

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GOVERNOR OF VIRGINIA,

FOR THE

YEAR 1893.

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# Annual Report of the Attorney-General.

## COMMONWEALTH OF VIRGINIA,

ATTORNEY-GENERAL'S OFFICE,

RICHMOND, VA., November 22, 1892.

To His Excellency, PHILIP W. MCKINNEY,

Governor of Virginia :

GOVERNOR,—I have the honor to submit to you my *fourth* annual report.

Since my last report I have tried in the *Supreme Court of Appeals* of the Commonwealth the following cases—*viz* :

1. *Drier vs. Commonwealth*. Indictment—murder. From Circuit Court of Northampton county. *Affirmed*.

2. *Byrd vs. Commonwealth*. Indictment—murder. From the County Court of Louisa. *Affirmed*.

3. *Field vs. Commonwealth*. Indictment—shooting with intent to kill. From the Circuit Court of Culpeper county. *Affirmed*.

4. *Commonwealth vs. McCullough et als.*

*Commonwealth vs. McCullough.*

*Commonwealth vs. Barry.*

*Commonwealth vs. Davis & Co.*

*Coupon cases from the Circuit Court of Norfolk city*—turn upon the constitutionality of "The Funding Bill" of 1870-'71, and that of the Act of Assembly known as "*The McCullough Bill*"—were argued, but not decided. In these cases I was ably assisted by Colonel Ellis, of the Norfolk bar, and Hon. H. R. Pollard, of Richmond, counsel for the "Sinking Fund Commissioners."

5. *Commonwealth vs. Dunlop*. From the Circuit Court of Petersburg. "*A coupon case.*" *Affirmed*. The court held that the tax-payer who tenders coupons is *not* required to prove the genuineness of the bonds from which the coupon was cut; that the statute does not change the common-law rule, and courts will take *judicial notice* of the seal of the State and the signatures of the heads of departments.

6. *Commonwealth vs. Ford, Trustee*. From the Circuit Court of Richmond city. *A coupon case.* *Affirmed*. The court held that when the tax-payer tenders coupons for verification, and the bond from which the coupon was cut had been surrendered to the Commonwealth and funded under "*act of February 20, 1892,*" the bond need not be produced; such cases are within the meaning and intent of "*section 12*" of said act.

7. *Lescallett vs. Commonwealth*. From the Hustings Court of Richmond city. *Reversed*. This was a prosecution under the "Act of Assembly," 1891-'92, chapter 380, page 626—"To prevent and punish betting, gambling, etc.," approved February 25, 1892. The court (Judges Fauntleroy and Hinton dissenting) held that the offence charged in the indictment's "*second count*" was not proved; that *criminal laws* must be *strictly* construed; that "a bet" is "a contract," and in this case was not consummated in Virginia; therefore no violation of the statute. This decision makes of no value "*the statute,*" and the evil it was intended to sup-

press continues and steadily grows, a blot upon the Commonwealth and a "canker worm" eating into and destroying the morals of our people. Laws of *this kind* are upon the statute-books of Missouri and Maryland, and have been enacted by Congress for the District of Columbia. My brother-attorneys inform me they are enforced, but (at the date of their letters) no case had been carried to their Court of Appeals. Our statute closely resembles that of Maryland, but the *Missouri law* I consider better in form and more comprehensive in scope and purpose. It was passed *April 1, 1891*, and will be found in "*Missouri's Laws of 1891*," page 122. This book is in the library of the Court of Appeals, and I commend it the consideration of "The General Assembly."

8. *Benton vs. Commonwealth*. From the Circuit Court of Loudoun. *Reversed*. Presented this new and important question: When three or more persons *jointly* prosecuted for *felony* elect to be and are tried separately, two found guilty, fined and imprisoned in the county jail, and on the trial of their confederate, offered as witnesses for the Commonwealth, *can they testify?* The court held they could not, but were excluded by "section 3898," Code 1887—to-wit:

"*Except where it is otherwise expressly provided, a person convicted of felony shall not be a witness unless he has been pardoned or punished therefor.*"

My contention this: Virginia statutes grade crime into—(a) Felony; (b) Misdemeanor; and defines each offence (section 3879)—"Such offences as are punishable with death or confinement in the penitentiary are *felonies*, and all other offences *misdemeanors*." Indictments are the accusations of grand juries, found upon *ex-parte* evidence; the verdict of the trial-jury ascertains and fix the crime and imposes punishment. The sentence gives it effect, and must *strictly* conform to the verdict. From the very nature of prosecutions there cannot be a verdict for one crime and judgment and sentence for a different offence, and though the indictment charge the accused with "a felony," the court (section 3706) allows the jury, in their discretion, to find him guilty of "*misdemeanor*." That *felony* can be punished by confinement *in jail* seems to me "*a legal solecism*." The *major* certainly embraces the *minor* crime. This verdict punished by fine and confinement *in jail*, *ex vi termini* negated the *felony* and graded the crime "*a misdemeanor*." The Commonwealth's witnesses, were, therefore, *competent*, and *not* within "section 3898," as was held in "*Canada's Case*," 22 G. 899.

9. *Snodgrass vs. Commonwealth*. From the Circuit Court of Wise county. Indictment—felonious assault. *Affirmed*.

10. *Jesse Mitchell vs. Commonwealth*. From the Circuit Court of Amelia county. Indictment—*rape*. *Reversed*, and Mitchell lynched. *His victim a child of twelve years*. The court held the record defective—1st, because not certified as required by "section 4016," Code 1887; 2d, the sheriff's return of the writ of *venire facias* did not conform to "section 900," Code 1887.

11. *Lewis vs. Commonwealth*.

Same *vs.* Same. From the Circuit Court of Accomac. Indictment—selling liquor without license. Argued March 16, 1893, *but not decided*.

12. *Proffit vs. Anderson*. *Habeas corpus*. To test the validity of "*Louisa county's road-law*." (Acts 1891-'92, chapter 417, page 686.) Argued March 17, 1893, *but not decided*. Mr. R. L. Gordon, Jr., attorney for the Commonwealth, appeared with me and filed a brief in this case, in which the issues were clearly presented and admirably argued.

13. *King vs. Commonwealth*. *Habeas corpus*. To test the validity of "sections 4179, 4180, 4181, 4182, and 4183, chapter 204, Code 1887," which relate to "*Proceedings in criminal cases against convicts*," and over this class of cases con-

fers jurisdiction upon the *Circuit Court of Richmond city*. Argued April 13, 1893, and not decided. In this connection I suggest that the superintendent of the penitentiary be required to keep in a bound book, provided for the purpose, an accurate descriptive list and photograph of convicts, and when taken before the Circuit Court of Richmond city pursuant to "sections 4180, 4181, 4182, and 4183, of chapter 204," the book and photograph made evidence for the Commonwealth.

14. *Read vs. Commonwealth*. From the Circuit Court of Tazewell. Indictment—*malicious shooting. Reversed.*

15. *Tilley vs. Commonwealth*. From the Circuit Court of Carroll. Indictment—murder. *Reheard and reversed.*

16. *James Thomas vs. Commonwealth*. From Circuit Court of Russell. Indictment—selling liquor contrary to law. *Affirmed.*

17. *Morgan vs. Commonwealth*. From the Circuit Court of Montgomery. Indictment—selling liquor unlawfully. *Reversed.*

18. *Weatherman vs. Commonwealth*. From the Circuit Court of Carroll. Indictment—murder.

19. *Taylor vs. Commonwealth*. From the Circuit Court of Wise county. Indictment—murder. *Affirmed.* I was assisted in this case by *Mr. Fulton*, of Messrs. Burns & Fulton.

20. *Combs vs. Commonwealth*. From Circuit Court of Carroll. Indictment—breaking and entering a grist-mill. *Affirmed.*

21. *Thos. Short, Jr., vs. Commonwealth*. From the Circuit Court of Russell. Indictment—murder. *Affirmed.*

#### CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

1. *Ex-parte* William Marsh.
2. *Ex-parte* Robert L. Wharton.
3. *Ex-parte* Severn Nelson.

Citizens of Maryland, tried in the County Court of Accomac county for violating Virginia's oyster laws, were convicted, and upon their petition for writ of *habeas corpus* brought before the United States Circuit Court, their cases heard by Judges Hughes and Goff in this city, June 14th, decided in Baltimore, September 18, 1893, and every point of contention determined in favor of the Commonwealth. In these trials I was efficiently and kindly assisted by *Mr. James H. Fletcher*, the *Commonwealth attorney for Accomac county*, and take this opportunity to thank him, and also thank his county judge, *Hon. John W. Gillett*, for the valuable paper entitled, "*Review of the claim of Maryland of the right of her citizens to fish in the waters of Pocomoke Sound*," which I made part of my brief as "Appendix No. 2."

These cases have been taken by appeal to the United States Supreme Court, and that the *status* of this controversy may be fully understood, I make the opinion of the learned judges part of this report:

#### "CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

*Ex-parte* W. W. Marsh, R. L. Wharton, and Severn Nelson, imprisoned for violating oyster laws of Virginia, brought into court on writ of *habeas corpus*.

Three citizens of Maryland, William W. Marsh, Robert L. Wharton, and Severn Nelson, are before the court on writs of *habeas corpus*, issued upon petitions, severally, alleging that they have been unlawfully prosecuted for violating certain laws of Virginia relating to oysters; and have been unlawfully convicted and

imprisoned by the County Court of Accomac county, Virginia, for the offences charged. Marsh was convicted of violating section 2156 of the Code of Virginia, which forbids all persons from taking or catching oysters with a dredge, scraper, or any other instrument than ordinary oyster tongs, in any of the waters of the Commonwealth, except as prescribed by other sections of the Code. Wharton and Nelson were convicted under section 2147 of the Virginia Code, which forbids any person, other than a resident of Virginia who has paid a tax and obtained a license as prescribed by law, from taking or catching oysters in any manner in the waters of the State.

The indictments in the case of Wharton and Nelson charge that the offences were committed on Ledge Rock, in that part of Pocomoke Sound which lies within the limits of Virginia. The indictment in the case of Marsh charges that the offence was committed on Hurley's Rock in Tangier Sound, within the limits of Virginia. It is conceded that all of the offences were committed within the limits of Virginia; but it is contended, in defense, that by reason of Wharton's and Nelson's offences having been committed in Pocomoke Sound by citizens of Maryland, the courts of Virginia cannot take cognizance of them; and that by reason of Marsh's offence having been committed at a place near the boundary line between Virginia and Maryland, running from Smith's to Watkins' Point, where the line is "doubtful," the Virginia courts have no jurisdiction to try him as a citizen of Maryland.

We shall deal, in treating the question raised, more directly with the cases of Wharton and Nelson, and afterward with that of Marsh.

A great mass of documentary evidence and historical literature has been filed by counsel on both sides, as evidence in these causes. We have studied it with great care, and as thoroughly as the importance of the question involved seemed to require. The extraordinary volume and diffuseness of this evidence renders necessary a more elaborate discussion and decision than is usually submitted from the bench in ordinary litigation.

We will first describe in some detail, as matters of common knowledge, the oyster properties of Pocomoke Sound, and the laws of Virginia enacted for the protection generally of her oyster interests.

Pocomoke Sound has an area of about ninety square miles, and is one of the largest subdivisions of Chesapeake Bay. According to the survey recently made by Captain Baylor, under an act of the Legislature of Virginia, fifty-two square miles (28,528 acres) of this area is natural oyster rocks, beds, or shoals. It is common knowledge that the natural growth of oysters in this Sound at one time was nearly depleted by constant and imprudent dredging; but some ten or twelve years ago the Legislature of Virginia prohibited dredging, and since then the oysters on the natural rocks have recuperated, and now the Sound is well stocked. Immense quantities are removed annually; but so long as the removals are made with tongs only, the quantity continues to be abundant; and a rock, if worked and nearly depleted, will, when left alone, re-seed itself with a growth of small oysters, which in two or three years become marketable.

It is doubtful if so rich a deposit of oysters, in as small a territory, can be found in the waters of Virginia or Maryland. That portion of Tangier Sound which is within the limits of Virginia, is a much larger body of water than Pocomoke Sound; and, although it is looked upon as rich in its production of oysters, yet it has but 4,746 acres (seven square miles) of natural beds, rocks, or shoals. Pocomoke river is a navigable stream midway on the Eastern Shore Peninsula, lying wholly within the State of Maryland in its entire course south-

ward until it crosses the boundary line five miles above its mouth; and until 1887 lying wholly within Virginia for that five miles, from the boundary line to its mouth where it empties into the Sound.

It is shown by public documents that Pocomoke Sound supplies the main—almost entire—support to at least three thousand of the inhabitants of Accomac county, Va., counting only those engaged in the oyster industry and the members of their immediate families. Of that part of the population dependent upon their labor in this Sound for the maintenance of themselves and families, five-sixths rely upon taking oysters directly from the places of their natural growth and selling the catch. The remaining sixth plant alone, or combine planting with tonging. The planters have their grounds, upon application, assigned to them and marked by stakes by the oyster inspector of the district, who is an officer of the State of Virginia, then they are surveyed by the county surveyor, and the survey returned to and recorded in the County Court clerk's office. This, if exceptions are not filed and sustained, authorizes the planters to hold their assignments so long as they pay the annual rent to the State. The planter prepares his ground by depositing shells upon it and placing a limited quantity of oysters thereon to facilitate its seeding. If no oysters are placed upon the bed, still the spawn will attach itself to the shells and produce a growth; but this process is hastened by placing seed-oysters upon the prepared bed as before stated. In a few years the oysters grow so large and thickly that it becomes difficult to distinguish the artificial beds from the natural rocks. At maturity (in about three years, if the location is suitable) the oysters are removed from the beds and marketed, the quality being superior to and the oysters commanding a better price than those taken from the natural rocks.

Official records show that 139 assignments and surveys have been made in Pocomoke Sound upon applications of planters, and these surveys embrace a little more than 1,000 acres. The records show that the surveys run from one-eighth of an acre to 105 acres, most of them containing less than ten acres. Some few persons—but very few—occupy lands for planting purposes which have not been assigned or surveyed, and consequently they have never acquired a legal right to hold them.

The laws of Virginia regulating the oyster culture are found in the Code and statutes. The owner of a boat to be used in taking or catching oysters from the natural rocks is required to have the boat registered by the oyster inspector of his district every year, and pays the inspector for his services a fee of fifty cents annually. Each registered tongman is required to report weekly the amount of his sales of oysters, and to pay thereon an amount equal to the amount of tax levied by the State on any other species of property; but at the time of registering any tongman can commute the tax on his sales by paying two dollars for the entire season. This the tongers invariably do, because it relieves them from the trouble of making weekly reports, and the amount of commutation is less than the tax on sales would amount to. The planter pays an annual rent of one dollar per acre for the land assigned to him, and he also reports to the commissioner of the revenue where he lists his property for taxation the amount of his sales of planted oysters for the preceding year, upon which sales is assessed a tax the same as upon other taxable property. These are the only taxes collected from tongers or planters.

Two truths are obvious from the foregoing recital—first, that unless laws are passed and stringently enforced for the protection of the oyster rocks, beds, and plants in Pocomoke Sound, the oysters which are produced in profusion there

will soon be destroyed; and, second, that in order to preserve and cultivate the oyster and increase its production in those waters, it is necessary to allow of private proprietorship in the oyster plants, subject, at the pleasure of Virginia, to such taxation as entails upon the State the duty of protecting these taxed oyster properties by police and general laws. These truths very broadly distinguish the oystering industry from that of catching running fish in the waters of the Chesapeake and its tributaries, in which there can be no private property until they are caught, and invalidate any claim that may be made, by inference, to the right of oystering from grants—in general terms, of the right of fishing.

We think, moreover, it may be laid down as a proposition of natural law that, inasmuch as oysters are becoming more and more valuable and necessary every year, with the growth of populations, as human food, any State possessing great and productive oyster deposits owes it as a duty to humanity, no less than to her own citizens engaged in the oyster culture, to protect these deposits from such depredations as destroy their valuable product.

In order to give effectual encouragement to this industry, Virginia has enacted laws, some of which have been described above, which confer private rights in oyster beds, and which impose taxes upon cultivators of oysters, which are expended in supporting a police force charged with the duty of protecting these private properties from such depredations as those of which the petitioners have been convicted.

We do not understand that the validity of these laws of Virginia is questioned by counsel for the petitioners, or that they question the right of private property in oyster beds. The defense set up for the petitioners is technical only, denying the jurisdiction of the Virginia Court which convicted them, and basing the denial solely on the circumstance that their offences were committed in localities in which Virginia is claimed to have relinquished jurisdiction over Maryland citizens by treaty with Maryland.

We turn now to the Potomac river, on the western side of the Chesapeake Bay. The tide-water portion of this great stream, for a hundred and twenty miles from the Great Falls at Georgetown to the Chesapeake Bay, constitutes the boundary line for that entire distance between Maryland and Virginia. Its fisheries for herring, mackerel, shad, and other running fish, were for a long time highly valuable, and are quite so still. There are oysters in the more brackish waters near its mouth, but the oyster interests of the Potomac have always been very inconsiderable. The relations of the tide-water portions of the Potomac river to the two States made it necessary that there should be some compact as to its use between Maryland and Virginia. Accordingly, on the 28th day of March, 1785, under the auspices of General Washington, and at Mt. Vernon, a compact was entered into which had the effect of a solemn treaty between these States. That compact is still in force, except so far as the subsequent ratification by Virginia and Maryland of the Constitution of the United States may have modified and changed it.

Another portion of the boundary between the two States has always been a subject of much interest, to-wit: that extending from the mouth of the Potomac across the Chesapeake Bay and the Eastern Shore or Peninsula, to the Atlantic Ocean. Until the final settlement in 1877 of this boundary line by Arbitrators Black and Jenkins, which was accepted by the two States, and was ratified by Congress by the Act of March 3, 1879 (see 20 U. S. Stat. at Large, page 481), this line was the subject of much controversy, more or less acrimonious, between the two States and their respective citizens.



One of the original subjects of contention was the exact locality of Watkins' Point, which was ambiguously mentioned in Lord Baltimore's charter. This was fixed, however, at a very early date. It was determined by Commissioners Scarborough, of Virginia, and Calvert, of Maryland, in their report of March 28, 1668, defining its position; and that position has never been changed; certainly not very largely changed. (The Act of Congress just cited and the Code of Virginia, section 13, page 62, strangely refer to the Scarborough-Calvert line as marked by them in eighteen hundred and sixty-eight, which, of course, are misprints). Watkins' Point thus determined has remained from 1668 till now, a cardinal point in the boundary line of Maryland and Virginia. In regard to this point, which determined and continues to determine so large a section of the boundary line of the two States, the two commissioners use the following language:

"After a full and perfect view taken of the point of land made by the north side of Pocomoke Bay and the south side of Annamessex Bay, we have and do conclude the same to be Watkins' Point, from which said point, so-called, we have run an east line, agreeable with the extremest part of the westernmost angle of said Watkins' Point, over the Pocomoke River, to the land of Robert Holston's," etc., etc., etc., and "on into a marsh of the seaside."

That is to say, after fixing Watkins' Point, they ran a line from that point on Pocomoke Bay, to and "over Pocomoke River" eastward to the Atlantic Ocean.

Not only is Watkins' Point, as fixed, or nearly as fixed, by Scarborough and Calvert, still a cardinal point in the boundary, but the point at which these commissioners crossed over the Pocomoke river also remains an undisputed point of the line as it was fixed by them. In modern times this crossing has been ascertained to be at latitude 37°, 59', 37'', longitude 75°, 37', 4''. The line, from Watkins' Point to Pocomoke river, fixed by Scarborough and Calvert, skirted the irregular northern shore of Pocomoke Sound, taking in no navigable water except what is in the five miles of Pocomoke river below its intersection with the line; a fact which will be seen in the sequel to have given a good deal of annoyance to some of the citizens of Maryland. One of our objects in quoting exact language from the report of Scarborough and Calvert is to show that at that day and by those two men of pre-eminent intelligence, the Bay and the river Pocomoke were spoken of and regarded as two distinct bodies of water.

From what has been said, it is plain that while the two States had very important common interests in the Potomac river, which was a common boundary for a hundred and twenty miles, they had comparatively trifling common interests in the Pocomoke river, a stream that from 1668 to 1877 constituted no part whatever of a boundary between them, and whose course in Virginia was less than five miles.

The petition of Wharton and Nelson, praying for the writs of *habeas corpus* under which they are before this court, recites among other things, as follows: "By the seventh section (of the compact entered into on the 28th day of March, 1785, between the States of Maryland and Virginia) it is provided that:

"§ 7. *The citizens of each State, respectively, shall have full property in the shores of Potomac river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river; but the right of fishing in the river shall be common to and equally enjoyed by the citizens of both States: provided, that such common right be not exercised by the citizens of one State to the hindrance or disturbance of the fisheries on the shores of the other State; and*

*that the citizens of neither State shall have a right to fish with nets or seines on the shores of the other."*

By the eighth section of said compact it is provided that:

"§ 8. *All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine in the river Potomac, or for preserving and keeping open the channel and navigation thereof, or of the river Pocomoke within the limits of Virginia, by preventing the throwing out of ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both States.*"

The petitioners now before this court, by their counsel, contend that "by the true interpretation of the said seventh and eighth sections of the compact of 1785 the citizens of Maryland are lawfully entitled to possess and enjoy and exercise a common right of fishery, including the right to catch and take oysters in the Potomac river and in the Pocomoke river, including what is called Pocomoke Sound, which is a part of said river, being, in fact, really the mouth thereof."

The petition thus claims that the provisions of the seventh section of the compact giving a common right of fishery in which the Potomac river only is mentioned, and the reasons for which provision were so strenuous as to make them necessary in respect to a great river, forming for a hundred and twenty miles the boundary between the two States, is to be construed to apply also to a small river not mentioned in the section, not then forming any part of the boundary, and as to which no such reason for the provision then existed in any degree. It founds this pretension on no conceivable ground other than the fact that the Pocomoke river is mentioned in section eight of the compact in a clause subsequent to another clause, requiring all laws and regulations for the preservation of fish in the Potomac, particularly described in that section, to be made with the mutual consent and approbation of both States.

It is apparent, from the language of the petition, that the validity of the defense in these cases depends upon the truth of several propositions—viz:

1st. That the seventh section of the compact of 1785, granting a common right of fishery to citizens of both States in the Pocomoke river, despite the non-mention of that river therein.

2d. That even if the seventh section did not, by omitting the mention of Pocomoke river, contain the grant, yet the eighth section did by implication and construction.

3d. That the grant of a common right of fishery, thus contained in sections seventh or eighth, or both, in the Pocomoke river, carried the right into Pocomoke Sound as a part of Pocomoke river. And,

4th. That the grant of a common right of fishery thus derived in Pocomoke Sound—that is to say, of fishing for running fish, which, until caught, are *feræ naturæ*, and not the subject of private ownership—embraces the right to scrape and dredge for oysters, not only on natural rocks in Pocomoke Sound, but on the private plantations granted and taxed there by the State of Virginia, who owns the water and the soil.

Section seventh defines two classes of subjects in relation to which the laws and regulations made by these States shall be of mutual consent and approbation. The first class embraces laws and regulations necessary for the preservation of fish and for the performance of quarantine in the Potomac river. The second embraces laws and regulations for preserving and keeping open the channel and navigation of the Potomac, and also of the river Pocomoke within the limits of

Virginia, by preventing the throwing out of ballast or giving any other obstruction thereto.

The compact in section seven having given common right of fishery in the Potomac river, followed up that provision with a clause requiring all laws and regulations for the protection of this common right in that river to be made with the mutual consent and approbation of both States. And Maryland and Virginia, having in 1785 rights of navigation and commerce, under the law of Nations, in the Potomac and Pocomoke rivers, which were reciprocal in part though not common in all, the compact naturally contained a provision requiring laws and regulations for keeping open the channel and navigation of the two rivers within the limits of Virginia to be made by mutual consent; the waters below the mouths of both rivers liable to obstruction being owned by Virginia.

There is nothing in section seven of the compact that can reasonably be held to give a common right of fishery in the waters of the Pocomoke to citizens of Maryland and Virginia, whether running fish or shell-fish, the Pocomoke river not being mentioned or referred to in the whole section, and the oyster interests in the Potomac having been so meagre that it can hardly be supposed that they were in the minds of the two States in stipulating for common rights of fishing in the Potomac.

After the adoption of the compact of 1785 the two States enacted laws for the preservation of fish and regulations for fishing in the Potomac river, having the sanction of mutual consent and approbation. They have not done so in respect to the Pocomoke river. Virginia has never enacted such laws, and it has not been shown in the evidence or argument that Maryland has ever proposed them. We are inclined to believe that Maryland has never enacted or proposed them.

For one hundred and eight years Virginia certainly, and we believe Maryland also, by their non-action have given practical refutation to the contention of counsel for petitioners that any grant of a common right of fishing in the Pocomoke river was intended in sections seven and eight of the compact.

On this subject, Mr. I. Nevett Steele, of the Maryland bar, in an opinion, written at the request of the Governor of Maryland, in respect to the present validity of the compact of 1785, remarks, after quoting section eight, as follows:

"The ordinary and grammatical construction of the section would manifestly limit the mutual or joint legislation over the river Pocomoke to the preserving and keeping open of the channel and navigation, and would not extend it to the preservation of fish in the river."

"If this construction be correct, there is nothing at all in the compact on the subject of fish in the Pocomoke, and consequently nothing upon which any claim of Marylanders to fish there could be founded. The compact, by its previous clauses, having given to Marylanders no right to fish in that part of Pocomoke river belonging to Virginia, there seems to be no reason why it should give to Maryland the power to legislate for the preservation of fish in that part of the river."

We cannot accede, therefore, to the contention that because the State of Maryland has never consented to or approved the law of Virginia under which the petitioners, Wharton and Nelson, were convicted, therefore that law is inoperative and invalid as against them as citizens of Maryland in respect to offences committed on the Pocomoke river. We are accordingly of opinion that section 2147 of the Code of Virginia is valid as against all offenders including depredators from Maryland in the water of Pocomoke river, though it has not the consent and approval of that State.

## POCOMOKE RIVER IS NOT POCOMOKE SOUND.

Though it is unnecessary, after this ruling, to consider the point so strenuously urged by counsel for the petitioners—that the exemption, by operation of the eighth section of the compact of 1785, of offences committed in Pocomoke river by citizens of Maryland extends to those committed in Pocomoke Sound, which is claimed to be part of the river—yet it is due to the subject, in view of the elaborateness with which the point has been pressed, to examine this claim of identity between the river and the Sound, Pocomoke.

Considered either as a question of strict law or of historical fact, this contention—this claim of identity between these two bodies of water—is equally untenable.

We have already shown, by quoting from the report of Commissioners Scarborough and Calvert, made as far back as 1668, that they spoke of the bay and the river as two distinct bodies of water. We have examined all of the early maps of the waters and region embracing this sound and river, and we do not think that in any of them the name *river* is laid upon the *sound*. In one of the oldest and best of the maps, that of Augustin Herrman, published in 1673, five years after the settlement of the boundary by Scarborough and Calvert, the bay and the river Pocomoke are laid down with considerable accuracy as distinct from each other, and are separately designated, the one as Pocomoke *Bay* and the other as Pocomoke *river*.

Coming down to modern maps, the case is the same—distinct designations appearing in them as sound and river, as in Hermann's map. The first edition of the chart, made by the United States Coast Survey, published between 1850 and 1860, gives a clear delineation of Pocomoke river, and a distinct one, from careful surveys of Pocomoke Sound, placing the name of Pocomoke Sound upon the bay. Every later edition of this map of the Coast Survey exhibits this bay as a distinct body of water, separately designated and distinguished from the river.

It is true that Maryland has long manifested a decided dissatisfaction with the boundary line of 1668, prescribed by Scarborough and Calvert; but her chief contention was that the line should not have been placed so far north as to have left the whole of Pocomoke Sound in Virginia. As the result, in part, of this dissatisfaction, a commission was finally appointed to readjust the boundary lines generally between Maryland and Virginia. The commissioners were Jeremiah S. Black, Charles A. Jenkins, and James B. Beck, all men of distinction, and enjoying the confidence of the public in the highest degree. The boundaries of the two States were settled by them in an award dated January 16, 1877. This award was accepted by the two States, and was ratified by Congress by its act of March 13, 1879, hereinbefore cited. This settlement possesses every element of finality and unimpeachability. It has not only the unqualified acceptance of the two States, but has also the ratification of Congress at the instance of both States. It has the merit of extraordinary fullness, accuracy, and clearness of description in setting out the lines of boundary which it establishes. It leaves not in doubt a single point or a single line confusedly or inaccurately delineated. Observe how precise its language is in defining the line east of Watkins' Point, with which we have to do in the case at bar; and that Maryland is given part of Pocomoke Sound, by the fixing of the line far enough below that of Scarborough and Calvert to leave a strip of the sound about a mile wide, for a distance of fourteen miles, within her limits. The arbitration of 1877, in

respect to that part of the boundary line which lies east of Watkins' Point, after fixing that point at latitude  $37^{\circ} 54' 38''$ , longitude  $75^{\circ} 52' 44''$ , goes on to say, with great precision of description: "From Watkins' Point the boundary line runs due East 7,880 yards, to a point where it meets a line running through the middle of Pocomoke Sound, which is marked C on the accompanying map, and is in latitude  $37^{\circ} 54' 38''$ , longitude  $75^{\circ} 47' 50''$ ; thence by a line dividing the waters of Pocomoke Sound—North,  $47^{\circ} 30'$ , East, 5,220 yards, to a point in said sound marked D on the accompanying map in latitude  $37^{\circ} 56' 25''$ , longitude  $75^{\circ} 45' 26''$ ; thence following the middle of the Pocomoke river by a line of irregular curves, as laid down on the accompanying map, until it intersects the westward protraction of the boundary line marked by Scarborough and Calvert, *May 28, 1868*, at a point in the middle of Pocomoke river, and in the latitude  $37^{\circ} 59' 37''$  longitude  $75^{\circ} 37' 4''$ ; thence by the Scarborough and Calvert line, which runs  $5^{\circ} 15'$  North of East to the Atlantic Ocean." *The misprint of 1868 for 1668 has already been adverted to.*

This language of the Black-Jenkins' award of 1877 has been quoted for two purposes—first, in order to show that this latest historical document relating to this boundary, just as that of 1668 had done, particularly distinguishes the Sound from the river Pocomoke by two distinct mentionings of each; and secondly, to show that the settlement of 1877 left no part of this portion of the boundary between the two States "doubtful."

It is proper to observe that the United States Coast Survey, in its maps, has extended the river Pocomoke (so called) westward of its proper mouth to the narrows abreast of Meramscot creek, which is twelve miles South and Southwest of the crossing of the river by the Scarborough-Calvert and Black-Jenkins' line. It is to be also observed that the Black-Jenkins' award adopts the map of the United States Coast Survey in designating the boundary line east of Watkins' Point, and in designating the river as distinct from the bay, makes the river commence nearly abreast of Meramscot creek.

In concluding this part of the subject we think we can say, with truth, that there is no map of these waters, and no joint official document existing in relation to them, which has confounded the river with the sound, or claimed that the sound is the river, or any part of the river Pocomoke.

#### CONCLUSIONS.

We conclude from what has been said that the eighth section of the compact of 1785 does not require that the laws and regulations established by Virginia for the preservation of fish—more particularly shell-fish—in the Pocomoke river shall have the consent and approbation of Maryland; and that, even if it did so, such requirement cannot be applied to Pocomoke Sound, which is not the river, is no part of it, and is immeasurably superior to it in value and importance. *This sound is ninety square miles in area, containing the most valuable oyster beds in Virginia or Maryland, and is of such extent and importance as to forbid the supposition that Virginia would have granted away her jurisdiction over it in any other than express, precise, formal, and solemn terms.*

*There having been no grant of a common right of fishing in the Pocomoke river, no right can be derived, by inference, of common fishing in Pocomoke Sound. And there having been no grant of a common right of fishing for fish either in the river or the sound, there can be no right derived, by inference, of common fishing for oysters in either of these waters.*

If Virginia had intended to grant away the valuable rights now claimed by Maryland, it is fair to assume that she would not have subjected the beneficiaries of the grant to the necessity of resorting to extraordinary inferences and constructions for realizing and enjoying the fruits of the grant. It would have been her duty to have used apt and proper words for executing her purpose, and to have been just as explicit and frank in the language of the eighth section of the compact as she was in that of the seventh.

#### MARYLAND'S CONTENTION.

In support of their contentions, based on section eight of the compact of 1785, which have been shown to be inadmissible in the foregoing paragraphs, counsel for the petitioners cite the language of one of the judges in the decision of the Supreme Court of Appeals of Virginia in the case of the Commonwealth *vs.* Hendricks, reported in 75 Virginia, 934. In that case George Hendricks, a citizen of Maryland, was indicted in the County Court of Fairfax county for "unlawful fishing" in the Potomac river. He contended that he was entitled to be tried in a court in Maryland, and could not be tried in a court of Virginia, because the law which he was charged with violating had been passed by the mutual consent and approbation of both States for the regulation of fishing in the Potomac river, and because another law, passed by like mutual consent, had given citizens of Maryland violating the first-named law the right of trial in a Maryland court. His contention was perfectly sound, and the Virginia Court of Appeals sustained this defense. The trial related exclusively to the Potomac river. It involved the question of the common right of fishery in that river, given by the seventh section of the compact of 1785. It also involved certain laws and regulations passed by both States for the protection of that common right of fishing in the Potomac river, passed in pursuance of the first clause of section eight of that compact. *There was no question in the case concerning Pocomoke river.* But the justice delivering the opinion of the court, in examining the question of the jurisdiction of the two States over an offense charged to have been committed on the Potomac river, used the following language:

"By Article 8, all laws and regulations which may be necessary for the preservation of fish in the river Potomac or the river Pocomoke within the limits of Virginia shall be made with the mutual consent and approbation of both States. The effect of this article is to give to the State of Virginia concurrent jurisdiction with the State of Maryland over the Potomac from shore to shore, and over that part of the Pocomoke river *which is within the limits of Virginia*, to enact such laws, with the consent and approval of Maryland, as may be deemed necessary and proper for the preservation of fish in said waters."

The court here refers to section eight of the compact of 1785 without quoting it, although the mere quotation of it would have shown the fallacy of its language in respect to the Pocomoke river. So far as the Pocomoke river was concerned, the language of the court was *obiter dictum* upon a point not argued or even mentioned in the case; and Mr. Steele, in his opinion, written for the Governor of Maryland, before referred to, very naturally says: "*I think it may well be doubted whether the Court of Appeals of Virginia would consider what is there said about the Pocomoke river, as a binding decision of that learned tribunal.*"

Few instances can be cited in which the *obiter* of a court has sown the seeds of greater mischief than this of the Virginia Court of Appeals in the Hendricks case. It has instigated the depredations of Marylanders upon the private oyster

properties of Pocomoke Sound, of which the newspapers are full. It has brought these cases before this court. Yet in using the language of the *obiter* part of its decision the court did not hold that Pocomoke Sound was Pocomoke river, and "*its obiter*" has no application to the case at bar. Nor did the court say that the eighth section, in what it stipulated in regard to a common right of fishery, "included the right to take oysters in the Pocomoke river."

The petitions of Wharton and Nelson must be disallowed, and the prisoners remanded to the custody of the sheriff of Accomac county.

#### MARSH'S CASE.

Coming now to the consideration of *the case of Marsh*, it is to be observed that his offense is charged to have been committed on Hurley's Rock, which the indictment alleges to be within the limits of Virginia, near the line of boundary lying between Smith's Point, on the Potomac, and Watkins' Point. The defense is that that part of the boundary is "*doubtful*," and that the prisoner is entitled to the privilege granted by the tenth section of the compact of 1785, which stipulates that offenses committed by citizens of Maryland within the limits of Virginia on that part of Chesapeake Bay where the line of division between Smith's Point and Watkins' Point may be doubtful, shall be tried in a court of Maryland. As a matter of historical fact, no part of the line between Maryland and Virginia was, at the date of the compact of 1785, more doubtful than the part between Smith's and Watkins' Points, and no law could be more just and judicious than the tenth section of the compact of 1785, containing the provisions relied on. But the able and distinguished commissioners appointed by the two States in 1877 had in charge the very duty of making certain and determinate all doubtful parts of the common boundary of the two States. Accordingly, the commission addressed itself to the task of removing all doubt from this part of the line as well as others, and accomplished its purpose successfully. Probably no section of a boundary line was ever more clearly, precisely, minutely, definitely, or intelligibly laid down and defined than was the portion of the Maryland and Virginia line between Smith's and Watkins' Points, and which may be found on pages 63-'4 of the Virginia Code, and page 482 of the twentieth volume of the Statutes at Large of the United States.

It is useless in this opinion to set out the careful language of the award in defining this line. The duty of the arbitrators was to make it cease to be doubtful, and to establish the line with precision and certainty. They performed that duty and accomplished that purpose. The line is no longer doubtful, and the defense of the prisoner, Marsh, is inadmissible. It was competent for the Virginia court by which he was convicted to try him, and he must be remanded to the custody of the sheriff of Accomac county, Va.

Norfolk, Va., September 18, 1893.

A copy, teste:

M. F. PLEASANTS, *Clerk.*"

The following cases are unchanged since my last report as received from my predecessor, Mr. Ayers:

Commonwealth *vs.* Baltimore and Ohio Railroad Company.

This is a suit originally brought in the Circuit Court of the City of Richmond to recover judgment against the company for taxes due the State; the company having tendered coupons in payment. The defendant company, being a non-

resident, removed the case to this court. The case would have been tried ere now, but the death of Judge Sheffey and other incident causes have prevented it.

Gatewood *vs.* the State of Virginia.

Parsons *vs.* Marye, Auditor.

These cases were fully argued and submitted to the court for decision in 1886, and the court has been *deliberating* upon them ever since.

#### IN EQUITY.

James P. Cooper *vs.* Lewis P. Winston, sheriff.

D. K. Stewart *vs.* J. W. Southward, sheriff.

These are injunction suits to restrain the sheriffs from levying executions upon judgments rendered under the act of May 12, 1887.

Temporary restraining orders were issued, to which Winston, sheriff, paid no attention. The principles were settled against plaintiffs by the decision in cases cited, but they remain on the docket.

#### CIRCUIT COURT OF UNITED STATES FOR WESTERN DISTRICT OF VIRGINIA.

The American Harrow Company *vs.* Shafer, Commissioner, &c.

Injunction to restrain Commonwealth's officers in the county of Wythe from enforcing the statute which imposes "a license-tax" upon the complainants, a foreign corporation doing business in this State, was argued at Abingdon before Judges Goff and Paul, *but not decided*.

It was made a *vacation case*, and briefs to be filed by myself and the opposing counsel.

Commonwealth of Virginia *vs.* Joseph H. Carrico.

Indictment pending in the County Court of Smyth against Joseph H. Carrico for the murder of James Nelson. At the time of the homicide Carrico was an United States deputy marshal. He applied to Judge Paul for "*writ of habeas corpus*." The writ was granted, and the case heard at a special term of his District Court, which began January 12, 1892, in Abingdon. Judge Paul did not discharge Carrico, but removed the case to the *United States Circuit Court*. When called for trial, I moved to remand because the federal court had not jurisdiction, and, further, because the removal was not authorized by the laws of the United States. This motion was overruled, the trial prosecuted, and Carrico found guilty of "manslaughter." Judge Paul set this verdict aside, and admitted Carrico to bail *upon his own recognizance*. I applied to the United States Supreme Court for "*writ of mandamus*," and the writ was granted. The opinion of *Mr. J. Gray* as follows—viz:

#### SUPREME COURT OF THE UNITED STATES.

Commonwealth of Virginia *vs.* John Paul, District Judge of the United States for the Western District of Virginia. *Petition for writ of mandamus*. This was a petition by the Commonwealth of Virginia to this court for a *writ of mandamus* to the Honorable John Paul, District Judge of the United States for the Western District of Virginia, and holding the Circuit Court of the United States for that district, to command him to remand to the County Court of Smyth county, in Virginia, an indictment against Joseph H. Carrico, for the murder of James M. Nelson, found by the grand jury of the county, and by them returned into



the County Court, and of which the Circuit Court of the United States had assumed jurisdiction; and also to command him to restore the body of Carrico to W. D. Wilmore, the jailer of the county, from whose custody he had been taken upon a writ of *habeas corpus* issued by said judge.

Annexed to the petition was a copy of the record of the District Court of the United States in the proceedings for a *habeas corpus*, as well as a copy of the record of the Circuit Court of the United States in the proceedings concerning the indictment.

The record of the District Court set forth the following proceedings: On December 18, 1891, in vacation, Carrico presented to Judge Paul a petition, addressed to him as "Judge of the United States Circuit Court," alleging "that on December 12, 1891, one Kirk, a justice of the peace of Smyth county, Virginia, issued his warrant in the name of the Commonwealth of Virginia, addressed to Constable Scott, of the said county, commanding him to arrest your petitioner, and bring his body before said justice for wilfully, premeditatedly, and of malice aforethought, killing and murdering one James M. Nelson, in the said county of Smyth, on December 11, 1891; and upon said warrant the said Constable Scott did arrest your petitioner late on Saturday evening, December 12, 1891, and delivered him to W. D. Wilmore, the jailer of Smyth county, Virginia; and your petitioner is now confined in the jail of Smyth county, at Marion, awaiting a trial before said justice upon the said charge of murder." The petition further alleged that no murder was committed, but that the killing was done by the petitioner in self-defense, in the performance of his duty as a deputy of the marshal of the district, acting by and under the authority of the internal revenue laws of the United States, and in attempting to arrest Nelson while violating those laws by having in his possession and selling illicit ardent spirits. "In view of these facts, under section 643 of the Revised Statutes of the United States," the petition prayed that "said cause may be removed from the jurisdiction of the said Kirk, justice of the peace of said county of Smyth, and from the County Court of said county, to the Circuit Court of the United States for the Western District of Virginia for trial"; that a writ of *habeas corpus cum causa* might be awarded, and a duplicate thereof delivered to the clerk of the County Court, and that by virtue thereof the marshal of the district or one of his deputies might take the body of the petitioner into his custody, to be dealt with in the cause according to law, and according to the order of the Circuit Court, or of a judge thereof in vacation; and, "upon the removal of said prosecution, that a copy of the record and proceedings before said justice and by said constable" might be brought into the Circuit Court. The petition was verified by the oath of the petitioner, taken before a United States commissioner on December 12th; and annexed to it was a certificate of counsel of the same date, in the form required by said section of the statutes.

Upon that petition, and on the same day, Judge Paul made an order, entitled "In the District Court of the United States for the Western District of Virginia, in vacation," and signed by him as District Judge, granting a writ of *habeas corpus* in common form to the jailer, returnable before him on December 23d, at Abingdon.

On December 19th that petition was filed, and the order granting the writ of *habeas corpus* recorded, in the clerk's office of the District Court, and the writ was issued accordingly, tested by Judge Paul as judge of the District Court, and under its seal.

On December 22d, the writ of *habeas corpus*, as appeared by the marshal's

return thereon, was executed by delivering copies thereof to the jailer, and to the clerk of the County Court.

On December 23d, at a special term of the District Court, held at Abingdon, the jailer brought in the body of Carrico; and returned that the causes of his detention were a warrant of commitment, a copy of which, marked Exhibit A, was annexed to and made part thereof, "and the proceedings of the County Court of Smyth and Commonwealth of Virginia, marked Exhibit B, and made part and parcel of this return."

The only exhibit annexed to the jailer's return was marked Exhibit A, and was as follows:

"Virginia, Smyth County, to-wit: To William Scott, constable of said county, and to the keeper of the jail of said county:

"These are to command you, the said constable, in the name of the Commonwealth of Virginia, forthwith to convey and deliver into the custody of the keeper of said jail, together with the warrant, the body of Joseph H. Carrico, charged before me, John J. Kirk, a justice of the said county, on the oath of R. W. Nelson, with a felony by him committed, in this, that the said Joseph H. Carrico, on the 11th day of December, 1891, in the said county, feloniously and of his malice did kill and murder one James M. Nelson; and you, the said keeper of the said jail, are hereby required to receive the said Joseph H. Carrico into your jail and custody, that he may be examined for the said offence by the County Court of the said county, and him there safely keep until he shall be discharged by due course of law. Given under my hand and seal this, the 14th day of December, 1891.

"JOHN J. KIRK, *J. P.*

The prisoner was thereupon admitted to bail, with sureties for his appearance on January 8, 1892, and the case was continued to that day, and again to January 9th, when the jailer was permitted by the court to amend his return by adding Exhibit B, therein referred to, which was a transcript of an indictment against Carrico for the murder of Nelson, returned into that court by a grand jury of the county on December 21st, and of an order made the same day by the County Court, directing that Carrico, who had been removed to the jail of another county for safe-keeping be conveyed by the sheriff to the jail of Smyth county, that he might be tried in the County Court on the indictment. This transcript appeared to have been certified by the county clerk on January 7th, and was endorsed by the clerk of the District Court of the United States, as filed in that court on May 17, 1892.

The case was continued from January 9th to January 12th, when the District Court, held by Judge Paul, made the following order:

"In this cause, the court having heard the testimony introduced on behalf of the petitioner, as well as that introduced on behalf of the respondent, W. D. Wilmore, sheriff of Smyth county, Virginia, and the arguments of counsel for the petitioner and respondent, and it appearing to the court that the petitioner is in custody for an act done in pursuance of a law of the United States, and is held in custody contrary to law by the jailer of Smyth county, Virginia, and that he has a right to have removed into the Circuit Court of the United States for the Western District of Virginia the prosecution pending against him in the County Court of Smyth county, Virginia: It is therefore ordered that the petitioner be recognized in the sum of one thousand dollars for his appearance before the Circuit Court for this district on the first day of the next regular term thereof, to

answer the indictment found against him by a grand jury of the County Court of Smyth county, Virginia." Thereupon Carrico entered into a recognizance accordingly. The record set forth the testimony introduced at that hearing, as well as the opinion then delivered, and published in 51 Fed. Rep. 196.

On May 14, 1892, the jailer moved the District Court to amend its order of January 12th so as to allow him an appeal to this court, and to certify that the question of the jurisdiction of the District Court to hear and determine the writ of *habeas corpus* in the manner it did was alone involved and to be reviewed. The motion was granted, upon the grounds that the order of January 12th, taking the petitioner from the custody of the respondent, and holding him to answer to the indictment in the United States court was a final order, from which the respondent might appeal to this court, as if it had been an order for the absolute discharge of the prisoner from his custody; and that the writ of *habeas corpus* was not merely ancillary to the petition for the removal, under section 643 of the Revised Statutes, of the prosecution of Carrico by the State of Virginia, but was a distinct and different proceeding, in a different court, and under a different statute, and was not issued by the clerk, as provided in that section, but by the district judge, and on December 18, 1891, "whereas," the judge said, "the petition for removal, as shown by record evidence used in the discussion of this motion, was not filed in the clerk's office of the Circuit Court until December 19, 1891." His opinion on this motion is in the record, and is published in 51 Fed. Rep. 200. The appeal from the order of January 12th does not appear to have been prosecuted.

The copy of the record of the Circuit Court of the United States, annexed to the petition for a mandamus, was of the proceedings at the regular May term, 1892, of that court at Abingdon, held by Judge Paul, in the case entitled "Commonwealth of Virginia *vs.* Joseph H. Carrico, Indictment for murder from Smyth County Court," and began, under date of Saturday, May 14th, with the following memorandum:

"Be it remembered that heretofore the said Joseph H. Carrico presented a petition for the removal of the case aforesaid, and herein charging him with the murder of James M. Nelson, from the County Court of Smyth county, Virginia, to the Circuit Court of the United States for the Western District of Virginia, at Abingdon, Virginia (and for a writ of *habeas corpus*), to the Judge of the District Court of the United States for the Western District of Virginia; and upon return of W. D. Wilmore, jailer of Smyth county, Virginia, and upon the hearing of the evidence and arguments of counsel, an order was entered in the said District Court of the United States for the Western District of Virginia on January 12, 1892, removing the said prosecution of the Commonwealth of Virginia *vs.* Joseph H. Carrico into the Circuit Court of the United States for the Western District of Virginia, in the Fourth Circuit, at Abingdon, Virginia, for further proceedings and trial; and said indictment, with the endorsements thereon, is in the words and figures following—viz:"

Then followed a copy of the indictment, with the endorsement "a true bill," by the foreman of the grand jury, and also endorsed as "a transcript from the record," by the clerk of the County Court. The record of the Circuit Court further showed that on May 14th the Attorney-General of Virginia and the county attorney came in, and that the prisoner appeared, as required by his recognizance, was arraigned upon the indictment, pleaded not guilty, was tried by a jury, and on Monday, May 16th, found guilty of voluntary manslaughter; and that on May 17th the court, upon his motion, set aside the verdict and granted a

new trial, continued the case to the next term, and admitted him to bail upon his own recognizance.

Upon motion of the Commonwealth of Virginia, on the first day of this term, and before any further proceedings were had in the Circuit Court, this court gave leave to file the petition for a mandamus, and granted a rule to Judge Paul to show cause why a writ of mandamus should not issue as prayed for.

The judge, in his return to the rule, referred to the petition for removal and for a writ of *habeas corpus*, and the proceedings concerning the *habeas corpus* and those upon the indictment, as appearing in the copies of records annexed to the petition for a mandamus; set forth the grounds of his action substantially as in his opinions above mentioned; and specifically stated that the writ of *habeas corpus* was issued, not under section 643 of the Revised Statutes, but under section 753, which authorizes the writ when a prisoner "is in custody for an act done or omitted in pursuance of a law of the United States."

It was alleged in the petition for a mandamus, and in the brief for the petitioner, and was not denied in the judge's return, or in the brief of his counsel, that when the case of the indictment was called for trial in the Circuit Court of the United States, a motion was made by the Commonwealth of Virginia to remand the case to the County Court, because the Circuit Court had no jurisdiction over the crime charged in the indictment, and because the removal of the prosecution from the County Court was not authorized by law, but was contrary to the Constitution and laws of Virginia, and to the Constitution and laws of the United States; and that this motion was denied by the Circuit Court.

March 6, 1893.

Mr. Justice GRAY, after stating the case, delivered the opinion of the court.

The prosecution and punishment of crimes and offences committed against one of the States of the Union appropriately belong to the courts and authorities of the State, and can be interfered with by the Circuit Court of the United States so far only as Congress, in order to maintain the supremacy of the Constitution and laws of the United States, has expressly authorized either a removal of the prosecution into the Circuit Court of the United States for trial, or a discharge of the prisoner by writ of *habeas corpus* issued by that court or by a judge thereof. *Tennessee vs. Davis*, 100 U. S. 257; *Virginia vs. Rives*, 100 U. S. 313; *Davis vs. South Carolina*, 107 U. S. 597; *In re Neagle*, 135 U. S. 1; *Huntington vs. Attrill*, 146 U. S. 657, 672, 673.

In the case at bar, Joseph H. Carrico, having been arrested under a warrant from a justice of the peace of the county of Smyth on a charge of murder, was discharged by the district judge on writ of *habeas corpus* from the commitment under State process; and having afterwards been indicted by the grand jury of the county for that offence, and committed by order of the County Court for trial upon the indictment, the prosecution against him was assumed to have been removed into the Circuit Court of the United States for trial, and was there tried.

The State of Virginia, by a petition for a writ of mandamus, questions the validity both of the removal and of the discharge, and it will be convenient to consider the two separately, beginning with the removal.

It is contended by the respondent that the prosecution was rightly removed into the Circuit Court of the United States under section 643 of the Revised Statutes (the constitutionality of which was affirmed in *Tennessee vs. Davis* and in

Davis *vs.* South Carolina, above cited), authorizing the removal into the Circuit Court of the United States for trial of "any civil suit or criminal prosecution" "commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States, now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office, or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law."

It is important, therefore, to consider whether the conditions of that section have been complied with.

By that section it is only when the suit or prosecution has been "commenced in any court of a State," and at "any time before the trial or final hearing thereof," that it "may be removed for trial into the Circuit Court," "upon the petition of such defendant to said Circuit Court, and in the following manner": The petition must set forth the nature of the suit or prosecution, and be verified by affidavit and supported by certificate of counsel. It "shall be presented to the said Circuit Court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office." "The cause shall thereupon be entered on the docket of the Circuit Court, and shall proceed as a cause originally commenced in that court." The clerk of the Circuit Court is required, when the case is commenced in the State court otherwise than by *capias*, to issue a writ of *certiorari* to the State court for the record; and, when it is commenced by *capias*, to "issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court or left at his office by the marshal"; "and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the Circuit Court, and any further proceedings, trial, or judgment therein in the State court shall be void."

The removal of the case out of the jurisdiction of the State court and into the exclusive jurisdiction of the Circuit Court of the United States takes place, without any order of the Circuit Court, as soon as the State court, by the service upon it, or upon its clerk, of the appropriate process, whether *certiorari* or *habeas corpus cum causa*, has notice of the filing of the petition in the Circuit Court. But it is only after such formal notice has been given that the jurisdiction is transferred from the State court to the National court. The proceedings, under this section differ from those under section 641, in which the petition for removal is required to be filed in the State court, and is of itself notice to that court, and therefore, "upon the filing of such petition, all further proceedings in the State court shall cease," and if the petition shows a sufficient ground for removal, the case is, in legal effect, removed. *Virginia vs. Rives*, 100 U. S. 313, 316. But under either section the jurisdiction of the State court is not taken away until it has notice, in one form or other, of the petition for removal; under section 641, by the petition filed in that court; under section 643, by notice from the clerk of the Circuit Court of the petition there filed.

The records of the District Court and of the Circuit Court, copies of which are annexed to the petition for a mandamus, present a curious and complicated condition of things, in which some of the confusion may be owing to the facts that not only is the district judge a judge of either court, but that in the Western District of Virginia both courts are held at the same times and places and have the same clerk. Rev. Stat. §§ 572, 609, 622, 658; Act of September 25, 1890, c. 922, 26 Stat. 474.

The petition for removal, praying also for a writ of *habeas corpus cum causa*, was evidently framed under section 643 of the Revised Statutes, and was addressed to the district judge as "Judge of the United States Circuit Court"; and it is said, in his opinion delivered on allowing an appeal to this court from his order of January 12th upon the *habeas corpus*, that "the petition for removal, as shown by record evidence used in the discussion of this motion, was not filed in the clerk's office of the Circuit Court until December 19, 1891." 51 Fed. Rep. 202.

But that record evidence, all of which is in the record now before us, shows only that the petition was filed in the clerk's office of the District Court on that day, being the same day on which the order granting the writ of *habeas corpus* was recorded in, and the writ issued from, that office. Indeed, the very ground assigned by the judge in his opinion, just referred to, for allowing an appeal from his order on the *habeas corpus*, was that the writ of *habeas corpus* issued by him was not ancillary to the petition for a removal, nor issued by the clerk of the Circuit Court as provided in that section; his return to this petition for a mandamus expressly states that it was not issued under section 643, but under section 753; and the memorandum, inserted at the beginning of the record of the proceedings in the Circuit Court on the indictment, describes that order as an order of the District Court, removing the prosecution of the Commonwealth of Virginia against Carrico into the Circuit Court.

The single petition, addressed to Judge Paul as Judge of the Circuit Court, and praying for a removal of the cause into that court, and for a writ of *habeas corpus cum causa* to complete the removal (which, so far as appears on the records of either court, was the only petition either for a removal or for a *habeas corpus*), appears to have been treated by the judge as if it had been, or had included, two separate petitions; the one a petition for an ordinary writ of *habeas corpus*, under section 753, which might be granted by the District Court or District Judge, the other a petition for a removal of the cause, under section 643, which could only be addressed to and filed in the Circuit Court.

If the petition for removal had been duly filed in the Circuit Court of the United States, and a writ of *habeas corpus cum causa* had been duly issued by the clerk of that court, and served on the clerk of the County Court, no order of removal would have been necessary. If the petition was not so filed, and neither such a writ of *habeas corpus*, nor a writ of *certiorari* to bring in the record, was so issued and served, no order, even of the Circuit Court, for the removal of the cause, could have any effect. In any aspect, the District Court had no authority to order the prosecution to be removed into the Circuit Court.

The inference appears to be inevitable that the only foundation of the exercise of jurisdiction by the Circuit Court over this indictment was a petition filed in the District Court and orders made and recorded in that court; and that no petition for removal was ever filed in the clerk's office of the Circuit Court, and no writ of *certiorari* or *habeas corpus cum causa* was ever issued by the clerk, as clerk of that court, and served on the State court, as required by section 643 of the Revised Statutes, in order to take away the jurisdiction of the State court.

But there is a more serious objection to the exercise of jurisdiction by the Circuit Court of the United States over the indictment found in the State court.

By the law of Virginia, murder or other felony must be prosecuted by indictment found in the County Court; and a justice of the peace, upon a previous complaint, can do no more than to examine whether there is good cause for believing that the accused is guilty, and to commit him for trial before the court

having jurisdiction of the offence. Virginia Code of 1887, §§ 3990, 4016, 3955-3971.

The petition for removal, which was sworn to on December 12, 1891, alleged that Kirk, a justice of the peace of Smyth county, had that day issued his warrant to a constable to arrest the petitioner and bring him before the justice on a charge of the murder of Nelson, and that the petitioner had been arrested by the constable on that warrant, and was now confined in the county jail, as the petition alleged, "awaiting a trial before said justice upon the said charge of murder," which can only mean an examination before the justice with a view to a commitment to await the action of the grand jury; and prayed that "said cause" might be removed from the jurisdiction of the justice and of the County Court into the Circuit Court of the United States for trial, and, "upon the removal of said prosecution, that a copy of the record and proceedings before said justice and by said constable" might be brought into the Circuit Court.

When that petition was signed and sworn to, there had been no proceedings, except before the justice of the peace and by the constable; there was no case pending in the County Court, and the justice had not even committed the prisoner to await the action of that court; and no indictment was found, or other action taken, in the County Court until after the petition had been filed in the Federal court.

By the terms of section 643, it is only after "any civil suit or criminal prosecution is commenced in any court of a State," and "before the trial or final hearing thereof," that it can "be removed for trial into the Circuit Court next to be holden in the district where the same is pending," and "shall proceed as a cause originally commenced in that court."

Proceedings before a magistrate to commit a person to jail, or to hold him to bail, in order to secure his appearance to answer for a crime or offence, which the magistrate has no jurisdiction himself to try, before the court in which he may be prosecuted and tried, are but preliminary to the prosecution, and are no more a commencement of the prosecution than is an arrest by an officer without a warrant for a felony committed in his presence.

We are aware that under this section the opposite view has prevailed in some cases in the Circuit Courts. *Georgia vs. Port*, 4 Woods, 513; *Georgia vs. Bolton*, 11 Fed. Rep. 217; *North Carolina vs. Kirkpatrick*, 42 Fed. Rep. 689. But the only authorities there cited which afford any color for that conclusion were English decisions that the preliminary arrest upon the warrant of a justice of the peace took a case out of the statute of limitations, defining the time after the commission of the offence within which "the prosecution shall be commenced." *Rex vs. Wallace*, 1 East P. C. 186; *The Queen vs. Brooks*, 1 Denison, 217; *S. C.* 2 Car. & K. 402. The question whether the government has taken such action as will stop the running of a statute of limitations is quite different from the question when a prosecution can be deemed to be commenced within the meaning of the acts of Congress authorizing removals from the State courts into the courts of the United States for trial.

A grand jury, whether of the State or of the United States, is empanelled and sworn to inquire into and present offences against that government only under whose authority it is summoned. Story on the Constitution, § 1784. The grand jury summoned and empanelled under the authority of a State is the only appropriate body to inquire into any offence against the State, and to find or to ignore an indictment therefor. The duty of the grand jury attending a court of the United States is limited to inquiring into and presenting offences against the

laws of the United States, and its proper advisers in matters of law are the court and the attorney of the United States.

In a criminal case removed from the State court into the Circuit Court of the United States after indictment found, the Circuit Court of the United States tries the case upon the accusation presented by a grand jury of the State, and framed with the assistance of the law officers of the State. *Tennessee vs. Davis*, 100 U. S. 257, 271.

But if a person arrested to await the finding of an indictment may remove the case before an indictment is found, the accusation is not framed and presented by the officers and the grand jury of the State whose criminal law has been violated, but by the officers and grand jury of another government; and the Circuit Court of the United States has not only to try the defendant, but also to charge its own grand jury as to the accusation against him on behalf of the State; and this, too, in a case in which the very ground of removal into the Circuit Court is the defendant's suggestion that he needs the protection of the Constitution and laws of the United States against the prosecution by the State.

We cannot believe that such was the intention of Congress in the statutes enacted to secure a fair and impartial trial between the State seeking to vindicate its public justice, on the one hand, and a defendant claiming the protection of the Constitution and laws of the United States on the other.

In any case falling within the purview of the acts of Congress the defendant is adequately protected against danger of unlawful oppression from the courts or authorities of the State by the right to remove it into the Circuit Court of the United States as soon as a prosecution has been commenced against him, and by the right to apply to any court or judge of the United States for a writ of *habeas corpus* under sections 751-753 whenever he "is in custody for an act done or omitted in pursuance of a law of the United States."

The true rule on this subject, as it appears to us, was forcibly and accurately expressed by Mr. Justice Grier in a case removed from the court of quarter sessions of Bucks county, in the State of Pennsylvania, before indictment found into the Circuit Court of the United States for the Eastern District of Pennsylvania, under the act of Congress of March 3, 1863, ch. 81, § 5 (12 Stat. 756), since incorporated in section 641 of the Revised Statutes, and which, though differing from the statute now in question in requiring the petition for removal to be originally filed in the State court, yet, in substantial accord with this statute, provides that "if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court against any officer, civil or military, or against any other person," for any such act as is therein described, done by virtue or under color of authority of the United States, the defendant may file a petition "for the removal of the cause for trial at the next Circuit Court of the United States to be holden in the district where the suit is pending." Mr. Justice Grier, after quoting these words, ordered the case to be remanded to the State court, for the following reasons: "The petition of the defendants brings their case fully within the provisions of this section, but the removal is premature. The prosecution has not been commenced in the State court. A warrant has been issued by a justice of the peace, and the defendants have been arrested preparatory to the commencement of a prosecution in the State court, but the attorney for the Commonwealth has not sent a bill to the grand jury. We do not know, therefore, whether the Commonwealth of Pennsylvania intends to prosecute the defendants for the alleged offence, or whether the grand jury will find a bill, without which the prosecution cannot be said to be 'commenced in the State



court.' The act contemplates the removal of a prosecution 'pending' that a 'trial' may be had in the Circuit Court. If the attorney of the United States were required to send a bill of indictment before a grand jury of the United States court for a breach of the peace of the State, it would present a truly anomalous proceeding. Yet without it there would be no case to try in the Circuit Court. If a bill of indictment had been found in the State court, it would have presented such a case; but, until this is done, there is no case pending in the court of Bucks county which can be removed to this court for trial." *Commonwealth vs. Artman*, 3 Grant, 436; *S. C. 5 Phila.* 304.

It appearing upon the face of the petition for removal, as well as by the copies of records laid before this court, that no prosecution had been commenced in the State court, within the meaning of section 643 of the Revised Statutes, when the petition for removal was drawn up and sworn to, nor even when it was filed in the Federal court, the prosecution subsequently commenced by the presentment of an indictment in the State court was never lawfully removed into the Circuit Court of the United States; for, in all cases of removal from the State courts, the jurisdiction of the Circuit Court of the United States rests and depends upon the statements made in the petition for removal, and verified by the oath of the petitioner. *Virginia vs. Rives*, 100 U. S. 313, 316; *Crehore vs. Ohio & Mississippi Railway*, 131 U. S. 240; *Graves vs. Corbin*, 132 U. S. 571, 590.

The result is that the Circuit Court of the United States has, without authority of law, assumed jurisdiction of an indictment found in the courts of the State of Virginia for a crime against the laws of the State, and that the State is entitled to have the prosecution remanded to its courts, to be there dealt with according to law. For aught that appears on this record, the State is not bound to commence or to carry on the prosecution in the courts of another government, but is entitled to resume its own rightful jurisdiction and authority, and to try the offender in its own courts. If the case should be allowed to proceed in the Circuit Court of the United States, and should finally result in an acquittal of the charge, in whole or in part, the State could not have a writ of error to review the judgment. *United States vs. Sanges*, 144 U. S. 310. A stronger case for issuing a writ of mandamus can hardly be imagined. The writ may be directed to the judge who has unlawfully assumed jurisdiction of the prosecution; and no previous motion to him to remand the case was necessary. The case is governed in every particular by *Virginia vs. Rives*, 100 U. S. 313, 316, 323, 324.

If any delay on the part of the State, in a case of this kind, could justify a denial of the writ of mandamus, no unreasonable delay is here shown. So far as appears by the copies of records submitted to us by both parties, the Circuit Court of the United States first took jurisdiction of the indictment on Saturday, May 14, 1892. It is alleged by the petitioner, and not denied by the respondent (although the fact does not appear of record), that on that day a motion to remand the case to the State court was made by the State and denied by the Circuit Court. The accused was found guilty of voluntary manslaughter on Monday, May 16th, the very day on which October term, 1891, of this court was finally adjourned. On the next day the District Judge set aside the verdict, continued the case to October term, 1892, of the Circuit Court, and admitted the accused to bail on his own recognizance. On the first day of the present term of this court, and before any further proceedings in the Circuit Court, the State applied to this court for leave to file the petition for a mandamus.

The necessary conclusion is that the State of Virginia is entitled to a writ of

mandamus to compel the respondent to remand the indictment and prosecution against Carrico to the County Court in which the indictment was found.

The matter of the discharge of the prisoner by the District Judge upon the writ of *habeas corpus* may be more briefly disposed of. If that writ had been a writ of *habeas corpus cum causa*, issued by the clerk of the Circuit Court as ancillary to a removal of the prosecution into that court, under section 643, the remanding of the cause would carry with it the right to the custody of the prisoner. But being, as appears by the records annexed to the petition for a mandamus, as well as by the return to the rule to show cause, an ordinary writ of *habeas corpus*, issued by the District Judge upon the ground that the prisoner was in custody for an act done in pursuance of a law of the United States, the question whether good cause was shown for his discharge was to be judicially determined by the judge, in the exercise of the jurisdiction vested in him by sections 751-753 of the Revised Statutes. His determination might have been reviewed, on the facts as well as the law, by appeal. Rev. Stat. §§ 763-766; Acts of March 3, 1885, c. 353, 23 Stat. 437; March 3, 1891, c. 517, §§ 5, 6, 26 Stat. 827, 828; *In re Neagle*, 135 U. S. 1; *Horner vs. United States*, 143 U. S. 570, 576. But it cannot be reviewed or controlled by writ of mandamus. *Ex-parte Schwab*, 98 U. S. 240; *Ex-parte Perry*, 102 U. S. 183; *Ex-parte Morgan*, 114 U. S. 174; *Ex-parte Morrison*, 147 U. S. 14, 26.

It follows that, as to the discharge on the writ of *habeas corpus*, no order can properly be made upon this petition; but that, for the reasons above stated, there must be a

*Writ of mandamus to remand the indictment and prosecution of the Commonwealth of Virginia against Joseph H. Carrico to the County Court of Smyth county."*

In obedience to the mandate of the Supreme Court, Judge Paul remanded the case to the County Court of Smyth, but soon thereafter it was again removed to the Federal Circuit Court, under "section 643," U. S. Rev. Stats.

When called October 14, 1893, assisted by Mr. A. M. Dickenson, the Commonwealth's attorney for Smyth, I appeared for Virginia, and again moved to remand. First, because the Federal Court had not jurisdiction; second, the facts of the case, undisputed, exclude it from the terms of "section 643" of the Rev. Stats. This motion was denied, and I filed three bills of exceptions. The case was then called for trial. I moved for a continuance, because not ready, and the Commonwealth of Virginia desired and intended to appeal from the decision of the court on "the motion to remand," the pivot on which the case turned. This motion was denied and the trial proceeded. The jury summoned and impanelled, but not charged as required by Virginia's statutes, found Carrico "not guilty," and the court discharged him.

I do not think this case is ruled by *Tenn. vs. Davis* (100 U. S. Reps. 257), or *Davis vs. So. Ca.* (107 U. S. Reps. 597), or *Cunningham vs. Neagle* (135 U. S. Reps. 1), and can find no excuse or justification for Federal interference.

The following cases stand as in my last report, and as received from Mr. Ayers: *S. Brown Allen et als vs. Marye et als*.

This is an injunction suit brought to restrain levy of an execution in favor of the Commonwealth against the plaintiffs after a tender of coupons. The case arose from a payment made by S. Brown Allen, as late Auditor of Public Accounts, to one Hamilton, without authority of law, for which judgment was obtained against him by the State and enjoined as above.

Samuel Moore *vs.* William H. Wightman, trespass on the case.  
 Samuel Garber *vs.* William H. Wightman, trespass on the case.  
 William Penn *vs.* William H. Wightman, trespass on the case.  
 John H. Wine *vs.* William H. Wightman, trespass on the case.  
 Cornelius Zirkle *vs.* William H. Wightman, trespass on the case.  
 H. M. Smootz *vs.* William H. Wightman, trespass on the case.  
 J. W. Wakeman *vs.* William H. Wightman, trespass on the case.  
 John S. Lafton *vs.* P. C. Gore, trespass on the case.  
 W. H. Ebert *vs.* P. C. Gore, trespass on the case.  
 W. L. Brown *vs.* P. C. Gore, trespass on the case.  
 W. W. Glass *vs.* P. C. Gore, trespass on the case.  
 Mrs. S. W. Tidbail *vs.* P. C. Gore, trespass on the case.  
 J. S. Robinson *vs.* P. C. Gore, trespass on the case.  
 George W. Ward *vs.* P. C. Gore, trespass on the case.  
 James Ginn *vs.* P. C. Gore, trespass on the case.  
 M. A. Mitchell *vs.* John W. Bransford.  
 P. Gregory *vs.* E. S. Moorman.

The above are suits instituted to recover damages for refusal to receive coupons and for levying executions. The cases are matured and ready for trial, but the principles involved have been adjudicated in other cases decided in the *Eastern Circuit*, and will, I presume, be dismissed when called for trial.

W. W. Larkin *vs.* H. C. Joyner, has been tried and decided in favor of the defendant, the efficient treasurer of Amherst county.

#### THE SUPREME COURT OF THE UNITED STATES.

The following cases unchanged since my last report :

Abram *vs.* Winston,  
 Rose *vs.* same,  
 Mills *vs.* same,  
 Royall *vs.* Greenhow,  
 Royall *vs.* Childrey,

appeals from the Circuit Court of the United States for the Eastern District of Virginia.

The defendants are proceeded against by tax-payers, who tendered coupons, "for trespass," "*as trespassers*," &c.; "the trespass"—*this*: That they served "process" upon the plaintiffs, as required by statute approved May 12, 1887, sometime called "the coupon-crusher." Demurrers to the declarations were sustained, and appeals taken.

No. 875. Jas. H. Gregory et als *vs.* Bransford, treasurer,

No. 876. Jos. Lawson et als *vs.* same,

No. 877. L. E. Letchford et als. *vs.* M. J. Day, sergeant, &c.,

No. 1093. W. W. Larkin *vs.* J. W. Bransford, treasurer, &c.,  
 "*coupon cases*" won by the Commonwealth in the trial courts, have been dismissed by the appellants.

#### "VIRGINIA *vs.* TENNESSEE"

has been decided, and "*the boundary line of 1802*" held to be the true boundary line between the States.

This line is not distinctly marked, and in the opinion delivered by *Mr. Justice*

*Field, April 3, 1893, permission was granted Virginia to ask for the restoration of marks and monuments which define this line, where the same have been defaced or destroyed.*

I made this motion May 15, 1893, but it has not been acted upon by the court. The opinion as follows, viz :

THE VIRGINIA AND TENNESSEE BOUNDARY.

SUPREME COURT OF THE UNITED STATES.

October Term, 1892.

The State of Virginia, Complainant, }  
*vs.* }  
The State of Tennessee. }

[April 3, 1893.]

MR. JUSTICE FIELD delivered the opinion of the Court.

This is a suit to establish by judicial decree the true boundary line between the States of Virginia and Tennessee. It embraces a controversy of which this court has original jurisdiction, and in this respect the judicial department of our government is distinguished from the judicial department of any other country, drawing to itself by the ordinary modes of peaceful procedure the settlement of questions as to boundaries and consequent rights of soil and jurisdiction between States, possessed, for purposes of internal government, of the powers of independent communities, which otherwise might be the fruitful cause of prolonged and harassing conflicts.

The State of Virginia, as the complainant, summoning her sister State, Tennessee, to the bar of this court—a jurisdiction to which the latter promptly yields—sets forth in her bill the sources of her title to the territory embraced within her limits, and also of the title to the territory by Tennessee.

The claim of Virginia is that by the charters of the English sovereigns, under which the colonies of Virginia and North Carolina were formed, the boundary line between them was intended and declared to be a line running due west from a point on the Atlantic Ocean on the parallel of latitude thirty-six degrees and thirty minutes north, and that the State of Tennessee, having been created out of the territory formerly constituting a part of North Carolina, the same boundary line continued between her and Virginia. And the contention of Virginia is that the boundary line claimed by Tennessee does not follow this parallel of latitude, but varies from it by running too far north, so as to unjustly include a strip of land about one hundred and thirteen miles in length and varying from two to eight miles in width, over which she asserts and unlawfully exercises sovereign jurisdiction.

On the other hand, the claim of Tennessee is that the boundary line, as declared in the English charters, between the colonies of Virginia and North Carolina was run and established by commissioners appointed by Virginia and Tennessee after they became States of the Union—by Virginia in 1800, and by Tennessee in 1801—and that the line they established was subsequently approved in 1803 by the legislative action of both States, and has been recognized and acted upon as the true and real boundary between them ever since, until the com-

mencement of this suit, a period of over eighty-five years. And the contention of Tennessee is that the line thus established and acted upon is not open to contestation as to its correctness at this day, but is to be held and adjudged to be the real and true boundary line between the States, even though some deviations from the line of the parallel of latitude thirty-six degrees and thirty minutes north may have been made by the commissioners in the measurement and demarcation of the line.

In order to clearly understand and appreciate the force and effect to be accorded to the respective claims and contentions of the parties, a brief history of preceding measures should be given, with reference to the charters and legislation under which they were taken.

On the 23d of May, 1609, James the First of England, by letters-patent, reciting previous letters, gave to Robert, Earl of Salisbury, Thomas, Earl of Suffolk, and divers other persons associated with them, a charter which organized them into a corporation by the name of The Treasurer and Company of Adventurers and Planters of the city of London, for the first colony of Virginia, and granted to them all those lands and territories lying "in that part of America called Virginia, from the point of land called Cape or Point Comfort, along the sea coast to the northward 200 miles, and from the said point of Cape Comfort along the sea coast to the southward 200 miles, and all that space and circuit of land lying from the sea coast of the precinct aforesaid up into the land throughout, from sea to sea, west and northwest"; and, "also, all the islands lying within 100 miles along the coast of both seas of the precinct aforesaid."

On the 24th of March, 1663, Charles the Second of England granted to Edward, Earl of Clarendon, and others of his subjects, all that territory within his dominion of America, "extending from the north end of the island called Lucke Island, which lieth in the Southern Virginia seas and within six and thirty degrees of the northern latitude, and to the west as far as the South Seas, and so southerly as far as the river Mathias, which bordereth upon the coast of Florida, and within one and thirty degrees of northern latitude, and so west in a direct line as far as the South Seas aforesaid," and gave them full authority to organize and govern the territory granted under the name of the Province of Carolina.

On the 30th of May, 1665, Charles the Second granted to the above proprietors of Carolina a charter, confirming the previous grant, and enlarging the same so as to include the following-described territory: All that province and territory within America, "extending north and eastward as far as the north end of Currituck river or inlet, upon a straight westerly line to Wyonoke creek, which lies within or about the degrees of thirty-six and thirty minutes northern latitude; and so west in a direct line as far the South Seas; and south and westward as far as the degrees of twenty-nine inclusive of northern latitude, and so west in a direct line as far as the South Seas."

The northern and southern settlements of Carolina were separated from each other by nearly three hundred miles, and numerous Indians resided upon the intervening territory, and though the whole province belonged to the same proprietors, the legislation of the settlements was by different assemblies, acting at times under different governors. Early in 1700 the northern part of the province was sometimes called the colony of North Carolina, though the province was not divided by the crown into North and South Carolina until 1732. (Story's Commentaries on the Constitution, sec. 137.) Previously to this division the settlements on the borders of Virginia, and of what was called the colony of North Carolina, had largely increased, and disputes and altercations frequently occurred

between the settlers, growing out of the unlocated boundary between the provinces. Virginians were charged with taking up lands, under titles of the crown, south of the proper limits of their province, and Carolinians were charged with taking up lands which belonged to the crown with warrants from the proprietors. The troubles arising from this source were the occasion of much disturbance to the communities, and various attempts were made by parties in authority in the two provinces to remove the cause of them. Previously to January, 1711, commissioners were appointed on the part of Virginia and North Carolina to run the boundary line between them, and proclamations were made forbidding surveys of the grounds until that line within the disputed limits should be marked. But these efforts for the settlement of the difficulties were unavailing.

In January, 1711, commissioners were again appointed, but failed for want of the requisite means to accomplish their intended object.

In 1728 an attempt to settle the difficulties was renewed, but, as on previous occasions, it failed. The commissioners of the colonies met, but they could not agree at what place to fix the latitude thirty-six degrees thirty minutes north, nor upon the place called Wyonoke, and they broke up without doing anything. The governors of North Carolina and Virginia then entered into a convention upon the subject of the boundary between the two provinces, and transmitted it to England for approval. The king and council approved of it, and so did the lords and proprietors, and returned it to the governors to be executed. The agreement was as follows:

“That from the mouth of Currituck river, setting the compass on the north shore thereof, a due west line shall be run and fairly marked, and if it happen to cut Chowan river between the mouth of Nottaway river and Wiccacon creek, then the same direct course shall be continued towards the mountains, and be ever deemed the dividing line between Virginia and Carolina. But if the said west line cuts Chowan river to the southward of Wiccacon creek, then from that point of intersection the bounds shall be allowed to continue up the middle of Chowan river to the middle of the entrance into said Wiccacon creek, and from thence a due west line shall divide the two governments. That if said west line cuts Blackwater river to the northward of Nottaway river, then from the point of intersection the bounds shall be allowed to be continued down the middle of said Blackwater to the middle of the entrance into said Nottaway river, and from thence a due west line shall divide the two governments.

“That if a due west line shall be found to pass through islands, or cut out small slips of land, which might much more conveniently be included in one province or other, by natural water bounds, in such case the persons appointed for running the line shall have the power to settle natural bounds, provided the commissioners on both sides agree thereto, and that all variations from the west line be punctually noted on the premises or plats, which they shall return to be put upon the record of both governments.”

Commissioners were appointed by Virginia and North Carolina to carry this agreement into effect. They met at Currituck Inlet in March, 1728. The variation of the compass was then found to be three degrees one minute and two seconds west, nearly, and the latitude thirty-six degrees thirty-one minutes. The dividing line between the provinces struck Blackwater one hundred and seventy-six poles above the mouth of Nottaway. The variation of the compass at the mouth of Nottaway was two degrees thirty minutes. The line was afterwards extended to Steep Rock creek, 320 miles from the coast, by Commissioners Joshua

Fry and Peter Jefferson, on the part of Virginia, and Daniel Weldon and William Churton, on the part of North Carolina.

In 1778 and 1779 Virginia and North Carolina having become, by their separation in 1776 from the British crown, independent States, again took up the question of the boundary between them, and appointed commissioners to extend and complete the line from the point at which the previous commissioners, Fry and Jefferson and others, had ended their work on Steep Rock creek, to Tennessee river. The commissioners undertook the work with which they were charged, but they could not find the line on Steep Rock creek, owing, as they supposed, to the large amount of timber which had decayed since it was marked. The report of their labors was signed only by the Virginia commissioners. Their report was, in substance, that after running the line as far as Carter's Valley, forty-five miles west of Steep Rock creek, the commissioners of Carolina conceived the idea that the line was farther south than it ought to be, and, on trial, it appeared that there was a slight variation of the needle, which the Virginia commissioners thought arose from their proximity to some iron ore; that various expedients to harmonize the action of the commissioners were unavailing, and the Carolina commissioners, agreeing that they were more than two miles too far south of the proper latitude, measured off that distance directly north, and ran the line eastwardly from that place, superintended by two of the Carolina and one of the Virginia commissioners, while from the same place it was continued westwardly, superintended by the others, for the sake of expediting the business. The Virginia commissioners subsequently became satisfied that the first line run by them was correct, and they, therefore, continued it from Carter's Valley, where it had been left, westward to Tennessee river. The North Carolina commissioners carried their line as far as Cumberland Mountains, protesting against the line run by the Virginia commissioners.

This was in 1779 and 1780. The line adopted by the Virginia commissioners was known as the Walker line, and the line adopted by the commissioners of North Carolina was known as the Henderson line. Walker's line was approved by the Legislature of Virginia in 1791, but it never received the approval of the Legislature of Tennessee. Previously to the appointment of these commissioners, and on the 6th of May, 1776, the State of Virginia, in a general convention, with that generous public spirit which on all occasions since has characterized her conduct in the disposition of her claims to territory under different charters from the English government, had declared that the territories within the charters erecting the colonies of Maryland, Pennsylvania, North Carolina, and South Carolina were thereby ceded and forever confirmed to the people of those colonies respectively. On the 25th of February, 1790, North Carolina ceded to the United States the territory which afterwards became the State of Tennessee, and which was admitted into the Union on the 1st of June, 1796. Subsequently the States of Virginia and Tennessee both took steps for the final settlement of the controversy as to the boundary between them. On the 10th of January, 1800, the House of Delegates of the General Assembly of Virginia adopted the following resolution: "Whereas it is represented to the present General Assembly that the people living between what are called Walker's and Henderson's lines, so far as the same run between the State of Tennessee and this State, do not consider themselves under either the jurisdiction of that or this State, and, therefore, refuse the payment of any taxes to either of said States, or to the collectors of either for the general government, because the State of North Carolina, on the 25th of February, 1790, ceded the said State of Tennessee, then called the South-

western Territory, to the government of the United States; and, therefore, the act entitled 'An act concerning the southern boundary of this State,' passed on the 7th of December, 1791, in this Legislature, to establish the line commonly called Walker's line, as the boundary between North Carolina and this State, could only bind the State of North Carolina as far as her territorial limits extended on the line of this State, and could not bind the said Southwestern Territory, which had previously been conveyed, as aforesaid; and

"Whereas, since the said session, the general government hath erected the said Southwestern Territory into an independent State, by their act, June 1, 1796, whereby it has become the duty of the said State, of Tennessee and of this State to settle all differences between them with respect to the said boundary line:

"*Resolved, therefore,* That the executive be authorized and requested to appoint three commissioners, whose duty it shall be to meet commissioners to be appointed by the State of Tennessee, to settle and adjust all differences concerning the said boundary line, and to establish the one or the other of the said lines, as the case may be, or to run *any other line* which may be agreed on, for settling the same; and that the executive be also requested to transmit a copy of this resolution to the executive authority of the State of Tennessee."

On the 13th of January, 1800, this resolution was agreed to by the Senate.

On the 13th day of November, 1801, the General Assembly of Tennessee passed an act on the same subject, the first section of which is in these words:

"*Be it enacted by the General Assembly of the State of Tennessee,* That the governor, for the time being, is hereby authorized and required, as soon as may be convenient after the passing of this act, to appoint three commissioners on the part of this State, one of whom shall be a mathematician capable of taking latitude, who, when so appointed, are hereby authorized and empowered, or a majority of them, to act in conjunction with such commissioners as are or may be appointed by the State of Virginia to settle and designate a true line between the aforesaid States."

The second section is as follows:

"*And whereas* it may be difficult for this Legislature to ascertain with precision what powers ought of right to be delegated to the said commissioners; therefore,

"*Be it enacted,* That the governor is hereby authorized and required from time to time to issue such power to the commissioners as he may deem proper for the purpose of carrying into effect the object intended by this act, consistent with the true interest of the State."

On the 22d day of January, 1803, a report having been made by the commissioners, which is copied into the act, the Legislature of Virginia ratified what had been done in the following act:

"Whereas the commissioners appointed to ascertain and adjust the boundary line between this State and the State of Tennessee, in conformity with the resolution passed by the Legislature of this State for that purpose, have proceeded to the execution of that business, and made a report thereof in the words following—to-wit:

"The commissioners for ascertaining and adjusting the boundary line between the States of Virginia and Tennessee, appointed pursuant to public authority on the part of each—namely: General Joseph Martin, Creed Taylor, and Peter Johnson, for the former, and Moses Fisk, General John Sevier, and General George Rutledge, for the latter—having met at the place previously appointed for that



purpose, and not uniting, from the general result of their astronomical observations, to establish either of the former lines called Walker's and Henderson's, *unanimously agreed*, in order to *end all controversy* respecting the subject, to run a due west line equally distant from both, beginning on the summit of the mountain generally known by the name of White Top Mountain, where the northeastern corner of Tennessee terminates, to the top of Cumberland Mountain, where the southwestern corner of Virginia terminates, which is hereby declared to be the true boundary line between the said States, and has been accordingly run by Brice Martin and Nathan B. Markland, the surveyors duly appointed for that purpose, and marked under the directions of the said commissioners, as will more at large appear by the report of the said surveyors, hereto annexed, and bearing equal date herewith.

“2. And the said commissioners do further unanimously agree to recommend to their respective States, that individuals having claims or titles to lands on either side of the said line, as now fixed and agreed on, and between the lines aforesaid, shall not in consequence thereof in anywise be prejudiced or affected thereby; and that the Legislatures of their respective States should pass mutual laws to render all such claims or titles secure to the owners thereof.

“3. And the said commissioners do further agree unanimously to recommend to their States respectively that reciprocal laws should be passed confirming the acts of all public officers, whether magistrates, sheriffs, coroners, surveyors, or constables, between the said lines, which would have been legal in either of the said States had no difference of opinion existed about the true boundary line.

“4. This agreement shall be of no effect until ratified by the Legislatures of the States aforesaid. Given under our hands and seals at William Robertson's, near Cumberland Gap, December the eighth, eighteen hundred and two. (Dec. 8th, 1802.)

“JOS. MARTIN.	[L. S.]
“CREED TAYLOR.	[L. S.]
“PETER JOHNSON.	[L. S.]
“JOHN SEVIER.	[L. S.]
“MOSES FISK.	[L. S.]
“GEORGE RUTLEDGE.	[L. S.]

“5. And whereas Brice Martin and Nathan B. Markland, the surveyors duly appointed to run and mark the said line, have granted their certificate of the execution of their duties, which certificate is in the words following—to-wit: ‘The undersigned surveyors, having been fully appointed to run the boundary line between the States of Virginia and Tennessee, as directed by the commissioners for that purpose, have, agreeably to their orders, run the same, beginning on the summit of the White Top Mountain, at the termination of the northeastern corner of the State of Tennessee, a due west course to the top of the Cumberland Mountains, where the southwestern corner of Virginia terminates, keeping at an equal distance from the lines called Walker's and Henderson's, and have had the new line run as aforesaid marked with five chops in the form of a diamond, as directed by the said commissioners. Given under our hands and seals this eighth day of December, eighteen hundred and two. (8th December, 1802.)

“B. MARTIN.	[L. S.]
“NAT. B. MARKLAND.	[L. S.]

“And it is deemed proper and expedient that the said boundary line, so fixed

and ascertained as aforesaid, should be established and confirmed on the part of this Commonwealth—

“6. *Be it therefore enacted by the General Assembly of the Commonwealth of Virginia*, That said boundary line between this State and the State of Tennessee, as laid down, fixed, and ascertained by the said commissioners above named, in their said report above recited, shall be and is hereby *fully and absolutely*, to all intents and purposes whatsoever, *ratified, established, and confirmed* on the part of this Commonwealth, as the *true, certain, and real boundary line* between the said States.

“7. All claims or titles derived from the government of North Carolina or Tennessee, which said lands by the adjustment and establishment of the line aforesaid, have fallen into this State, shall remain as secure to the owners thereof as if derived from the government of Virginia, and shall not be in anywise prejudiced or affected in consequence of the establishment of said line.

“8. The acts of all public officers, whether magistrates, sheriffs, coroners, surveyors, or constables, heretofore done or performed in that portion of the territory between the lines called Walker's and Henderson's lines, which has fallen into this State by the adjustment of the present line, and which would have been legal if done or performed in the States of North Carolina or Tennessee, are hereby recognized and confirmed.

“9. This act shall commence and be in force from and after the passing of a like law on the part of the State of Tennessee.”

And on the 3d of November, 1803, Tennessee passed the following ratifying act:

“Whereas the commissioners appointed to settle and designate the true boundary between this State and the State of Virginia, in conformity to the act passed by the Legislature of this State for the purpose, on the thirteenth day of November, one thousand eight hundred and one, have proceeded to the execution of said business, and made a report thereof in the words following—to-wit”:

(Here follows the report named in the Virginia act.)

“And it is deemed proper and expedient that the said boundary line, so fixed and ascertained as aforesaid, should be established and confirmed on the part of this State—

“1. *Be it enacted by the General Assembly of the State of Tennessee*, That the said boundary line between this State and the State of Virginia as laid down, fixed, and ascertained by the said commissioners above named in their said report above recited, shall be and is hereby fully and absolutely to all intents and purposes whatsoever, *ratified, established, and confirmed* on the part of this State as the *true, certain, and real boundary line* between the said States.

“2. *Be it enacted*, That all claims or titles to lands derived from the government of Virginia, which said lands, by the adjustment and establishment of the line aforesaid have fallen into this State, shall remain as secure to the owners thereof as if derived from the government of North Carolina or Tennessee, and shall not be in anywise prejudiced or affected in consequence of the establishment of the said line.

“3. *Be it enacted*, That the acts of all officers, whether magistrates, sheriffs, coroners, surveyors, or constables, heretofore done or performed in that portion of territory between the lines called Walker's and Henderson's lines, which has fallen into this State by the adjustment of the present line, and which would have been legal if done or performed in the State of Virginia, are hereby recognized and confirmed.”

The line thus run was accepted by both States as a satisfactory settlement of a controversy which had, under their governments and that of the colonies which preceded them, lasted for nearly a century. As seen from the acts recited, both States, through their Legislatures, declared in the most solemn and authoritative manner that it was fully and absolutely ratified, established, and confirmed as the true, certain, and real boundary line between them; and this declaration could not have been more significant had it added, in express terms, what was plainly implied, that it should never be departed from by the government of either, but be respected, maintained, and enforced by the governments of both. All modes of legislative action which followed it indicated its approval. Each State asserted jurisdiction on its side up to the line designated, and recognized the lawful jurisdiction of the adjoining State up to the line on the opposite side. Both States levied taxes on the lands on their respective sides, and granted franchises to the people resident thereon. The people on the south side voted at State and municipal elections for representatives and officers of Tennessee, and the people on the north side at such State and municipal elections voted for representatives and officers of Virginia. The courts of the two States exercised jurisdiction, civil and criminal, on their respective sides, and enforced their process up to that line; and the legislation of Congress, in the designation of districts for the jurisdiction of courts and in prescribing limits for collection districts and for purposes of election, made no exception to the boundary as thus established. (12 Stat. 432, 433.)

The line was marked with great care by the commissioners of the States, with five chops on the trees in the form of a diamond, at such intervals between them as they deemed sufficient to identify and trace the line. Not a whisper of fraud or misconduct is made by either side against the commissioners for the conclusions they reached and the line they established. It is true that in the year 1856, fifty-four years after the line was thus settled, Virginia, reciting that the line as marked by the commissioners in 1802 had, by lapse of time, the improvement of the country, natural waste and destruction, and other causes, become indistinct, uncertain, and to some extent unknown, so that many inconveniences and difficulties occurred between the citizens of the respective States and in the administration of their governments, passed an act for the appointment of commissioners, to meet commissioners to be appointed by Tennessee, to again run and mark said line, not to run and mark a new line, and provided that where there was no growing timber on any part of the line by which it might be plainly marked, if the old marks were gone, the commissioners should cause monuments of stone to be permanently planted on the line, at least one at every five miles or less, where it might seem best to the commissioners to do so, that the line might be readily identified for its entire length. The whole purpose of the act, as is evident on its face, was not to change the old boundary line, but only to more perfectly identify it. Tennessee responded to that invitation, and appointed commissioners to act with those from Virginia. The commissioners together re-run and re-marked the line as it was established in 1802, and planted such additional monuments as were deemed necessary, and they reported to their respective legislatures that they had "accurately run, re-marked, and measured the old line of 1802, with all its offsets and irregularities as shown in the surveyor's report" therein incorporated and on the accompanying map therewith submitted. The Legislature of Tennessee approved of the action of the commissioners, but Virginia withheld her approval and called for a new appointment of commissioners to re-run and re-mark the line, which was refused by Tennessee as unnecessary. No com-

plaints as to the correctness of the line run and established in 1802 was made by Virginia until within a recent period. She now, by her bill, asks that the compact entered into between her and the State of Tennessee, as set forth in the act of the General Assembly of Virginia of January 22, 1803, and which became operative by similar action of the Legislature of Tennessee on the 3d of November following, be declared null and void, as having been entered into between the States without the consent of Congress, and prays that this court will establish the true boundary line between those States due east and west, in latitude 36° and 30' north, in accordance with what it alleges to be the ancient chartered rights of that Commonwealth and the laws creating the State of Tennessee and admitting it into the Union.

The Constitution provides that "no State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Is the agreement, made without the consent of Congress, between Virginia and Tennessee, to appoint commissioners to run and mark the boundary line between them, within the prohibition of this clause? The terms "agreement" or "compact," taken by themselves, are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or have any interest in interfering with, as well as to those which may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control.

There are many matters upon which different States may agree that can in no respect concern the United States. If, for instance, Virginia should come into possession and ownership of a small parcel of land in New York which the latter State might desire to acquire as a site for a public building, it would hardly be deemed essential for the latter State to obtain the consent of Congress before it could make a valid agreement with Virginia for the purchase of the land. If Massachusetts, in forwarding its exhibits to the World's Fair at Chicago, should desire to transport them a part of the distance over the Erie canal, it would hardly be deemed essential for that State to obtain the consent of Congress before it could contract with New York for the transportation of the exhibits through that State in that way. If the bordering line of two States should cross some malarious and disease-producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of Congress for the bordering States to agree to unite in draining the district, and thus removing the cause of disease. So in case of threatened invasion of cholera, plague, or other causes of sickness and death, it would be the height of absurdity to hold that the threatened States could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of Congress, which might not be at the time in session. If, then, the terms "compact" or "agreement" in the Constitution do not apply to every possible compact or agreement between one State and another, for the validity of which the consent of Congress must be obtained, to what compacts or agreements does the Constitution apply?

We can only reply by looking at the object of the constitutional provision and construing the terms "agreement" and "compact" by reference to it. It is

a familiar rule in the construction of terms to apply to them the meaning naturally attaching to them from their context. *Noscitur a sociis* is a rule of construction applicable to all written instruments. Where any particular word is obscure or of doubtful meaning, taken by itself, its obscurity or doubt may be removed by reference to associated words. And the meaning of a term may be enlarged or restrained by reference to the object of the whole clause in which it is used.

Looking at the clause in which the terms "compact" or "agreement" appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States. Story, in his Commentaries (§ 1403), referring to a previous part of the same section of the Constitution in which the clause in question appears, observes that its language "may be more plausibly interpreted from the terms used, 'treaty, alliance, or confederation,' and upon the ground that the sense of each is best known by its association (*noscitur a sociis*) to apply to treaties of a political character; such as treaties of alliance for purposes of peace and war; and treaties of confederation, in which the parties are leagued for mutual government, political co-operation, and the exercise of political sovereignty, and treaties of cession of sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges"; and that "the latter clause, 'compacts and agreements,' might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundary, interests in land situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of States bordering on each other." And he adds: "In such cases the consent of Congress may be properly required, in order to check any infringement of the rights of the national government; and, at the same time, a total prohibition to enter into any compact or agreement might be attended with permanent inconvenience or public mischief."

Compacts or agreements—and we do not perceive any difference in the meaning, except that the word compact is generally used with reference to more formal and serious engagements than is usually implied in the term agreement—cover all stipulations affecting the conduct or claims of the parties. The mere selection of parties to run and designate the boundary line between two States, or to designate what line should be run, of itself imports no agreement to accept the line run by them, and such action of itself does not come within the prohibition. Nor does a legislative declaration, following such line, that it is correct, and shall thereafter be deemed the true and established line, import by itself a contract or agreement with the adjoining State. It is a legislative declaration which the State and individuals affected by the recognized boundary line may invoke against the State as an admission, but not as a compact or agreement. The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it—for example, as made upon a similar declaration of the border or contracting State. The mutual declarations may then be reasonably treated as made upon mutual considerations. The compact or agreement will then be within the prohibition of the Constitution or without it according as the establishment of the boundary line may lead or not to the increase of the political power or influence of the States affected, and thus encroach or not upon the full and free exercise of Federal authority. If the boundary established is so run as to cut off an important and valuable portion of a State, the political power of the State enlarged would be affected by the settlement of the boundary; and to an agreement for

the running of such a boundary, or rather for its adoption afterwards, the consent of Congress may well be required. But the running of a boundary may have no effect upon the political influence of either State; it may simply serve to mark and define that which actually existed before, but was undefined and unmarked. In that case the agreement for the running of the line, or its actual survey, would in no respect displace the relation of either of the States to the general government. There was, therefore, no compact or agreement between the States in this case which required, for its validity, the consent of Congress, within the meaning of the Constitution, until they had passed upon the report of the commissioners, ratified their action, and mutually declared the boundary established by them to be the true and real boundary between the States. Such ratification was mutually made by each State in consideration of the ratification of the other.

The Constitution does not state when the consent of Congress shall be given, whether it shall precede or may follow the compact made, or whether it shall be express or may be implied. In many cases the consent will usually precede the compact or agreement, as where it is to lay a duty of tonnage, to keep troops or ships of war in time of peace, or to engage in war. But where the agreement relates to a matter which could not well be considered until its nature is fully developed, it is not perceived why the consent may not be subsequently given. Story says that the consent may be implied, and is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing them; and observes that where a State is admitted into the Union, notoriously upon a compact made between it and the State of which it previously composed a part, there the act of Congress admitting such State into the Union is an implied consent to the terms of the compact. Knowledge by Congress of the boundaries of a State, and of its political subdivisions, may reasonably be presumed, as much of its legislation is affected by them, such as relate to the territorial jurisdiction of the courts of the United States, the extent of their collection districts, and of districts in which process, civil and criminal, of their courts may be served and enforced.

In the present case, the consent of Congress could not have preceded the execution of the compact, for until the line was run it could not be known where it would lie and whether or not it would receive the approval of the States. The preliminary agreement was not to accept a line run, whatever it might be, but to receive from the commissioners designated a report as to the line which might be run and established by them. After its consideration each State was free to take such action as it might judge expedient upon their report. The approval by Congress of the compact entered into between the States, upon their ratification of the action of their commissioners, is fairly implied from its subsequent legislation and proceedings. The line established was treated by that body as the true boundary between the States in the assignment of territory north of it as a portion of districts set apart for judicial and revenue purposes in Virginia, and as included in territory in which Federal elections were to be held, and for which appointments were to be made by Federal authority in that State, and in the assignment of territory south of it as a portion of districts set apart for judicial and revenue purposes in Tennessee, and as included in territory in which Federal elections were to be held, and for which Federal appointments were to be made for that State. Such use of the territory on different sides of the boundary designated in a single instance would not, perhaps, be considered as absolute proof of the assent or approval of Congress to the boundary line, but the exercise

of jurisdiction by Congress over the country as a part of Tennessee on one side, and as a part of Virginia on the other, for a long succession of years, without question or dispute from any quarter, furnishes as conclusive proof of assent to it by that body as can usually be obtained from its formal proceedings.

Independently of any effect due to the compact as such, 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. Lord Hardwicke, in *Penn. vs. Lord Baltimore*, 1 Vesey Sen. 444, 448; *Boyd vs. Graves*, 4 Wheat. 513; *Rhode Island vs. Massachusetts*, 12 Pet. 657, 734; *United States vs. Stone*, 2 Wall. 525, 537; *Kellogg vs. Smith*, 7 Cush. 375, 382; *Chenery vs. Waltham*, 8 Cush. 327; *Hunt on Boundaries* (3d ed.), 306.

As said by this court in the recent case of the *State of Indiana vs. Kentucky* (136 U. S. 479, 516), 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. In the case of *Rhode Island vs. Massachusetts* (4 How. 591, 639), this court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the action of the commissioners of the colonies, said: "Surely this, connected with the lapse of time, must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time and fall with the lives of individuals. For the security of rights, whether of States or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary."

Vattel, in his "Law of Nations," speaking on this subject, says: "The tranquility of the people, the safety of States, the happiness of the human race do not allow that the possessions, empire, and other rights of nations should remain uncertain, subject to dispute, and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title." (Book II, ch. 11, sec. 149.) And Wheaton, in his *International Law*, says: "The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called prescription, is justly applicable as between nation and nation; but 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 to the article of property in question." (Part II, ch. 4, sec. 164.)

There are also moral considerations which should prevent any disturbance of long-recognized boundary lines, considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have

long resided, the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life.

Notwithstanding the legislative declaration of Virginia in 1803, that the line marked by the joint commissioners of the two States was ratified as the true and real boundary between them, and the repeated reaffirmation of the same declaration in her laws since that date, notably in the Code of 1838, in the Code of 1860, and in the Code of 1887; notwithstanding that the State has in various modes attested to the correctness of the boundary—by solemn affirmation in terms, by legislation, in the administration of its government, in the levy of taxes, and the election of officers, and in its acquiescence for over eighty-five years, embracing nearly the lives of three generations, she now, by her bill, seeks to throw aside the obligation from her legislative declaration, because, as alleged, not made upon the express consent in terms of Congress, although such consent has been indicated by long acquiescence in the assumption of the validity of the proceedings resulting in the establishment of the boundary, and to have a new boundary line between Virginia and Tennessee established running due east and west on latitude thirty-six degrees thirty minutes north. But to this position there is, in addition to what has already been said, a conclusive answer in the language of this court in *Poole vs. Flugler* (11 Pet. 185, 209). In that case Mr. Justice Story, after observing that “it is a part of the general right of sovereignty belonging to independent nations to establish and fix the disputed boundaries between their respective territories, and the boundaries so established and fixed by compact between nations become conclusive upon all the subjects and citizens thereof, and bind their rights, and are to be treated, to all intents and purposes, as the true and real boundary,” adds: “This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the States of this Union, unless it has been surrendered under the Constitution of the United States. So far from their being any pretense of such a general surrender of the right, it is expressly recognized by the Constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress.” The Constitution, in imposing this limitation, plainly admits that with such consent a compact as to boundaries may be made between two States; and it follows that when thus made it has full validity, and all the terms and conditions of it are equally obligatory upon the citizens of both States.

The compact in this case having received the consent of Congress, though not in express terms, yet impliedly, and subsequently, which is equally effective, became obligatory and binding upon all the citizens of both Virginia and Tennessee. Nor is it any objection that there may have been errors in the demarcation of the line which the States thus by their compact sanctioned. After such compacts have been adhered to for years, neither party can be absolved from them upon showing errors, mistakes, or misapprehension of their terms, or in the line established; and this is a complete and perfect answer to the complainant's position in this case.

It may also be stated that if the work of the joint commissioners, under the laws of 1800 and 1801, approved by the legislative action of both States in 1803, could be left out of consideration and a new line run, it would not follow that the parallel of latitude thirty-six degrees thirty minutes north would be strictly followed. The charter of Charles the Second designates the northern boundary line of the province of North Carolina as extending from Currituck river or inlet upon a straight westerly line to Wyonoke creek, which lies *within or about thirty-six degrees thirty minutes north latitude*, from which it is evident that that parallel



was only to be the general direction of the line, not one to be strictly and always followed without any variations from it. The purpose of the declaration in the charter of Charles the Second was only that the northern boundary line was to be run in the neighborhood of that parallel. The condition of the country at the time the charter was granted (1665) would have made the running of a boundary line strictly on that parallel a matter of great difficulty, if not impossible. Nor did the needs of grantor or chartered proprietors call for any such strict adherence to the parallel of latitude designated. That neither party expected it, is evident from the agreement made between the governors of Virginia and North Carolina as to running the boundary line between them, and sent to England for approval by the king and council. That agreement provided that, if the west line run should be found to pass through islands or to cut out small slips of land, which might much more conveniently be included in one province than the other by natural water bounds, in such case the persons appointed to run the line should have power to settle natural water bounds, provided the commissioners on both sides agreed, and that all variations from the west line should be noted on the premises or on plats which they should return, to be put on record by both governors. A possible, indeed a probable, variation from the line of the parallel of latitude, or the straight line, designated, was contemplated by both Virginia and Tennessee. With full knowledge of the line actually designated, and of the ancient charter to Carolina, and of the description in the Constitution of Tennessee, in appointing the joint commissioners, they provided that they should settle and adjust all differences concerning the boundary line, and establish either the Walker or Henderson line, or run *any other line which might be agreed on for settling the same*; and that means any lines run and measured with or without deviations, from time to time, from a straight line, or the line of latitude mentioned as might, in their judgment, be most convenient as the proper boundary for both States. It was made with numerous variations from a straight line, and from the line of the designated parallel of latitude for the convenience of the two States, and, with the full knowledge of both, was ratified, established, and confirmed as the true, certain, and real boundary line between them. And when, fifty-six years afterwards, in consequence of the line thus marked becoming indistinct, it was re-run and re-marked by new commissioners under the directions of the statutes of 1800 and 1801, in strict conformity with the old line. The compact of the two States, establishing the line adopted by their commissioners, and to which Congress impliedly assented after its execution, is binding upon both States, and their citizens. Neither can be heard at this date to say that it was entered into upon any misapprehension of facts. No treaty, as said by this court, has been held void on the ground of misapprehension of facts, by either or both of the parties. (*Rhode Island vs. Massachusetts*, 4 How. 635.)

The general testimony, with hardly a dissent, is that the old line of 1802 can be readily traced throughout its whole length; and, moreover, that line has been recognized by all the residents near it, except those in the triangle at Denton's Valley and in another district of small dimensions, in which it is stated that the people have voted as citizens of Virginia and have recognized themselves as citizens of that State. That fact, however, cannot affect the potency and conclusiveness of the compact between the States by which the line was established in 1803. The small number of citizens whose expectations will be disappointed by being included in Tennessee are secured in all their rights of property by provisions of the compact passed especially for the protection of their claims.

Some observations were made upon the argument of the case, upon the pro-

privity and necessity, if the line established in 1803 be sustained, of having it re-run and re-marked, so as hereafter to be more readily identified and traced. But a careful examination of the testimony of the numerous witnesses in the case, most of them residing in the neighborhood of the boundary line, as to the marks and identification of the line originally established in 1802, and re-run and re-marked in 1859, satisfy us that no new marking of the line is required for its ready identification. The commissioners appointed under the act of Virginia of 1856, and under the act of Tennessee of 1858, found all the old marks upon the trees in the forest through which the line established ran, in the form of a diamond; and whenever they were indistinct, or, in the judgment of the commissioners, too far removed from each other, new marks were made upon the trees, or, if no trees were found at particular places to be marked, monuments in stone were planted. Besides this, the State of Virginia does not ask that the line agreed upon in 1803 shall be re-run or re-marked, but prays that a new boundary line be run on the line of  $36^{\circ} 30'$ . Tennessee does not ask that the line of 1803 be re-run or re-marked. Nevertheless, under the prayer of Virginia for general relief, there can be no objection to the restoration of any marks which may be found to have been obliterated or become indistinct upon the line as herein defined.

Our judgment, therefore, is that the boundary line established by the States of Virginia and Tennessee by the compact of 1803 is the true boundary between them, *and that on a proper application, based upon a showing that any marks for the identification of that line have been obliterated, or have become indistinct, an order may be made at any time during the present term for the restoration of such marks without any change of the line.* A decree will, therefore, be entered declaring and adjudging that the boundary line established between the States of Virginia and Tennessee by the compact of 1803 is the real, certain, and true boundary between the said States, and that the prayer of the complainant to have the said compact set aside and annulled, and to have a new boundary line run between them on the parallel of  $36^{\circ} 30'$  north latitude should be and is denied at the cost of the complainant.

*And it is so ordered.*

THE PUBLIC DEBT.

At their request I addressed the following letter to Messrs. Scott & Stringfellow, of this city :

COMMONWEALTH OF VIRGINIA,

ATTORNEY-GENERAL'S OFFICE,

RICHMOND, VA., *June 13, 1893.*

*Messrs. SCOTT & STRINGFELLOW, Bankers :*

GENTLEMEN,—I am counsel for the State officials, and in executing the act for the settlement of the "public debt," approved February 20, 1892, have attended the meetings of "the Board of Sinking Fund Commissioners," and am familiar with their proceedings and action.

In my opinion, they have conformed to the provisions and requirements of the law, and the bonds issued by them are proper, legal, and binding.

Very respectfully yours.

THE ARMORY.

On the 6th of March last, your Excellency referred to me *Colonel Jones'* letter

of February 15th, and asked my opinion as to Colonel Jones' and the Commonwealth's rights in and to the "armory building."

I made reply as follows—viz :

"It is admitted that the armory building used by the First Regiment Virginia Volunteers is the property of and belongs to the city of Richmond; further, that the regiment is in possession and holds under 'an agreement' or 'contract' with the municipal authority.

"As between the city and regimental commander this 'agreement' or 'contract' measures rights and defines powers.

"The sections of the Code referred to—namely, 'sections 343, 344, and 362'—do not bear upon this controversy.

"Over arms, equipments, officers, enlisted men, and intruders the authority and power of the commanding officer is supreme.

"'The armory building' is not 'public property,' but only 'a leasehold'—the city 'lessor' and the regiment 'lessee'; therefore the terms and provisions of 'the lease,' and not *statutes* enacted for the public defense, must determine this controversy."

CIRCUIT COURT OF RICHMOND CITY.

1. Commonwealth *vs.* P. B. Crowder, treasurer of Amelia county. Judgment, \$4,386.93 (subject to a credit). Appeal taken.

2. Commonwealth *vs.* David A. French, treasurer of Wise county. Judgment, \$9,962.92. Subject to credit of \$237.17, February 16, 1893.

3. Commonwealth *vs.* H. C. French's administrator. *As above*, subject to same credit.

4. Commonwealth *vs.* National Exchange Bank of Lynchburg. Coupon case. Costs paid and coupons turned into the treasury under act of February 20, 1892.

5. Commonwealth *vs.* L. C. Arthur, treasurer of Bedford county. Judgment *confessed*, \$10,625.96.

6. Commonwealth *vs.* L. C. Arthur, treasurer of Bedford county. Judgment *confessed*, \$14,726.29.

7. Commonwealth *vs.* Geo. S. Miller, late clerk of Mathews county. Judgment for \$5,000 and costs.

8. Same *vs.* same. Judgment, \$5,000 and costs.

9. Commonwealth *vs.* John A. Booker, late clerk of Cumberland county. Judgment for \$243.86.

10. Commonwealth *vs.* J. S. King et als, sureties of E. H. Quillan, late treasurer of Scott county. Judgment for \$120.05. Interest from November 1, 1883.

11. Commonwealth *vs.* R. T. Lucas, surety for Benjamin Austin, late clerk of Alexandria county. Judgment for \$225.34. Interest from November 22, 1880.

12. Commonwealth *vs.* S. B. Corbett et als, sureties for Benjamin Austin, late clerk of Alexandria county. Judgment, \$86.73. Interest from June 25, 1881.

13. Commonwealth *vs.* Benjamin Austin, late clerk of Alexandria county, et als. Judgment, \$8,000 (penalty of bond), to be discharged by \$1,871.21. Interest from July 27, 1885.

14. Commonwealth *vs.* Septimus Brown, surety of Benjamin Austin, late clerk, etc. Judgment, \$216.22. Interest from December 15, 1885.

15. Commonwealth *vs.* T. C. Cook, surety of John S. Cook, late clerk of County Court of Gloucester county. Judgment, \$2,049.37.

16. Commonwealth *vs.* T. C. Cook and B. W. Thornton, sureties for John S. Cook, late clerk, etc. Judgment, \$1,405.18. Subject to credit of \$979.32.

17. Southwestern Investment and Trust Company *vs.* Marye, auditor, etc. Motion to refund "charter taxes" paid Commonwealth. Demurrer and judgment for the defendant, with costs.

18. Commonwealth *vs.* B. B. Redwine, late treasurer of Wise county, et als. Judgment, \$3,694.95, with interest. Subject to credit of \$48.

19. Commonwealth *vs.* John M. Speece, clerk of Circuit Court of Bedford county, et als. Judgment, \$252.13. Interest from December 15, 1892.

20. Commonwealth *vs.* John R. Thurman's administrator, surety for Speece, clerk, &c., &c. *Judgment as in above suit.*

21. Commonwealth *vs.* C. W. Walker, late treasurer of Giles county. Judgment, \$3,253.05. Interest from July 25, 1892.

22. Commonwealth *vs.* C. E. Wilson, late treasurer of Nottoway county, et als. Judgment, \$1,092.67, and interest.

23. Commonwealth *vs.* R. D. Stallard, W. H. Lewis, and W. P. Dotson, sureties of B. B. Redwine, late treasurer of Wise county. Judgment, \$3,694.95, with interest.

24. Hygeia Hotel Co. *vs.* Morton Marye, auditor, et als. Injunction to restrain the Commonwealth's officials from assessing and collecting taxes upon the "Hygeia Hotel" at "*Fortress Monroe*," in Elizabeth City county. The injunction was dissolved by decree entered *June 1, 1893*, and *this property* held to be subject to taxation by Virginia. No tax had been paid to the Commonwealth since this hotel was built (*June 25, 1868*), but no tax had been demanded *prior to 1892*, and the court, by consent of parties, decreed to the Commonwealth the sum of \$6,400, and to Elizabeth City county \$5,000, to be received in full satisfaction of "*back taxes*" due by the complainant respectively to Commonwealth and county, and these sums of money, together with the costs of this suit, *have been paid.*

#### FORTRESS MONROE.

*This decision* subjects certain property at *Fortress Monroe* to taxation by the State. [See table on page 47 of this report.]

25. Commonwealth *vs.* J. H. Cato, late treasurer of Greenville county, et als. Judgment, \$72.89.

26. Commonwealth *vs.* John T. Stovall et als, sureties of C. H. Ingles, late treasurer of Henry county. Judgment, \$1,028.12.

27. Commonwealth *vs.* W. M. Cabell et als, sureties for William A. Moss, late treasurer of Buckingham county. Judgment, \$1,202.09.

28. Commonwealth *vs.* William A. Moss, administrator. *Judgment as above.*

29. Commonwealth *vs.* F. W. Payne, late treasurer of King George county, et als. Judgment, \$102.88.

30. Commonwealth *vs.* W. F. Grizzle, late treasurer of Dickinson county, et als. Judgment, \$238.59.

31. Litchford et als *vs.* P. W. McKinney, governor, et als. *Bill in equity. Dismissed by order of complainants*, February 6, 1893.

The following cases are pending and undetermined—viz:

1. Commonwealth *vs.* F. C. S. Hunter, late treasurer of King George county, et als.

2. Same *vs.* Same.

3. Commonwealth *vs.* A. A. Chapman. *Attachment in equity.*

4. Commonwealth *vs.* C. R. Randolph, surety of Bennett Taylor, late clerk of Circuit Court of Albemarle county.

5. Commonwealth *vs.* Mary B. Randolph's administrator, surety of Bennett Taylor, *late* clerk, &c., &c.

6. Commonwealth *vs.* S. C. Pry. *Garnishee process.*

7. W. M. Dixon et als *vs.* Board of Chesapeake, &c., &c. *Bill of injunction.*

8. Coffee Stemming Machine Co. *vs.* Marye, auditor. Motion to refund "charter tax" paid to the Commonwealth.

The following cases stand as in my last report, *and as received from Mr. Ayers.* It has not been in my power to do anything with them :

Commonwealth *vs.* A. J. Cleek et als.

Commonwealth *vs.* Berger et als (two cases).

Commonwealth *vs.* Mayo et als.

Commonwealth *vs.* Given's sureties.

Commonwealth *vs.* Sears et als.

Commonwealth *vs.* Ingle's sureties.

Commonwealth *vs.* Jones et als.

Commonwealth *vs.* Taylor et als.

Commonwealth *vs.* Thomas et als.

The above suits were brought against treasurers and clerks for money due to the State. They are matured, but circumstances beyond my control have prevented the trial.

Commonwealth *vs.* James River Steamboat Company. This is a coupon case, which has matured and is ready for trial.

Robinson *vs.* Greenhow.

Brown, Davis & Co. *vs.* Greenhow.

Saunders & Son *vs.* Greenhow.

Chaffin & Co. *vs.* Greenhow.

These are coupon suits, matured and ready for trial.

Commonwealth *vs.* Huffman et als. This was a suit to subject certain property of the defendants to the payment of a judgment.

Commonwealth *vs.* Page, escheator. This was a suit to recover certain property which came into defendant's hand by virtue of his office.

Farmers' Bank *vs.* Alexandria Canal Company. Decree entered in this suit March 3, 1887, on commissioner's report.

Commonwealth *vs.* Grantham. The object of this suit was to subject property of defendant to satisfy a judgment.

Commonwealth *vs.* Millan. The object of this suit was to clear the title and subject certain land of the defendant to the payment of a judgment.

The above are all old cases.

#### MY OFFICE LIBRARY.

On entering upon my duties *four* years ago, I found "the office library" in *poor plight*, but am glad to say it is *now* in fair condition and "good working order." I have also necessary and comfortable office furniture.

#### LYNCH-LAW.

It is with sorrow and deep regret that I report several lynchings within the limits of the Commonwealth—the saddest that which occurred in the city of Roanoke.

"Our clergy and lawyers," through the columns of the *Dispatch*, have offered

their solution of this difficult problem. So far as *I* have knowledge and information, the trial and appellate courts have done their duty promptly and faithfully, without *unnecessary* delays.

The trouble comes from local causes—the sudden outburst of passion and feeling deep down in the human heart.

*Rape*, attempted or consummated—North, South, East, and West—with *rare exception*, is tried and punished by *Judge Lynch*.

For your past kindness and consideration I am grateful, and sincerely hope that your future will be as full of blessings to you and yours as your administration has been to the State.

Respectfully submitted,

R. TAYLOR SCOTT,  
*Attorney-General.*

# TAXABLE PROPERTY AT FORTRESS MONROE.

NAMES OF PERSONS CHARGED WITH TAXES.	RESIDENCE OF EACH TAX-PAYER.	The marketable value of all other personal property not specifically enumerated in this or other schedules.	Aggregate value of personal property enumerated in Schedules B and C.	Tax on aggregate value of personal property enumer- ated in Schedules B and C, taxed at thirty cents on the one hundred dollars' value, for the support of govern- ment.	Tax on aggregate value of personal property enumer- ated in Schedules B and C, taxed at ten cents on the one hundred dollars' value, for the support of public free schools.	Total tax on Schedules A, B, C, and D.	Amount of tax levied for City free sch ol purposes.	Amount of tax levied for Dis- trict free school purposes.	Total levy for City and Dis- trict free school purposes.	Road tax.	Total amount of levies for City purposes.
William Bauleh . . . . .	Fortress Monroe, Va. .	2,000	2,000	6	2	8	40	3 60	4	3 00	7 00
George Booker . . . . .	Fortress Monroe, Va. .	15,000	15,000	45	15	60	3 00	27 00	30	22 50	52 50
Hygeia Hotel Company. . . . .	Fortress Monroe, Va. .	160,000	160,000	480	160	640	32 00	288 00	320	240 00	560 00
W. H. Kimberly . . . . .	Fortress Monroe, Va. .	2,000	2,000	6	2	8	40	3 60	4	3 00	7 00
Old Point Comfort Hotel Co. . . . .	Fortress Monroe, Va. .	100,000	100,000	300	100	400	20 00	180 00	200	150 00	350 00
J. W. Watkins . . . . .	Fortress Monroe, Va. .	2,000	2,000	6	2	8	40	3 60	4	3 00	7 00
Totals . . . . .		\$281,000	\$281,000	\$843	\$281	\$1,124	\$56 20	\$505 80	\$562	\$421 50	\$983 50