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REPORT

OF THE

COMMISSIONERS

TO SETTLE AND

Adjust the Boundary Line

BETWEEN THE

STATES OF VIRGINIA & MARYLAND,

Appointed Dec. 22nd, 1870.

ANNAPOLIS:
S. S. Mills & L. F. Colton, State Printers.

1872.

REPORT.

The following extract from the Report of Col. A. W. McDonald, to the Governor of Virginia, of the result of his mission to England in 1860, to obtain copies of maps and documents relating to the boundary line between Virginia and Maryland, will show the grounds upon which the Virginia Boundary Commissioners expect to sustain their claim to the line indicated by them at the meeting of the Joint Commissioners, at the City of Washington, on Feb. 1st, 1872, as set forth in the Report of the Maryland Commissioners to the General Assembly, at the present Session.

ISAAC D. JONES.

I was also permitted to examine the Records of the "Rolls Office," in which I was successful in finding the Record of the original charter or grant of Maryland to Cælius, (Calvert,) Lord Baltimore, engrossed in the Latin language; a certified copy of which I have brought back with me, bound up in vol. 8, page 34. Of this document, (the charter of Maryland,) more important in its bearing upon the question of boundary between Virginia and Maryland than any other, I have obtained several copies: The one just mentioned from the "Rolls Office," authenticated by the official seal and the certificate of the Assistant "Keeper of the Rolls," J. Sharpe. A second copy I obtained from a transcript of said charter, as the same now remains of record in the "State Paper Office," in a book entitled "Maryland;" which, in July 1723, was examined and corrected by the original charter to Lord Baltimore under the Great Seal of England, which had been obtained from Lord Baltimore through Mr. Blake, as by endorsement copied from said book will be seen.

[Anno Domini 1723, is the same year in which a book containing another copy of said charter was printed, which I shall refer to again.]

In this copy (the second above named) were preserved in the first entry of it, (in the book from which I have had it copied,) the abbreviations used in the "Rolls Office," in recording Latin charters of that and anterior dates; which abbreviations (rendering the text liable to mistranslations,) are

all written out at length in a different ink, showing the original as first transcribed, and the emendations made by correcting from the original grant to Lord Baltimore, under the Great Seal.

These abbreviations also appear in the copy obtained from the "Rolls Office" above mentioned.

I made every effort to find the original grant itself. I sought out the representative of the Baltimore family, and finally discovered him a prisoner for debt in the "Queen's Bench" prison, to which some twelve years since he had been transferred from the "Fleet" prison, after having been there confined for more than eight years.

I obtained an interview with this gentleman; informed him of the object of my visit—which he appeared entirely willing to promote—and learned from him, after most minute inquiry, that the original charter had never come into his hands with the other family papers which had; that he had never seen it; never heard of it as being in the hands of any other person; and that he verily believed said original charter to be utterly lost or destroyed.

I instituted other inquiries concerning it, which proved fruitless.

I obtained a (third) copy, not of said original charter, but (as by comparison will be seen) of the record of said charter, as the same was entered in the "Rolls Office." This found printed in a book "printed in London in 1723 by Baskett, printer to the King's Most Excellent Majesty."

This is the same year in which, as it appears by the entry in the "Maryland" book before referred to, the transcript of the charter, as the same had been entered from a copy from the "Rolls Office," was corrected or emended by original, under the Great Seal.

This book purports to contain the Acts of Assembly passed in the Province of Maryland from the year 1692, to the year 1715; and the date of its publication was about eight years after the Crown had restored to the proprietor the government of that Province.

By the label on the back of this book, it would appear that it had originally belonged to the office of the "Board of Trade;" and this indication of ownership is confirmed by the fact, that four copies of it, still preserved in the "State Paper Office," are shown by the minutes of that office to have been transferred to it from the "Board of Trade;" from which it is fair to infer that this printed book of "The Laws of Maryland," is the same which Thomas Bacon, compiler

and publisher of the Laws of Maryland, in about 1764. This he refers to in a note to the preface of his said publication: "I have seen, [some time before I left England,] in 1745, an edition printed in London, at Lord Baltimore's expense, as I have been informed, for the use of the "Board of Trade," with the Latin charter prefixed, but could never meet with a copy of it in this Province, nor can I recollect the date it bears."

A copy of "Bacon's Laws of Maryland" I have procured, and will return with this Report. In it will be found prefixed to the laws what he assumes [upon the authority he there quotes] to be a copy in Latin of Lord Baltimore's charter, with a translation of the same into English.

I also obtained from the British Museum a manuscript copy of an old printed pamphlet, entitled "A Relation of Maryland, together with a Map of the country—the condition of plantations, and His Majesty's charter to Lord Baltimore, translated into English;" which appears, from its title-page, to have been printed in London, in the year 1635, and by the contents, to have been written by an inhabitant of Maryland. This manuscript copy will be found bound up in vol. 9, and commences at page 206 of that volume. A *fac-simile* of the map in said pamphlet will be found in the book of maps, and numbered "4."

One of the depositaries of this pamphlet in London, as will be seen by title-page, was one Mr. William Peasely.

Whether he is the same Mr. Peasely of whom Lord Baltimore makes mention in a letter written by him to Mr. Secretary Windebank, as his brother Peasely, I could not ascertain. The Peasely spoken of in the letter, and mentioned as His Lordship's brother Peasely, was certainly a Catholic, and probably in that sense only designated as brother.*

The letter to Secretary Windebank will be found copied in vol. 2, page 209.

In this printed pamphlet there is not given any copy of the Latin charter of Lord Baltimore; and the pretended translation of it into English is not at all licensed by the Latin text, as the same is recorded in the "Rolls Office," or as the same stands recorded in the "State Paper Office."

Some such version, however, was necessary to give color to the claim of territory which the map in said pamphlet professed to picture. It will appear from said map, as also from Smith's Map of Virginia, published in 1612, that the head-

* Wm. Peasely married the sister of Lord Baltimore. I. D. J.

spring of the Little Potomac River, (now called Potomac Creek,) was at that day supposed to rise further west than the head-spring of the main river, both being then supposed to head on the eastern side of the Blue Ridge—and assuming that the Little Potomac was the River Potomac referred to in Lord Baltimore's charter, the amount of territory embraced within the charter calls, as the same had been rendered in said translation, would be largely increased, and the great river, as far as the same had been explored, and was known to be navigable, would fall entirely within the limits of those calls.

I procured still another copy, or rather alleged copy of Lord Baltimore's charter in Latin, and a translation of the same furnished by Bacon, and promulgated under the authority of Lord Baltimore, and the Povincial Legislature of Maryland, about the year 1764, as may be gathered from the contents of said book, [the title-page to it being without date or indication of the place where it was printed,] in which I found it, and which book I have hereinbefore mentioned.

The identity in substance and similarity in language between the English translation as given by Bacon and the one given in the pamphlet entitled "A Relation of Maryland," in giving a description of the territory as embraced in the calls of the charter to Lord Baltimore, justifies the conclusion that the latter was predicated upon a Latin version of the charter, similar to the Latin one given in "Bacon's Book."

It will be seen, by comparing the two, that the Latin text, as given by Bacon, is a plain and gross departure from the original as found recorded both in the "Rolls Office" and "State Paper Office;" and but for these gross and patent violations of both letter and spirit of the original grant, no reasonable doubt would ever have existed that the whole Potomac River, from its source, wherever fixed and whenever ascertained, to its mouth, was wholly without the limits of Maryland and within the bounds of Virginia.

I have caused to be translated by "Thomas Edlyne Tomlins, attorney-at-law and record solicitor of Lincoln's-inn-fields, London," so much of the Latin charter as the same is found recorded in the "Rolls Office" as describes the bounds of the territory thereby granted; which translation cannot be so interpreted as to permit the Maryland boundary, along the bank of the River Potomac, to be upon the Virginia shore; and more it establishes beyond all plausible cavil; "Point Look-out," as the point from which the closing line of the descriptive calls is to be drawn over the bay to the headland, called

in the charter "Watkins' Point," and mentioned as the beginning point, fortified, too, by the fact that the shortest line from "Point Lookout" to this headland would reach it exactly at the point ascertained [by Lieutenant Michler, under the direction of the Joint Commissioners, upon the boundary between Virginia and Maryland] to be the initial point agreed upon [by Scarborough and Calvert, agents of the Crown and Lord Baltimore] in the year 1668; whereas, if the closing line were to be drawn from "Smith's Point," on the south side of the Potomac River, the shortest line to this headland would strike it several miles south of said point, as ascertained by Lieutenant Michler. Mr. Tomlins was recommended to me as distinguished for his ability as a translator of ancient Latin records, and for his fidelity as a man. I doubt not that his work will justify these recommendations.

We have abundant evidence in "Smith's" and other histories to prove the fact that the bank of the Potomac, on the Virginia shore, was occupied by "enforced Virginians" cultivating the land, (probably,) but certainly occupying the river itself, with their vessels, carrying away the produce and keeping up annually trade and intercourse with the natives living on both banks of the river for years before the date of the grant of Lord Baltimore. In the face of these facts, the charter would not have been construed to extend to, much less embrace, the southern shore of the Potomac, even if its language had been susceptible of such an interpretation.

As bearing upon this point, I have found a copy of a Report of the "Lord's Committee of Trade and Plantations," made 13th of November, 1685, and the King's order thereon, by which the now "State of Delaware" was adjudged to belong to William Penn, (who had purchased the same from the Duke of York,) upon the ground that "though clearly included within the boundary calls of Lord Baltimore's patent, it did not pass to him in consequence of the fact, that before the date of said grant it was not uninhabited except by savages, as Lord Baltimore had described the territory to be which was embraced within the bounds set forth in his grant." Said report and order will be found in vol. 8, page 162.

In vol. 2, page 128, will be found a copy of a paper preserved among the Records of the State Paper Office, headed, "Considerations upon the Patent to Lord Baltimore, and dated June 20th, 1632," the date of said patent, from which I make brief extracts, to wit:

1st. "Because the matter of the petition of the patentee, mentioned to be the motive and cause of the grant, is, (viz. :) that the region thereby granted was then uninhabited and possessed of the barbarous heathen or savages." "It is not

so ; for, in truth, part of the said region had been inhabited by his Majesty's subjects, which were sent over from the London Colony of Virginia."

2nd. "By Lord Baltimore's patent, this election (referring to a provision in the 4th item not necessary to quote here) is taken away, and part granted to him, viz., from Watkins' Point south, which is in the 38 degrees of latitude to 'Le Ware's Bay,' which is in the 41 degree of latitude or thereabout."

In Book 8, from page 242 to page 252, will be found copied the answers given by Lord Baltimore, dated the 26th of March, 1678, to questions propounded to him by the Lord's Committee, &c., dated 10th of April, 1676, copied in same book, page 106 to page 110.

In answering the 10th question, Lord Baltimore says: "The boundaries, latitude and longitude of this Province are well described and set forth in a late map or chart of this Province, lately made and prepared by one Augustine Herman, an inhabitant of said Province, and printed and publicly sold in London by His Majesty's license, to which I humbly refer for greater certainty."

For the map here referred to, I made myself, and caused others to make great search in every known depository of London, but could find no map authenticated as "Herman's."

In Ogilby's American, which was published in London in 1671, I found a map of Maryland, which upon its face is said to be the "Achievement of the Right Honorable Cecilius Calvert, Baron of Baltimore," &c., having upon it also the Baltimore coat of arms.

This is the only map in the book which was not taken by Ogilby from "Montana's History," a German work, from which Ogilby copied ; and this may be the map to which Lord Baltimore referred in his said answer. It is with very slight change—the same as the one which I have above referred to as found in the pamphlet entitled "A Relation of Maryland." A *fac-simile* of each will be found in the book of maps before mentioned. They both dot Lord Baltimore's southwestern boundary on the south bank of the Potomac River ; continue it so dotted up said river (the first in point of time) to the Little Potomac ; and thence up it on its south bank as far as said stream is shown on said map ; the second to what is now known as Acquia Creek ; and thence up it along its southern bank as far as said creek is shown on said map. Both also lay down "Watkins' Point" as in latitude 38 degrees, and run the boundary line across Chesapeake Bay from "Smith's Point"—the south bank of the Potomac at its mouth.

The grant of the "Northern Neck" by Charles II., to Ralph, Lord Hopton, Henry, Earl of St. Albans, Lord Culpepper and others, in the first year of the King's reign, included, by expressed words, "the Rivers Potomac and Rappahannock, and all the islands within their banks."*

This grant will be found referred to in 1st vol. Rev. Code, page 343, chap. 89. It is also referred to in a letter from King Charles II., of date March, 1663, copied in vol. 4, page 261, and therein mentioned as having been made in the first year of his reign, the commencement of which he was accustomed to date from the day of his father's death upon the scaffold. In this letter he describes said grant as embracing all the land lying between the Rivers Potomac and Rappahannock and the Chesapeake Bay, together with the rivers themselves, "and all the islands within the banks of said rivers." The southern boundary of Maryland from Watkins' Point, on the Chesapeake Bay shore, across the Peninsula to the Atlantic Ocean, was established by agreement between Col. Edmund Scarborough, acting for the Crown, and Leonard Calvert, for Lord Baltimore, in June, 1668. The grant of Pennsylvania by Charles II. to Wm. Penn, is dated the 4th of March, 1682'—1. (See a letter from Charles II. to Lord Baltimore, dated April 2nd, 1681, copied in volume 8, page 145.)

In another letter from the same to Lord Baltimore, dated the 19th of August, 1682, copied in vol. 8, chap. 147, the King says, in (referring to an adjustment of the boundary between the grants to Penn and Baltimore,) "the boundary between Pennsylvania and Maryland cannot, by any method, be so certainly effected as by an admeasurement of the two degrees north of Watkins' Point. The express south bounds of your patent, and already so settled by Commissioners between Virginia and Maryland," &c. And further says, willing and requiring you, that with all possible speed upon the receipt hereof, to proceed to determine the northern bounds of your Province, as the same borders on Pennsylvania by an admeasurement of the two degrees granted in your patent, according to the usual computation of sixty English miles to a degree, from the south bounds of Maryland, as the same are already settled by Commissioners as is above mentioned.†

So that "Watkins' Point," where the same is crossed by the line between latitude 38 deg. and 39 deg. north of the equator, is the true southern boundary line across the penin-

* This grant by Charles II., in 1650, while he was in exile, was 18 years after Lord Baltimore's grant. I. D. J.

† This requirement of the King, Lord Baltimore respectfully declined, as beyond the King's authority. I. D. J.

sula to the Atlantic Ocean, and thus settling the southern line of Maryland to be said line of latitude 38 degrees, and allowing 60 English miles to be a degree, as intended by the King's charter to Lord Baltimore, "Mason's and Dixon's" line came to be fixed at 39 deg., 43 min., 18 sec. north of the equator, instead of on the 40th degree of north latitude, as claimed by Lord Baltimore upon the two maps I have reference to above. Beside the records and documents I have specially noticed, because of their direct and authoritative bearing upon the subject of Virginia's boundary lines, many others will be found copied, which fortify and confirm the former. I will call attention to but one: It is a complete copy of the proceedings of the General Assembly begun at James city, Oct. 1st, 1685, and prorogued to Novr. and continued till the 13th of December, 1685. Among the proceedings of this Assembly will be found a copy of those upon a bill introduced and passed to establish ports in the four great rivers of Virginia, &c., by which it will be seen that at that time the Provincial Assembly claimed jurisdiction of Potomac River. (See vol. 7, page 310 to 420.)

In addition to the two maps mentioned as promulgated under the auspices of Lord Baltimore, I procured some 46 others, about ——— of which bear certain and definite testimony to the fact that the Maryland line along the Potomac River was always considered (by those having the matter in their official charge, and therefore most likely to know and regard the truth) to be on the northern bank of said river.

Many of these 46 maps were deemed worth preservation, to show how little was known of the interior of the territory of both Virginia and Maryland above the flow of the tides prior to the actual survey of the "Northern Neck" under the mandate of the Crown made in 1736, and completed and officially reported in 1747. The testimony taken and preserved during the progress of this survey establishes the fact that it was not until after the year 1705 that any reliable information was obtained to show that the Potomac River had its sources west of the Blue Ridge.

The remainder of Col. McDonald's Report consists of a list of the Acts of the Colonial Assembly of Virginia from 1673, establishing ferries at different points across the Potomac River, and ports of entry and laws regulating pilotage, &c., from which he infers a claim by Virginia to the jurisdiction over the whole Potomac River. He refers also to the absence of similar laws by the Assembly of Maryland, seeming not to be aware that under the government of Maryland such matters, under the proprietary government, were generally regulated by orders of the Governor and Council.

ISAAC D. JONES.