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Part One: Historical Perspective (of the Chesapeake Bay)

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The Chesapeake Bay is a major east coast interstate estuarine area which has many legal and management characteristics which exist in other estuarine areas of the United States. This report describes the historical development and resulting complex, interacting legal framework at the Federal, State, local, and interstate levels which regulates the development of the Bay's resources. Several case studies are presented which relate the complex legal framework to specific estuarine management problems such as water quality management, withdrawals and diversions, and dredging and dumping. Using the legal framework and case studies as a basis, a suggested model statute is presented which may be of assistance to coastal States in improving the planning, development, management, and conservation of their estuarine areas. The report is written so that it can be understood by the layman as well as the legally and technically trained reader.
This report is a result of one year of study and research. Although it is not possible to recognize every contribution, the project directors thank the following for their valuable assistance:

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PART ONE:

HISTORICAL PERSPECTIVES
I. THE BAY AND HISTORY

"Scarcely a summer passes that someone is not digging on Gibson Island for Captain Kidd's treasure."

The history of Chesapeake Bay and its various tributaries is closely bound up with the histories of Maryland and Virginia as colonies and sovereign states and, importantly enough, with the early political and economic history of the country. That such a sweeping comment can apply to but few other geographical areas in America lends substance and a meaningful perspective to the rather isolated treatment of the Bay's history which follows.

To the early colonists the Bay was a highway and marketplace, and the main source of their prosperity. In a country without roads, the vast network of natural waterways opened up many square miles of hinterland to rapid settlement. The first Maryland frontier was land which bordered on the water, and both the eastern and western shores of the Bay were settled up to the mouth of the Susquehanna before the interior counties ceased to be thought of as "backwoods". The Bay was traded on, fought on, and played on, and "its inlets and estuaries were so numerous and so accommodating that nearly every planter had navigable salt water within a rifle's shot of his front door."

Strong arguments have been made by historians in support of the academic thesis that Chesapeake country was the nation's birthplace. It was here that the Virginia Company planted the first seeds for a representative government, from which sprang our first state legislature. What began as a quarrel between an early Virginia adventurer and the second Lord Baltimore led
to the first naval battle in American waters, and subsequently to the first civil war on New World shores. Richard Lee (who in June of 1777 moved that the colonies be "free and independent") and Patrick Henry were two of many early patriots to call Maryland and Virginia tidewater their home. And because it connects thickly settled portions of the eastern seaboard with the Atlantic Ocean, the Chesapeake Bay has played an important role in many of this country's foreign and domestic wars.

The Bay's natural resources were recognized and appreciated from the beginning by colonial traders, planters, seamen and hedonists. An inland sea with a two hundred mile shoreline and a drainage system unique in North America, the Chesapeake was seen to make its surrounding land "the best water'd Country" by providing it with "the best and most convenient Navigation unit of any known Country in the World." A seventeenth century traveler asserted that "no Country in the World can be more curiously watered," and that the Bay's tidewater would ultimately become "the richest place in all America." And an early American historian described the Chesapeake as "that grand reservoir, into which are poured all the vast rivers, which . . . open the interior parts of the country to navigation, and render a commercial intercourse more extensive and commodious than in any other region of the globe."

Such unqualified encomiums have not been limited to the Bay's mercantile advantages. Through history the beauties of the Chesapeake have inspired bountiful, if lavish, description. Of the more subdued testimonials, the following might be typical:

Tidewater Maryland sits like a chaplet about the head of the Chesapeake. So persistent is the appearance of water in the landscape that its land area seems only a little greater than the water area. Its green shores and necks and points and islands intertwine with the complementary water-lines of the great bay, of little bays, and of the shores of meandering rivers and creeks and coves, with such bewildering variety that all pattern seems to be lost. The land seems as often water-locked
as the water seems landlocked. Land and water here fonde each other like caressing lovers, and their embraces have the welding intimacy of lovers' embraces.\(^5\)

The seascape for this land of pleasant living has been at once the object of commercial exploitation and the subject-matter for poets:

\[
\begin{align*}
\text{From Chesapeake men I come,} \\
\text{These men a sun-tanned, quiet breed,} \\
\text{With eyes of English blue and faces} \\
\text{Lived with many a watch of sunlit waters;} \\
\text{These men with cautious mouths and lazy stride,} \\
\text{grizzled chinned, hip-booted, oil-skinned men;} \\
\text{These men, they fear the Chesapeake,} \\
\text{And yet they would not leave her.}\(^6\)
\end{align*}
\]

Thus filled with delight for those who live on its shores, the Bay and its tide-water seem now to exist in placid ignorance of their past. Yet even now they cannot escape their history, and in their history rests much of their charm. Rivers, inlets and islands on the Chesapeake are named after Indian tribes which dwelled there 3000 years ago. And "scarcely a summer passes that someone is not digging on Gibson Island for Captain Kidd's treasure."\(^7\) The U.S. Navy's Constellation, built on the Chesapeake in 1794, can yet be seen in the harbor at Baltimore. Annapolis retains the flavor of the Chesapeake as its narrow cobblestoned streets and small colonial houses and mellowed old State House reflect the history of America.

And the Bay remains peaceful and proud, still remembered for the battles fought, the freedoms won and the prosperity gained upon its waters.
I. THE BAY AND HISTORY

1. 2 J.T. SCHARF, HISTORY OF MARYLAND 2 (Reprint 1967) (hereinafter cited as SCHARF). "These factors account for the rapid growth of the Chesapeake country in population, wealth, and preeminence among the American continental colonies. Had there been no Chesapeake Bay, it is certain that Virginia and Maryland would have increased in population and wealth at a much slower rate." A.P. MIDDLETON, TOBACCO COAST 33-34 (1953) (hereinafter cited as MIDDLETON).


3. 3 TRACTS AND OTHER PAPERS RELATING PRINCIPALLY TO THE ORIGIN, SETTLEMENT, AND PROGRESS OF THE COLONIES IN NORTH AMERICA No. 12 at 11 (PETER FORCE ed. 1836-46).

4. WILLIAM ROBERTSON, HISTORY OF VIRGINIA AND OF NEW ENGLAND (1799) (cited by MIDDLETON at 30-31). For a random sampling of concurring views on the importance of the Chesapeake Bay in history, see H.N. CHRISTIAN, LIFE AND LIVING ON THE CHESAPEAKE BAY (1959); E. Horan, Maritime Museum for the Chesapeake, 119 YACHTING 158 (1966); and L. Webb-Peploe, The Chesapeake Bay and its Tributaries (1923 monograph).

5. P. WILSTACH, TIDEWATER MARYLAND 17 (1931) (hereinafter cited as WILSTACH). And some writers get even more carried away:

Those who have floated through the lagoons of Venice, or the Bay of Naples, or traversed the Danube through the Balkans, or the Rhine through beautiful and historic Rhineland; or voyaged on the renowned Hudson, or through the Golden Gate to Santa Catalina, have seen much that is beautiful, but to them, and others, be
it known that the moon never smiled on, nor
the sun's rays never kissed a face more
beautiful than that of CHESAPEAKE, THE
"MOTHER OF WATERS!"

---Address by C.W. Wright, Maryland

Historical Society, Chesapeake Bay,

6. G. BYRON, THESE CHESAPEAKE MEN 19 (1942). Additional volumes of poetry on
the Chesapeake Bay are G. BYRON, CHESAPEAKE COVE (1953) and THE WIND'S MILL
(1969); A. DOWLING, ON CHESAPEAKE SHORES (1959); G. SCHAUN, CHESAPEAKE MEM-
ORIES (1957); and L. THURSTON, SONGS OF THE CHESAPEAKE (1897).

7. E.S. Miers, The Drowned River: The Story of the Chesapeake Bay 29 (1967).
II.

PREHISTORIC CHESAPEAKE

"... a lush steaming region of oceanic lagoons and marshes probably reminiscent of present coastal South America."

According to geologists, the Chesapeake was born about one million years ago. Before that it is presumed the whole of the Middle Atlantic region was covered with water. Over the vast amount of time that has passed since its origin, the area has been roamed by all manner of beasts, from mastodons to saber-toothed tigers, from giant plated armadillos to camels. Chesapeake waters were once the habitat for crocodiles, whales, porpoises, sharks, huge scallops and gigantic oysters.

The Calvert Cliffs, in the eastern part of Calvert County, are well known to geologists and paleontologists around the world. The Cliffs were formed during the Miocene Age (fourteen to twenty million years ago), when the Chesapeake's warm shallow waters and lagoon-like environment were favorable for the breeding of whales. Many remains of ancient whales and sharks have been collected there. In the past several decades the site has yielded at least six whale skulls, five backbones and numerous smaller bones of Miocene origin. The most recent discovery occurred in late 1968, when the five-foot skull of a twenty-million year old whale was found at the Cliffs.

In 1685 the first illustration of an American fossil appeared, drawn after a specimen taken from the Miocene beds of Maryland. There is not a great deal of paleontological evidence from which to learn, but what has been found is enlightening. Among the fossils discovered to date there are a few teeth of mammoths and mastodons, and the partial skeletons of camels, tapirs, peccaries,
wolves, bears, sloths and porcupines. Geologists suggest that the beaches on Gibson Island and the shores off of the Magothy River yield indications of large prehistoric evergreen forests.

The Bay was once a massive river valley which broadened as it was slowly inundated. The Susquehanna and Patapsco Rivers were northern and southern arms of the Miocene expanse which slid into the sea. We are told that, long before man made his appearance---

the Chesapeake country was a lush steaming region of oceanic lagoons and marshes probably reminiscent of present coastal South America. It is likely there was no Chesapeake Bay at all then, only miles of shallow salty channels, broken by winding sand bars, open to the ocean not too far away. Here the sharks and porpoises came to feed on a teeming fish life, and here the whales were often stranded or drifted ashore if one can judge by the frequency of their unmistakable bones. The bellowing of crocodiles filled the air, turtles crept on the sandy beaches to lay their eggs, and swarms of sea birds swirled excitedly over the bars and tidal flats. 2

Primitive man left ample traces of his habitation of Chesapeake shores. The pre-Columbian Indians built campsites and villages on many rivers and creeks along the Bay. Broad layers of oyster shells and oval blackened pits filled with charcoal and small bones give evidence of prehistoric dwelling places. The Patuxent River valley contains perhaps the highest number of fossilized campsites in the entire Middle Atlantic area.

Other than this, the clearest proof of the existence of the Indians—who they were and where they lived—may be seen in the names that were taken by the early discoverers and given to the numerous estuarine watermarks: from the Wicomico to the Choptank, from the Pocomoke to the Potomac, from the Susquehanna to the Rappahannock. 3
II. PREHISTORIC CHESAPEAKE


"Such great and well-proportioned men are seldom seen, for they seemed like giants to the English . . ."

Just as a great deal of Maryland's geographical nomenclature is derived from the many Indian groups which dwelled and prospered there, thousands of years before the first white men came, so the Chesapeake Bay takes its name from the tribe which the earliest explorers found living on its shores.

As early as 1590 the Bay appeared as the "Chesepiooc sinus" on a map published by Theodore DeBry, who had relied upon charts drawn by the early English explorers, Ralph White and Richard Hakluyt. Apparently the name was a transliteration from the Indian "Tschischiwapeki" (meaning a pond, a bay, or "Great Waters") although there are other theories as to its genesis. Some say the word originally was "Chesapiooc", taken from the Indian "Kchesepiock" meaning "a country on a great river" or "a highly salted body of standing water." Others maintain that "Chesapeake" is very simply the Indian equivalent for "Mother of Waters," much as "Mississippi" is said to mean "Father of Waters." And still others think that "great shellfish bay" is the proper interpretation.

Approximately two-fifths of the tributaries flowing from the Chesapeake Bay retain original Indian names, and most of these were given by the early English settlers. Among the better known creeks, rivers, sounds and other waterways in the state are the Potomac, Patuxent, Patapsco, Pocomoke and Piscataway; the Magothy, Manokin, Metomkin and Mattawoman; the Assawoman, Annemessex and Assateague; the Chincoteague and Choptank; the Susquahanna, Sassafras, Seneca and
Severn; the Nanjimoy and Nanticoke; the Onancock and Occohannock; and the Rappahannock and Wicomico. 2

The majority of the Indians in Maryland were of the Algonquin family, which consisted of numerous smaller tribes. Other large groups were the Iroquois, the Nanticokes, the Susquehannoughs and the Piscataways. On the western shore, most Indians were Piscataway and belonged to various smaller tribes, among them the Mattawomans, the Mattaponys, the Patuxents, the Potopacs, the Chopticans and the Yaocomicos. On the eastern shore, the Nanticokes were divided among the Assateagues, the Annemasse, the Choptanks, the Wickamisses and the Wicomicoes. 3

Soon after Captain John Smith crossed the Bay to the eastern shore on his first voyage of exploration, he encountered Indians:

The first people we saw were two grim and stout salvages upon Cape Charles; with long poles like jaulings, headed with bone, they boldly demanded what we were, and what we would; but after many circumstances they seemed very kinde, and directed us to Accomack, the habitation of their Werowance, where we were kindly intreated. This king was the comeliest, proper, civill salvage we encountered. His country is a pleasant fertile clay soyle, some small creekes; good harbours for small barks, but not for ships. They spake the language of Powhatan, wherein they made such descriptions of the bay, isles, and rivers, that often did us exceeding pleasure. Passing along the coast, searching every inlet and bay, fit for harbours and habitations. Seeing many isles in the midst of the bay we bore up for them, but ere we could obtaine them, such an extreme gust of wind, rayne, thunder, and lightening happened, that with great danger we escaped the unmerciful raging of the ocean-like water. . . . The next day, searching them for fresh water, we could find none; the defect whereof forced us to follow the next eastern channel, which brought us to the river of Wighcocomico. The people at first with great fury seemed to assault us, yet at last with songs and dances and much airth, became very tractable, but searching their habitations for water, we could fill but three barricoes, and that such puddle, that never till then we ever
knew the want of good water. We digged and searched in many places, but before two daies had expired, we would have refused two barricoes of gold for one of that puddle water of Wighcocomoco.

Smith and his party continued their investigation of the nearby isles, where they discovered that not all of the Chesapeake's Indians were so friendly. A tribe living on the Cuskarawawock River was quick to demonstrate its hostility. After penetrating a furious assault of arrows, however, Smith was able to negotiate a wary peace. Further along in their first voyage, Smith met the Sarapinagh, Nause, Aroeck, Nantaquak and Massawomeke tribes.

The Susquehennoughs (or Susquehannocks) lived to the north. They were a giant but friendly people, who for many years dwelled at the head of the Bay before being driven by the Senecas to a position near the Maryland-Virginia boundary in 1674. Of the Susquehannoughs Captain Smith wrote—

Such great and well-proportioned men are seldom seen, for they seemed like giants to the English, yea and to the neighbours, yet seemed of an honest and simple disposition, with much ado restrained from adoring us as Gods. These are the strangest people of all these countries, both in language and attire; for their language it may well become their proportions, sounding from them as a voice in a vault. Their attire is the skinnes of beares, and wolves, some have cassocks made of beares heads and skinnes, that a mans head goes through the skinnes neck, and the eares of the beare fastened to his shoulders, the nose and teeth hanging downe his breast, another beares face split behind him, and at the end of the nose hung a pawe, the halfe sleeves coming to the elbows were the necks of beares, and the armes through the mouth with pawes hanging at their noses. One had a head of a wolfe hanging in a chaine for a jewell, his tobacco-pipe three quarters of a yard long, prettily carved with a bird, a deare, or some such devise at the great end, sufficient to beat out ones braines: with bowes, arrowes, and clubs, suitable to their greatnesse.

Father Andrew White, who sailed over with the first Maryland colonists in 1634, was impressed with the facial appearance of the Susquehannoughs.

The natives are very tall and well proportioned; their skin is naturally rather dark, and they make it uglier by staining it, generally with red paint mixed with oil, to
keep off the mosquitoes, thinking more of their own comfort than of appearances. They disfigure their countenances with other colors too, painting them in various, and truly hideous and frightful ways, either a dark blue above the nose, and red below, or the reverse. And as they live almost to extreme old age without having beards, they counterfeit them with paint, by drawing lines of various colors from the extremities of the lips to the ears.7

In the early 1600's there were about seven thousand Indians in Maryland. Numerous conflicts with the Maryland and Virginia colonists during the seventeenth century reduced their number to only a few hundred by the beginning of the eighteenth.8 In 1742 the remaining tribes claimed territory lying along the Susquehanna and Potomac Rivers. A treaty was signed two years later by which the Indians relinquished all their claims in return for £600 sterling.9
III. PLACE NAMES AND INDIANS

1. Address by C.W. Wright, Maryland Historical Society, Chesapeake Bay, "The Mother of Waters" 1-2, March 25, 1919; A.A. BODINE, CHESAPEAKE BAY AND TIDewater 13 (1954); 1 SCHARF at 21; H.R. MANAKEE, INDIANS OF EARLY MARYLAND 43 (1959); and N.T. KENNEY, CHESAPEAKE COUNTRY 372 (1964).

2. Names derived from physical characteristics include Point Lookout, Piney Point, Cedar Point, Cove Point, Herring Bay, Highland Beach, Sandy Point, Elk River, Turkey Point, Still Pond, Swan Point, Poplar Island, Bar Neck, Rugged Point, Barren Island, Terrapin Point and Sand Point. Those of Catholic origin include St. Mary's City, St. Clement's Island, St. Margaret's Island, St. Inigoes Creek, St. George Island and St. Catherine's Island.

—WILSTACH at 57.

3. MANAKEE, supra note 1 at 32-33. See also 1 SCHARF at 84 and 87, and, generally, R. SEMMES, CAPTAINS AND MARINERS OF EARLY MARYLAND (1937).


5. See footnote 5 under "Smith's Voyages of Exploration" and accompanying text.

6. 1 SMITH 117.

7. FR. A. WHITE, NARRATIVE OF A VOYAGE TO MARYLAND 37-38 (Maryland Historical Society Fund Publication No. 7, 1874).

8. MANAKEE, supra note 1 at 38-39.

9. 1 SCHARF at 424 and 427.
IV.

EARLY VOYAGES

"... within it are many rivers and harbors

where one may anchor by either shore."

Who discovered the Chesapeake Bay? Historians speculating upon that academic query have disputed its answer for many years, and the argument still goes on today.

It is curious that few theorists wrapped up in the continuing debate seem fit to qualify their hypotheses by asking who was the first white man, or who was the first European, to see the Bay, especially since all seem to recognize the fact that Indians lived on Maryland and Virginia shores long before they were visited by explorers from the continent.

Suggestions as to the Chesapeake's true discoverer are numerous and varied. Several writers have placed a Viking in the Bay as early as the tenth century and as late as the eleventh, when a Norseman named Thorfinn Karlsefni may have investigated the Middle Atlantic region. In 1492 Spain acted upon Columbus' discovery of the New World by claiming territorial rights to the entire eastern coast of North America. But although the Chesapeake presumably was included in this accession, it was neither named nor specified by the Spanish and was most likely unknown to them. On John Cabot's second voyage to America in 1498, he explored the eastern coast and may have entered the Bay, but again, there is no recorded proof. Then Giovanni Verrazzano, a Florentine navigator sailing under the French flag, is said to have anchored his vessel in 1524 in what is now Chincoteague Bay and to have been the first European to set foot on the eastern shore. And Estevanico, a Portuguese explorer in the service of Spain,
may have entered the Chesapeake during his voyage from Newfoundland to the Florida Keys. However sound these hypotheses may be in presumption and logic, there is little documentary evidence by which they can be substantiated.

Much of what is known about those early sixteenth century discoveries is reflected in an official map published by Spain in 1529. The chart shows the results of explorations by Pedro de Quexos, shipmaster to Lucas Vazquez de Ayllon, who had been awarded a royal patent to colonize the Carolina coast. Pedro de Quexos sailed as far north as the 36th parallel, into what he called the Bahía de Santa María. This is probably the modern Currituck Sound; there is no indication that de Quexos ever reached the entrance to the Chesapeake Bay.

About that time a Spanish shipmaster found a friendly Indian near the Bahía de Santa María and brought him back to Spain, where he was christened Luis de Velasco. The commander of the Spanish transatlantic fleet, Pedro Menendez de Aviles, authorized various exploratory missions during the years from 1561 to 1572. Velasco was to be used as a guide and interpreter. One of the apparent goals was to find and investigate the Indian's birthplace, a settlement called Axacan, which was situated somewhere near the Bahía de Santa María. The Spaniards may well have visited Axacan before 1573, but they left no evidence of its precise location. Several further attempts at exploration were abortive.

In 1573 the Spanish navigator, Pedro Menendez de Marques, a nephew of the Florida governor, explored the eastern coast of North America from the Florida Keys to the 37th parallel. There he noted what he thought was the Bahía de Santa María, and took soundings; but this was actually seven leagues beyond the Bahía de Santa María found by de Quexos in 1525. Marques described "the harbor and bay of Santa María, which is three leagues wide, wherein one enters to the north-northwest; and within it are many rivers and harbors where one may anchor by either shore." Since the mouth of the Chesapeake is at the thirty-seventh parallel, Marques thus became the first to record an entrance into the Chesapeake Bay.
News of the Spanish discovery of the Bay was buried in secrecy—whether purposely or by mere neglect is not known. Europe first learned of the Chesapeake when Sir Walter Raleigh came in 1585 to settle what is now Pamlico Sound. An Indian chief taken prisoner by Ralph Lane, the governor of the fledgling colony, told the settlers much about the large bay to the north from whence he came. Lane searched for the great inland sea described by the captive Indian, and the waters which he found he called the "Chesapeake," after the Chesepuic Indians on its shores. When Wright and Molyneaux drew their first world map using Mercator's projection, they copied the name which has come down through the ages.

As noted earlier the Englishmen Ralph White and Richard Hakluyt also furnished rough sketches of the Bay, and their approximations appeared as the "Chesepiooc sinus" in Theodore DeBry's publication of a map of the area in 1590.

In 1587 Raleigh directed his colonists to move the Roanoke Island settlement to a new location on the shores of the Chesapeake. Two years earlier an exploring party had penetrated 135 miles northward to the country of the Chesepians or Chesepiook, where they were told by the tribal king that further northward was the province of more Indians, situated in a bay with a "great store of pearls." Before Raleigh's new orders could be carried out, the colonists disappeared. When the next English ships called at Roanoke in 1590, the only clue to their whereabouts was the word CROATAN carved on a tree. (The Croatans were a tribe of nearby Indians.) The fate of the colonists on Roanoke Island remains one of the unsolved mysteries of American history.

There has been no little conjecture about the first white man to see the Chesapeake Bay. Some still maintain that the Italian Cabot was the first, but there are advocates for his countrymen, Verrazzano and Amerigo Vespucci; for the Spaniards, Gomez, Quexas and Marques; as well as for the early Vikings. Other arguments have been kindled over who was the first Englishman to see the
Bay. Did White sail into the Chesapeake shortly before Lane's party in 1585, or was it the other way around? Was Captain Christopher Newport's fleet of three vessels involuntarily blown into the mouth of the Bay even before White or Lane? Or was Captain Bartholomew Gilbert actually the first, when in 1603 he sailed up the Bay searching for survivors of the Roanoke colony? These debates are of little moment when viewed in the light of the later explorations of the English adventurer, Captain John Smith, the first man to investigate the Chesapeake Bay and to catalogue his discoveries in detail.
IV. EARLY VOYAGES


3. BYRON, supra note 2 at 2 and E.S. Miers, The Drowned River: The Story of Chesapeake Bay 10 (1967).


5. Scisco, supra note 4 at 278-82.

   Around 1570 Spanish Jesuits spent five months at a settlement near the York River in Virginia. They were all murdered. Other Spanish visitors came in 1571 and 1572 but no settlements were made until the Jamestown colony took permanent root in 1607. BYRON, supra note 2 at 20. See also M.V. BREWINGTON, CHESAPEAKE BAY: A PICTORIAL MARITIME HISTORY 1 (1956) (hereinafter cited as BREWINGTON).

6. Scisco, supra note 4 at 282. See also BYRON, supra note 2 at 3, CHRISTIAN, supra note 2 at 1 and BREWINGTON 1.

   According to Scisco, the invalid theory that the Bay was really discovered by the Axacan missions began with a communication from one Robert Greenhow to the Virginia Historical Society in 1848 which has been erringly followed by other historians ever since. Greenhow's thesis was that the Spaniards had knowledge of the 37th parallel Bahía de Santa María in 1566, and suggested that this was the Chesapeake. One of those who accepted the
suggestion was Scharf (vol. 1 at p. 22). Greenhow's letter can be found in C. Robinson, An Account of the Discoveries in the West Until 1519 and of Voyages to and along the Atlantic Coast of North America from 1520 to 1573 (Richmond, 1848)

7. BARCIA, ENSAYO CRONOLOGICO appearing in JEANNETTE CONNOR, COLONIAL RECORDS OF SPANISH FLORIDA as cited by Scisco, supra note 4 at 282 and 286. See also 1 SCHARF at 21-22.

8. Scisco, supra note 4 at 282-283 and BREWINGTON at 1. For another interpretation see BYRON, supra note 2 at 3-4.

9. See also footnote 1 and accompanying text under "Place Names and Indians."

10. 1 SCHARF at 20.

11. See footnotes 1 through 7 supra and accompanying text, and WILSTACH 27-28.

12. See, e.g., BYRON, supra note 2 at 3 and WILSTACH, supra note 11 at 28.


14. See L.D. Scisco, Voyage of Vincente Gonzalez in 1588, 42 MD. HIST. MAG. 95 (1947); HOBBS, supra note 4 at 12; and BYRON, supra note 2 at 5-6.

On July 25, 1603, Captain Bartholomew Gilbert made his voyage up the Chesapeake Bay in Virginia, "being the first that sailed up into it and landed there. The Indians set upon him and his company in the woods; and Captain Gilbert and four or five of his men were killed by their arrows, upon which his crew returned home."

1 OLDMIXON, BRITISH EMPIRE IN AMERICA 354 (as quoted in 1 SCHARF at 20).
V.

SMITH'S VOYAGES OF EXPLORATION

"... heaven and earth seemed never to have agreed better to frame a place for man's commodious and delightful habitation!"

Sir Walter Raleigh's expedition in the latter part of the sixteenth century met with enough frustrations to stifle England's enthusiasm for colonization of the New World. That spark was not rekindled until Bartholomew Gosnold, who had visited the eastern coast in 1602 and had become excited with prospects for its settlement, united with John Smith, the adventurer whose daring exploits in other lands made his reputation in London.

On April 10, 1606 King James I issued letters of patent to the London and Plymouth Companies, with the former assigned to colonize the territory around Virginia, and the latter designated to do the same for New England. Three vessels under the command of Captain Christopher Newport sailed from England in mid-December. On April 26, 1607, the small fleet entered the Chesapeake Bay, between two capes they named after Henry, the Prince of Wales, and his brother Charles, the Duke of York. The colonists were pleased with this first view of their new home, Captain Smith declaring that "heaven and earth seemed never to have agreed better to frame a place for man's commodious and delightful habitation."

All was not so pleasant in the early years. During the first twelve months, famine, disease and the Indians reduced the original settlers from 105 to 38. Those who survived had already prepared to sail back to England when they were met in the river off of Mulberry Island by Lord Delaware. He prevailed upon them to return to Jamestown. It developed that the King had granted a new
charter to Sir Thomas Dale, under which land was assigned to anyone who chose to cultivate it, and profits remained largely with the planter. This seed of hope for the entrepreneur soon blossomed into mild but sure prosperity for the London Company, and the colony began to take permanent root. 2

It was at this point in history (on December 10, 1607) that Captain Smith led a party of nine men up the Chickahominy River as part of his continuing exploration of the tributaries to the James. Three of the adventurers were killed by savages; only the gift of a compass and bold words to the Chief Opechancano saved Smith's life. Eventually he was taken before the great Indian leader Powhatan, who lived off the Pamunkey (today's York) River. Pleasantries were exchanged, and Smith extracted a promise of safe conduct back to Jamestown (for which he later sent gifts to Powhatan). At least this is the story Smith told upon his return. The account of how Powhatan's daughter, Pocahontas, had saved his life did not appear until sixteen years later, with the publication of the Captain's General History of Virginia, New England and the Summer Isles. 3

John Smith had done what he could to sustain the spirits of the battered colonists during that first harsh winter of 1607-1608. Now he set out to explore in detail the great bay to the north, and to search for a possible outlet to the South Sea and for the source of an Indian metal which he thought to be silver (but which turned out to be "fool's gold").

On June 2, 1608, Smith left Jamestown "in an open barge neare three tons burthen," in which he hoped "to performe his discovery with this company: Walter Russell, doctor of physicke, Ralfe Morton, Thomas Momford, William Cantrili, Richard Fetherstone, James Burne, Michell Sicklemore, Gentlemen [an.] Jonas Profit, Anas Todkill, Robert Small, James Watkins, John Powell, James Read, Richard Keale, Gouldiers." 4 The barge carried two sails, oars should the wind fail, a tarpaulin in case of rain, corn meal for bread, and drinking water in
gourds. A log of "the accidents that happened in the discovery of the bay of Chisapeake" was to be maintained by Doctor Russell and Anas Todkill, while Smith himself was to make a rough map of the Bay and its rivers.

After sailing across the Bay to Cape Charles and up the eastern shore, the party came to a series of islands in Tangier Sound, the group of which were named after Doctor Russell. They are today's Tangier, Smith, Holland, Southmarsh and Bloodsworth Islands. Here Smith learned about a powerful and warlike tribe of Indians to the north called the Massawomeks, who were said frequently to raid smaller tribes on the Chesapeake tidewater. The Englishmen wasted no time in exercising a fruitful diplomacy, by offering the victimized natives the hope of a thorough (European-style) redress of their grievances in return for a barge full of provisions.

Fighting swarms of mosquitoes on the lower eastern shore, rough seas and harsh weather, and facing a serious lack of fresh water, the explorers continued north through the "Straits of Limbo" (Hooper's Strait), passing the Calvert Cliffs and ultimately reaching a tributary which they called the "Bolus" after the red clay found on its shores. This was the Patapsco River—Smith and his men saw it many years before Lord Baltimore's colonists ever thought of starting a settlement there.

Several of the crew fell sick and urged their captain to return to Jamestown. Smith, reluctant to cut short the voyage, cajoled and consoled his sailors. A good measure of the man may be gleaned from his final exhortation:

Regaine therefore your old spirits, for return I will not (if God please) till I have seen the Massawomeks, found Patawomek [the Potomac River], or the head of this water you conceit [think] to be endlesse. The crew found itself sufficiently inspired (and recovered) to carry on with the adventure of discovery and confrontation. Smith headed south along the western shore, and met more Indians:

-20-
The 16th of June we fell with the river Patowomек
[the Potomac], feare being gone, and our men recovered,
we were all content to take some paines, to know the name
of that seven-mile broad riuier: for thirtie myles sayle,
we could see no inhabitants: then we were conducted by
two savages up a little bayed creeke, towards Onawmanient,
where all the woods were layd with ambuscados to the number
of three or foure thousand salvages, so strangely
paynted, grimed and disguised, shouting, yelling and
crying as so many spirits from hell could not have shewed
more terrible. Many bravados they made, but to appease
their fury, our captaine prepared with as seeming a
willingnesse as they to encounter them. But the grazing
of our bullets upon the water (many being shot on purpose
they might see them), with ecco of the woods so amazed
them, as downe went their bowes and arrmves; (and exchang­
ing hostage), James Watkins was sent six myles up the woods
to their king's habitation. We were kindly used of those
salvages, of whom we understood, they
~ilere
commanded to
betray us, by the direction of Powhatan, and he 80 directed
from the discontents at James-towne, because our captaine
did cause them stay in their country against their wills.7

One of the more interesting episodes of this first voyage reveals how
Stingray Point came to be named. The expedition's supplies nearly spent, Smith
and his men headed south for home. Near the mouth of the Rappahannock, the party
espied a multitude of fishes lurking in the reeds. It was probably Anas Todkill
who gave one of the first accounts of spearfishing in North American waters, and
in this instance added its peculiar consequences:

... [O]ur captaine sporting himself by nayling them to
the ground with his sword, set vs all a fishing in that
manner: thus we tooke more in one houer than we could
eate in a day. But it chansed our captaine taking a fish
from his sword (not knowing her condition) being much of
the fashion of a Thornback, but a long tayle like a riding
rode, whereon the middest is a most poysioned sting, of
two or three inches long, bearded like a saw on each side,
which she strucke into the wrist of his arme near an
inch and a halfe; no bloud nor wound was seene, but a
little blew spot, but the torment was instantly so extreame,
that in foure houres had so swollen his hand, arme, and
shoulder, we all with much sorrow concluded his funerall
and prepared his graue in an island by, as hemselfe directed;
yet it pleased God by a precious oyle Doctor Russel at
the first applied to it with a probe, (ere night) his tor­
menting paine was so well asswaged, that he eate of the
fish to his supper, which gaue no less joy and contant
to vs than ease to himselfe, for which we called the island
Stingray isle after the name of the fish.
The party returned to Jamestown on July 21, 1608. Within three days Smith embarked upon a second voyage with a new crew (Anthony Bagnell and Nathaniel Powell replaced Doctor Russell and Ralfe Morton, Edward Pising and William Ward replaced Robert Small, John Powell and James Read). It was on this expedition that the Massawomeks and the Susquehannoughs, mortal enemies one to the other, were encountered. Although peace was made with both tribes, there was some tension at the first meeting with the Massawomeks:

... in crossing the bay we encountered 7 or 8 canowes full of Massawomeks, we seeing them prepare to assault us, left our oares and made way with our sayle to encounter them, yet were we but five with our capitaine that could stand, for within two days after we left Kecoughtan, the rest (being all of the last supply,) were sicke almost to death, until they were seasoned to the country. Having shut them under our tarpawling, we put their hats upon stickes by the barges side, and betwixt two hats a man with two peces, to make us seeme many, and so we thinke the Indians supposed these hats to be men, for they fled with all possible speed to the shore, and there stayed, staring at the sayling of our barge till we anchored right against them. Long it was ere we could draw them to come unto us. At last they sent two of their company unarmed in a canow, the rest all followed to second them if neede required. These two being but each presented with a bell, brought aboard all their fellowes; presenting our capitaine with venison, beares flesh, fish, bowes, arrowes, clubs, targets, and beare skinnes.

Before returning home once again, Smith and his men met and befriended an Indian names Mosco, who spoke English. It was he who suggested that the Indians' overt hostility towards white men was based upon the (well-grounded) fear that the strange visitors from the other side of the world would take away their lands. But Mosco helped the settlers fight against the Rappahannocks, and he was rewarded with a canoe-full of gifts.

On September 7, 1608, Smith and his adventurers came back to Jamestown. Three days later the gallant Captain was elected President of the Virginia Council. The two voyages had provided abundant information about the navigable waters feeding into the Chesapeake Bay, especially the Potomac, Wicomico, Patuxent,
Patapsco, Rappahannock and Susquehanna Rivers. 11

After John Smith, the first third of the seventeenth century saw at least a half-dozen other pioneers who were to contribute substantially to George Calvert's recognition of the Bay's tremendous colonial and mercantile potential. Among them were Captain Henry Hudson, who in 1609 sailed through the Chesapeake in his search for a northeast passage to India, 12 and Captain Henry Fleet, who gained reknown on both sides of the Atlantic as a frontier guide and interpreter.

For a number of years Captain Fleet was held prisoner by the Indians, in which time he learned well their customs and languages. 13 He spent much time sailing the Chesapeake and Potomac, and his observations and experiences remain no less colorful than those of John Smith. Fleet was much more materialist than explorer, however, and he was more concerned with trading for furs than with charting new territory. In the late summer of 1632 he again left Jamestown for the rich country to the north.

The 29th of August we came to Patomack; here was I tempted to take in corn and then to proceed for New England; but wanting truck, and having much tobacco due to me in Virginia, I was unwilling to take any irregular course, especially in that I conceived all my hopes and future fortunes depended upon the trade and traffic that was to be had out of this river.

I took in some provisions, and came down to a town called Patobanos [probably Port Tobacco], where I found that all the Indians below the cannibals, which are in number five thousand persons in the river of Patomack, will take pains this winter in the killing of beavers and preserve the furs for me now that they begin to find what benefit may accrue to them thereby. By this means I shall have in readiness at least five or six thousand weight against my next coming to trade there. 14

Fleet later helped Leonard Calvert settle his Maryland colony. He prospered for a number of years as the leading mercantile entrepreneur on the Chesapeake Bay, until William Claiborne made his appearance in 1627.
V. SMITH'S VOYAGES OF EXPLORATION

1. 1 SMITH 114.

2. 1 SCHARF 1-5. In 1609 the colony was rechartered as the Virginia Company which three years later secured a new charter that included the Bermudas and which placed control of the colony in stockholders. J.H. CLAIBORNE, WILLIAM CLAIBORNE OF VIRGINIA 44 (1917). For a comprehensive treatment of the land grant system in colonial Virginia, see Miller v. Commonwealth, 159 Va. 924, 166 S.E. 557 (1932).


4. 1 SMITH 173.

5. Being thus refreshed in crossing over from the maine to other isles, we discovered the wind and waters so much increased with thunder, lightning and raine, that our mast and sayle blew overboard, and such mighty waves overracked us in that small barge, that with great labour we kept her from sinking, by freeing out the water . . . . Repairing our saile with our shirts, we set sayle for the maine and fell with a pretty convenient river on the East called Guskarawock, the people ran as amazed in troupes from place to place, and divers got into the tops of trees, they were not sparing of their arrowes, nor the greatest passion they could express of their anger. Long they shot, we still ryding at an anchor without their reach making all the signes of friendship we could. The next day they came unarmed, with every one a basket, dancing in a ring to draw us on shore, but seeing there was nothing in them but villany, we discharded a volley of muskets charged with pistoll shott, wheret they all lay tumbling on the ground, creeping some one way, some another
into a great cluster of reedes hard by, where thare companies lay in ambuscade. Towards the evening we wayed, and approaching the shoare, discharging five or six shot among the reedes, we landed where there lay a many of baskets and much bloud, but saw not a salvage. A smoake appearing on the other side the river, we rowed thither, there we left some peces of copper, beads, bells and looking-glasses, and then went into the bay, but when it was darke we came back againe. Early in the morning four salvages came to us in their canoes, whom we used with such courtesie, not knowing what we were, nor had done, having beene in the bay a fishing, bade us stay and erc long they would returne, which they did and some twentie more with them; with whom after a little conference, two or three thousand men, women and children, came clustering about us, every one presenting us with something, which a little bead would so well requisite, that we became such friends they would contend who should fetch us water, stay with us for hostage, conduct our men say whither, and give us the best content. Here doth inhabithe the people of Sarapinagh, Nause, Arceck, and Nantesauq, the best marchants of all other salvages. They much extolled a great nation called Massawomekes, in search of whom we returned by Limbo . . .

---1 SMITH 174.

6. Id. at 177.
7. Id. at 177.
8. Id. at 179.
9. Id. at 181-182.
11. See 1 SMITH 118 ff. Other descriptions of Smith's adventures may be found in BREWINGTON 1-2; WILSTACH 29-34; and R.M. BURGESS, THIS WAS CHESAPEAKE BAY 4-6 (1963).

Much has been written about John Smith's life and times. For several good and more recent biographies, see P.L. BARBOUR, THE THREE WORLDS OF CAPTAIN JOHN SMITH (1964); P. LEWIS, THE GREAT ROGUE (1967); and BRADFORD SMITH, CAPTAIN JOHN SMITH: HIS LIFE AND LEGEND (1953).

12. See 1 SCHARF 230.
13. When he came to write a journal of his adventures, Fleet was nearly apologetic for his proficiency with the Indian tongue:

And so, beloved friends, that shall have the perusal of this journal, I hope that you will hold me excused in the method of this relation, and bear with my weakness in penning the same. And consider that time would not permit me to use any rhetoric in the form of this discourse, which, to say truly, I am but a stranger unto as yet, considering that in my infancy and prime time of youth, which might have advantaged my study that way, and enabled me with more learning, I was for many years together compelled to live amongst these people, whose prisoner I was, and by that means am a better proficient in the Indian language than mine own, and am made more able that way.

——From HENRY FLEET, A BRIEF JOURNAL OF A VOYAGE MADE IN THE BARK VIRGINIA AND OTHER PARTS OF THE CONTINENT OF AMERICA (as quoted in E.D. NEILL, THE FOUNDERS OF MARYLAND 36-37 (1876)).

14. Id. at p. 35.
VI.
THE FOUNDING OF MARYLAND

"... the most extraordinary delegation of power granted to any English subject since the creation of the border palatinates of previous centuries."

The Chesapeake Bay country blossomed slowly during the second and third decades of the seventeenth century. In 1617 the eastern shore of what is now Maryland acquired its first permanent white resident. He was named, appropriately enough perhaps, Thomas Savage; having moved from Virginia with his wife, he was to prosper "raising corn and progeny." A few years later (in 1625), one of the earliest English settlements was made miles to the north at the mouth of the Susquehanna River, after Edward Palmer purchased the island now bearing his name, with the idea of founding a university there. In the late 1620's, trading posts were established on Kent and Palmer Islands by the Virginian, William Claiborne, about whom much will be said later.

It was around this time that an active interest in the Bay area was taken by George Calvert, the first Lord Baltimore and the founder of Maryland. Calvert has often been hailed as a man of great political insight, patient understanding and strong moral fibre. Distinguished historians have reserved for him high praise: he was a self-made statesman-philosopher, one of the first in the Christian world to seek religious security and peace by the practice of justice more than by the exercise of power, and by the establishment of popular institutions within an environment of liberty and conscience. And the country of the Chesapeake Bay "was the spot where in a remote corner of the world, on the banks of rivers which as
yet had hardly been explored, the mild forbearance of a proprietary, adopted religious freedom as the basis of the state.\textsuperscript{3}

Calvert had served as England's Secretary of State under King James I. Shortly after the death of his first wife he converted to Catholicism, and when British persecution of Catholics became severe, he affirmed his faith by bowing out of office. The first Lord Baltimore then looked to find a haven for those persecuted because of their religious beliefs. His ill-fated attempts to colonize in Newfoundland seemed to do little more than increase a fervent desire to establish a sanctuary in the New World.\textsuperscript{4}

In 1629, Calvert visited Jamestown with the unstated but obvious intention of scouting new territory for his colony. He was not warmly received. Most Virginians were jealous of their territorial rights and hard-worked lands, and did not cotton to any newcomer with competing aspirations, be he commoner or lord. Thus we read that one Thomas Tindall, "for giving my Lord Baltimore the lie and threatening to knock him down," was sentenced to two hours in the pillory.\textsuperscript{5} One of the more hostile of the official hosts was Claiborne, the prosperous trader with vested political interests in Virginia. In his fanciful though factually-based novel, \textit{The Sot-Weed Factor}, John Barth tells of Calvert's reception in Virginia. Here Charles Calvert, the third Lord Baltimore, recounts the incident for Ebenezer Cooke, Maryland's first poet-laureate:

\begin{itemize}
  \item he [George Calvert] was met by Governor Pott and his Council (including the blackguard William Claiborne, archenemy of Maryland, who for very spleen and treachery hath no equal in the history of the New World), all of 'em hostile as salvages and bent on driving Grandfather away, for fear Charles would grant him the whole of Virginia out from under 'em. As if he were some upstart and not late Privy Councillor to the King, they pressed him to swear the oath of supremacy, knowing full well that as a good Catholic he would perforce refuse. Not e'en the King had required it of him, and 'twas in the authority of neither Pott nor Claiborne nor any other rascal in Virginia to administer it, but demand it they did, nonetheless, and were like to set bullies and ruffians upon him when he would not swear't.\textsuperscript{6}
\end{itemize}
Claiborne was either dispatched or went on his own accord as a lobbyist to England for the purpose of preventing confirmation to Calvert of lands south of the James River, in the Carolinas. In a gesture of compromise, Calvert withdrew the King's bill granting him the Carolina territory before it was given the privy seals, and a second grant for what is now the eastern shore peninsula was withheld by the Privy Council after vigorous objections by the Virginians. While he was at it, Claiborne obtained a license under the hand of King Charles to trade in all seas in or near the country around Virginia.

Besides the Carolinas, however, Calvert was also favorably impressed with the climate and bountifulness of the Chesapeake Bay and its hinterlands. He submitted an alternative petition for these regions north of Virginia, to which the King promptly acquiesced. But before this final charter received its seal, the first Lord Baltimore died, never to set foot upon his promised land.

The new grant passed immediately to George Calvert's son Cecilius, the second Lord Baltimore. When the charter went through the Privy Council and was published, on June 30, 1632, Cecilius inherited all the rights attendant to the palatinate. These were, to put it mildly, extensive. "The Province of Maryland was the largest land grant ever made by a sovereign of England to an individual subject . . . the most extraordinary delegation of power granted to any English subject since the creation of the border palatinates of previous centuries."

In brief, the Charter of Maryland invested the Lord Proprietary with the territorial rights to all lands, waters and natural resources within the province, in perpetual possession to himself and his heirs; with the legislative and judicial rights to make and enforce public and private laws and to establish courts of justice; with the regal rights to confer titles, erect towns, and pardon offenses; with the ecclesiastical rights to establish churches (in accordance with the laws of England); with the military rights to declare and wage war; and with
the financial rights to alienate lands and levy duties and tolls. It has been suggested that all of these powers taken together represented a return to feudal and baronial ideals of land tenure and government, leaving Maryland the most extreme of the proprietary colonies in America.

So it was that on March 25, 1634, the first Maryland settlers anchored their two small pinnaces, the *Ark* and the *Dove*, at St. Clement's Island (now Blackiston Island) on the shores of the Chesapeake Bay. At their command was Leonard Calvert, Cecil's brother and the governor-designate for the province. Not long after the colonists went ashore, Father Andrew White assembled them for the first mass to be celebrated in this haven for the persecuted.

Leonard Calvert wasted little time before he attached Captain Henry Fleet to the expedition. Using Fleet's knowledge of both the land and its people, a quick peace was negotiated with the chief of the Piscattaway and Patuxent Indians. The settlement was then moved a short distance from St. Clement's Island to a spot on the St. Mary's River, which had "two excellent bayes, wherein might harbour three hundred saile with great safetie." Here the roots of St. Mary's City, which was to remain the capitol of Maryland for the next sixty years, took firm hold.
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2. WILSTACH 180.
3. G. BANCROFT, 1 HISTORY OF THE UNITED STATES 244 (1864).
4. Some writers have suggested a less popular theory, that Calvert's first consideration in asking for a new charter was to offset the financial loss occasioned by the failure in Newfoundland, and that the wish to establish a refuge for Catholics was but secondary. See P.G. SKIRVEN, THE FIRST PARISHES OF THE PROVINCE OF MARYLAND 3 (1923); E. ALLEN, MARYLAND TOLERATION 18 (1855) and, generally, K.L. Lasson, Religious Freedom and the Church-State Relationship in Maryland, 14 THE CATHOLIC LAWYER 6-7 (1968).
7. See LATANE', supra note 5 at 9; W.H. BROWNE, MARYLAND: THE HISTORY OF A PALATINATE (1899); and J.H. CLAIBORNE, WILLIAM CLAIBORNE OF VIRGINIA 62 (1917). The latter insists that Claiborne was sent to London "to keep an eye on the wily nobleman [Baltimore] and thwart his purposes and schemes." CLAIBORNE, supra at 62.
8. N.C. HALE, VIRGINIA VENTURER, 169 (1951) and 1 SCHARF 50.
10. 1 SCHARF 61. A copy of the Charter of Maryland may be found at 1 SCHARF 53-60.

-1-

12. The site is now commemorated by a large white cross. See pp. 32-33 in Father White's Journal. See also infra under "Kent Island and Claiborne," at 27.

13. HALE, supra note 8 at 178.
"Claiborne returned to Virginia . . . now that force, fraud and complaint had failed in effecting his purpose, there remained to him but the spirit of deadly animosity towards the colony, waiting only the opportunity for revenge."

"[N]ot one of his descendants should take aught to himself but honour from the fact that the blood of that virile Englishman runs in his veins."

Few men in the history of the Chesapeake Bay have engendered more contrasting perspectives than William Claiborne of Virginia. His strong personality at once provoked animosity and cajoled devotion, the result often depending largely upon whether a particular commercial or political relationship was mutually beneficial.

Maryland historians generally have relegated him to a position of infamy, while Virginians (particularly his lineal descendants, of whom there are many) assure him the status of a patriot. As noted before, Claiborne was one of the prime spokesmen against Calvert's efforts to establish a colony either north or south of Jamestown. For this reason he was early established as an "archenemy of Maryland, who for very spleen and treachery hath no equal in the history of the New World."¹ Other writers are no less vindictive. Claiborne's resistance to Lord Baltimore's authority is said to have been "unjustifiable, seditious, and subversive of all just government."² When he was "baffled in his attempts to obtain redress, Claiborne returned to Virginia . . . and now that force, fraud and complaint had all failed in effecting his purpose, there remained to him but
the spirit of deadly animosity towards the colony, waiting only for the opportunity of revenge. This is the same man about whom still other biographers have written with considerably more admiration and charity:

His descendants in men and women have been estimated at many thousands. Amongst them have been those who have served their country in the halls of Legislature, as governors, as orators, soldiers, sailors, in the law, in medicine, and in the ministry. The names of many are written on the imperishable records of American manhood, achievement, and valour, and though he has been villified and defamed unjustly by enemies dead and alive, not one of his descendants should take aught to himself but honour from the fact that the blood of that virile Englishman runs in his veins.

The debate over whether Claiborne was hero or villain sometimes beclouds the undisputed certainty of his importance to the early history of Maryland and the Chesapeake Bay. Claiborne was thirty-four years old when he sailed for the New World in 1621-1622. Soon after arriving in Virginia, he began trading with the Indians on the shores of the Chesapeake. In 1627 Governor Yeardley of Virginia gave him authority to explore the Bay from the thirty-fourth to the forty-first parallel, and in that same year a royal license was issued granting him power to trade "in, nere, or about those parts of America for which there is not already a patent granted to others for the sole trade."

In 1632, three years before the Ark and Dove set anchor in Maryland, Claiborne set out to investigate the northern reaches of the Bay (following John Smith's original trail). Eventually he came to a large island 125 miles north of Jamestown, off the eastern shore between what are now the Chester and Miles Rivers. Here the level fields of grass and broad forests reminded him of his native Kent, and the proximity of the Wicomico and Nanticoke Indians offered the attraction of potentially profitable trade. In the space of two years a small trading post was established and a settlement started to grow on the southern shore of Kent Island. Shortly after, Claiborne set up a similar station on Palmer's Island at the mouth of the Susquehanna River and quickly affirmed
friendly relations with the giant Susquehannough Indians.

As the first settlers at Jamestown found it difficult to live during those early years in the New World, so the colonial traders on Kent Island encountered frustration and hardship in excessive proportion to their small number. Claiborne financed the trading post with the help of his majority partners in London—William Clobery, John Delabarr and David Moorhead—Clobery promising the Virginian he would use his political influence to obtain a patent to Kent Island under the broad seal of England. But there was little that could be done in London to prevent the extensive fire which on October 18, 1631, nearly wiped out the tiny Chesapeake settlement. By 1632, the colony on Kent had been restocked and planted, there was a mill and court-house, regular trade had begun with the Indians, and the Island was being represented in the Virginia Assembly by Captain Nicholas Martin.

When the news reached Jamestown that George Calvert had been granted the Chesapeake Bay territory, there were some Virginians who had doubts about their continued jurisdiction over Kent Island. Most, however, were confident that Kent was not embraced by the Maryland Charter, especially in view of Claiborne's trading post there and the language in the Charter that Lord Baltimore was being given lands "hitherto uncultivated" (hactenus inculta). The old Virginia Company nevertheless persisted in its opposition to the Charter, as it had objected to the earlier grants to Calvert which he had withdrawn. Virginia obtained legal opinions that the King's gift of plenary powers to Baltimore was a dangerous precedent. The King sent the matter to his Privy Council, asking for a declaratory judgment. On July 3, 1633, the Council returned its recommendation to the effect that Baltimore be left with his Charter, and other claimants to their remedies at law.

This should have closed the case, but as late as November of 1633 the Virginians were still petitioning for exclusive rights to Kent Island. In early
March of 1634 Claiborne, who by now had become Secretary of State for Virginia, appealed to the Virginia Council for guidance; in turn he received that body's partisan support for his various claims of right. Meanwhile, Cloberry and Company continued to maneuver behind the scenes by attempting to deal privately with Cecil Calvert in London, while discreetly reminding Claiborne of the partnership's viability.

When Leonard Calvert arrived with the Ark and Dove in the spring of 1634, he depended upon a letter from the King commanding the Jamestown colonists to render whatever assistance was necessary to the fledgling Marylanders. Leonard did not expect a warm welcome. His brother Cecilius had counseled against sailing too close to the newly placed guns at Point Comfort. The advice appeared well taken when the Virginians apparently mistook the two small pinnaces for Spanish ships, and challenged the strangers for a tense two hours before admitting them. Then Calvert went ashore, where he was received cordially by the Governor of Virginia, Sir John Harvey.

Cecilius Calvert had also instructed his brother that, if Claiborne should offer resistance and reject Baltimore's authority, the Virginian should be left unopposed for at least one year. But Claiborne's open refusal, both to confess himself a Maryland subject or to acquire a license from Calvert to trade in the Chesapeake Bay, probably pushed Leonard into forcing the issue earlier than suggested. He made the points clear that the Kent Island station was within the precincts of the Lord Proprietor of Maryland, that the settlers thereon could remain only as tenants, and that a license to trade would be required. Unfortunately, little mention was made of the fact that Cloberry had already subjugated himself and the partnership to Cecilius: in England he was petitioning the second Lord Baltimore for a sub-grant of Kent Island, while at the same time making light of Claiborne's interest. Cecilius, however, expressed his wish to forbear until
a working agreement could be negotiated with Claiborne.

Several months after the Marylanders arrived, Captain Henry Fleet accused Claiborne of inciting various tribes of Indians into hostile acts against the new settlers. Calvert complained to the Governor of Virginia, who put Claiborne under bond not to leave Jamestown until the charges had been thoroughly investigated. On June 20, 1634, duly appointed commissioners from Maryland and Virginia met at Patuxent to interview the King of the Patuxents concerning Fleet's charges. According to some historians, the result was a complete exoneration of the Virginia trader; others think the indictment had more substance.

It took a long time for news to travel between England and the colonies, and this sometimes caused misunderstandings of no small consequence. Hearing the rumors that Claiborne had aroused the Indians against his colony, Cecil Calvert in early September of 1634, sent orders for Leonard to seize Kent Island and arrest Claiborne.

Governor Harvey of Virginia sided with the Lord Baltimore and removed Claiborne from his position as Secretary of State of Virginia. No doubt Harvey acted out of political expediency, but his decision quickly made him unpopular with most Virginians. King Charles seemed hopelessly caught in between, apparently wishing to appease both Claiborne and Baltimore even though their interests were in essence contradictory. The King wrote a letter to Harvey thanking him for his assistance and encouragement to the Maryland colonists. A few days later, however, Charles issued a royal sign manual saying that Baltimore's interference with the planters on Kent Island was "contrary to justice and to the true intention of our grant to the said Lord . . ." Harvey concealed the second message, later claiming he thought that it was either a forgery or had been surreptitiously obtained by Claiborne's friends.

Despite the King's efforts at long-distance arbitration, traders from Kent
and colonists from Maryland soon found occasion for a direct confrontation. Captain Thomas Smith and the new pinnace Long Tayle (the first built on the Chesapeake) were taken captive on open waters by Calvert's representatives, who construed the King's letters as restricting Claiborne's trade to the boundaries of Kent Island. On April 23, 1635 an incensed Claiborne dispatched thirteen men on the Cockatrice under Lieutenant Radcliffe Warren, to retake the Long Tayle (Thomas Smith had since been returned) and to capture one of Baltimore's large pinnaces. They were met in the Pocomoke River off the eastern shore of the Bay by two of Calvert's ships, the St. Margaret and the St. Helen, under the command of Captain Thomas Cornwallis. The ensuing skirmish, which left four dead and many wounded, was the first naval battle ever fought in the New World.¹⁴

Cornwallis again met Thomas Smith on May 10th and this time charged him with various acts of piracy. The next day Claiborne ordered his men to retake the Long Tayle, without bloodshed if possible. The history of this second encounter between Virginia and Maryland is unclear, but the result was a temporary settlement of hostilities, with Claiborne left in undisputed possession of Kent Island for several more years.¹⁵

In the meantime the Virginians, having become completely vexed at Governor Harvey for his failure to support the Kent Islanders, repudiated his authority and ultimately forced him to depart for England. Claiborne himself apparently eluded the Maryland authorities by returning to Virginia.

Towards the end of 1636, Cloberry and Company sent George Evelyn to Kent Island. Evelyn had bought out the one-sixth share in the partnership formerly owned by John Delabarr, and was to take charge of the company's fur trading business in the Chesapeake. Claiborne, meanwhile, was to sail for England, where he would recount his troubles for the partners and report on profits and losses. Before leaving for London, Claiborne made sure that Palmer's Island was fortified.
He was unable, however, to extract from Evelyn an assurance that he would maintain the status quo on Kent. And as soon as Claiborne left, Evelyn began a methodical dispossession of the Virginian's interest, and negotiations with Leonard Calvert. Evelyn presented the Kent Islanders with an ultimatum: if they refused to yield to the government of Maryland, the Island might be taken by force. Thomas Smith and John Butler were adamant in their refusal to surrender the Island, and Calvert was left with little choice but to order them arrested. But Evelyn, without the support of the other Islanders, was unable to make the arrests.

Leonard Calvert now found himself in an awkward position, his offers for appeasement totally rejected. Suspicious that Smith and Butler were planning to incite the Susquehannocks against the colonists at St. Mary's, he set out to reduce Palmer's Island. On February 12, 1638 a Bill of Attainder was drawn against Claiborne for crimes committed by his Cockatrice three years earlier. Now, with Evelyn's assistance and direction, Kent Island was taken and Claiborne's plantation and personal property there were attached by Cloberry and Company pending the outcome of Calvert's indictment against him. Smith and Butler were arrested and brought to trial before the legislative assembly, which was acting as a court of justice. Smith was convicted of piracy and sentenced to death, although Calvert forbore from ordering his execution and let Butler off with a milder censure. By virtue of the Bill of Attainder against him, Claiborne was made an outlaw and all of his property in the Chesapeake Bay was seized. As a final gesture, Palmer's Island was reduced and its spoils divided.

Claiborne had by now arrived in England. After he learned of the reduction of both Kent and Palmer's Islands, he petitioned the King for redress of the wrongs and injuries that he and the Cloberry partnership allegedly had sustained. Calvert in the meantime had submitted his own petition, asserting that Claiborne was a pirate and murderer and requesting a reaffirmation of the 1633 order leaving
the Baltimores to their Charter and Claiborne to his remedies at law. The King referred Claiborne's petition to his commissioners of plantations, who in turn recommended that the matter again be treated strictly as a private quarrel between Claiborne and the Calverts. On April 4, 1638 the commissioners issued their report, which stated that——

... the Right & Tytle to the Ile of Kent & other places in question to be absolutely belonging to the Lord Baltimore, & that noe Plantation or Trade with the Indians ought to be within the precincts of his patent without Lycence from him. Did therefore likewise thinke fitt & declare, that noe Grannt from his Majesty should passe to the said Clayborne or any others of the said Ile of Kent, or any other parts or places within the said Patent Whereof his Majesty's Attorney & Soliciter generall are hereby prayed to take notice. And concerning the Violences & wrongs by the said Clayborne & the rest complayned of in the said Petition to his Majesty their Lordshipps did now al also declare, that they found no cause att all to relieve them, butt doe leave both sides to the ordinary course of Justice.16

Two weeks later, Claiborne appeared before Sir Henry Marten, Judge of His Majesty's High Court of Admiralty, and successfully defended himself against Lord Baltimore's charges of piracy and murder. Having by now become aware of Cloherry's surreptitious compromising, Claiborne started to reexamine his business interest. But in the midst of various civil suits and counter-suits for libel filed by him and the partnership, the outcomes of which have remained unclear, more felicitous news came for the Virginian. The Providence Company had granted him the Island of Roaten (now Rich Island) off the coast of Honduras. And on July 14, 1638, King Charles issued another mild censure and approbation to Lord Baltimore after word came that his agents had "slain three of our subjects" on "Kentich Island."17

Nevertheless, Calvert's title to Kent had been reaffirmed and was being generally accepted. Back in the colonies, the Governor and Council of Virginia issued a proclamation, on October 4, 1638, recognizing "the right and title to the Isle of Kent & other places in question to bee absolutely belonging to Lo: Baltimore."18
All was not finished, however, as far as William Claiborne was concerned. It is difficult to say whether the King acted out of a spirit of conciliation or in one of affection when in 1642 he made Claiborne Treasurer of Virginia for life. Several years later, while the Calverts were becoming embroiled in the Puritan controversy, the Virginian saw an opening to retake his old Island. But now, because he realized full well that the stability of Leonard Calvert's palatinate was at best precarious, Claiborne chose a more prudent, non-violent course of action.

Earlier that year Calvert had once again declared Claiborne to be an enemy of the province, but the declaration had a hollow ring. After the two-year rebellion against Lord Baltimore's authority (touched off by Richard Ingle), Claiborne repossessed Kent Island. He was not to be expelled until 1646. Meanwhile, it took all of Cecil Calvert's influence in Parliament to retain the Maryland Charter. And in June of 1647, in tenuous possession of Maryland and Kent Island, Leonard Calvert died.

Claiborne persisted nonetheless, and in 1649 submitted "A Declaration shewing the illegality and unlawfull Proceedings of the Patent of Maryland." The Maryland Assembly responded in 1650 with an act decreeing that anyone who should "assist, abett, or countenance Claiborne in any attempt against the Island of Kent, or any place within this Province . . . shall be punished by death and confiscation of all his Lands, goods and chattels."

In the early 1650's there was a good deal of political turmoil in England and in the colonies. For a brief period in 1652 William Claiborne actually found himself the governor pro tem of Maryland while serving at the same time as Virginia's Secretary of State. However, under a 1657 compromise in which Maryland and Virginia resumed an amicable relationship, Kent Island became once and for all within the jurisdiction of Lord Baltimore.
William Claiborne died in 1677 at the age of ninety years. According to the theory of the still active Claiborne protagonists, he had based his claim to Kent Island solely on grounds of prior occupancy and purchase from the Indians, and not on a royal grant. It is claimed further that the two major objections to Claiborne's title to Kent are without merit: first, the fact that the original charter to the London Company which granted Chesapeake territory had been annulled did not affect the Colony's rights to settle lands originally granted, if they hadn't already been alienated; and second, even though the Virginia Council never granted Kent Island to Claiborne, it nevertheless was consistent in its recognition of his rights and title there. Moreover, the charter to Baltimore was for lands "not yet cultivated" and Claiborne had planted Kent Island at least one year before the Ark and Dove set anchor.

Advocates who claim that Calvert's title to Kent was whole and unencumbered assert that Claiborne "could not rest his title on the ground of prior occupancy, for . . . his license from the king went no further than a permission to trade, which might have been granted to a citizen of a foreign state" and that "the instant . . . Maryland, was granted by King Charles to Lord Baltimore, Kent Island and Claiborne . . . became subject to his jurisdiction and authority." Or, as Charles Calvert might have argued to the poet laureate Ebenezer Cooke—

\[\text{H}a\text{r\text{t}e\text{e}nus ic\text{n}c\text{l}t\text{a} \text{was \text{meant \text{as \text{m}e}r\text{e \text{d}escription \text{of\text{th}}}e \text{land; \text{t}is the \text{c}ommon \text{language \text{of \text{charters, \text{and \text{n}ot \text{in}tended \text{as \text{a \text{c}ondition \text{of \text{the \text{grant. \text{And}} \text{t}ruth \text{to \text{tell,}}}}}}}}}}\text{Claiborne's \text{traders \text{had \text{not \text{f}illed \text{the \text{Island \text{a}}t \text{th}}at:}}}}\text{\text{they \text{b}ar\text{t}er\text{ed \text{th}eir \text{w}}\text{are \text{f}or \text{c}orn \text{t}o \text{l}ive \text{on \text{a}s \text{well \text{as \text{furs \text{f}or \text{Clo}berry \text{and \text{C}ompany.}}}}}}}\text{.}}\]

All of the debates, of course, are purely academic—-one might even wonder what all the fuss was ever about. Although there was a small fur trade and shipbuilding business on Kent Island, never so much as a township developed there—only a fort, windmill, church and small plantation—and the living was hard.
Perhaps the most reasonable commentary on the whole lengthy episode was offered by one of Claiborne's many Virginian descendants. "Measured dispassionately in the light of the actual record and against the historical background of the time and place of his life," Claiborne was neither villain nor hero in his long struggle with the Calverts. "He simply fought a good fight and lost it to an antagonist better equipped for such a contest."27
VII. KENT ISLAND AND WILLIAM CLAIBORNE

1. BARTH 91.

2. G.W. BURNAP, LIFE OF LEONARD CALVERT, FIRST GOVERNOR OF MARYLAND 105 (The Library of American Biography, 2d series 1846).

3. 1 SCHARF 119-20.

4. J.H. CLAIBORNE, WILLIAM CLAIBORNE OF VIRGINIA 200 (1917) (hereinafter cited as CLAIBORNE). The following appears at 201:

   He was a clever and resourceful politician, an accomplished courtier who knew how to wear the silken glove over the iron hand; a man of powerful magnetic and compelling personality, who bound his friends to him with hooks of steel, harassed and exasperated his enemies with undying pertinacity, and met aggression with aggression, reprisal with reprisal. He was proud, imperious, persistent, indomitable; he loved Virginia with a burning love that still lives in the hearts of his descendants. He was the champion and defender of her territorial rights, of constitutional and personal liberty, and, finally, was essentially and altogether human.

5. 3 ARCHIVES OF MARYLAND 2d. See also 1 SCHARF 99-100; J.H. LATANE, THE EARLY RELATIONS BETWEEN MARYLAND AND VIRGINIA 10 (1895); and N.C. HALE, VIRGINIA VENTURER 117 (1951) (hereinafter cited as HALE).

6. See HALE, supra note 5 at 117-26, LATANE, supra note 5 at 10, 1 SCHARF 100, and WILSTACH 36-37.

7. Kent Island was certainly settled and cultivated, and the true God made known to the natives there, reasoned the Virginians. They had no intention of giving over to those Papists either the Island or the fur trade it controlled. HALE 176.

8. See under "The Founding of Maryland", fn. 8 and accompanying text.
9. HALE 175-76.
10. CLAIBORNE 73-74; HALE 179-81.
11. 1 SCHARF 106.
12. LATANE, supra note 5 at 18. See also CLAIBORNE 76-78, 1 SCHARF 106, and HALE 190, 195-96. It has been suggested that the reason for Claiborne’s continued favor with Charles I is that the latter “was easily misled.” See BARTH at 93.
13. 3 ARCHIVES OF MARYLAND 34.
14. See HALE, supra note 5 at 196-202; 1 SCHARF 109-10; and CLAIBORNE 80-81.
15. 1 SCHARF 110; CLAIBORNE 80-81; and HALE 203-06.
16. 3 ARCHIVES OF MARYLAND 72-73. See also HALE 227 ff. and 1 SCHARF 115-18.
17. 3 ARCHIVES OF MARYLAND 78-79. See also HALE 232 ff.
18. 3 ARCHIVES OF MARYLAND 79-80. See also HALE 234-35 and 1 SCHARF 119. Soon after Calvert secured the Island he awarded the manor lands to Giles Brent, whose heirs retained it for 145 years. The area is now known as Chew’s Gardens. WILSTACH 122.
19. 3 ARCHIVES OF MARYLAND 161-62. See also N.C. HALE 258.
20. 5 ARCHIVES OF MARYLAND 174-81.
21. 1 ARCHIVES OF MARYLAND 288.
22. In 1677 Royal Commissioners came from England to straighten out the political situation in Virginia following Bacon’s Rebellion. The Commissioners recommended that the King assume the government of both Virginia and Maryland, whereupon Virginia renewed its original territorial claims. On March 13, 1677, Claiborne submitted one last petition to regain Kent and Palmer’s Island in the Chesapeake Bay. This last gasp seems to have been given a pocket veto by the King: no historical evidence can be found about the plea’s disposition. See 5 ARCHIVES OF MARYLAND 155 ff.; HALE 312-15; and CLAIBORNE 127.
23. See CLAIBORNE 52-53. Hale points out that a similar territorial dispute between Pennsylvania and Maryland a half-century later was decided in William Penn's favor, on the basis of an "uncultivated land" clause. Penn was thereby awarded the territory which later became Delaware. HALE 227 ff.

24. 1 SCHARF 104.

25. BARTH 94.

26. In the early years the Island's resident physician, Dr. Pott, had his hands full fighting various sicknesses, and the other residents had to contend with Marylanders and savages. HALE 182.

27. HALE 315. For additional perspectives on the struggle between Claiborne and the Calverts, see E.D. NEILL, THE FOUNDERS OF MARYLAND 38-58 (1876) and L.B. WRIGHT, THE ATLANTIC FRONTIER 77-78 (1947).
"This . . . without all question, is the most pleasant and healthful place in all this country, and most convenient for habitation, the air temperate in summer and not violent in winter. It aboundeth with all manner of fish . . . . And as for deer, buffaloes, bears, turkeys, the woods do swarm with them . . . ."

Perhaps the main reason why Kent Island was so fervently contested was because of its fortuitous geographical position at the center of a magnificently bountiful Chesapeake Bay. There is no question that the settlers of Maryland and Virginia were attracted by the climate and resources of the Chesapeake, and there is little doubt that those substantial graces were primary to the rapid growth and development of the two Middle Atlantic provinces in population, prosperity and preeminence among the original American colonies.

Early visitors called it the "Noblest Bay in the Universe" and "the Mediterranean Sea of America." Of its 4,612 miles of tidal shoreline and forty-eight principal rivers it was said that "no Country in the World can be more curiously watered."1 One newcomer, enraptured with the great natural wealth of the Bay, described it as a place "beautified by God, with all the ornaments of nature, and enriched by his earthly treasures."2 Still another offered, "Neither do I think there is any place under Heavenly altitude . . . that can parallel this fertile and pleasant piece of ground in its multiplicity, or rather Natures extravagancy of a super abounding plenty."3 But Father Andrew White, sailing with the Ark and Dove, expressed it with a more simple eloquence, saying "You will scarcely find a more beautiful body of water."4
Few modern Baltimoreans would endorse the characterization of the Bay area's climate as "serene and mild, not oppressively hot like that of Florida and old Virginia, nor bitter cold like that of New England: but preserves, so to speak, a middle temperature between the two, and so enjoys the advantages, and escapes the evils, of each." But seventeenth and eighteenth century Marylanders for the most part did count the Chesapeake weather among their blessings. Captain John Smith wrote that "heaven and earth never agreed better to frame a place for man's habitation." William Byrd, a Virginia merchant in the late 1600's, thought the climate to be—

most charmingly delightfull, with a fine Air and a Serene Sky that keeps us in Good Health and Good Humour. Spleen and vapours are as absolute Rarities here as a Winter's Sun, or a Publick Spirit in England. A man may eat Beef, be as lazy as Captain Hardy, or even marry in this Clymate, without having the least Inclination to hang himself.

Other early descriptions of Chesapeake weather, however, might be more compatible with the impressions of twentieth century Marylanders. Midsummers then as now tended to be hot and humid. A newly arrived Anglican clergyman wrote back to a friend in England that the heat of Virginia "fevers the Blood and sets all the animal Spirits in an Uprore." John Smith noted that "the Sommer is hot as in Spaine" although "coole Breeses asswage the vehemency of the heat." Winters, on the other hand, were frequently as cold as those on the Continent, and the Bay was often clogged with ice. There are numerous recorded instances of colonial ships being stranded and sometimes damaged, or of trade being completely halted, in a frozen Chesapeake Bay. Forever complicating the weather were the extremely variable winds, which often caused sudden drops in temperature. "It is no uncommon thing," wrote the Reverend Andrew Burnaby in 1798, "for the thermometer to fall many degrees in a very few hours; and after a warm day, to have such a severe cold, as to freeze over a river a mile broad in one night's time."

Colonial mariners were often beset by squalls and storms in the Chesapeake.
Captain Smith, on his first voyage of discovery in 1608, experienced such "thunder, lightning and rain, that our mast and sail blew overboard," and Calvert's expedition against Kent Island in the winter of 1637-1638 was severely obstructed by the harsh weather. George Washington once sailed through alternating calms and squalls from Rock Hall on the eastern shore to Annapolis, and the journey lasted fourteen hours instead of the usual four. In August of 1667, a "Hurry-Cane" destroyed most of the year's farm crops, and severe storms which damaged many vessels on the Bay were recorded in 1667, 1688, 1749, 1761 and 1769.

Freshets caused by heavy spring rainfalls and melting snows were not uncommon. The worst flood in Chesapeake Bay history occurred in 1771, when "Impetuous Torrents rushed from the mountains with such astonishing Rapidity that nothing could withstand their mighty force," and there was damage to the extent of £2,000,000 sterling.

Except for the one or two months of summer humidity and the occasional storms, however, the Chesapeake climate was favorable and mild, making it "a faire Bay, compassed but at the mouth with fruitfull and delightsome land." According to Captain Henry Fleet—

This . . . without all question, is the most pleasant and healthful place in all this country, and most convenient for habitation, the air temperate in summer and not violent in winter. It aboundeth with all manner of fish. The Indians, in one night commonly, will catch thirty sturgeons in a place where the river is not above twelve fathom broad. And as for deer, buffaloes, bears, turkeys, the woods do swarm with them, and the soil is exceedingly fertile, but above this place the country is rocky and mountainous like Cannida. 

Fleet was not the only early observer to remark upon the fertility of the soil in Chesapeake country. Father White noted that,

in passing through the very thick woods, at every step we tread on strawberries, vines, sassafras, acorns, and walnuts. The soil is dark and not hard, to the depth of a foot, and overlays a rich, red clay. There are lofty trees everywhere, except where the land has been cultivated by a few persons. Numerous springs furnish a
supply of water. No animals are seen except deer, beavers and squirrels, which are as large as the hares of Europe. There is an infinite number of birds of various colors, such as eagles, cranes, swans, geese, partridges and ducks.¹³

The abundance of water fowl on the Bay seldom failed to amaze early visitors. Two Dutch travelers to the area thought they had never seen so many ducks in one place before. "The water was so black with them that . . . when they flew up there was a rushing and vibration of the air like a great storm coming through the trees, and even like the rumbling of distant thunder."¹⁶ One colonist swore that he saw a square mile of ducks in flight. Old turkeys weighed as much as fifty pounds, and a sea turtle caught in the Chester River in 1755 tipped the scales at ninety pounds.¹⁷

Some of the seafood was also of Brobdingnagian proportions. Twelve-foot sturgeon have been reported, as well as yard-long shad, foot-long crabs, and oysters fourteen inches across ("as big as a horse's hoof").

The grandest descriptions, however, were often saved for the multitudes and seemingly endless variety of fish to be found in the Bay. This superabundance was noted as early as 1608 when Captain Smith made his voyages of discovery. "As for want of nets, our barge driving amongst them [the fish]," wrote Smith, "we attempted to catch them with a frying pan, but, we found it a bad instrument to catch fish with."¹⁸ An eighteenth-century visitor to the eastern shore thought the fish so plentiful that "they were obliged in many places to swim slanting on their sides" and that they could have been caught "without the water coming over my shoes."¹⁹

Waiting to be eaten or exported were numbers of herring, shad, rock-fish, trout, bass, flounders, sturgeon, and sheepshead. Father White added whales, porpoises, mullets, soles, plaice, and mackerel to the catalogue. Another correspondent observed in 1705:

-42-
Those which I know myself I remember by the names of herring, rock, sturgeon, shad, oldwife, sheepshead, black and red druma, trout, taylor, greenfish, sunfish, bass, chub, plaice, flounder, whiting, fatback, maid, wife, small turtle, crab, oyster, mussel, cockle, shrimp, needlefish, bream, carp, pike, jack, mullet, eel, conger eel, perch and catfish... Those which I remember to have seen there of the kinds that are not eaten are the whale, porpoise, shark, dogfish, gar, stingray, thornback, sawfish, toadfish, frogfish, land crabs, fiddlers, and periwinkle.

Stingrays and jellyfish were nuisance creatures which peppered the Bay. Though whales were not common, a Virginia man applied for a whaling license as early as 1710; in 1747 thirty barrels of oil were made by John Custis from a whale which had washed ashore; in 1791 Virginia produced 1,263 gallons of whale oil.

The Chesapeake Bay is known principally for its variety and delectability of shellfish. Every cove and channel abounds with crabs, clams and oysters. Today strict regulations control the taking of shellfish and extensive efforts are being made for their conservation, but no such problems existed for the colonists. It has been said that the only thing which saved the first settlers at Jamestown from total starvation was a plentiful supply of oysters. The first recorded oyster roast in the New World seems to have taken place in Virginia on April 27, 1607, when an exploring party came across an Indian feast at which they found the oysters to be "large and delicious." Although at first the bivalves seemed to be more popular a delicacy among the Indians than with the colonists, by the end of the eighteenth century oyster merchants had gained in respectability and prosperity in Maryland and Virginia. By 1954, Maryland alone was taking in 20,000,000 pounds of oysters a year, worth some nine million dollars.

The colonists' efforts at conservation centered mainly around the prevention of soil erosion and the clearing from rivers of logs, trees, silt and ballast. Poplar, Tilghman and Sharp's Islands have nevertheless steadily lost acreage to the forces of erosion. Holland Island started to lose ground to the Bay in the early part of this century; by 1920 most families there had been forced to move,
and now only one house remains. Under legislation enacted in 1964, Maryland now offers up to fifty percent funding for the construction of shore erosion control structures, as well as technical advice and assistance to property owners.

A number of state agencies have been established for purposes of conserving the Bay's natural resources. Among them are the Board of Natural Resources (created in 1941), the Department of Chesapeake Bay Affairs (1964, superseding the Department of Tidewater Fisheries), the Department of Game and Inland Fish (1939), and the Department of Water Resources (1964).

Fishing and oystering techniques remain much the same today as in the early 1600's, by which time the Indians had become adept enough at catching the bounty of the Chesapeake to serve as tutors and guides for the "fully civilized" European explorers. It seems that the only sophistications added by the white man have been the intuitive deductions that "it is bad luck to swear while fishing" and that "good fortune is yours if you spit on your bait."

So the Chesapeake men continue to sail the Bay for its peace and serenity and to search it for its natural treasures. In the poem "These Chesapeake Men" by Gilbert Byron—

They seek the imperial shad and the lowly crab,
The oyster, the weakfish, the turtle, the rockfish,
The muskrat, the eel, the terrapin, diamond-backed,
The clam, the blue fish, the wild duck,
In the mating of the kingfisher,
In the sloughing of the soft crab,
In the softness of the water's touch,
In the flight of great blue heron,
In the sculling of the oar,
In the passing schools of fish,
In the belly of the sail,
In the hauling of the seine,
In the taste of oysters raw,
In the soaring fish-hawk's wings,
In the touch of southwest wind,
In the little waves that break,
In the surge against the prow,
In the cliffs of yellow clay,
In the setting of the sun,
In the quest of quiet harbor,
In the Chesapeake.
VIII. RESOURCES OF THE BAY

1. MIDDLETON 30. BREWINGTON 2; BALTIMORE MUNICIPAL JOURNAL, 200th ANNIVERSARY, 1729-1929 at 157 (R. Irwin ed. 1929). Many of the sources used in this and the next two sections, describing natural resources, transportation, boating, shipbuilding and commerce on the Chesapeake Bay, are similarly quoted in MIDDLETON—an excellent treatise on the Bay's mercantile development during the colonial period.

2. 2 A. BROWN, GENESIS OF THE UNITED STATES 583 (1890).


4. FR. A. WHITE, NARRATIVE OF A VOYAGE TO MARYLAND 31 (Maryland Historical Society Fund - Publication No. 7, 1874).

5. Id. at 48 (this is from An Account of the Colony of the Lord Baron of Baltimore, author unknown, published with Father White's work). See also 1 SCHARF 203.


9. 1 SMITH, supra note 6.

10. A. BURNABY, TRAVELS THROUGH THE MIDDLE SETTLEMENTS IN NORTH AMERICA IN THE YEARS 1759 and 1760 at 36 (reprinted from the 3rd ed. of 1798, 1904).
11. BREWINGTON 57-58.


13. 1 SMITH, supra note 6.


15. WHITE, supra note 4 at 42-43.

16. JASPAR DANKERS AND PETER SLUYTER, JOURNAL OF A VOYAGE TO NEW YORK AND A TOUR IN SEVERAL OF THE AMERICAN COLONIES, IN 1669-1680, at 123 ff. (Henry C. Murphy transl. 1867).


18. 1 SMITH 178.


   One of the more interesting theories as to why the Chesapeake is so well stocked was offered by an unknown colonial writer.

   Now this great abundance of fish arises from the following cause: the wind, which uniformly blows from the Canaries to the north-east, drives the water of the ocean, and, with it, the fish into the Gulf of Mexico; from which, since there is no escape for it either to the east or the south, it is driven with great force towards the north, and carries with it large numbers of fish along the shores of Florida, Virginia, Maryland, and New England. These, flying from the larger fish, take refuge in shallow places, where they are more easily caught by the fishermen.

   ——found in WHITE, supra note 5 at 49.


21. Id. at 42-43.
22. MIDDLETON 56.

23. Even the shells were used for making roads, garden paths and brick mortar. By 1751 the price for shells had reached three shillings a hogshead. See Miers, supra note 17 at 18 and MIDDLETON at 58. See also the transcript of the Conference on Resources of the Chesapeake Bay, published by the Chesapeake Bay Authority (1933).

24. See Address by C.W. Wright, Maryland Historical Society, Chesapeake Bay, "The Mother of Waters" 10-12, March 25, 1919; A.A. BODINE, CHESAPEAKE BAY AND TIDEWATER 15 (1954); and MIDDLETON 86-90.


"A gentle breeze wafts us pleasantly on our course; the day is splendid, and the interesting and magnificent objects which continually strike the eyes, infinitely exceed the utmost powers of description."

The Chesapeake Bay and its tributaries gave the tidewater colonists a means of social and commercial intercourse unique to the American colonies, which thereby made possible the very rapid settlement of both Maryland and Virginia. Forty-eight navigable rivers besides the Bay itself greatly facilitated the exportation and importation of staples and commodities in an age when interconnecting highways were unknown, and cross country travel was difficult at best. Although the figures were not known to the colonists, they were surely aware of the proportions: of the 13,959 square miles in the total area of Maryland, there are some 4,285 square miles of water.

Sailing from England to America in the seventeenth century was no easy matter. The voyage consumed anywhere from seven to twelve weeks, depending upon which route was taken. The northern passage past Newfoundland was shorter and more convenient, generally taking seven to eight weeks to complete. Before 1650, however, the more frequented route was by way of the southern passage, which traversed the West Indies. The Ark and Dove spent three months on the Atlantic Ocean, stopping for short respite at the islands of Barbados and Saint Kitts. When the two small pinnaces finally reached the Chesapeake they caused no little excitement among the Indians, who wondered "where that tree should grow, out of which so great a canoe should
be hewn, supposing it all of one piece, as their canows.\footnote{1}

Conditions on shipboard were appallingly filthy, and the crowded quarters made disease and death exceedingly common. When transatlantic voyages were made through hot tropical climates, the colonists who sought but the promise of hope and a new home often were joined by large groups of convicts and slaves, many of whom fell victims to "jail fever" and "negro fever." Death at sea usually meant burial at sea, and with little or no ceremony.

Travelers quickly learned that the best time to make the trip was in the fall and spring, after the hot summers or cold and rough winters. Whenever their journey was taken, however, passengers had to put up with poor food and an abundance of rats. Captains waged a constant war against the "worm" which ravaged through every ship. Shipowners often tried to cut their costs by purchasing spoiled provisions: standard fare was old hard biscuit, salted meat, and cheese. Sometimes the rats which plundered through the holds were killed, cooked and eaten.

A seventeenth century writer complained of the shipboard cuisine thusly:

\begin{quote}
But oh the great bowls of Pease - porridge that appeared in sight every day about the hour of twelve, ingulfed the senses of my Appetite so, with the restringent quality of the Salt Beef, upon the internal Inhabitants of my belly, that a Galenist for some dayes after my arrival, with his Bag - pipes of Physical operations, could hardly make my Puddings dance in any methodical order.\footnote{2}
\end{quote}

Only those who were wealthy and privileged enough to dine at the captain's table had fresh meat and vegetables.\footnote{3}

There were few recreations for early travelers, who spent much of their time doing their own laundry, baking, fishing and butchering (if they had happened to bring along a pig). Excitement was sometimes provided by impromptu skirmishes with pirates or national enemies, when whole bags of mail might be thrown overboard to prevent confidential letters from falling into the wrong hands. The rest of the long hours were spent in fighting boredom and disease. Certainly those colonists on the mainland did not relish the prospect of facing a new wave
of the plague. By the eighteenth century, though, conditions had improved significantly, primarily due to increased usage of the northern passage. Even so, Maryland in 1766 passed a quarantine act which required that shipmasters swear under oath that their vessels had arrived relatively free of disease.\(^4\)

Westbound mariners knew their voyage would soon be over when the smell of Virginia pine trees wafted past their nostrils, sometimes from as far as sixty leagues offshore, and when the sea changed color from the deep blue of mid-ocean to the dark green off the eastern coast of America.\(^5\) Land was always a welcome sight.

* * *

Indians, especially the Susquehannoughs, had long used the waterways of Maryland for peaceful inter-tribal communication as well as for hostile warpaths. Their canoes and two-masted pinnaces (called "pungies") were soon adopted by the colonists as the most efficient method of transportation. There were also oar-propelled barges and packet-boats "which not only gave to our people a freedom and facility of intercourse with one another not enjoyed by any other agricultural community on the face of the globe, but shaped their manners and regulated their customs to an extent which it is difficult to exaggerate."\(^6\) Other craft in vogue included shallops, bateaus, canoes, skiffs, wherries, piraguas, flats, longboats, dories, yawls, luggers and dinghies.

The first public utility in the New World was a ferry service started on the Chesapeake Bay in 1638. Maryland supplied a boat to enable its burgesses to commute to Saint Mary's City; in Virginia, a man who had been convicted of fornication was ordered to set up a ferry operation across the Old Plantation Creek or submit to thirty lashes of the whip. The first ferries were log canoes poled or paddled across stream or river. Wagons were carried with their wheels resting in two canoes, and their horses swimming. Then came flats or broad-beamed rowboats. For longer trips, such as those across the Bay itself, sailing
vessels were used. Today ferry boats are still operating in Wicomico County in the eighteenth century fashion: a flat boat about forty-five feet long is propelled across stream by one man pulling at a rope stretched from bank to bank. Some ferry services operated more like taxis and advertised that passengers would be carried to any spot ordered in tidewater Maryland or Virginia. But most of the transports went back and forth from one point to another on the Bay. By the middle of the eighteenth century there were three shuttles running regularly between Annapolis on the Severn, and Kent Island, Rock Hall and Oxford on the eastern shore. A traveler going from Williamsburg to Annapolis was obliged to take no fewer than a dozen ferries. By the end of the colonial period the most important of the Chesapeake ferries was that which sailed from Annapolis to Rock Hall, cutting off some thirty miles of land travel on the trip north to Philadelphia.

For the most part Maryland was successful in establishing a system of free public ferries, supported by county levies, while Virginia had begun to license its many private services as early as 1640. Among the ferries operated free from government regulation, great competition existed which tended to improve service. Nevertheless, complaints were no less common in 1669 than they are some three hundred years later concerning service on other modes of public transportation. It was claimed that the Elk River ferry "hath of Late been kept by Negroes whose Master being for the most part absent [are] very Negligent in Discharging their Duty." Sometimes when only one ferry was operating over a particular river the prospective passenger had to build a fire to attract the attention of the ferryman on the opposite shore with smoke signals. But when it took George Washington fourteen hours to cross from Annapolis to Chestertown in 1791, his problems were caused mainly by the horrendous weather.

Once on board and under fair skies, however, the journey often provided an enjoyable interlude from the common vexations of colonial travel. Wrote William
Eddis in one of his *Letters from America*: "[A] gentle breeze wafts us pleasantly on course; the day is splendid, and the interesting and magnificent objects which continually strike the eyes, infinitely exceed the utmost powers of description."^{9}

Early mariners on the Chesapeake, if they were to avoid damaging their vessels or running aground, had to know well its shoals and shallows. The depths of the Bay vary from numerous sandbars and mud banks near the surface to the 137-foot-deep bed of the Patuxent River. Between 1590 and 1776 there were some two hundred and forty-seven maps drawn of the Bay, the first being DeBry's chart in 1590, which was followed by John Smith's 1608 renditions. In 1659 Lord Baltimore commissioned Augustine Herman to draw a detailed map of tidewater Maryland. Herman took ten years to complete his work, which has been called "one of the greatest pioneer achievements in American cartography."^{10} The first large-scale mariner's chart, with comprehensive hydrographic information about depths throughout the Bay, was made in 1735 by Captain Walter Hoxton.

The nineteenth century brought about a change in types of Chesapeake Bay vessels from the old-time ferry boats to transportation by steamboat. Twenty-one years before Robert Fulton exhibited his *Clermont*, James Rumsey of Middle Neck operated a boat on the Potomac River which was propelled by a stream of water forced from its stern by power from a steam pump.^{12} The first steamboat service on the Bay was offered on June 21, 1813 by the "Chesapeake," built by William Flanigan of Baltimore, which sailed from Baltimore to Frenchtown. There was steady expansion of the business until every bay or river port had both passenger and freight steamboat service to Baltimore. Perhaps the most pleasant offering was a ride on the "floating theater," a summer aboard which inspired Edna Ferber to write "Show Boat."

Not until 1952, when the great Chesapeake Bay Bridge was built, did steamboat ferries suffer their demise. The Bridge is four miles long and is one of the largest continuous over-water steel structures in the world. Its use has
exceeded estimations to such an extent that several additional spans have been authorized by the Maryland General Assembly.

* * *

Surprisingly enough, in an area so placid and available as the Chesapeake Bay, there are few recorded descriptions of pleasure boating in the colonial period. Pinnaces even smaller than the fifty-ton Dove were often seen during the seventeenth century. But the earliest known yacht on the Bay was a small vessel called the Susanna (owned by Major Richard Sewale of Maryland) which made its first appearance in 1689. This was one of the few boats of the day to be used exclusively for pleasure cruising; more often it was the commercial schooner made to double as a sporting craft which was taken out for a Sunday sailing. Many colonists, however, maintained small rowboats, canoes and barges that could be used for recreational purposes. Sometime before 1745 the first pilot-boats appeared, and these served as the prototypes for the schooner-yachts which were to become fashionable among people of means.

By 1760 there were organized regattas on the Chesapeake Bay, spectacles whose color and excitement have survived to the present. In the spring and summer of 1774, betting races were held on the Potomac and Rappahannock Rivers:

The Boats were to Start, to use the Language of Jockeys, immediately after Dinner; A Boat was anchored down the River at a Mile Distance—Captain Dobby and Captain Benson steer'd the Boats in the Race—Captain Benson had 5 Oarsmen; Captain Dobby had 6—It was Ebb-Tide—The Betts were small—and chiefly given to the Negroes who rowed—Captain Benson won the first Race—Captain Purchase offered to bett ten Dollars that with the same Boat & same Hands, only having Liberty to put a small Height in the Stern, he would beat Captain Benson—He was taken, & came out best only half the Boats Length.15

In 1851 the yacht America, modeled after the early pilot-boats, captured a heralded race against the best contemporary English craft, thereby spawning the seed for the popular America's Cup races. The first yacht club on the Bay was founded

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in 1852, the Chesapeake Bay Yacht Club coming later, in 1885. 16

Recreational boating has experienced phenomenal growth during the twentieth century, and the waters of the Bay have not diminished in popularity. To control the use of pleasure craft and maintain safety standards, the Department of Chesapeake Bay Affairs supervises the operation of the Maryland Marine Police, believed to be one of the largest, best-trained and best-equipped units of its kind in the world.

* * *

The shipbuilding industry had a slow but sure beginning on the Chesapeake. The first colonists to reach the shores of Virginia brought with them various parts of a small barge, which they assembled soon after landing. Raw materials were plentiful in the backwoods of Maryland and Virginia, but it was not until 1610, when some forty professional shipbuilders were summoned from England, that sailing vessels started being produced on a regular basis. By 1624 there were forty ships native to the Chesapeake, the largest being about forty tons. William Claiborne set up a small shipyard on Kent Island to produce medium size pinnaces and shallops for his trading activities. Towards the end of the seventeenth century larger ships of about 150 tons' burden were being built. By this time the Bay colonies had produced more than a hundred substantial sea-going vessels. 17

Maryland shipbuilding, which was concentrated in Talbot and Kent Counties on the eastern shore, slowed considerably in the early 1700's as a result of the loss of numerous vessels during Queen Anne's War and in trading to the West Indies. At the end of the war in 1713, activity livened and reports of many new launchings appeared in the colonial gazettes. The industry prospered largely because of abundant wood resources close by the Chesapeake; shortages of iron, sailcloth and shipwrights were met with newer and larger importations from London.

A great many English shipwrights migrated to the colonies during the first half of the eighteenth century. At first they settled on convenient navigable
tributaries of the Chesapeake, later concentrating in the seaport towns of Annapolis, Chestertown and Norfolk. Many offspring industries now began to flourish. Ship chandleries, iron manufacturers, ropewalks and sail makers did thriving businesses. There were numerous and complete facilities for refitting and repairing damaged vessels. For many years Annapolis was the chief rival to Norfolk in the competition for ships in need of outfitting and repair.

Particularly after King George's War the excess of demand over supply in sailing vessels led to higher production costs, and there was considerable expense (and risk) involved for businessmen in the shipbuilding industry. A two-year collapse in the market between 1766 and 1768 failed to repress rising costs, and more than one shipbuilder went out of business. Nevertheless, in the years before the Revolution, the Chesapeake was a shipbuilding center second only to New England in size and importance.

* * *

After the Revolutionary War, all manner of sailing ships could be seen on the Chesapeake Bay. Besides the familiar sloops, pinnaces and packet boats there were barks, snows, brigs, brigantines and schooners.

When experimentation with new shapes and designs, sizes of sails and number of masts was in vogue at the start of the eighteenth century, classification of the various rigs became difficult. It was easy to identify, however, the famous Baltimore Clipper ship. In the language of the mariner, it was "a trim, rakish craft, with smooth underbody, considerable deadrise, deep drag of keel aft, low freeboard, and a minimum of standing rigging."18 In short, it was sleek and fast. The Clipper was developed during the Revolutionary War to facilitate smuggling and privateering on and around the Chesapeake Bay.19 After the war they quickly caught on to the north and the south and soon became famous the world over for their unmatched speed and efficiency.
The Maryland shipbuilding industry itself took on an international character during the nineteenth century. With the advent of the metal hull and increasingly sophisticated designs, construction centers moved from bayside yards to mammoth plants owned and operated by large corporations. Today, the industry on the southern shores of the Bay is limited chiefly to the making of small pleasure craft.
IX. TRANSPORTATION, BOATING AND SHIPBUILDING

1. WILSTACH 38. The journey eastward from the Chesapeake Bay to England normally was accomplished in 6-7 weeks. See generally MIDDLETON 5-8.


4. B. Sollers, Transported Convict Laborers in Maryland During the Colonial Period, 2 MD. HIST. MAG, 36 (1907).

5. As early as 1720 the Governor of Virginia suggested that a lighthouse be built on Cape Henry at the mouth of the Chesapeake Bay. Nothing was done until 1772, when Virginia and Maryland passed the necessary legislation. Exigencies of the Revolutionary War prevented completion of the lighthouse before 1792. The oldest existing lighthouse on the Bay is the one at Cove Point, built in 1828.

6. 2 SCHARF 2. See also R. SEMMES, CAPTAINS AND MARINERS OF EARLY MARYLAND 57 and 68 (1937).

7. BREWINGTON 57-58 (1956). For a comprehensive and entertaining treatment of colonial ferriage in Maryland and Virginia see generally MIDDLETON at 60-71.


10. WILSTACH 188-09, 280 and 290. See generally E.G. Swem, Maps Relating to Virginia, 7 VIRGINIA STATE LIBRARY No. 2 and 3 at 41-71 and 37 (1914). For his efforts Herman was granted five thousand acres of land on the east side of the Elk
River (now Bohemia Manor).

11. W. Hexton, Mapp of the Bay Chesapeack with the Rivers Potomack, Patapsco, North East, and part of Chester (1735) See generally MIDDLETON 71-77. At MIDDLETON 77-83 there is a discussion of early pilots and pilotage on the Chesapeake Bay.

12. Rumsey died while contesting John Fitch for rights to the steam engine. WILSTACH 110-11.

13. BREWINGTON 43 and WILSTACH 115.

14. W.L. Henderson, Then and Now, Yachting on the Chesapeake, YACHTING No. 3 at 67. The earliest use of the term "yacht" was applied in 1676 to one of Lord Baltimore's armed ships, the Loyal Charles.


16. See generally BREWINGTON 27-42, 63-110 and 221; R.H. BURGESS, CHESAPEAKE CIRCLE 1965; R.H. BURGESS, THIS WAS CHESAPEAKE BAY (1963); MIDDLETON 225-30; SEMMES, supra note 6 at 73; and Henderson, supra note 14 at 66.

17. BREWINGTON 9-10. See generally MIDDLETON 230-43.

18. MIDDLETON 219. See also 2 SCHARF 605.

19. Some believe that the clipper-type craft first appeared as early as 1670 in the port at St. Michaels. See 2 SCHARF 63.

20. BREWINGTON 10-12.
"Tis the Blessing of this Country... and fits it extremely for the Trade it carries on, that the Planters can deliver their Commodities at their own Back doors, as the whole Colony is interflow'd by the most navigable Rivers in the World."

The Chesapeake Bay and its many tributaries had perhaps their greatest influence on the historical development of Maryland and Virginia by providing the natural waterways which made possible the large-scale production and merchandising of tobacco. Had there been no Bay, the tobacco-producing colonies undoubtedly would have lagged in the growth of their population and prosperity.

In the first half of the seventeenth century, mercantile interests on the Bay centered primarily around the fur-trading activities of the early frontiersmen. Most prominent among these were Captain John Smith, Captain Henry Fleet, and William Claiborne. It was not until the colonists' fondness for rum and sugar began to stimulate trade with the West Indies that the Chesapeake asserted its international significance. Barbados and Bermuda were willing customers for American meat and fish. And the abundance of oak and soft yellow pine on Chesapeake shores and in its backwoods spurred the growth of the shipbuilding industry.

One curious phenomenon which resulted from the Bay's extraordinary accessibility to sea-borne traffic was the negative effect it had upon the growth of townships. This in turn repressed the development of social and cultural institutions. William Eddis pointed out in one of his Letters from America:
Maryland will never abound with ports. By the advantage of so many navigable waters, an opportunity is afforded to ship the produce of many extensive districts, even at the doors of the respective planters; who, consequently, have not that inducement, common to most countries, for establishing themselves in populous communities.  

The principal river towns of tidewater Maryland which flourished during the half-century before the Revolution were Port Tobacco, Piscataway, Bladensburg, Londontown, Joppa, Charlestown, and St. Mary's City. These communities became centers for the sale of imported goods as well as departure points for the exported commodities of tobacco, corn, wheat, lumber and iron. Along the fall line there were established such towns as Upper Marlboro on the Patuxent, Georgetown and Alexandria on the Potomac, Fredericksburg and Falmouth on the Rappahannock, Richmond on the James, and Petersburg on the Appomattox. Each of these was important in supplying goods to the hinterlands westward. Annapolis and Williamsburg, seats of the colonial governments in Maryland and Virginia, fostered brisk businesses among shopkeepers and tavernkeepers, craftsmen, merchants, shipbuilders and chandlers. Until it was surpassed by Baltimore in the 1770's, Norfolk, Virginia, was the Chesapeake's leading port and commercial center.  

Baltimore itself was a fall line town which saw its development nourished by both the Chesapeake trade to the east and the agricultural boom to the west. In December of 1730 surveyors laid out the first plans of what was to become one of the largest cities in the nation. At the time of its birth, the present Baltimore was the third community in the province to bear the name of Maryland's Lord Proprietary, and was situated between the already existing townships of Joppa and Elk Ridge Landing. The port area of the city was far from being a great natural harbor. As early as the Revolutionary War, artificial construction devices were being used to improve the harbor, with crude machines brought in to dredge and enlarge it.  

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Already mentioned have been the rapid development of the seafood and shipbuilding industries. But by far the most important staple in the colonial economy was tobacco. And although the delicate nature of the plant precluded overland transportation of the thousands of half-ton hogsheads, the Chesapeake waterways were quickly recognized as ideal for the purpose. An eighteenth-century writer observed:

'T]is the Blessing of this Country . . . and fits it extremely for the Trade it carries on, that the Planters can deliver their Commodities at their own Back doors, as the whole Colony is interflow'd by the most navigable Rivers in the World. ¹

It was a Virginian named John Rolfe who first discovered (in 1612) that tobacco would grow well in the Chesapeake country and sell profitably in England. Despite objections which ranged from King James' opinion that the weed was "loathsome to the eye, hateful to the nose, harmful to the brain," and "dangerous to the lungs," to the Virginia Company's insistence that the colony produce a variety of commodities, tobacco quickly caught on as the staple of economy. Many of the early settlers at Jamestown and St. Mary's City were planters who owned small clearings called "oronookes," in which tobacco was extensively cultivated. By 1619 it was the only commodity being exported to England. Production jumped from 60,000 pounds in 1622 to 500,000 pounds in 1628 to 1,500,00 pounds in 1639. By the time of the Revolution, the export total was 100,000,000 pounds of finished leaf, worth some $4,000,000. ²

The business of manufacturing and marketing tobacco was not without its risks. Planters faced the substantial possibilities that poor weather would ruin their crops, or that they would lose their product in shipwrecks or to pirates or privateers. There were also depressions resulting from overproduction or wartime restrictions on exports. If a sufficient number of hogsheads survived the rolling and stormy seas between the Chesapeake and the British Isles, there was
the additional peril that shifts in the weather would cause spoilage of the product. Despite all of the attendant risks, however, the tobacco trade proved an invaluable source of revenue for both the royal treasury and the colonial governments. Taxes and duties imposed on exports and imports made the tobacco colonies "of as great importance to his Majesty as the Spanish Indies to Spain."6

So much tobacco was exported by the Maryland and Virginia colonies that by 1660 the English market had become glutted. Various attempts were made to reduce the amount of tobacco manufactured, to regulate the size of hogsheads and prohibit shipments in bulk, and to prevent the exportation of "trash tobacco." But the situation remained serious. Lord Culpeper, the Governor of Virginia, declared that "Our thriving is our undoing."7 The potential economic disaster never materialized, but only because of the gradual though certain establishment of a tobacco market on the European Continent. By the end of the seventeenth century, some two-thirds of the crop annually produced on the shores of the Chesapeake was being imported by Holland, France, Spain, and a few years later by the Baltic countries and Russia.8

*       *       *

One of the most attractive features of colonial trade for the English was that, with the exception of sailing vessels, Maryland and Virginia produced almost nothing which might compete substantially with British manufacturing interests. On the other hand, the Chesapeake colonies consumed large amounts of British cloth, china, hardware, building materials, and other goods. It was not until the beginning of the eighteenth century that serious efforts were made by the colonies at agricultural diversification. Later on, industries for tanning hides and producing iron and cloth began to give body to the American economy. The fur trade which was so important to early Chesapeake entrepreneurs remained relatively small throughout the colonial period.

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In addition to their rapidly growing exchange of consumer products, England and her colonies maintained a vigorous trade in slaves during the eighteenth century. Negroes were bought on the African coast for as little as £4 to £6 apiece. Between 1700 and 1750, their going rate in the Chesapeake colonies increased from £16 to £40 apiece. At first colonial merchants were deterred from entering the highly profitable trade, for want of investment capital, and most of the slave-trading business was monopolized by the large and influential Royal African Company operating out of England. Gradually, however, as the American economy grew and prospered, American capital found its way into the British companies.

There were substantial risks in the trade of slaves which tempered some of the enthusiastic financial prospects. Shippers sailing from Africa to the Chesapeake had to contend with debilitating heat, rampant disease and a great many pirates. Negroes were packed into ships' holds with little concern for their health or survival: sanitation, ventilation and food ran the short gamut from poor to non-existent. It was not uncommon for a slaving transport to lose one-quarter of its human cargo enroute. 9

Despite the high mortality rate, the slave population around the Chesapeake multiplied tremendously during the eighteenth century. In 1700 there were approximately 6,000 slaves in Virginia and 4,000 in Maryland. By 1790 the two states numbered between them some 400,000 negroes and the rate of increase alarmed even the early eighteenth century governments. In 1710 Governor Alexander Spotswood of Virginia claimed that "the Country is already ruined by the great number of negroes imported of late years."10 After that year both Maryland and Virginia began to impose higher duties on imported slaves, in an attempt to reduce the heavy traffic (while at the same time raising needed revenues). This legislation upset the British interests, to the point where the Privy Council introduced its own regulations over the trade. Depending on the relative economic and
political postures on both sides of the Atlantic, duties applicable to slave im-
ports fluctuated throughout the century.

Besides the slave trade, large numbers of immigrants seeking homes in the
New World and felons released at the convenience of the British Government, pro-
vided both English and American shipowners with ample revenues from transporta-
tion. But as with other mercantile ventures across the Atlantic, the many prob-
lems of overseas trade made free enterprise as much a challenge as a profitable
activity.

All told, however, British imports of goods and commodities from the Chesape-
ke Bay during the seventeenth and eighteenth centuries accounted for more than
half of the total imports from the combined American colonies.

* * *

Trade between the Chesapeake provinces and other American settlements was
founded primarily on the exportation of grain, foodstuffs and lumber rather than
of tobacco. Maryland and Virginia sent large quantities of corn, wheat and flour
to New England. In return, the New England colonies supplied European-made clothes
and domestic foodstuffs, including codfish, mackerel, cheeses, raisins, apples
and cranberries. Also imported from the north were various beverages and whaling
products, woodenware, furniture and simple tools. It is interesting to note that
the New England colonies used many of their Chesapeake imports for third-party
trade with Great Britain and the West Indies, while Maryland and Virginia consumed
most of their New England products domestically.

The Middle Atlantic provinces also maintained active trading relationships
with the West Indies, to and from which the short voyage had its definite advan-
tages over the lengthy trip to England, and with the Wine Islands (Madeira, Cape
Verde, and the Azores), Spain, Portugal and Italy. Grain, lumber and salted fish
were exported from the Chesapeake Bay, in return for wine, rum, sugar, salt, cot-
ton, molasses, citrus fruits and bills of exchange.11
The development of a domestic merchant marine fleet in the Chesapeake was a slow and costly process. As with other economic ventures between England and her colonies, most of the capital outlay was made by the established British businessmen. Few ships were owned by colonists before the end of the seventeenth century, although several Virginians and Marylanders held shares in British shipping companies.

In 1633 there were some thirty to forty vessels trading to Virginia. By 1667 the number had increased to between eighty and a hundred, with approximately one-third dealing with Maryland. The tobacco export boom inflated the number of trading ships from around 150 vessels carrying 75,000 hogsheads of tobacco in 1700, to twice that number and amount in 1706. Subsequently, there was a gradual decline in tobacco shipping, as new regulations on its exportation were enacted throughout the rest of the colonial period.

Another interesting comparison between the Chesapeake colonies and their New England counterparts may be seen in the amounts of British mercantile investment in shipping to the two areas. In 1743 the value of British shipping in Maryland and Virginia was estimated at £330,000 and employment was had by 3,360 mariners; in New England the value was about £24,000 and 240 sailors were employed.

As early as 1661 both Maryland and Virginia passed various acts to encourage the growth of a native American merchant marine. Progress was slow and unsteady. Most of the colonially owned vessels traded with the West Indies, far closer to the Chesapeake than the British Isles. But losses were heavy, especially during times of war, because the Chesapeake-West Indian routes seldom carried protective convoys. Depressions and revivals in the number of colonial vessels occurred during and after the Anglo-French Wars and King George’s War. By the middle of the eighteenth century the Maryland merchant marine had sixty ships manned by 480 sailors.
The Chesapeake's early dependence upon Great Britain for the safe conduct and delivery of its exports and imports gradually relaxed over the century-and-a-half following the first settlement of the Maryland and Virginia colonies. Increasing colonial ownership and economic prosperity, combined with continuing restrictions imposed by the mother country, were several of the factors which created a climate of, and spurred the quest for, independence in America.

* * *

After the Revolutionary War, the commercial development of the Chesapeake Bay made rapid advances. For the first time, however, the political separation of Maryland and Virginia presented clear-cut difficulties in the regulation of trade to, from and between the now sovereign states. Virginia found itself unable to establish an efficient system of duties which did not conflict with those of Maryland. In 1777, Congress had recommended that Maryland, Virginia and North Carolina settle their differences through joint arbitration, but for various reasons the discussions never materialized. The following year, Maryland and Virginia appointed commissioners for the express purpose of deciding upon the rights of each state to the use of and jurisdiction over the Chesapeake Bay, but again the convention failed to reach any agreement satisfactory to both sides. Finally, in 1785, commissioners from the two states formally settled upon a compact.

In principle, Virginia agreed to relinquish her right to charge tolls for Maryland vessels entering the Chesapeake Bay through the Virginia Capes; Maryland gave Virginia the rights of use, navigation and jurisdiction of the Bay and the Potomac and Pocomoke Rivers; and fishing rights in the Potomac were made common to citizens of both states. The first two provisions were rendered ineffective with the adoption in 1787 of the Commerce Clause of the Federal Constitution, but the agreement over equal fishing rights retained its legal validity. The various disputes subsequently arising out of the Compact of 1785 will be treated in the discussion of boundary disputes, infra.
X. COMMERCE AND TRADE

1. W. EDDIS, LETTERS FROM AMERICA 90 (1792).

2. MIDDLETON 40-42. See also BREWINGTON 115-18 and WILSTACH 44.

3. One early merchant to take advantage of the improved port facilities was John Stevenson, who recognized the potential for profit in the exportation of wheat and flour to his native Ireland. BREWINGTON 113.

4. Observations in Several Voyages and Travels in America, 15 WILLIAM AND MARY QUARTERLY 147 (Series I 1907). See also 2 SCHARF 3.


A book entitled SHAW'S FORTUNE by E. TUNIS tells the story of a plantation near the head of Nanokin Bay, a small Chesapeake inlet. The tale is charming, the text straightforward, the illustrations well-rendered (and the book recommended).


7. Lord Culpeper to Lords of Trade and Plantations, CALENDAR OF STATE PAPERS, COLONIAL SERIES, AMERICA AND WEST INDIES, 1681-1685, No. 319 at 156.

8. One reason which has been suggested for the inability of Maryland and Virginia to control the volume or standardize the quality of their tobacco production until the eighteenth century was the political separatism of the two colonies. It has been argued that the essential unity of the Chesapeake Bay region, both geographically and economically, makes its division particularly impracticable; had Charles I recognized this it would have been to the mutual benefit.
of Great Britain and her colonies. MIDDLETON 355-58. Other results of the
division, asserts Middleton, were disputes over fisheries and navigation in
the Potomac, a lack of coordination and cooperation in the defense of the
Bay during wartime, and the failure to make uniform customs laws and regula-
tions concerning pilots and ferries.

and ed. by W.J. Hinke 1916).

10. Lt. Governor Spotswood to the Council of Trade and Plantations, CALENDAR OF
STATE PAPERS, COLONIAL SERIES, AMERICAN AND WEST INDIES, 1710-1711, No. 710
at 415-16.

11. See MIDDLETON at 133-77.

12. The figures for Jamaica were £120,000 value and 1,200 mariners; for Barbados,
£96,000 value and 960 mariners. See generally MIDDLETON at 244-64.


14. See infra pp. 70-73 and accompanying footnotes. For additional material
in the Chesapeake Bay see BREWINGTON 137-41.
XI.
THE BAY IN WARTIME

"On the shore, dimly seen thro' the mist of the deep,
Where the foe's haughty host in dread silence reposes . . .
'Tis the star-spangled banner. Oh! long may it wave
O'er the land of the free and the home of the brave!"

The broad reaches of the Chesapeake Bay and the extensiveness of its tributary system have made both Maryland and Virginia, from their earliest histories, particularly vulnerable to naval attack. Whether the enemy was Spanish, Dutch, French, English, pirate or privateer, the colonial governments had to defend the vast area of the Bay itself besides the many rivers feeding into it.

In addition, the tobacco colonies had to depend upon Great Britain for the protection of their merchant marine vessels during the transportation of commercial items to and from the Chesapeake. In the seventeenth and eighteenth centuries it was not unusual for a fleet of one hundred and fifty to two hundred ships to cross the Atlantic together, with the annual export of goods and commodities from Maryland and Virginia, two of Great Britain's most productive colonies. Such large convoys, often accompanied by warships, were the primary means of defense against enemies of all sorts, in war and in peace. ¹

The New England, Carolina and Georgia colonies could secure themselves against direct attack with strategically placed forts at the mouths of rivers and at the entrances to harbors. But the opening to the Chesapeake Bay was so wide, and the settlers of Maryland and Virginia were so widely scattered, that forts were of little use (except on islands and small rivers) and the threat of enemy depredations was ever present. The Chesapeake colonies quickly reached
the conclusion that their only true means of protection rested in a naval force.

The first recorded naval engagement in the New World took place in 1635 between pinnaces owned by William Claiborne of Virginia and Leonard Calvert, Governor of Maryland. But it was some years later before a foreign country was to violate Chesapeake waters. In 1667 Virginia petitioned the Crown’s Privy Council for a frigate to defend her shores against the Dutch. England responded by sending over the Elizabeth, but the gesture proved too little, and too late. Five Dutch warships easily took the Elizabeth and controlled the Bay for almost a week before leaving of their own accord. Five years later, in the third Dutch War in 1672-1673, two men-of-war lent to the colonies by England were captured.

During the next decade and a half, the Bay was the scene of numerous skirmishes. Bacon’s Rebellion in 1676 witnessed the meeting of the opposing forces’ small navies. In 1681 pirates unsuccessfully attempted to seize the Lord Proprietor of Maryland together with the Provincial Magazine. And in 1685, despite the presence of a royal warship on the Bay, the pirate Roger Makeele roamed, seized and plundered at will.

The colonies continued to make repeated requests for naval protection from England, especially during King William’s War in the 1690’s and Queen Anne’s Wars after 1701. Even between these conflicts pirates and privateers had regular field days on and around the Bay. Later on, in 1708-1709, French privateers increased their depredations against the east coast of North America, and frequent rumors of impending attacks kept Virginia and Maryland in continuous and apprehensive vigil.

From 1713 to 1720, Spanish ships regularly took prizes from the Chesapeake Bay’s commercial fleet, despite the Peace of Utrecht in 1713. The 1720’s saw a marked increase in acts of piracy: it was the heyday of the pirates Louis Guittar, John Vidal, Roberts and Blackbeard. After 1727, piracy diminished but privateering was more commonplace than ever, particularly between 1745 and 1748.

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when dozens of Chesapeake ships fell prey, and even plantations on the eastern shore were plundered.

"Privateers" (from "private" and "volunteer") were originally authorized by governments, through "letters of marque and reprisal," to recover from other ships a sum equal to the amount taken or owed by the enemy. Later on the commissions were issued to any vessel willing to interfere with enemy shipping. While pirates were universally condemned, privateering was legal—and condoned, if not encouraged, by most governments.

The first privateering on the Chesapeake was by Claiborne and Calvert in the dispute over Kent Island. Far more prominent from an historical perspective, however, were the subsequent privateering activities on behalf of Maryland and Virginia, which gave the two colonies some measure of an offensive naval force. Nevertheless, during the colonial period, "at no time did the Chesapeake receive what might be called sufficient naval protection. This rich seat of commerce was . . . one of the weakest spots in the armor of the British Empire."

Privateering tended to be discouraged by the Chesapeake colonies during the first half of the eighteenth century. But after 1740, increased capital enabled the Bay's privateers to roam widely in pursuit of enemy vessels, and their importance continued through both the Revolutionary War and the War of 1812. Many judicial decisions during the seventeenth and eighteenth centuries involved the disposition of prizes taken on the Bay as well as those captured on the high seas. There was little consistency from one case to the next, until Parliament in 1708 enacted a law which regulated the taking and awarding of prizes.

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Almost without exception, every war in which Great Britain was involved after the seventeenth century had reverberations within the Chesapeake Bay. After the Declaration of Independence in 1776, no fewer than five of the original thirteen states were located on or very close to the Bay.

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It was not until the Revolutionary War that England had its first direct confrontation with the American colonies. As colonial trade began to offer stiff competition to England, Parliament in 1774 passed a series of "Navigation Acts," which were quickly labeled by many Americans as the "Intolerable Acts." These were the last straws in what the colonists viewed as a systematic program of commercial intimidation which England had begun with the Stamp Act of 1765.

Maryland's opposition to the increasing mercantile restrictions was as strong as in any of the colonies. On October 19, 1774, one year after the Boston Tea Party, the brig Peggy Stewart and her cargo of 2,300 pounds of tea were burned in the harbor at Annapolis. The fire was lit by the brig's owner himself, Anthony Stewart, after he announced his contrition:

... we solemnly declare, for the future, that we never will infringe any resolution formed by the people, for the salvation of their rights; nor will we do any act that may be injurious to the liberties of the people; and to shew our desire of living in unity with the friends of America, we request this meeting, or as many as may choose to attend, to be present at any place where the people shall appoint, and we will there commit to the flames, or otherwise destroy, as the people may choose, the detestable article, which has been the cause of this our misconduct.

On July 10, 1775, the ship Totness from Liverpool, England, ran aground on a Chesapeake shoal near the Three Sisters Islands off the West River. Eight days later members of the colonists' nonimportation association ordered the crew off and set fire to the vessel and its cargo. This was the "second burnt offering to liberty" within the province.

The first formal American navy began outfitting in Baltimore in October of 1775. This was to mark the temporary change of Maryland's largest city from a growing industrial community to a military planning center, and of the Chesapeake Bay from a brisk mercantile arena to a theater of marine warfare. Baltimore, however, was to remain the only major city on the Atlantic seaboard never held by a foreign enemy. During the Revolutionary War its privateers controlled
coastal commerce from New England to the West Indies, traded with Bristol and London while smuggling from Holland and France, and ranged as far as the Spanish Coast and the Pacific Ocean in conducting naval guerilla warfare against the British.

While defensive preparations were being made in Baltimore, the mouth of the Chesapeake Bay was being blockaded by the British. Governor Dunmore continued his depredations along the Virginia coast, and in the Bay an increasing number of enemy cruisers harassed the American merchant marine. Then, on March 5, 1776, the British sloop-of-war Otter sailed up the Chesapeake and anchored outside of Annapolis in an overt act of intimidation. The colonists did not react passively. In the spring of 1776, the American ship Defense was launched and quickly succeeded in capturing numerous enemy vessels. After the Declaration of Independence on July 4, Maryland's small navy went on to acquit itself well throughout the Revolution. 

Congress, meeting in Baltimore in early 1777, received word that the British were planning to attack certain Maryland coastal settlements on the Chesapeake Bay. All military provisions were ordered removed from the eastern shore, the lower counties of which were still occupied by numerous Tories. By August the British fleet had sailed up to the head of the Bay and several ships had been dispatched up the Elk River to seize American stores. ("Head of Elk" became the scene of shifting troops and supplies throughout the war.) By September the British were in the Patapsco—and Baltimore was ready to give the enemy "a warm reception," according to the Maryland Gazette—but the confrontation never took place. Throughout 1778, British ships preyed upon mercantile vessels on the Bay and in 1779 renewed their attacks as part of the campaign which began in the south with the capture of Savannah, Georgia. Plundering and looting of property along the Bay as far north as the Patuxent continued through 1780.
Lord Cornwallis, incensed at the British defeat in the Battle of Cowpens in 1781, determined to march north in pursuit of the American army and to meet his troops in the Chesapeake Bay. The British planned to take a position near the Susquehanna. On April 10th, Sir Henry Clinton wrote to one of his fellow officers that "the security of the Carolinas is of the greatest moment, but the best consequences may be expected from an operation up the Chesapeake." Lord Cornwallis in turn wrote Clinton the same day, saying "I cannot help expressing my wishes that the Chesapeake may become the seat of war, even, if necessary, at the expense of abandoning New York."8

George Washington prepared to move his army in August, together with the French allies under Count Rochambeau and Count de Grasse, to meet Cornwallis on and around the Chesapeake.9 There was great activity among the merchants of Baltimore and officers of the Army in establishing supply routes and provisioning prospective encampments on the shores of the Bay. The spirit was there, if the equipment was not. Governor Thomas Sim Lee wrote to General Washington on August 30th:

You may rely, Sir, on every exertion that is possible for us to make, to accelerate the movements of the army on an expedition, the success of which must hasten the establishment of the Independence of America . . . Orders have been issued to impress every vessel belonging to the State, and forwarding them without delay to the head of Elk. But we are sorry to inform your Excellency that since the enemy has had possession of the Bay, our number of sea vessels and craft has been so reduced by captures, that we are apprehensive what remains will not transport so considerable a detachment.10

Washington was appreciative of the efforts made. Upon his arrival in Baltimore, he thanked the citizenry at length.

Count Rochambeau encamped his French troops at the site of the old Havre deGrace race track, just before moving on to Yorktown near the southern tip of the Bay. On September 7th, he was joined by the fleet of Count deGrasse. Together
they went against the British, inflicted heavy losses, and decisively won the Chesapeake for America. A few days later Cornwallis surrendered his troops, and the war was over. 11

* * *

In the years immediately following the Revolution, the Chesapeake Bay continued its prominent position in the affairs of the nation, particularly after Congress recommended the City of Annapolis for the capitol of the United States. 12

At the end of the eighteenth century a renewed source of friction between Great Britain and America was fast coming to a head. Over a long period of time, beginning as early as 1690, there were many desertions from British naval and merchant marine vessels by sailors seeking higher wages and the better working and living conditions in America. Before the Revolution, the British had replaced deserters by impressing colonial seamen into the Royal Navy. This was done with the ready cooperation of the colonial governments. After Independence, however, such practices were no longer possible. The situation became only more acute as England's increased involvement with Napoleon dictated her concurrent need for a navy at full strength.

In 1805 James Madison reported to Congress that some 2,273 Americans had been impressed into the Royal Navy during the past year. On the other hand, it was rumored that as many as twenty thousand British sailors were working in the American merchant marine. The backbreaking straw came on June 22, 1807, when the British cruiser Leopard attacked the American frigate Chesapeake just outside the three-mile territorial limit, over an impressment dispute. 13

Added to this provocation were the "paper blockades" of American ports set up by Britain and France (at war with one another). The United States was caught in the middle. Finally, on June 18, 1812, America declared war on Great Britain. One of the first places to which the British dispatched troops was the Chesapeake
Bay. British captains had long been familiar with the Bay's military advantages, and both Baltimore (the privateering center) and Washington (the nation's capitol) were situated near the Chesapeake. And since the states which bordered on the Bay seemed to be divided as to the desirability of another war with Great Britain, the area seemed a good place to begin a campaign of terror and attrition. So on December 26, 1812, Britain formally declared a blockade of the Delaware and Chesapeake Bays. The British fleet under Rear Admiral George Cockburn entered the Chesapeake on February 4, 1813, anchoring at Hampton Roads, Virginia.

Four days later the Baltimore schooner Lottery tried to run the British blockade. After brisk fighting, in which the Lottery's Captain John Southcomb was mortally wounded, she was taken as a prize. On March 16th, four other Chesapeake schooners were captured. The British fleet sailed up the Bay in early April, plundered the exposed settlements, and established a base on Tangier Island. During that month the British occupied Spesutie, Poplar and Tilghman's Islands, seized Frenchtown, and threatened both Annapolis and Baltimore. In May, Havre deGrace, Georgetown and Fredericktown were burned. Norfolk held its ground in June, but the town of Hampton, Virginia succumbed to British invaders. In late July and early August the enemy fleet again gave signs of threatening Annapolis and Baltimore, but settled for the time being as a base on Kent Island. There were also three British ships moored within three miles of Washington, D.C. In the meantime, two attempts to capture St. Michael's Island were repulsed. The British fleet spent the winter of 1813-1814 in Bermuda.

In defense of the Chesapeake Bay was Commodore Joshua Barney's flotilla of twenty-six vessels and nine hundred seamen. These were little match in numbers to the British naval forces but during late May and June of 1814 Barney was successful in conducting a type of hit-and-run warfare on the sea. Then, on July 1st, he was called to defend Washington. By early August the British had reinforced their Chesapeake fleet and on August 22nd Upper Marlboro was taken. The
American flotilla was ordered to destroy itself. Two days later the British won the Battle of Bladensburg and burned the public buildings of the nation's capitol. Now the plan was to attack the "hornet's nest" of Baltimore, "which had equipped and sent to sea on President Madison's request more privateers than any other city in America."  

While Washington was burning, a Committee of Vigilance and Safety formed in Baltimore. Placed in charge of the military defenses was General Sam Smith, 62 years old and a veteran of the Revolutionary War. It was known that the British planned to attack the city by both land and sea, and the Americans were prepared. On the waterfront, Baltimore was protected by Fort McHenry, with one thousand men under the leadership of Major George Armistead, and by two smaller fortifications at Fort Covington and Fort Babcock. To protect against attacks by land, defenses were also established at North Point and, directly on the city line, in what is now Patterson Park.

On September 11, 1814 the British fleet anchored in the mouth of the Patapsco, and were immediately reconnoitered by a force of Maryland militia under General John Stricker. A day later the British landed at North Point and were driven back, their commander, General Robert Ross, being killed in the fighting. The frustrated invaders, facing what seemed to be the entire American army on the outskirts of Baltimore, never attacked.

At dawn on September 13th, the bombardment of Fort McHenry began. American cannons returned the enemy fire but their shells fell far short of the British vessels. A nighttime attempt to capture the Fort from the rear was abortive. Major Armistead revealed the strength and spirit of his troops in a report of the action he filed with the Secretary of War.

During the bombardment, which lasted twenty-five hours (with two slight intermissions), from the best calculations I can make, from fifteen to eighteen hundred shells were thrown by the enemy. A few of these fell short. A large
proportion burst over us, throwing their fragments among us and threatening destruction. Many passed over and about four hundred fell within the works. Two public buildings were materially injured, others but slightly. I am happy to inform you (wonderful as it may appear) that our loss amounts to only four men killed and twenty-four wounded. The latter will all recover.

Francis Scott Key, the lawyer-poet from Washington, D.C., had sailed from Baltimore with John Skinner, an American agent for prisoner exchange, to meet the British fleet and negotiate the release of an elderly Maryland physician named Beanes. Key and Skinner convinced the British that they should free Dr. Beanes in return for the humane treatment accorded British prisoners of war, but all three Americans were forced to remain with the enemy fleet during its bombardment of Fort McHenry. Key was so inspired by the tattered star-spangled banner which continued to wave by the dawn's early light, that he wrote the poem which has become our national anthem.

The war ended two months later.

* * *

The War of 1812 was the last large-scale conflict to make the Chesapeake Bay a strategic battle area, although subsequent American wars related in one way or another to tidewater Maryland.

In 1861 the federal government kept a strong garrison at Fort McHenry, had troops stationed in Annapolis, and held control over the mouth, headwaters and tributaries of the Chesapeake. The Confederates did manage to capture the steamer St. Nicholas at Point Lookout, although the exploit was managed more by deception than by force. The only other notable event on the Bay during the War Between the States was the famous clash of the ironclads, the South's Virginia and the North's Monitor, at Hampton Roads.

For the most part, however, the Civil War as it related to the Chesapeake was limited to minor skirmishes involving corellary forces, and to a great deal of illicit trading by which the Confederate army supplied itself with various goods and commodities. The Bay remained essentially a military highway for
the North.

During the Spanish-American War the United States Navy's "Flying Squadron" sailed out of the Bay to hunt the enemy on the high seas. (In command of the Squadron was Winfield Scott Schley, born on the banks of the Monocacy River.) In the first World War ammunition and soldiers were shipped out of Norfolk, and during both World Wars Liberty ships transported military supplies from the Bay. Various amphibious naval craft were tested on Chesapeake shores and simulated beachheads in the 1940's, and four German ships taken as prizes on the high seas were anchored in the Bay. 19

Except for various civil disputes upon its waters, however, the Chesapeake Bay during the twentieth century has remained briskly commercial and peacefully serene.
XI. THE BAY IN WARTIME

1. See generally MIDDLETON, Chapter Ten, and at 319-20.


3. BREWINGTON 197-98.

4. MIDDLETON 335 and, generally, id. Chapters Eleven and Twelve.

5. From statement signed by Anthony Stewart, Joseph Williams and James Williams, quoted in 2 SCHARF 160.

6. W. EDDIS, LETTERS FROM AMERICA 218 (1792). Shortly thereafter, Virginia's Governor Dunmore (who was loyal to the Crown) attached plantations owned by Maryland patriots on the southern shores of the Bay. See 2 SCHARF 186-87.

7. From April, 1777 through March, 1783, some 248 privateers from Maryland rendered heavy damage to British naval operations in the Chesapeake. 2 SCHARF 203-05, 210-12. See also B.W. BOND, STATE GOVERNMENT IN MARYLAND 82. On December 2, 1777, John Paul Jones from Hampton's Corners sailed into the Port of Brest, France—a Chesapeake ship preying on the British in their own territory. L. Webb-Peploe, The Chesapeake Bay and Its Tributaries 8-9 (1923 monograph).

8. 2 SCHARF 441.

9. Washington had already sent Marquis de Lafayette to dislodge the traitor Benedict Arnold from the James River area. Lafayette was assisted by Commodore James Nicholson and Major James McHenry, both born on the Bay.

10. 2 SCHARF 456.

11. See E.S. Miers, The Drowned River: The Story of the Chesapeake Bay 23-24, 28 (1967); 2 SCHARF 458-62. The last of the Bay Country's "tide mills"
stands on a branch of Mobjack Bay. Records indicate that it supplied ground
grain for Washington's army during the siege of Yorktown. A.A. BODINE, CHESA-
PKE BAY AND TIDEWATER 29 (1954).

12. A portion of the sales pitch made by the Annapolis city fathers:

... The city standing within three miles of the Bay of
Chesapeake, and on a large navigable river, with a high,
dry soil, and many springs of excellent water, is remarkably
healthy ... The Bay of Chesapeake and rivers falling into
it, will afford safe and capacious harbors for fleets of
ships of any size and force, and dispatches may be conveyed
or received with great facility to or from Europe, or any
other part of the world.

---quoted in 2 SCHARF at 494-95.

13. When the British opened fire, Captain James Barron discovered that his men
lacked matches, gunlocks, powder horns and wadding for the charges. Before
surrendering he managed to fire a single shot, set off by a red-hot coal
carried in the fingers of a young lieutenant. Three Americans were killed
and eighteen wounded. This was to be the only peacetime attack upon an
American naval vessel in history, before the intelligence ship Pueblo was
taken off the coast of North Korea in early 1968. 66 LIFE No. 5 at 20 (Feb-
uary 7, 1969). See also G. BYRON, THE WAR OF 1812 ON THE CHESAPEAKE BAY
7-11 (1964).

14. BYRON, supra note 13 at 17-32. See also WILSTACH 151 and 230-31, and 3
SCHARF 127.

15. E.S. DELEPIALNE, MARYLAND IN LAW AND HISTORY 81 (1964). A roving Methodist
preacher from Deal Island, named Joshua Thomas, delivered a sermon to the
British on Tangier Island in 1814 to the effect that they could not take
Baltimore and that they would not succeed in their expedition. See WILSTACH
168.

16. Quoted by G. BYRON, THE WAR OF 1812 ON THE CHESAPEAKE BAY 72 (1960) and 3
SCHARF 121-22.

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17. The second stanza of "The Star Spangled Banner" is quoted in part at the beginning of this section. See generally DELAPIANE, supra note 15 at 79, 3 SCHARF 117-20, and WILSTACH 209-11.


19. See BODINE, supra note 11 at 13 and 20, and CHRISTIAN, supra note 18.
"The Lord, and not the State of Maryland,
put the oysters there."

Boundary disputes between Maryland and Virginia have taken place almost from their colonial beginnings in the early part of the seventeenth century. The charters awarded by the Crown to Lord Culpeper (of the London Company) and to Lord Baltimore (for the Maryland province) were basically contradictory. George Calvert's original grant encompassed a great deal more territory than that which is presently Maryland, and included area in what are now Delaware and Pennsylvania. Some historians have asserted that, by virtue of invalid claims by Pennsylvania, Delaware and Virginia, some four and one-quarter million acres of the true charter of Maryland were wrongfully appropriated by her neighbors.

In 1634-1635 Lord Baltimore published his "Relation of Maryland," which purported to describe the rightful boundaries of his palatinate. Philip Calvert and Edmund Scarborough were appointed in 1661 to effect a settlement of the southern boundary. Seven years later a line was agreed upon, between landmark trees on the Pocomoke River and on the shore of Chincoteague Bay near Franklin City. But despite this early understanding, the controversy over the eastern shore's point of departure for the boundary line, and over the sovereignty of the Potomac River, was to remain unsettled for more than two centuries.

By the 1700's both Maryland and Virginia were still claiming rights to the Potomac and Pocomoke Rivers. Virginia had also taken up the practice of collecting tolls from all vessels entering the Chesapeake Bay through Cape Charles and Cape Henry, even if they were bound for ports in Maryland. When Virginia ratified
its first constitution in June of 1776, various old claims to territory in Pennsylvania, Maryland and the Carolinas were relinquished—but the right to the free use and navigation of the Potomac and Pocomoke Rivers was expressly reserved. Maryland, of course, refused to acquiesce to that reservation. 3

As noted earlier, several conferences between the two states in the late 1770's, which had been designed to harmonize commercial interests in the Bay and its tributaries, had failed to produce agreement. In June of 1784 Virginia urged renewed negotiations to settle the difficulties, and Maryland consented. The fact that Maryland was still especially disturbed by Virginia's tolling practices is made clear in one of the instructions to its commissioners:

You are to insist that the Commonwealth of Virginia shall expressly relinquish every claim to impose tolls on any vessels whatever sailing through the Capes of Chesapeake Bay to the State of Maryland or returning from this State through the said Capes, outward bound; this you are to insist upon as a condition sine qua non, and if not acquiesced in by the commissioners from the commonwealth of Virginia, you are to break up the conference . . . 4

Commissioners from both governments met in late March of 1785, and a compact agreeable to both was drawn before the month ended. 5

On the whole, the main considerations for the Compact were commercial in nature, Virginia relinquishing her right to tolls in return for rights of navigation in and jurisdiction over the Potomac and Pocomoke Rivers and the Chesapeake Bay. (Fishing rights in the Potomac were made common to both states.) But the agreement did offer two contributions towards settlement of the long-standing boundary dispute: Article Ten mentioned Smith's Point and Watkins' Point as references for a line across the Chesapeake Bay separating Maryland from Virginia; and Article Seven gave to the citizens of each state "full property in the shores of the Potomac adjoining their lands," thereby setting the Potomac boundary line at the low water mark on the Virginia shore. 6
Since Maryland and Virginia were but loosely joined under the Articles of Confederation (1785), and since both states considered themselves sovereign, the Compact from the beginning had less legal force than moral commitment. Moreover, with the adoption of the Commerce Clause in the Federal Constitution (1787), the prior commercial agreements became largely superceded.

Most of the nineteenth and twentieth century judicial and legislative history relating to the Compact of 1785 was concerned with commercial and fishing rights, especially along the Potomac River. Several cases, however, dealt with boundaries and jurisdiction. An 1829 decision refused to enjoin the construction of a dam across the Potomac, holding that the Compact referred only to the tidewater portions of the River. Two later cases pointed out that the provisions in Article Ten for a citizen of either state to be tried in the courts of his own state were contingent upon the boundary line being uncertain; but these provisions were rendered ineffective with the drawing of a boundary which was acceptable to both Maryland and Virginia.

That agreement did not come until 1877. Twenty-five years earlier the two states had appointed commissioners to retrace and mark a proper boundary line between Smith's Point and the Atlantic Ocean, but negotiations were discontinued with the outbreak of the Civil War. In 1872 and 1873 numerous meetings between the commissioners resulted in a decision to submit the question to binding outside arbitration. On January 16, 1877, the arbitrators issued their report. The Potomac River was placed within the jurisdiction of Maryland, the southern boundary of the state to be at the low water mark on the Virginia side (as measured from one headland to another, without reference to indentations, creeks or rivers.)

Thus ended the longest-standing controversy between the sister states on the Chesapeake. It had lasted nearly two hundred and fifty years.
But contentions were renewed during the twentieth century, and culminated in 1957 with Maryland's complete repeal of the Compact of 1785. The repealing legislation reads in part:

> Whereas, the citizens and law enforcement personnel of the State of Virginia have callously and intentionally disregarded, disobeyed and interfered with the enforcement of laws regulating the acquisition, preservation and conservation of natural resources in the Potomac River, and

> Whereas, the State of Maryland has requested the State of Virginia to cooperate in the preservation of these natural resources of the Potomac River which the State of Virginia has effectively refused to do, all of which is to the mutual detriment of the citizens of both States, and

> Whereas, the State of Virginia has clearly demonstrated its unwillingness and open refusal to cooperate in the enforcement of existing laws and to adopt new laws for the effective enforcement of the preservation and conservation of these valuable natural resources, and

> Whereas, the State of Virginia has clearly demonstrated its intention to disregard and flout the rights of the State of Maryland as owner of the bed of the Potomac River and to interfere with the lawful rights of the State of Maryland and its citizens . . .

> [Now, therefore, the Compact of 1785 is repealed.]

Closely related to the boundary disputes were various cold and warm wars that involved the taking of fish and oysters from the Bay. In the early years the colonists saw little need to conserve the Chesapeake's bountiful supply of seafood. But by the start of the nineteenth century, the Maryland and Virginia Assemblies were beginning to express concern over the indiscriminate depletion of some choice oyster beds.

Virginia first passed an act regulating the manner in which oysters were to be taken from its waters in 1810, and in 1818 restricted the exportation of oysters from the Commonwealth (except where they were taken from the Potomac and
Pocomoke Rivers, which were held in common with Maryland). In 1820, Maryland made it unlawful to take or export oysters by persons who had not resided in the state for at least twelve months. Various statutes which further regulated oyster dredging were passed by both states during the 1830's.

Most of the early oyster legislation was conspicuously lacking in effective enforcement, and the regulations were widely and openly flaunted. In 1865 the Maryland Assembly passed a law requiring oyster dredgers to be licensed, but local sheriffs found this as difficult to enforce as the other oyster laws. Finally, in 1868, a State Oyster Police Force was established and outfitted with a steamer and several fast sloops and schooners. The boats were equipped with small arms, and their captains with a substantial number of statutes to enforce.

The task was very often a frustrating one. According to an 1887 issue of Goode's Fishery Industries of the United States, there were simply too many oystermen and too few policemen:

It is now rarely the case that a dredger can be found who will admit that he believes there is anything wrong in disregarding the oyster laws and such a thing as being disgraced among his fellow workmen by imprisonment for violation of the laws is totally unknown. In the above facts will be found sufficient reasons why it has been impossible for the oyster police, since its first organization, to enforce the laws. Seven hundred well-manned, fast sailing boats, scattered over such a large area as the Chesapeake Bay, are rather difficult to watch, and especially at night.

During the last two decades of the nineteenth century there were numerous pitched battles between oyster tongers and dredgers (dredging was forbidden in many parts of the Bay), and among dredgers, oyster pirates, and the police. All of the watermen seemed to share a concerted disliking for the patrol boats. After the Award of 1877, when Maryland was forced to yield some 23,000 acres of the best oyster bottoms to Virginia, Smith Islanders continued to dredge in defiance of both states. One notable skirmish occurred in the Choptank River in 1888,
when the greatly outnumbered patrol boats succeeded in breaking up an illegal operation by ramming the line of defense which had been set up by the allied oystermen.

Politics have always played a large part in the cold wars over oysters. Both good and bad oystermen held votes in the Maryland and Virginia Assemblies, and the infighting was more often stalemated than not. Laws relating to fishing rights in the Potomac and Pocomoke Rivers as well as in the Bay itself were passed throughout the nineteenth century, and various agencies to study, regulate and control Maryland and Virginia fisheries have been established in the twentieth. But the famous Chesapeake Bay oyster remains the item around which most of the controversies have arisen. During the twentieth century, even though oysters are scarcer and dredge-boats fewer, there seem to be just as many scoff-laws as ever. The Maryland Marine Police have tried to keep pace by adding to their forces faster and more sophisticated equipment, including aircraft. Nevertheless, conservationists point out that "the problem is likely to remain unsolved so long as healthy oysters continue to grow in Chesapeake waters and the philosophy of some watermen remains unchanged."17

Just as important as the political and legal aspects of the oyster wars are the emotional and historical factors. An 1894 issue of Harper's Weekly noted that:

The Chesapeake Bay, with its thousands of square miles of surface, and its hundreds of miles of tributaries, has more than 600,000 acres of oyster bottom which have for years supported nearly 50,000 people. The supply was so magnificent that exhaustion was thought to be impossible. And so when the State found it necessary to pass and enforce certain regulations, the bolder of the fishermen looked upon the action as an interference with the laws of Providence which was not to be tolerated. To many of them the taking of oysters where the State said they should be let alone was not a crime and they were ready to fight for what they believed to be their rights. This resulted in serious differences of opinion which were emphasized by powder and shot, and embittered by bloodshed.18
Although a good deal of live ammunition was expended during the skirmishes, it was seldom used accurately, and enough lead was wasted "to supply sinkers for all the fishing lines along the Atlantic Coast. In the 30 years of oyster wars only about 50 men have been killed, and the wounded would not reach 50 more." Those totals were increased substantially in the following year (1895), when a battle in Woman's Marsh between rival oystermen produced many casualties. Not until 1910, when several more choice beds became overworked and unproductive, was there some letup in the skirmishing. Nevertheless, piracy and disease were to cause continued depletion of the Bay's oyster crop during the first half of the twentieth century.

From the point of view of those who make and enforce the laws, the oystermen are an obstinate and immoral lot. To the watermen, "The Lord, and not the State of Maryland, put the oysters there." Conservation officials and oystermen continue to regard one another with a salty mixture of pathos and contempt. Gilbert Byron's poem, "The Duel," poses a fanciful though perhaps typical confrontation:

**Waterman**—

No thanks, Mister, I don't beg,  
Or bend my leg,  
Just for a handout.  
I've sailed the bay  
Nigh twenty year,  
In calm, in storm,  
In bloody fear,  
I'll steal what the Good Lord  
Planted here,  
You see,  
I'm free.

**Conservation Official** (departing)—

Poor fool.

**Waterman** (to himself)—

Damn fool.
XII. PEACETIME SKIRMISHES

1. 1 SCHARF 235, 259.

2. 1 SCHARF 262, and E.B. MATHEWS and W.A. NELSON, REPORT ON THE LOCATION OF THE BOUNDARY LINE ALONG THE POTOMAC RIVER BETWEEN VIRGINIA AND MARYLAND 2-3 (1928). Scharf claims that, even under the 1668 agreement, Maryland lost some 15,000 acres it had rightfully held under the original charter.

3. Maryland's rejection of the Virginia claim was overruled by the Supreme Court in Maryland v. West Virginia, 217 U.S. 577 (1910), which held that, by the Compact of 1785, Maryland had assented to Virginia's rights ("citizens of each state shall have full property on the shores of the Potomac and adjoining their lands"). For a complete history of events leading to the Compact of 1785 and of cases construing it afterwards, see Barnes v. State, 186 Md. 287, 47 A.2d 50 at 53-62 (1946) and infra footnote 7.

4. Quoted by C.N. EVERSTINE, MARYLAND IN LAW AND HISTORY 1 (1964) and 2 SCHARF 529.

5. See EVERSTINE, supra note 4 at 1-2 and 2 SCHARF 530. Maryland was represented at the meeting, held at Mount Vernon, by Daniel St. Thomas Jenifer, Thomas Stone and Samuel Chase. Virginia sent George Mason and Alexander Henderson. The Compact provided substantially as follows:

   I. Virginia disclaimed all right to impose any toll, duty or charge, prohibition or restraint, on any vessel sailing through the capes of Chesapeake Bay trading to or from Maryland; that the waters of the Chesapeake Bay and the river Pocomoke within the limits of Virginia be for ever considered common highway, free for the use of vessels owned in Maryland, or carrying on commerce with the State or its...
citizens; that all such vessels should enter the waters of Virginia without the payment of port duties or any other charge, and that the vessels of Maryland should have free navigation in any part of the State.

II. The State of Maryland confers the same privileges on vessels trading to or from Virginia.

III. Vessels of war, the property of either State, to be free of all charges.

IV. Vessels not exceeding forty feet keel, nor fifty tons burthen, owned in either State, with a permit from the naval officer from which they depart, might trade in either State, free of charge; provided they only have on board the produce of the said States.

V. All merchant vessels (except those described in the IV Article), navigating the Potomac were to clear at some naval officer on the river in one or both States; and if entered in both States, were subject to tonnage in each State in proportion to the merchandise carried to or from the said State.

VI. The Potomac to be a common highway to citizens of the United States and those in amity with the same States, trading to or from Virginia to Maryland.

VII. The citizens of Maryland and Virginia, respectively, to have full property in the shores of the Potomac, adjoining their lands, with all emoluments etc., with the privilege of running out wharves or any other improvement, so as not to obstruct the navigation; but the right of fishing was to be common to and equally enjoyed by the citizens of both States; provided they did not interfere with the fisheries, seines or nets on the shores of the other.

VIII. All laws for the preservation of fish, navigation, quarantine, etc., to be made with the consent of both States.

IX. Light-houses, beacons, buoys, signals, etc., to be erected and maintained upon Chesapeake Bay, between the sea and the mouths of the rivers Potomac and Pocomoke, at the expense of both States; also those on the Potomac. Virginia to pay three-fifths, and Maryland the remainder.

X. For the trial of persons charged with piracy.
XI. For the libelling of vessels for debt; absconding criminals, debtors, etc.

XII. Persons owning lands in one State and residing in the other, had liberty to transport to their own State the produce of such lands, etc., free of duty.

XIII. These articles to be laid before the Legislature of each State for its adoption, upon which they were to be confirmed and ratified by a law of each State, and were never to be repealed or altered by either, without the consent of the other.

—2 SCHARF 531.

The original text of the Compact is found in 1 MAXCY, THE LAWS OF MARYLAND, 1692-1807 at 536.

6. See EVERSTINE, supra note 4 at 29-34.


For other cases construing the Compact, see Negro Delilah et al. v. Jacobs, 4 Cranch CC Reports 238 (1832); Georgetown v. Alexandria Canal Company, 37 U.S. (12 Pet.) 91 (1838); State v. Hoofman, 9 Md. 28 (1856); Hendricks v. Virginia, 75 Va. 934 (1882); Potomac Steamboat Co. v. Upper Potomac Co., 109 U.S. 672 (1884); Biscoe v. Maryland, 68 Md. 294, 12 A. 25 (1888); ex parte Marsh et al., 57 Fed. 719 (1893); Wharton v. Wise, 153 U.S. 155 (1894); Morris v. United States, 174 U.S. 196 (1899); Marine Railway Company v. United States, 257 U.S. 47 (1921); Herald v. United States, 284 Fed. 927 (1922); Middleknuff v. LeCompte, 149 Md. 621, 132 A. 48 (1926); Washington Airport v. Smoot Sand Co., 44 F.2d 342 (1930); and Barnes v. State, 186 Md. 287, 47 A.2d 50 (1946).

Legislative enactments relating to Chesapeake and Potomac fisheries are discussed infra at pp. 73-75.

9. By agreement neither state could by decision of the arbitrators deprive the other of rights and privileges enumerated in the Compact of 1785. MD. LAWS ch. 247 (1874); and VA. ACTS ch. 135 (1874). The arbitrators chosen were Jeremiah S. Black (United States Attorney General, Secretary of State); William Alexander Graham (United States Senator, Secretary of the Navy); Charles Jones Jenkins (Governor of Georgia). Graham, then Governor of Georgia, was replaced upon his death by James B. Beck (United States Senator from Kentucky). See Mathews and Nelson, supra note 2 at 4-11; and 1 SCHARF 262-65.

10. Award of 1877; ratified by Congress on March 3, 1879, 20 Stat. 481. For the current Potomac River Statutes, see MD. ANN. CODE art. 66C, § 261A (1957); MD. ANN. CODE art. 66C, § 704 (1957); MD. ANN. CODE art. 43, § 407 (1957); VA. CODE ANN. § 7.1-7 (1950); VA. CODE ANN. § 28.1-203 (1950); VA. CODE ANN. §§ 28.1-204 to 226 (1950); and VA. CODE ANN. §§ 62.1-64 to 69 (1950).

11. MD. LAWS ch. 766 (1957).

12. VA. ACTS ch. 17 (1810); and VA. ACTS ch. 32 (1818).

13. MD. LAWS ch. 24 (1820). Virginia passed the same qualification in VA. ACTS ch. 40 (1820).

14. MD. LAWS ch. 87 (1829); MD. LAWS ch. 249 (1831); MD. LAWS ch. 265 (1832); and MD. LAWS ch. 254 (1832); VA. ACTS ch. 192 (1831); and VA. ACTS ch. 84 (1832).

The basic version of the present concurrent laws on taking oysters from the Potomac River, which recognized rights under the Compact of 1785, was enacted by both states in 1884. MD. LAWS ch. 76 (1884); and VA. ACTS ch. 405 (1884). MD. LAWS ch. 766 (1957).

16. See MD. LAWS Resolution 44 (1816); MD. LAWS ch. 279 (1831); MD. LAWS ch. 134 (1832); MD. ANN. CODE art. 41, §§ 12-21. The Commission of Fisheries was created in 1874 to study and report on all state fish resources. See also VA. ACTS ch. 80 (1831); VA. ACTS ch. 90 (1842); VA. ACTS ch. 71 (1843); and VA. ACTS ch. 280 (1860).

17. BURGESS, supra note 14 at 139.

18. 38 HARPERS WEEKLY 95 (1894).

19. Id.

20. See H. FOOTNER, RIVERS OF THE EASTERN SHORE 90-91 (1944). The vertical files of the Maryland Room at the Enoch Pratt Free Library in Baltimore contain a voluminous body of material concerning the Chesapeake Bay's oyster industry. See especially under "Oyster Culture—Laws and Regulations." Articles of particular interest may be found in the Evening Sun (Baltimore), March 7, 1939, Oyster Decline Marked by Riots and Gun Fights; Sunday Star (Washington), December 14, 1947, Chesapeake Oyster Patrol Takes to the Air; and the Sunday Sun Magazine (Baltimore), February 2, 1969.


22. From G. BYRON, The Duel, THESE CHESAPEAKE MEN 137-38 (1942). Both poems (cited in footnotes 21 and 22) are recommended.
The long and varied history of the Chesapeake Bay serves to emphasize its continued importance in the economy and sociology of Maryland and Virginia. From the earliest explorations to the present day, the Chesapeake has remained a commercial center for the world and an historical treasury for the nation. The past is filled with battles fought, freedoms won and prosperity gained upon Chesapeake Bay waters. Hopefully its future will be as significant and colorful.