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CORRESPONDENCE

OF THE

GOVERNOR OF VIRGINIA

WITH

THE GOVERNOR OF MARYLAND

AND

THE AUTHORITIES OF ACCOMAC COUNTY, VA.;

ALSO,

THE OPINION

OF THE

ATTORNEY-GENERAL OF VIRGINIA

IN RELATION TO

RECENT DIFFICULTIES

IN THE

WATERS OF THE POCOMOKE.

PRINTED UNDER RESOLUTION OF THE HOUSE OF DELEGATES, PASSED
DECEMBER 21ST, 1874.

RICHMOND:

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CORRESPONDENCE.

Telegram from the Governor of Maryland to the Governor of Virginia.

ANNAPOLIS, MD.,
OCTOBER 1, 1874.

His Excellency JAMES L. KEMPER:

I have written you fully about cases of Maryland oystermen imprisoned at Drummondtown, and will be pleased if you will have their trials, which are set for Monday, postponed until the receipt of my letter.

JAS. B. GROOME,
Governor of Maryland.

Letter from Governor Kemper to the Circuit Judge of Accomac County.

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND, *October 2d, 1874.*

To the Judge of the Circuit Court of Accomac Co.:

SIR:

The governor of Maryland, by telegram to this office, requests a postponement of the trial of certain citizens of that state who are about to be tried in your court on a charge of violating the laws of Virginia, until further representations can be communicated from the authorities of Maryland in regard to the alleged offence.

I respectfully recommend, and request, that the wishes of the governor of Maryland in the premises be complied with as far as your judicial powers and duties may permit.

Very respectfully,
Your ob't s'v't,

JAMES L. KEMPER.

Letter of Governor Groome to Governor Kemper.

STATE OF MARYLAND,

EXECUTIVE DEPARTMENT,

ANNAPOLIS, October 2d, 1874.

His Excellency JAMES L. KEMPER, *Governor of Virginia:*

SIR:

Complaint has been made to me that upon the eleventh ultimo, Thomas Riggin, an unresisting and unarmed citizen of Maryland, was approached by an armed canoe, believed to be commanded by William P. Curtis, an oyster inspector of the state of Virginia, and fired upon and wounded severely.

Mr. Riggin, at the time, was engaged in taking oysters on that side of the Pocomoke river, or sound, or bay, (as that body of water is variously termed) most remote from Accomac county, in the state of Virginia, and within a mile of the nearest shore, which, although of late claimed by the state of Virginia, forms a part of the territory out of which the state of Maryland, which has always held it in actual possession and subject to her jurisdiction, created Somerset county. After being thus so severely wounded as to be rendered helpless, he was abandoned to his fate, and was driven by the winds and waves upon the Somerset shore.

The crew of the said armed canoe on the same day captured four canoes occupied and owned by citizens of Maryland, who were taking oysters in the same locality. These canoes were removed to Onancock in your state, where they are still held, as I am informed, under the alleged authority of the commonwealth of Virginia, and their owners, Edward Horsey, John H. Garrison, Henry Curtis, and a Mr. Lewis, were lodged in Drummondtown jail, where, with the exception of Mr. Lewis, who succeeded in procuring bail, they still remain.

Maryland has always claimed for her citizens, and they have always exercised, the right to take oysters in common with the citizens of Virginia in every part of the Pocomoke river, sound or bay, and that claim was, as I am informed and believe, never disputed until during the late war.

That Maryland still asserts her right to jurisdiction over a large part of the Pocomoke is shown by the resolution passed at the last session of the general assembly, which was laid before the general assembly of your state by the Honorables John W. Davis, Isaac D. Jones, and James M. Dennis. That resolution proposes as a compromise that the boundary line between the two states shall be drawn from the center of Cedar straits "by a right line in a southerly direction to the channel of Pocomoke bay or river nearest to Cedar straits; thence up, by and with the channel of the Pocomoke bay or river nearest to a point thereon, opposite to the place on the east shore of said river ascertained by De La Camp," &c.; "the right of fishing and taking oysters in Pocomoke sound or bay and river to be common to the citizens of both states and subject to concurrent regulations by the two states; or if preferred by the commonwealth of Virginia, this latter provision may be omitted."

And that Maryland's claims to jurisdiction over the whole or a large part of the Pocomoke, has been recognized by Virginia herself, as entitled (until the true boundary between the two states is ascertained and established by some competent tribunal) to respectful consideration is shown by the Compact of 1785, section 10th, which secures the trial of offences committed "on that part of the Pocomoke river within the state of Virginia, or where the line of division between the two states is doubtful," in some cases to the tribunals of the one state, and in other cases to those of the other according to certain rules therein established. And the *bona fides* of the claim, if not the existence of the right, set up by Maryland on behalf of her citizens to take fish and oysters in common with the citizens of Virginia in the Pocomoke, has also been recognized by the general assembly of your state. As instances of this kind of legislation, I refer to chapter 255 of the act passed in 1819, by the general assembly of your state, which reserves the right of "taking and transplanting of oysters as heretofore from the waters of the Potomac and Pocomoke where these rivers are the common territory of the states of Maryland and Virginia; and so title 29, chapter 101, section 59 of your Revised Code, which, while forbidding under a heavy penalty, any person, other than a citizen of Virginia, from taking terrapins in the rivers Pocomoke and Potomac, provides that "this section shall not extend to a citizen of Maryland taking terrapins in the said mentioned waters."

The Lovett and Davidson line, as you are well aware, extends no further on the east than the centre of Cedar straits, and fixes no temporary boundary on the Pocomoke river, sound, or bay between the two states. It was the hope of the general assembly of Maryland, when proposing to the general assembly of your state, to submit the whole question of the disputed boundary between the two states to arbitration, that the general assembly of your state would take such action as should be deemed necessary to secure, pending the arbitration, "to the citizens of Maryland equal rights with the citizens of Virginia to take oysters and terrapins in the waters of Pocomoke bay, and sound, and river; and the verbal report of the Maryland commissioners on their return from your capital as to the general disposition shown by the individual members of your assembly to concede all that Maryland desired, strengthened that hope. When the act of your general assembly, providing for the appointment of arbitrators was laid before the general assembly of Maryland, although it was found to be silent in regard to the rights of citizens of Maryland in the Pocomoke, the general assembly of the latter state did not hesitate to pass a law identical in terms with the Virginia act; and believing that pending the arbitration, which is speedily and forever to settle all disputes as to the true boundary, Virginia would not jeopardize the peace of the two states by attempting by the use of armed force to maintain a claim to the exclusive right to take fish and oysters in the Pocomoke, and to deprive the citizens of Maryland of its use in common with the citizens of Virginia, and which they had so long enjoyed and claimed as their right, the Maryland assembly made no provision for securing what it believed to be the right of Maryland citizens therein.

In consideration, then, of the fact that the persons arrested by the armed canoe and placed in Drummondtown jail, were only taking oysters where from

time immemorial citizens of Maryland, sustained by the belief of their state in the right to do so, have been accustomed to take them; and of the fact that all disputes will soon be set at rest by the decision of the arbitrators already selected; and that any attempt, by either state, to assert, pending said arbitration, a claim by force is likely to endanger the friendly relations which have long existed, and which should always be cultivated between our states, and perhaps, result in serious loss of life; and of the further fact that when in last March I received information from you that citizens of Maryland had trespassed on the Virginia side of the Lovett and Davidson line, I forthwith, without waiting to ascertain for myself the existence of the grievances of which your officers complained, issued my proclamation warning the citizens of Maryland that the Lovatt and Davidson line must be respected by them :

I respectfully request that you will promptly direct the release from imprisonment of the citizens of Maryland arrested while taking oysters in the Pocomoke, and now in Drummondtown jail; and that the boats seized at the same time, and now detained at Onancock, may be restored to their Maryland owners.

And I further request that if there be in existence a law of the state of Virginia which is intended to secure to the citizens of your state the exclusive right of taking fish, oysters and terrapins in the Pocomoke river, sound or bay (the right to pass and enforce which is denied by the state of Maryland), that no attempt may be made to enforce said law, pending the decision of the arbitrators as to the true boundary between the states.

Or, if you prefer it, I ask that a temporary line of division between the two states in the waters of the Pocomoke may be agreed upon, to be binding on both states, until the ascertainment by the arbitrators of the permanent boundary line.

I further request to be informed whether or not the commander of said armed canoe, when firing upon and severely wounding a citizen of Maryland, under the circumstances already detailed, was acting under authority conferred by the laws of Virginia, or in excess of said authority and of his instructions?

Accompanying this letter will be found several affidavits detailing the circumstances attending said shooting, and showing that until the late war there was no attempt to interfere with Marylanders taking fish, oysters and terrapins in all parts of the Pocomoke, in common with Virginians. Because of the delay incident to obtaining these affidavits this letter has not been earlier written.

Desiring most sincerely that the excitement which has been engendered in southeastern Maryland, by the arrest of Maryland oystermen in the Pocomoke may be speedily allayed by some settlement, alike fair and honorable to both states, and which will restore and strengthen the friendly relations which it is my hope may ever exist between our respective states, and with sentiments of the highest regard for you, personally,

I am, sir, your obedient servant,

JAMES BLACK GROOME,
Governor of Maryland.

AFFIDAVITS

ACCOMPANYING

GOVERNOR GROOME'S LETTER.

Testimony of witnesses to the shooting of Thomas Riggin in Pocomoke sound, on the 11th of September, 1874 :

Deposition of Charles Walston.

Charles Walston being duly sworn says :

On the 11th of September, 1874, I was in Pocomoke sound, on the northwest side of the channel, near Broad creek. I saw Thomas Riggin. When I first saw him he was on the northwest side of the channel, about a quarter of a mile northeast from Cedar straits, within three-quarters of a mile of the Cedar island marsh shore, and coming towards Crisfield in his canoe. I was near the said Riggin, and was also coming to Crisfield.

I saw another canoe with about ten or twelve men in it, but did not know any of them. Mr. Riggin hove to and sat still in his canoe, and a gun was fired at him from the other canoe, which then turned away and left him. About one hour or more after the gun was fired, seeing Mr. Riggin did not move, and his canoe drifting about with the wind and tide, I and several others went to it where we found him in a sitting posture, covered with blood, his head leaning on the wash-board, and helpless. I helped others to put him on another boat, which brought him to Crisfield.

Sworn to before me, September 12th, 1874.

J. H. GOODSSELL, J. P.

Deposition of Charles J. Ford.

Charles J. Ford being duly sworn says :

I was in Pocomoke sound on the 11th of September, 1874; I saw Thomas Riggin there, he was on the northwest side of the channel, about three-quarters of a mile from the marsh shore, and three-quarters of a mile from Broad creek; he was on his way to Crisfield; I saw a canoe following him with about ten men in it; it was painted yellow; did not know any of the men; when they came within about forty yards of Mr. Riggin I heard the report of a gun from

the yellow canoe; was looking at Riggín when the gun was fired; his hat flew off and his head fell upon the wash-board; the men in the yellow canoe then turned away and left him.

Sworn to before me, September 12th, 1874.

J. H. GOODSELL, J. P.

Deposition of Charles W. Riggín.

Charles W. Riggín being duly sworn says :

That on the 11th day of September, 1874, I was in Pocomoke sound; I saw Thomas Riggín there; he was oystering in his canoe on the northwest side of the channel, abreast of the northeast side of Cedar straight and about a half mile from the Cedar island marsh shore; about two o'clock P. M., he was about a quarter of a mile from the southern mouth of Broad creek, on his way to Crisfield; there was another canoe near him with ten or twelve men in it; I saw one of them have a gun in his hand; soon after I heard the report of a gun from that canoe; I was not more than fifty yards from where the gun was fired; Thomas Riggín threw up his hands and told me to heave to for they had shot him; one of the men (John Barnes) aimed a gun at me, and told me to heave to; I did so; they then ordered me to go back to one of their boats; I did so; they turned away from Mr. Riggín, leaving him leaning on the wash-board of his canoe, which drifted ashore on the Cedar island marsh; their canoe was painted a sort of flesh color; I know several of the men by sight, but don't know any one by name, except John Barnes; some of them are called "Lewis"; the party that fired on Mr. Riggín assisted in taking my canoe and four other boats and crews to Hunting creek, Accomac county, Va.; I escaped from these the same night, and came to Crisfield in my canoe.

Sworn to before me, September 11th, 1874.

J. H. GOODSELL, J. P.

Deposition of William P. Horsey.

William P. Horsey, of Crisfield, who has just returned from Drummondtown, Va., has learned the names of four more of the men who were in the canoe which fired on Mr. Riggín, viz: William Sreeves, Tully Sreeves, Charles Justis, and Revel P. Middleton; he understood the last named is the man who fired the gun; he reports four Maryland oystermen in Drummondtown jail.

J. H. GOODSELL, J. P.

Deposition of William D. Wards.

William D. Wards, of Daniel, being duly sworn says :

I was in Pocomoke sound on the 11th of September, 1874; I saw Thomas Riggin there; he was sailing in his canoe towards Broad creek; when he was within about a quarter of a mile of the southern mouth of said creek, I heard the report of a gun fired from another canoe, which was about forty yards distant from him; I don't know who was in the canoe from which the report came; about one hour or more after the gun was fired I went to Mr. Riggin's canoe, which had drifted ashore on Cedar island marsh; I found him laying in the canoe, with his head leaning on the wash-board; his clothes were soaked with blood, and the part of the canoe where he lay, for six or eight feet in length, was literally covered with blood; I took his canoe off shore and helped others to put him on board a vessel, which brought him to Crisfield; I took his canoe to Crisfield.

Sworn to before me, September 11th, 1874.

J. H. GOODSELL, J. P.

Deposition of Wm. W. Evans.

Wm. W. Evans, being duly sworn, says:

I saw Thomas Riggin in Pocomoke sound on the 11th of September, 1874; he was sailing in his canoe towards Broad creek; another canoe, with about ten men in it, was sailing along near him; when they arrived within about three-quarters of a mile of the mouth of Broad creek, I saw the flash and smoke and heard the report of a gun from the other canoe, and saw Mr. Riggin's hat fly off; he settled down in the canoe, which drifted in towards the marsh shore; I did not see him again until he was brought to Crisfield; I did not know any of the men in the other canoe.

Sworn to before me September 11th, 1874.

J. H. GOODSELL, J. P.

Deposition of Thomas Riggin.

Thomas Riggin, being duly sworn, says:

On the 11th day of September, 1874, I was oystering in Pocomoke sound, about an east course from Cedar straights, and about one and a half miles from the shore of Cedar island marsh; about one or two o'clock, P. M. I started for Crisfield; I saw eight, ten or more men in a canoe following me; I don't know who they were; the canoe was painted a sort of flesh color; when they came within about forty yards of me, one who was "crouched" down in the bow of

the canoe, raised upon his knees and fired at me; I felt the shot strike in my head, face, and breast; Charles Riggan was near; I told him I was shot; I knew nothing after that, until I heard a ripple like the water on the edge of the marsh, from which I thought I had drifted ashore; soon after that I saw the top of a sail passing, and called for help; some men came to me, and took me to Crisfield.

Sworn to before me September 14th, 1874.

J. H. GOODSELL, J. P.

Deposition of Dr. G. T. Atkinson.

Dr. G. T. Atkinson, being duly sworn, says:

I have seen Thomas Riggan, and, on examination, found him suffering from ten or twelve heavy gunshot wounds in the right and left breast, neck, face and scalp; his condition is distressing and painful; the shot penetrated the flesh about one inch; the prognosis is favorable.

Sworn to before me September 14th, 1874.

I, J. H. Goodsell, one of the justices of the peace of the state of Maryland, in and for Somerset county, do hereby certify that the foregoing testimony was sworn to by the several named witnesses in my presence, and written down by myself.

J. H. GOODSELL, J. P.

STATE OF MARYLAND,

SOMERSET COUNTY, *To-wit:*

I hereby certify that on this 12th day of September, 1874, before me, the subscriber, a justice of the peace of the state, in and for the county aforesaid, personally appeared Thos. Riggan of the said state and county, and made oath in due form of law to the following interrogatories, to-wit:

Interrogatory 1st. Where were you on Sept. 11th, 1874?

Ans. I was in Pocomoke sound not exceeding any time of the day more than one mile and a half from the Maryland shore, that is the westward side.

Inter. 2nd. What happened to you while in said sound?

Ans. About one o'clock there was a canoe approached me from a place known as the "sand bar," on the Virginia side of the sound, with 12 or 13 men into her, within about 40 yards and ordered me to "heave too," and fired upon me immediately, not giving me time, either by word or action, to comply before they fired upon me, and then left me to my fate.

Inter. 3rd. Was there any person in your canoe to assist you beside yourself?

Ans. No person but myself.

Inter. 4th. How long were you alone before any person came to your relief?

Ans. It was about two hours before any person came to my relief, that is to get me home; and it was about four hours from the time I was shot before I received any medical aid.

Inter. 5th. Was you taking or catching oysters at the time you were shot?

Ans. I was not.

Sworn before—

THOS. K. WHELTON, J. P.,
Crisfield, Md.

STATE OF MARYLAND,

SOMERSET COUNTY, *To-wit:*

I hereby certify that on this 24th day of Sept., 1874, before me, the subscriber, a justice of the peace of the state and county aforesaid, appeared Charles J. Ford, and made oath in due form of law that at the time that he was fired upon by some person on board of Oyster Inspector Curtis's boat, Thomas Riggins was about three-quarters of one mile from the mouth of Broad creek, in a southeast course therefrom.

J. H. GOODSSELL, J. P.

Deposition of Isaac W. Cullen.

I, Isaac W. Cullen, am fifty-nine years of age, was born in Somerset county, state of Maryland, near the Pocomoke sound, and within sight of said sound, and have resided there ever since. I commenced oystering in the Pocomoke sound with my father when a small boy, and oystered there until after the beginning of the war, in company with Maryland and Virginians, and on both sides of the channel of said sound, and up the sound as far as oysters grow. I, nor no Marylanders was ever disturbed or arrested by the Virginia authorities prior to the war. I never knew or heard of oysters being found above Williams Point, in the Pocomoke river; said "point," being at the head of Pocomoke sound. I, with my brother, about the year 1832, caught the first load of oysters with dredges in Pocomoke sound; shortly after that time I have knowledge of a vessel coming from New Jersey to oyster in Pocomoke sound, which was driven off by the Virginia authorities; after which, I went on board Virginia boat in company with the officer of Virginia boat, when he acknowledged that we (the Marylanders) had equal right to catch oysters in the Pocomoke sound with Virginians, but the citizens of any other state had no such privileges; and we did continue to work in said sound for many years (as I have before stated) without being molested.

ISAAC W. CULLEN.

STATE OF MARYLAND,

SOMERSET COUNTY, *To wit:*

I hereby certify that on this 28th day of September, 1874, personally appeared Isaac W. Cullen before me, the subscriber, one of the justices of the peace for the county and state aforesaid, and made oath in due form of law, that the matters set forth in the foregoing statement are true and correct to the best of his knowledge and belief.

J. H. GOODSELL. [Seal.]

CRISFIELD, MARYLAND,

SEPTEMBER 28TH, 1874.

I hereby certify that Isaac W. Cullen and William Sterling, who have made affidavits before me this day, which are herewith enclosed to you, are well known to me; they are gentlemen of good standing for truth and veracity. Both of them are merchants, one in this town, and the other near the Pocomoke sound. Mr. Byrd is represented on good authority to be a man of truth.

Witness my hand and seal.

J. H. GOODSELL. [Seal.]

To his excellency, Governor GROOME.

Deposition of William Stirling.

I, William Stirling, am near sixty years of age, have resided in Somerset county, Maryland, from birth, and near the Pocomoke sound; I have followed oystering in said sound for fifty years or more, and on both side of the sound, in company with Virginians and Marylanders; I have never known of a Maryland man being arrested for oystering in said sound by Virginia authorities before the late war of 1861; I never was disturbed there by Virginia authorities; I have known of some Philadelphians being arrested there for oystering; I have never heard of any oysters growing or being caught above Williams Point, which is at the mouth of the Pocomoke river, where it empties into the Pocomoke sound. At the beginning of the aforesaid war both Maryland and Virginia oystermen were oystering on both sides of the said sound and using the same in common from shore to shore.

WILLIAM STIRLING.

Sworn to and subscribed before me this 28th day of September, 1874. Witness my hand and seal.

J. H. GOODSELL. [Seal.]

Deposition of David Byrd.

I, David Byrd, am seventy years of age, was born in Somerset county, state of Maryland, near the Pocomoke sound, and have resided there ever since; I have followed oystering in Pocomoke sound for fifty years; have oystered with Virginians and Marylanders on both sides of the said sound, and have no knowledge of any arrests being made of Marylanders by Virginians, or any threats or disturbances made by Virginia authorities before the beginning of the war. I have worked in company with my relatives and friends and many citizens of Somerset county, and none of them to my knowledge have been disturbed prior to the war. I have never known of any oysters being caught in Pocomoke river, above Williams Point, which is at the head of Pocomoke sound.

DAVID BYRD.

STATE OF MARYLAND,

SOMERSET COUNTY, *To wit:*

I hereby certify that on this 28th day of September, 1874, personally appeared David Byrd before me, the subscriber, one of the justices of the peace in and for the state and county aforesaid, and made oath in due form of law that the matters set forth in the foregoing statement are true and correct, to the best of his knowledge and belief.

Witness my hand and seal.

J. H. GOODSELL. [Seal.]

ADDITIONAL CORRESPONDENCE.

Letter from Governor Kemper to Governor Groome.

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND, October 7, 1874.

His Excellency JAMES BLACK GROOME,
Governor of Maryland:

SIR:

Upon the receipt of your communication of the 2d instant, I promptly directed an investigation of the particulars to which you call my attention. As soon as the results of the investigation can be obtained, I shall respond fully to your several suggestions.

In the meantime, accept the assurance that all the authority of my office will be efficiently exerted to prevent any encroachment upon the rights of citizens of Maryland, by the officers, agents or citizens of this state, as well as to correct and redress such encroachments, if they shall appear to have occurred, in the past.

The constitution and laws of this state do not allow any intervention on the part of the executive in the proceedings of a court, in respect to any cause or prosecution pending therein, nor can executive clemency be constitutionally extended to a party prosecuted for violation of law until after conviction. Having no power to go further at present, I have urgently recommended and requested the circuit court of Accomac county to comply with your wishes by postponing the trial of the causes in which the citizens of Maryland are held for trial; and if now, or at any time, a conviction should occur, and an application for the interposition of executive clemency should be brought to my attention, the greatest respect would be rendered to the recommendations and wishes of your excellency in the premises.

With the earnest purpose and desire to promote not only peaceful, but harmonious and cordial relations between the citizens of Maryland and Virginia, and with assurances of high personal regard for your excellency,

I have the honor to be,

Very respectfully, &c.,

JAMES L. KEMPER.

Letter from Judge Garrison to Governor Kemper.

ACCOMAC C. H.,
OCTOBER 6TH, 1874.

Governor KEMPER :

MY DEAR SIR :

Your communication of the 2d instant, in relation to certain citizens of Maryland charged with a violation of the oyster laws of the state, did not reach me until to-day, and I hasten to reply. The offence with which these parties are charged is a misdemeanor, and therefore, under our present statute, the county court has exclusive jurisdiction of the matter. The parties were indicted on the first day of my present term, but the cases were certified by me to the county court for trial. The next term of the county court will commence on the last Monday in this month, at which time I suppose the cases will be called. I have handed your letter to the judge of the county court for his consideration, and should you wish to communicate further, you had better address to him, as I will leave here in a few days. I know nothing about the case personally, but from representations made to me by officers whose duty it is to execute the law, it was a plain violation of the statute and of the agreement between the two states, and at a time, too, when even Virginians had no right to dredge for oysters.

With the kindest regards for you personally and officially, and with pleasant recollections of our former association in the house of delegates, during the trying times of the war,

I remain,
Yours, &c.,

GEORGE T. GARRISON.

Letter from Governor Kemper to Attorney for the Commonwealth of Accomac County.

OFFICE OF SECRETARY OF THE COMMONWEALTH,
RICHMOND, Oct. 10th, 1874.

SIR:

By direction of his excellency the governor, I respectfully request your attention to the 22d section of the "act for the preservation of oysters, and to obtain a revenue for the privilege of taking them within the waters of the commonwealth, approved April 18th, 1874 (see Acts of Assembly for 1874, page 243). It will be seen that by this section the privilege of taking oysters in the waters of the Potomac and the Pocomoke is extended to the citizens of Maryland.

The governor of Maryland has just communicated to the executive of this state the fact that Edward Horsey, John H. Garrison and Henry Curtis, citizens of Maryland, are now in the jail of Accomac, held for trial on the charge of taking oysters in the waters of the Pocomoke, since the passage of the act

above cited. If the allegations of the governor of Maryland are true, I need not say that the parties named have violated no law of this state, in taking oysters in the waters of the Pocomoke, and their further detention would, in the judgment of the governor of Virginia, not only be demanded by no end of justice, but would tend to impair the friendly relations which should be carefully cultivated and preserved between the states and their citizens.

If the facts are as represented by the governor of Maryland, and if the parties named are still detained in the jail of Accomac, then Governor Kemper is of opinion that the comity due to an adjoining state as well as the requirements of common justice dictate the abandonment of the pending prosecution; and he instructs me to say that if the circuit court of Accomac is not now in session, so as to admit of the entering of an immediate *nolle prosequi*, and if it be impracticable to secure a special term of that court for the purpose, the attorney-general suggests that the prompt discharge of the prisoners may be effected by means of a *habeas corpus* sued out in their behalf.

The governor deems it of great importance, in case the facts are as represented to him, that the prisoners shall be discharged without delay, and your prompt action in the premises is respectfully and urgently invoked.

If the facts are not such as have been represented to the governor, he requests that you will at once forward to this office an accurate statement of the details.

I am also instructed to bring to your attention the case of one Thomas Riggan, a citizen of Maryland, who it is charged by the authorities of that state, while oystering, as he had the privilege to do, in the waters of the Pocomoke, on or about the 11th September last, was, without provocation, fired upon and severely wounded by one of the men in an armed canoe commanded by Wm. P. Custis, an oyster-inspector of the state of Virginia. It is stated that Wm. Sreeves, Tully Sreeves, Charles Justis, John Barnes, and Revel P. Middleton, were among those composing the crew of the armed canoe on the occasion, and that Revel P. Middleton discharged the shot that wounded Thomas Riggan.

If the wounding of Riggan occurred in the manner and under the circumstances here detailed, the governor feels that a flagrant outrage has been committed upon an unoffending citizen of Maryland, and the laws of Virginia have been so violated as to call for the prompt and exemplary punishment of the guilty. He considers that the due enforcement of justice and the preservation of good relations between the two states demand that the facts shall be thoroughly investigated, and that any and all parties, for prosecuting whom probable cause may appear, shall at once be arrested and dealt with according to law.

I have the honor to be,

Very respectfully,

Your obedient servant,

JAS. McDONALD,

Secretary of the Commonwealth.

To the attorney for the commonwealth, Accomac C. H., Va.

Letter from Governor Kemper to Governor Groome.

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND, October 10, 1874.-

To His Excellency JAMES BLACK GROOME,
Governor of Maryland:

SIR:

Since acknowledging your communication of the 2d instant, I have adopted all available means for redressing the wrongs which appear to have been perpetrated in the waters of the Pocomoke by citizens of Virginia upon citizens of Maryland, and I shall exert the utmost powers of my office to prevent a recurrence of such wrongs in the future.

Upon some of the questions presented in your communication, my conclusions are different from those indicated by your excellency.

In that communication you say that "Maryland has always claimed for her citizens and they have always exercised the right to take oysters, in common with the citizens of Virginia, in every part of the Pocomoke river, sound or bay;" that "the *bona fides* of the claim, if not the existence of the right, set up by Maryland on behalf of her citizens to take fish and oysters, in common with the citizens of Virginia, in the Pocomoke has also been recognized by the general assembly of (Virginia);" that "it was the hope of the general assembly of Maryland, when proposing to the general assembly of (Virginia) to submit the whole question of disputed boundary between the two states to arbitration, that the general assembly of (Virginia) would take such action as should be deemed necessary to secure, pending the arbitration, to the citizens of Maryland equal rights with the citizens of Virginia to take oysters and terrapins in the waters of the Pocomoke bay and sound and river; and the verbal report of the Maryland commissioners on their return from (Virginia) as to the general disposition shown by individual members of (the Virginia) assembly to concede all that Maryland desired, strengthened that hope;" that "when the act of (the Virginia) general assembly providing for the appointment of arbitrators was laid before the general assembly of Maryland, although it was found to be silent in regard to the rights of citizens of Maryland in the Pocomoke, the general assembly of the latter state did not hesitate to pass a law identical in terms with the Virginia act; and believing that pending the arbitration, which is speedily and forever to settle all disputes as to the true boundary, Virginia would not jeopardize the peace of the two states by attempting, by the use of armed force, to maintain a claim to the exclusive right to take fish and oysters in the Pocomoke and to deprive the citizens of Maryland of its use in common with the citizens of Virginia, and which they had so long enjoyed and claimed as their right, the Maryland assembly made no provision for securing what it believed to be the right of Maryland citizens therein." And I understand, not only from the foregoing extracts, but from the general tenor of that communication, that the general assembly of Maryland and your excellency considered

it incumbent, and equally incumbent, upon the two states to secure to the citizens of both the equal rights "to take oysters and terrapins in the waters of the Pocomoke bay and sound and river," pending the arbitration.

I am happy to assure your excellency that I very cordially concurred in the "general disposition shown by the individual members of (the general assembly of Virginia) to concede all that Maryland desired" in the premises, as recited in the verbal report of the honorable commissioners of Maryland on their return from this capitol; and it was the confident expectation of all the authorities of this state, that whatever action might be taken by Virginia to secure to the citizens of the two states equal and common rights, in waters claimed by both, corresponding action would unhesitatingly be taken by the state of Maryland in order to completely effectuate the common object to which the interest and expressed wishes of both states were equally directed. Pursuant to the understanding thus had and manifested on the part of "individual members" of the general assembly of Virginia, the provision was enacted, which is to be found in section twenty-two of the "act for the preservation of oysters and to obtain revenue for the privilege of taking them within the waters of the commonwealth," approved April 18th, 1874. See Acts of Assembly for the state of Virginia for the year 1874, page 243. It will be observed that under the operation of this provision, the privilege of taking oysters and other shell-fish is accorded to citizens of Maryland, equally with citizens of Virginia, in the waters of the Potomac as well as the Pocomoke, and the privilege is not limited by the terms of the statute to the pendency of the arbitration.

Assuming that the state of Maryland as well as Virginia has taken such action as may be needful to protect the citizens of both states, in the equal and common use of all waters claimed by both states, I am constrained to dissent from the suggestion of your excellency in respect to the necessity for the establishment of a temporary boundary line between the two states across the waters of the Pocomoke.

It will be seen that any such act of violence, as the one you recite to have been perpetrated upon Thomas Rigg in the waters of the Pocomoke, is a flagrant violation of the laws of Virginia, and I have directed prompt and vigorous steps to be taken for the arrest and prosecution of the offenders.

At the same time, I am employing all the authority of my office to effect the final discharge of the citizens of Maryland hitherto confined and held for trial in Accomac county in this state.

With the assurance that this state will omit no proper effort to preserve the most cordial relations between the citizens of Maryland and Virginia;

I have the honor to be,

Very respectfully,

Your most obedient servant,

JAMES L. KEMPER.

Letter from Governor Groome to Governor Kemper.

STATE OF MARYLAND,
EXECUTIVE DEPARTMENT,
ANNAPOLIS, Oct. 12th, 1874.

SIR:

Yours of the 10th inst. reached me to-day. I am greatly gratified to learn that the acts of violence committed in the Pocomoke by officers or citizens of Virginia against the persons and property of citizens of Maryland, and to which I felt it my duty to call your excellency's attention, are in "flagrant violation of the laws of Virginia," and that you have directed prompt and vigorous steps to be taken for the arrest and prosecution of the offenders, and are "employing all the authority of your office to effect the final discharge of the citizens of Maryland, hitherto confined and held for trial in Accomac county," in your state. Although you do not say so in express terms, it follows from what you do say, that you are also endeavoring to procure the prompt return to their Maryland owners of the boats seized on the Pocomoke.

I need hardly assure your excellency that by the promptness with which you have invoked the authority of your high office to redress the wrongs to citizens of Maryland, complained of by me, you have done much to restore and strengthen the relations of amity between the citizens of our respective states.

You say that you are "constrained to dissent from" my suggestion that we establish "a temporary boundary line between the two states across the waters of the Pocomoke." By reference to my former letter you will see that that suggestion is made conditional upon the existence of a law of Virginia "intended to secure to the citizens of your state the exclusive right of taking fish, oysters and terrapins in the Pocomoke," and the enforcement of which your excellency might not feel at liberty wholly to suspend. At the time of writing that letter, I was unable to procure in the Maryland state library a copy of the Acts of the last session of your general assembly, and the passage of the "act for the preservation of oysters and to obtain revenue for the privilege of taking them within the waters of the commonwealth" of Virginia, never having been communicated to me, I was ignorant of its existence, and inclined to believe that the arrest of citizens of Maryland, and the capture of their vessels in the Pocomoke, must be under color of some law of your state. Had I known the provisions of the act last referred to, I would not have suggested the establishment of a temporary boundary line, as I think it better for the citizens of both Virginia and Maryland that equal privileges should be accorded to the citizens of each of said states in every part of the Pocomoke.

The general assembly of Maryland desired to make its legislation in regard to the disputed boundary conform to the legislation of your state. When, therefore, it found no provision in the act of your assembly, providing for the arbitration as to the boundary, recognizing citizens of Maryland as entitled to equal privileges with the citizens of Virginia in the Pocomoke, it concluded that your assembly preferred to take no action in relation to that body of water,

and therefore adjourned without taking any action itself, twelve days before the Virginia act became a law.

I have no hesitation, however, in making the pledge for the authorities of Maryland, that until the legislature of this state assembles, and has an opportunity to recognize in terms the equal privileges of citizens of Virginia with citizens of Maryland, to take oysters, terrapins and fish in all parts of the Pocomoke, that said privilege will be conceded and respected by said authorities.

In the confident expectation that at a very early day I will be informed of the release of the citizens of Maryland, now confined in Drummondtown jail, and of the restoration to their Maryland owners of the boats seized on the Pocomoke, and that your prompt action in directing the prosecution of the parties guilty of firing upon Thomas Riggins, whose wounds may yet result in his death, will prevent like wrongs to citizens of Maryland in the future,

I have the honor again to declare myself,
Your obedient servant,

JAMES BLACK GROOME.

Letter of Governor Kemper to Attorney for the Commonwealth for Accomac county.

COMMONWEALTH OF VIRGINIA,

GOVERNOR'S OFFICE,

RICHMOND, October 15, 1874.

*To the Attorney for the Commonwealth
for Accomac county:*

SIR:

Your attention is respectfully called to the enclosed affidavits, transmitted to this office by the governor of Maryland, having relation to alleged wrongs perpetrated by citizens of Virginia upon citizens of Maryland, in the waters of the Pocomoke, on the 11th of September last.

Comity to Maryland and the prevention of ill-feeling between the two states demand that the alleged violation of our own laws be vigorously and promptly investigated by the proper authorities of this state. Without a knowledge of all the facts, it is impossible for me to say, nor can it be my province to determine, how far or whether the laws of Virginia were violated by our citizens in the case referred to. I am advised by the attorney-general, that under the 22d section of the act of assembly, approved April 18th, 1874, (to which your attention was called in a previous letter) citizens of Maryland had the same right, which citizens of Virginia had, to take fish and oysters in the waters of Pocomoke bay or sound or river, on the 11th of September last. Whether Thomas Riggins and the other citizens of Maryland, named in the affidavits, were on the 11th of September found to be doing any act which citizens of Virginia could not have lawfully done on that day in the waters of the Pocomoke, is not a question to be decided here, nor is it the only question to be determined in the

premises. Even if they were in the act of violating a law of this state, the parties, who are charged with firing upon Riggin and then leaving him wounded and bleeding, drifting at the mercy of the winds and the waves, could not be justified in resorting to such extreme and bloody violence in such case, if the facts occurred as alleged. The violence done Riggin, by whomsoever or under whatever circumstances done, ought to be rigidly investigated according to law. Any failure, on the part of the authorities of Virginia or of Accomac county, to promptly investigate the facts or to punish the guilty, if guilt exists, would seriously impair the good relations hitherto existing between Virginia and Maryland and prejudice our own best interests.

I earnestly bespeak your careful attention to this affair, and request to be informed from time to time of all the proceedings of the authorities of Accomac county in connection with it.

I am sir, very respectfully,
Your obedient servant,

JAMES L. KEMPER.

Letter from the Attorney of the Commonwealth of Accomac county to the Secretary of the Commonwealth.

ACCOMAC C. H., VA.,
OCTOBER 17, 1874.

HON. JAMES McDONALD,
Secretary of the Commonwealth, Richmond, Va.:

SIR:

Yours of the 10th October, written by direction of his excellency, Governor Kemper, came to hand on the 14th instant. After examining the statute referred to and investigating, as far as possible, the shooting of one Thomas Riggin, I reply, first. That the evidence before the magistrate of a violation of the provisions of the said statute by the parties now held to appear for trial, was conclusive. It was clearly shown that they were "other than citizens of this state," and that they were dredging in Pocomoke sound, waters heretofore conceded to Virginia by the Maryland authorities (see the proclamation of Governor Bowie in 1872). The fact of the parties not being citizens of this state was admitted, and the defense was simply that they were not then catching oysters. You will find that there is marked difference between Pocomoke *sound* and Pocomoke *river*. The sound has always been held as exclusively Virginia water, while the river, under the old compact, between the two states has been held in common for the purposes "of *fishing*."

So far as I am informed, no natural oyster rock has ever been known in the river, the mouth of which is well defined by a wide bar extending from shore to shore. From this fact, if these parties were dredging at all, and it was proven they were, they must have been in Virginia waters and amenable to any infraction of her laws. The statements made to the governor are decidedly at va-

riance with those as detailed not only by the parties making the arrest but by those of the parties arrested when examined by the committing magistrate. From all the facts, I respectfully submit to his excellency that I do not see how I can, in keeping with the duties required of me as commonwealth's attorney for this county, fail to do other than give these parties a speedy trial and a prompt prosecution; and I would submit, respectfully, for them, that the application for the writ of *habeas corpus*, as suggested, is beyond my official interference—resting in the discretion of the parties seeking relief. And

Second. That, so far as I can learn the facts connected with the shooting of Thomas Riggin, it was done by one of the men summoned by Captain Custis to assist in making the arrest, but not in his boat, and contrary to his explicit orders, that no gun should be fired. Captain Custis is a prudent man, for many years the efficient sheriff of our county, and, under no circumstances, would he have been a party to such an outrage upon any one as is represented to have been committed upon Riggin. In explanation of the violation of his orders, the reports are conflicting; one is that the discharge of the gun was accidental, the other, that it was to repel armed resistance, and that the wounded man would have been cared for but for the near approach of an overwhelming force from Maryland. I have not been able to learn which one of that boat's crew fired the gun, but the matter will be judicially investigated as soon as practicable.

Since the arrest of the parties, on the 11th of September, I will respectfully inform his excellency, that the Maryland steamer has frequented our waters, drawn a line of limit to the oystering operations of our people, far different from the Walker-Bowie line, and placed an armed sloop for its protection. This proceeding is regarded here as a gross violation, not only of *that comity* which has always existed between the oyster class of the two states, but the promises made by Governor Groome's predecessors. The class of citizens excluded from our waters by this late action of the Maryland authorities is such as are industrious, honest men, depending entirely upon the catching of oysters for a support, and if they are not speedily relieved of the restriction imposed by the armed force of Maryland much suffering must follow.

In conclusion, I will respectfully add that our oyster law is sadly deficient in many particulars, especially so in the protection it affords our citizens, and the early attention of the legislature is earnestly invoked by the oyster class for some permanent relief from the encroachments of non-residents. Maryland citizens rest secure in the enjoyment of these peculiar privileges behind the guns of a large steamer and seven sailing vessels, while Virginia oystermen have the private canoe of Captain Curtis to aid them in the exercise of their rights and to prevent violations of our laws. I will speedily inform his excellency of the action taken by the courts of the matters in question.

Very respectfully,

THOMAS H. BAYLY BROWNE,
Attorney for the Commonwealth, Accomac county.

Letter from the Attorney for the Commonwealth of Accomac County to Governor Kemper.

ACCOMAC C. H., VA.,
21st October, 1874.

To His Excellency JAMES L. KEMPER,
Governor of Virginia,
At Richmond, Va.:

SIR:

Yours of 15th inst. came yesterday, with enclosed affidavits, and in reply, respectfully say, that after a partial investigation of the "Riggin" affair, I forwarded on Monday a letter to the secretary of the commonwealth containing the facts as ascertained by me, together with my views of the whole matter, in substance as follows:

First. That the parties arrested on the 11th September, were "other than citizens of this state."

Second. That they were engaged in taking oysters in *Pocomoke sound* waters, heretofore conceded by the Maryland authorities to belong to Virginia.

The defence set up by these parties was that they were not dredging, and nothing more. The proof of their being engaged in taking oysters in the waters of Virginia was abundant before the committing magistrate.

As to the wounding of Riggin, I have written Mr. McDonald what facts, after a diligent search, have come to my knowledge. The difficulty is, that no arrest can now be made, because the warrant must be upon oath, which it is impossible to obtain. Our next grand jury will thoroughly investigate the matter.

The parties will be tried Monday next. If possible, I will see your excellency in person between now and then.

Yours, with much respect,

W. H. BAYLY BROWNE.

Letter from Governor Groome to Governor Kemper.

STATE OF MARYLAND,
EXECUTIVE DEPARTMENT,
ANNAPOLIS, Nov. 6th, 1874.

SIR:

I have been officially informed that notwithstanding the provisions of the 22d section of the "act for the preservation of oysters and to obtain revenue for the privilege of taking them within the waters of the commonwealth of Virginia, approved April 18th, 1874," and notwithstanding your efforts to procure the release of the citizens of Maryland, imprisoned in Drummondtown jail, for alleged violation of said act, and the restoration to them of their property, seized and held by the Virginia authorities, the court of Accomac county

has assumed jurisdiction to try Edward W. Horsey, John H. Garrison and Henry T. Curtis, three citizens of Maryland, for an alleged violation of said act, and has convicted and sentenced each of said defendants to forfeit and pay for the use of the commonwealth of Virginia, five hundred dollars, and the vessel, tackle, and appurtenances used by him at the time of the commission of the act whereof he has been convicted; and that each of said defendants is now imprisoned for the non-payment of the sum so forfeited by him, and the vessel, tackle, and appurtenances used by him are advertised to be sold by the sheriff of Accomac county, on the 14th instant.

Knowing perfectly well that you have endeavored to prevent this complication which, unless removed, threatens the most disastrous consequences to our respective states, I forbear to comment upon the course which the court of Accomac county has seen fit to pursue, or to intimate, at this time, what must be the ultimate course of the Maryland authorities, if the rights of citizens of this state in the Pocomoke, are not respected; and content myself with urgently requesting that you will promptly exercise, to their fullest extent, such authority and prerogatives as you possess, which may be necessary to procure the immediate release of the said citizens of Maryland from the forfeitures imposed upon them by the court of Accomac county, and to prevent any further interference by officers or citizens of Virginia with the citizens of Maryland, when engaged in common with the citizens of your state in taking oysters in the waters of the Pocomoke.

While renewing the assurance of my personal esteem, and my appreciation of your co-operation in the effort to preserve the harmony of our respective states, permit me, in view of the imprisonment of the Marylanders already mentioned, and of the early day fixed for the sale of their vessels, tackle, and appurtenances, to request that you will, at your earliest possible convenience, inform me what action, if any, you are authorized and willing to take in the premises.

An indictment is also pending in the court of Accomac county against another citizen of Maryland—a Mr. Lewis—for taking oysters in the Pocomoke. He was recently brought to trial, but the jury failed to agree.

I regret to have to inform you that Thomas Riggin has died from the effects of the wounds received when he was fired upon, by persons in the armed canoe, as heretofore mentioned in our correspondence. I presume it is only necessary that the authorities of Accomac county shall be informed of this fact, in order that they investigate the circumstances under which the killing took place, and vindicate the majesty of the law.

I am, sir, your obedient servant,

JAMES BLACK GROOME.

Letter from Governor Kemper to Governor Groome.

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND, *November 10th, 1874.*

To His Excellency, JAMES BLACK GROOME,
Governor of Maryland :

SIR :

I have the honor to acknowledge your communication of the 6th instant in reference to the recent conviction of citizens of Maryland in the county court of Accomac county, Va., on the charge of unlawfully taking oysters in the waters of Pocomoke sound, in Virginia.

As you have been hitherto advised, I concur in the view taken by your excellency, that the 22d section of the act of the general assembly of Virginia, approved April 18th, 1874, extends to citizens of Maryland, equally with those of Virginia, the privilege of taking oysters in the waters of the Pocomoke, and before the late trial and conviction, I communicated my construction of the act, together with that of the attorney-general of Virginia, to the proper officers and authorities in Accomac county, and I went as far as the powers of my office constitutionally extend, in efforts to effect the discharge of the defendants and the release of their property. As the laws of Virginia, regulating the exercise of the pardoning power, expressly deprive the executive of the power to remit fines and amercements, and thus prevent me from at once releasing the defendants and restoring to them their property, I have requested the attorney-general of this state to repair at once to Accomac county and to employ all available legal means for accomplishing that object. On his return I shall communicate the results of his efforts.

I presume it was through the inadvertent or accidental use of terms, which inaccurately express what I suppose to be the meaning of your excellency, that you speak of "the ultimate course of the authorities of Maryland, if the rights of citizens of (that) state in the Pocomoke are not respected"; for your communication elsewhere claims for citizens of Maryland, not a right, but the privilegé of taking oysters in the waters of Pocomoke by virtue of the 22d section of the Virginia act of the 18th of April last, which extends that privilege to citizens of Maryland. Nor do I suppose that your excellency proposes to enter at this time upon the discussion of any of the conflicting claims of right, on the part of our respective states, which have been remitted to the final arbitrament of a tribunal organized by the states themselves.

Your excellency will accept the assurance that until all the disputed questions shall have been finally settled by the pending arbitration, Virginia will not fail to accord full justice to citizens of Maryland in respect to every privilege secured to them by the laws of this state. If the mission of the attorney-general should prove unavailing, which I do not apprehend, the legislature will convene on the 2d proximo and may be expected to take all needful action in the premises.

I am advised that all proper means are being employed to prosecute efficiently those who caused the death of Thomas Riffin, and I am maturing measures for preventing like wrongs in the future, of which you will be duly informed.

I have the honor to be,

Very respectfully yours,

JAMES L. KEMPER.

Letter from the Attorney-General of Virginia to the Governor of Maryland.

BARNUM'S CITY HOTEL,

BALTIMORE, November 15, 1874.

His Excellency, Governor JAMES B. GROOME:

DEAR SIR:

I came from the county of Accomac (Va.) this morning, having gone there at the request of Governor Kemper, as attorney-general, in reference to our inter-state troubles which have arisen lately on the fishery rights and privileges in the Pocomoke. As it is highly desirable that the best understanding should exist between Maryland and Virginia on all subjects of common interest, I hoped to have met you here, and offered you in person such explanations as were proper to put the course of the Virginia government in the light in which it deserves to stand—that of a cordial desire to maintain, on the part of Virginia, the relations of amity and good feeling with her old and valued neighbor. I found that three citizens of Maryland (two white and one colored) had been sentenced by the county court of that county to fine and imprisonment, until the fine should be paid, and to the forfeiture likewise of the vessels used by them in taking oysters in the Pocomoke, in contravention of the law of Virginia. This conviction was had under a misconstruction, as I believe, of the laws of Virginia passed last winter, which in terms excepts from the prohibitory clause of the law, citizens of Maryland taking oysters in Pocomoke river. This was construed to refer to the river as distinct from the sound, where the parties were operating when taken, hence the conviction. It is not in the constitutional power of the governor of Virginia to release these fines and forfeitures. But the defendants were relieved from imprisonment, upon their proved inability to pay the fines. And as to the vessels, an arrangement was made, which was deemed satisfactory by Mr. Gunby, who represented the owners who were others than the accused. It was concluded to supercede and reverse the judgment in the case for palpable legal error in the proceedings; and in the meantime, as keeping and guarding the vessels would be very expensive, to permit them to be sold and purchased by the owners (which was done at an under value), the sheriff to retain the purchase money, pending the proceeding in error, and to pay it back to the purchasers when the judgment shall be reversed, of which reversal there can be no doubt. This course will be actively pursued, and promises, I am persuaded, a satisfactory issue.

With high respect, &c.,

R. T. DANIEL.

Memorandum.

GOVERNOR KEMPER:

I have just returned from my expedition, and enclose this rough copy of a letter to Governor Groome, which will explain my proceedings. The governor lives for the most part here, (at Barnum's) but went to Annapolis this morning so early that I failed to see him, though close on his track. Will call as soon as I get a moment.

Very truly,

R. T. DANIEL.

November 18th.

Letter from Governor Kemper to Governor Groome.

COMMONWEALTH OF VIRGINIA,

GOVERNOR'S OFFICE,

RICHMOND, November 30, 1874:

*To His Excellency, JAMES BLACK GROOME,**Governor of Maryland:*

SIR:

Communications addressed to this office from Accomac county, Virginia, allege that steamers and other armed vessels, belonging to the state of Maryland, occupy a portion of Pocomoke sound and forcibly exclude the citizens of this state from the waters so occupied. In view of the position heretofore taken by your excellency in favor of the common use and enjoyment of Pocomoke sound by the citizens of the two states, during the pendency of the arbitration to ascertain the true line of boundary, I cannot conclude that Maryland seeks to exclude citizens of Virginia from any part of those waters without information from your excellency to that effect. I request to be fully informed in the premises at your earliest convenience.

I propose to recommend to the general assembly of this state, the passage of an act expressly extending to citizens of Maryland the privilege of taking oysters in all waters claimed by both states including Pocomoke river and sound and bay, until the true line of boundary shall be established; but with the understanding that the state of Maryland shall by a like act accord the same protection to citizens of Virginia in the enjoyment of the same benefits. An assurance from your excellency that such reciprocal action will be recommended to the legislature of Maryland, and that citizens of Virginia will not in the meantime be molested or interfered with, while taking oysters in any part of Pocomoke sound, will greatly conduce to the preservation of that good will between the people of the two states, which we both desire to perpetuate.

I have the honor to be,

Very respectfully,

Your most obedient servant,

JAMES L. KEMPER.

Letter from Governor Groome to Governor Kemper.

STATE OF MARYLAND,
EXECUTIVE DEPARTMENT,
ANNAPOLIS, *December 4th, 1874.*

His Excellency, JAMES L. KEMPER,
Governor of Virginia :

SIR :

Your letter of the 30th ultimo reached this office by due course of mail. I was greatly surprised to be informed by it of the allegations of persons in Accomac county, Va., that steamers and other armed vessels belonging to the state of Maryland had occupied a portion of the Pocomoke sound and forcibly excluded citizens of Virginia from taking oysters in the waters so occupied. The board of commissioners of the state fishery force, which is composed of the governor, comptroller, treasurer, commissioner of the land office, and clerk of the court of appeals of this state, upon the receipt by me of your letter of the 7th of October last, instructed Captain Jesse K. Hines, who has the chief command and control of all the vessels composing the state fishery force of Maryland, not to permit any of said vessels to interfere in any way with citizens of Virginia taking oysters in any part of the waters of the Pocomoke. Upon the receipt of your letter, although feeling confident that Captain Hines and the deputy commanders under his control had not violated the instructions already mentioned, I deemed it but proper to communicate directly with him before making you any reply.

I have now the pleasure to enclose you a copy of Captain Hines' letter, which I hope will satisfy you that the complaints of any of your citizens that they had been excluded since the 8th of October last by armed vessels belonging to the state of Maryland from taking oysters in any part of the Pocomoke, are unfounded. I am gratified to learn from your letter that you propose to recommend to the general assembly of your state the passage of an act, which if adopted, will forbid any interference by citizens of Virginia with the citizens of Maryland when taking oysters in any waters claimed by both states, "until the true boundary line shall be established, but with the understanding that the state of Maryland shall, by like act, accord the same protection to citizens of Virginia in the enjoyment of the same benefits." The general assembly of Maryland will not again be in session until January 1876, and hence the act cannot be passed by Maryland until that time. That unless rendered unnecessary by the final decision of the arbitrators in the interval, as to the true boundary line, it will be promptly passed by our legislature when it again assembles, I have not the slightest doubt. In the meantime, knowing fully the views of the board of commissioners of the Maryland state fishery force, I can confidently promise you, that if what Maryland regards as the rights, (and you concede under your construction of your laws as the privileges) of Marylanders in the Pocomoke and other waters claimed by both states, are accorded without molestation, by the officers and citizens of your state to citizens of this state,

that no attempt will be made by the Maryland state fishery force to interfere in any way with citizens of your state in any part of said waters claimed by both states; and that the authorities of this state will endeavor to prevent all molestations and interference by citizens of this state with the citizens of your state in said disputed waters. Reciprocating your desire to preserve and perpetuate the relations of amity between the people of our respective states,

I am, with great respect,
Your excellency's most obedient servant,

JAMES BLACK GROOME.

STEAMER LEILA, S. F. FORCE,
December 2d, 1874.

His Excellency JAMES B. GROOME:

DEAR SIR:

In reply to your letter enclosing a copy of letter from Gov. Kemper of Virginia, dated November 30th, I have to say, that the reports made to him have no further foundation than this: When I failed (as I notified the board of fishery commissioners) to get an interview with Capt. Curtis of Accomac, after going down the Pocomoke three different times, and learning through one of my officers, who talked immediately with Captain Curtis, that Maryland oystermen would not be permitted to take oysters in the Pocomoke, I ordered Captain Miles's sloop—Bessie Woolford—with instructions to permit no one other than a Marylander, to take oysters north of a line drawn from the Davidson-Lovett line to the channel of the Pocomoke, which instructions he obeyed on the following Monday. But upon my reporting the matter to the board on the Wednesday of the same week, they ordered me to go at once to the Pocomoke and give instructions to Captain Miles to interfere with no Virginia oystermen in the Pocomoke sound, bay, or river, which I did on Thursday, the next day. On Friday, the 9th of October, I found a letter from you enclosing one from Governor Kemper, dated the 7th.

I have been in the Pocomoke but once since that time, and then only to see Captain Miles on the ordinary business of our force, and this was the week following. Captain Miles goes there very seldom, and then only to see that Maryland oystermen at work have their proper licenses, and no other boats of our force have been in those waters. And I do not think that any Virginian can be found who will say that either Captain Miles or myself *have* ever interfered with him. As for myself, my only communication with any person in Virginia boats has been to purchase from them some supplies.

With high regard,
I am yours,

JESSE K. HINES.

MEMORANDUM

BY THE

ATTORNEY-GENERAL FOR THE GOVERNOR.

The important statements of Governor Groome's letter are: I. That the imputed trespass was committed "on that side of the Pocomoke river, sound or bay (as it is variously termed) most remote from Accomac county, and within a mile of the nearest shore, which although of late claimed by Virginia, forms a part of the territory out of which the state of Maryland (which has always held it in actual possession, and subject to her jurisdiction) created Somerset county." II. "Maryland has always claimed for her citizens, and they have always exercised the right to take oysters, in common with the citizens of Virginia in every part of the Pocomoke river, bay or sound, and that claim never was, as I am informed and believe, disputed until during the late war. That Maryland still asserts her right to jurisdiction over a large part of the Pocomoke, is shown by resolutions passed at the last session of her general assembly which were laid before the general assembly of your state by the Honorable John M. Davis, Isaac D. Jones, and James M. Dennis." III. And that Maryland claims jurisdiction over the whole or a large part of the Pocomoke, has been recognized by Virginia herself, as entitled to respectful consideration (until the true bounds between the two states is ascertained and established by some competent tribunal) as is shown by the compact of 1785, section 10, in regard to the trial of offences committed "on that part of the Pocomoke river within the state of Virginia, or where the line of division between the two states is doubtful"; and "the *bona fides* of the claim, if not the existence of the right set up by Maryland to take fish and oysters in common with the citizens of Virginia in the Pocomoke, has also been recognized by the general assembly of your state. Code 1819, ch. 255; and Code 1873, ch. 101, § 59." IV. The Lovatt and Davidson line extends no farther than the centre of Cedar straits, and fixes no temporary boundary on the Pocomoke sound, river or bay between the two states. It was the hope of the general assembly of Maryland when proposing to the general assembly of your state to submit the question of boundary to arbitration, that the general assembly of your state would take such action as should be deemed necessary to secure, pending the arbitration, "to the citizens of Maryland, equal rights with the citizens of Virginia to take oysters and terrapins in the waters of Pocomoke bay and sound and river"; and the verbal report of the Maryland commissioners on their return from your capital

as to the general disposition shown by the individual members of your assembly to concede all that Maryland desired, strengthened that hope, and disappointment is expressed at the silence of the Virginia act of submission on that subject; yet it is said, Maryland did not hesitate to pass an act of submission to arbitration identical in terms with that of Virginia. And believing that Virginia would not, pending the arbitration, which is to settle forever all disputes as to boundary use an armed force to maintain an exclusive claim, and to exclude Maryland from the use of the river in common, Maryland took no means for securing to her citizens what they have so long enjoyed in common, and is believed to be their right.

I. The absolute and necessary connection of the claim of fishery in the Pocomoke with the claim to the soil of Somerset county, which makes its northern shore, is not perceived, as the two claims may exist independently of each other, and in different proprietors; just as Maryland claims all the river Potomac, while she concedes to Virginia title in the soil of its southern shore. If, however, it becomes necessary to examine the statements on this subject, it might be remarked that Somerset county was created (as appears by Maryland Councils' Proceedings, liber H. H., folio 268,) in August 1666; whereas the Calvert and Scarborough line, which ran the dividing line between the states "from the westernmost angle of Watkin's Point, *over Pocomoke river*" (giving, as is supposed, the part of the territory of Somerset county which borders on the sound to the Virginia side), was run afterwards—25th June, 1668. If that be the true dividing line (and it seems to have been so regarded by the coast-survey officer who surveyed it under the authority of the joint commission of the two states) then the result is, that all of the Pocomoke, above the point where that line crosses it, belongs to Maryland, and all below that line (with the territory on its northern shore) belongs to Virginia; including the part upon which the occurrence in question took place. And if it be true, that Maryland has nevertheless continued to exercise jurisdiction over that part of the territory of Somerset, which, under that agreement belongs to Virginia, the result of the pending arbitration will be, that she will have to abstain from it in future. Whether the whole body of water be variously called sound, bay or river, seems unimportant in fixing where the Calvert and Scarborough line crosses; though it will be seen that *river* is the word used in that agreement, and in the compact between the states in 1785, concerning its navigable waters.

II. As to the claim of Maryland to the common *right* with Virginia to fish in "*that part of Pocomoke river within the limits of Virginia*," (in the language of the Compact) it has never been conceded. The Compact nowhere concedes it. By the seventh section of that instrument, concerning the *Potomac* river, the right of fishing in the river "shall be common to and equally enjoyed by the citizens of both states," but it is silent as to the right of fishing in the Pocomoke, and that for the plain reason, that the part of that river "within the limits of Virginia," (supposed to be the part below the Calvert and Scarborough line) is wholly hers, was so then, and is now. It is true, that by the first article, the common right of Maryland vessels to navigate the Pocomoke is secured; but it will be seen that while under the ninth article, it is provided that light-houses, beacons and buoys, shall be erected at the joint expense of the states

between the sea, and the mouths of the rivers Potomac and Pocomoke, and on the Potomac, the section is silent as to the Pocomoke itself; for the navigable part of it was doubtless considered to be "within the limits of Virginia," and no more was conceded to Maryland in regard to it, than the right of free navigation which was extended alike to other waters of Virginia and qualified jurisdiction. But as it was doubtful (that is, could not be then pronounced by the negotiators with certainty at what point the dividing line passed *over* the river), the tenth section gives a common right of criminal jurisdiction on the river, in the qualified terms there employed; and it is quite illogical to infer, from this concession on the point of jurisdiction, the concession of the right of fishing, which is nowhere acknowledged, but is silently withheld. As to the assertion of belief that Virginia conceded this right to Maryland, "and never disputed it *until during the last war*," it will be found that every concession by Virginia on this subject before the war, flowed from the spirit of amity and sisterly regard merely; and it may be readily supposed, that during the war, she had a dispute on her hands which obliged her to forget any differences between herself and her sister state, however important they might have been. There is absolutely nothing on the subject, in her legislation or proceedings of any sort "during the war." Nor is it perceived how the line recommended for adoption by the general assembly of Maryland at its last session, "as the line of boundary," amounts to an assertion by Maryland of an exclusive claim "over a large part of the Pocomoke," if that is meant. It is one of several proposals for settlement which were made by the Maryland to the Virginia commissioners and rejected; and is the same, in terms insisted on, in the statement of their case, by the commissioners of Maryland as a "just and equitable compromise line." But it is said that Virginia, in several acts of her legislature, which are cited, has recognized the *bona fides* of the claim, if not the right of Maryland to the privilege now asserted. It is, however, obvious, that if Maryland has any *right* in the premises, it must rest upon independent title in herself, which she must show, not upon casual extensions to her of privileges by the voluntary enactments of another state, which have been at some times accorded, and at others withheld. Thus while in the act of 1819, (ch. 255) referred to, prohibiting the exportation of oysters from the waters of the state, an exception is made in favor of Maryland, and the *District of Columbia*, as to the waters of Potomac and Pocomoke, yet in the act of 1820, (ch. 23) the exception is expressly repealed. And in the act of March 14th, 1831, (ch. 45) another general law on the subject, it is omitted. But in the act of 1850-51, (ch. 64) it is again enacted, though omitted in the acts of 1872-73, ch. 333. Stress is laid on the circumstance that in the act of 1819, referred to, the privilege is given of taking oysters from the Potomac and Pocomoke "where those rivers are common territory to the states of Maryland and Virginia." But Maryland will scarcely insist on the literal interpretation of this expression, as she claims the exclusive right of territory in the Potomac, and Virginia may well refer it to that qualified jurisdiction over the Pocomoke, which is extended to Maryland by the Compact of 1785. But it imparts nothing in any view, being only a common instance of loose and unconsidered language.

III. The complaint of disappointment in the hope that Virginia would take measures pending the proposed arbitration, "to secure to the citizens of Maryland, equal rights with the citizens of Virginia to take oysters in the waters of the Pocomoke sound, bay or river," is entirely out of place. By reference to the 22d section, chapter 214 of the act of 1874 (page 243), it will be seen that the privilege of taking oysters in the Pocomoke is extended without limit as to time, to citizens of Maryland. But while some degree of self-complacency is expressed at the liberality of Maryland in passing the arbitration measure, even though disappointed as she supposed, in this, her just expectation, the enquiry never seems to have suggested itself, why, if Maryland has the common right she asserts in that river, she has done nothing to "secure to the citizens of Virginia equal rights," pending the arbitration, "with the citizens of Maryland to take oysters in the waters of the Pocomoke sound, bay or river"; and, why, she has never at any time extended to Virginia by her laws any fishing privilege whatever in her waters—measures which might not have been without effect in promoting "the friendly relations which have long existed and should always be cultivated between our states." As to the extent of the Lovatt and Davidson line, it is supposed to embrace all that is really in dispute between the states, and does not reach the Pocomoke for that reason. But the extension of that or any line on the Pocomoke would in any view be unnecessary, as Virginia has already extended the privilege Maryland desires in those waters, by the act of last session.

R. T. DANIEL.

FARTHER MEMORANDUM

BY THE

ATTORNEY-GENERAL FOR THE GOVERNOR.

Virginia claims exclusive property in all of the Pocomoke river and sound, which falls below the dividing line between the states, known as the Calvert and Scarborough line, run in the year 1668, by the representatives of the colonies respectively, and sanctioned by them and the king of England. (For the line, see Michler's Rept. pp. 11, 14.)

The Compact between the states (1785), while it does not trace this line, nor mention it, plainly recognizes the rights ascertained by it. What is the eastern terminus of this line, on the territory called Watkin's point, and where (in the language of the agreement of 1668,) it runs "over Pocomoke river," and where the line should begin at the mouth of Potomac river and run across the bay to Watkin's point—(whether from Smith's point on the south bank or Point Lookout on the north bank—in other words, to which state the river belongs) were disputed points, then as now. The framers of the Compact did not aim to settle territorial lines, but merely sought to regulate *navigation* and *jurisdiction* (as the title of their work shows), by an agreement, to be approved by both states "and not to be repealed by either, without the consent of the other." They forbore, therefore, to settle these "lines of division" and treated them as "doubtful."

But the exclusive right of Virginia in a part of the Pocomoke, is expressly asserted, and a right of navigation on that part by Maryland vessels, and other vessels trading with her, is conceded by Virginia to Maryland, while there is no reciprocation of any similar right by Maryland to her.

By the 1st section, Virginia "agrees that the waters of Chesapeake bay and the river Pocomoke, *in the limits of Virginia*, be forever considered a common highway, free for the use and navigation of any vessel belonging to the said state of Maryland or any of its citizens, or carrying on any commerce to or from the said state; "and also that the before mentioned parts of Chesapeake bay and Pocomoke river be free for the navigation of vessels from one part of Maryland to another." As to the Potomac, in which both states claim the property right, it is agreed by the 7th section, "that the right of *fishing* in the river shall be common to, and equally enjoyed by citizens of both states;" but there is no such stipulation in regard to the Pocomoke. Virginia conceded the right of navigation in this river to Maryland, and no more. It will be seen

that the word *river* is used to designate the whole subject of this stipulation; but to be effectual, it must be held to include the waters of the sound, either as part of the river or of the Chesapeake bay "in the limits of Virginia." The 10th section regulates the jurisdiction on these rivers and Chesapeake bay-- "on that part of the bay which lies within Virginia or where the line of division between the south point of Potomac river (Smith's point), and Watkin's point *may* be doubtful; and on the part of Pocomoke river within the limits of Virginia, or where the line of division between the two states is doubtful"—(points still disputed by Maryland.) Here, offences committed upon citizens of Maryland or Virginia by persons who are citizens of neither state, may be tried by the courts of either state; while offences committed by citizens of either state upon citizens of the other, shall be tried by the courts of the state to which the offenders belong. These regulations grow naturally out of the common use and navigation by the citizens of both states.

From an early period, each state protected its oysters from taking and exportation by *non-residents* by exclusive and prohibitory legislation; but it had been the practice, in the Virginia laws, to except from the prohibition citizens of Maryland taking oysters, not only in the Potomac where the right of fishery under the Compact is common, but in the Pocomoke where it is not. 2 R. C. 1819, p. 315; 1820, ch. 40, p. 39; 1831, March 24, p. 114, (a general law repeals previous laws) 1832-3, ch. 84, p. 53; 1845-6, ch. 104, p. 71; 1846-7, ch. 86, p. 71, (Code 1849, p. 452-5, 121;) 1850-1, ch. 64, p. 55; (Code 1860, p. 602, 522.) And in one instance, this exception was extended, as to the transportation, to any place in the District of Columbia (1818-19, ch. 32, p. 42.) It will be seen, however, that this privilege was always restricted to the *taking* of oysters; the privilege of *planting* was withheld. But in the act of 1852-3, ch. 141, p. 19, citizens of this state only, might take oysters with other instruments than common oyster tongs in the waters of Tangier and Pocomoke sounds. But the act of 1855-6, ch. 40, p. 156, (sect. 22) inflicts a fine on all non-residents taking oysters in Virginia waters, including the Pocomoke by name, and by the act 1872-3, p. 316, sec. 22, non-residents, without exception, are forbidden to oyster in Virginia waters.

It should be added, that in the absence of any established lines in these waters, and until they should be established, the officers entrusted with the enforcement of the laws of the two states, to avoid collision agreed on a line, which should be respected, in taking oysters in the bay and Tangier sound; the Lovett and Davidson line, afterwards sanctioned by joint resolution of the legislature, (Acts 1869-70, p. 518,) "until the correct line can be definitely settled." (This resolution also released persons who had been arrested as trespassers, &c.) This line, however, extended only to Cedar straits, upon Tangier sound near the southern end of Watkins' point; where it stopped of necessity, as its further protraction would have reached into Pocomoke sound, where the right of Maryland is wholly denied. Afterwards Captain Brown, charged with the enforcement of the Virginia law in these waters, agreed with the Maryland official provisionally to extend this line from Cedar straits into and across Pocomoke sound, as will be seen on the chart. Governor Walker, *it is said*, agreed to this and sanctioned what he had done, as will appear, *it is said*, by a correspondence preserved in

the state archives, and *it is said* that this protracted line was respected, while Brown continued in office.

At the last session of the legislature, application was made to that body to renew the former recognition of this privilege of citizens of Maryland to take oysters in the waters of Pocomoke. As the right to one-half of the river and sound where they are claimed as the dividing boundary between Somerset county, Maryland, and the county of Accomac, is a pretension of Maryland in the pending controversy, it is supposed that she asked this as matter of courtesy merely pending the controversy. It was accorded to her in these words: "But this section" (the 22nd) shall not extend to citizens of Maryland taking oysters in the said mentioned rivers (Potomac and *Pocomoke*)—1874, p. 242.

It is reported that in the arrests lately made on the Pocomoke, a man of the Maryland party was shot and has since died. If this violence was committed by a citizen of Virginia on a citizen of Maryland, and was illegal, the offender is triable, under the compact, in the court of Virginia "having cognizance of the offence." I could get no information on this subject when on the eastern shore; no complaint I think is likely to be made on the Virginia side, and it is singular that the Marylanders are silent.

I learned that on the trial, the evidence of the inspector was, that the arrest took place at the point covered by the letter O in the word "*sound*," on the chart, which would be a little on the Virginia side of the line sanctioned, it is said, by Governor Walker; but other evidence placed it considerably on the other side.

The conviction of the prisoners is said to have resulted from a construction which restricted the word *river* in the law of last session, to the meaning of river strictly; the sound was held not to be included, although to take oysters in the river is impossible, as there are none there.

R. T. D.

MEMORANDUM

BY THE

ATTORNEY-GENERAL FOR THE GOVERNOR

OF ALL

VIRGINIA ACTS ON THE SUBJECT.

Act February 12, 1819, (2 R. C. 1819, p. 315,) prescribes regulations as to exportation: "Provided always, that nothing in this act contained shall prevent the taking and transporting of oysters as heretofore from the waters of Potomac and Pocomoke, where those *rivers* are common territory to the states of Maryland and Virginia."

Act 1820-21, (ch. 40, p. 28, § 4,) imposes penalty on owners, &c., taking or carrying oysters out of the commonwealth without permit: Provided always, that nothing in this act contained shall prevent the taking and transporting of oysters as heretofore from the *waters* of Potomac and Pocomoke where those *rivers* are common territory to the states of Maryland and Virginia.

Act March 24, 1831. (Sup. 504, ch. 401,) 1. Be it enacted, That no person whatever, other than an actual inhabitant and resident of the commonwealth of Virginia, shall at any time catch or take oysters in any of the waters of Virginia, except in *such rivers and such portions thereof* as are common property to this and some other state."

February 28, 1833, (ch. 84, p. 51.) 1. That it shall not be lawful for the hands or crew of any vessel not owned *bona fide* by an actual inhabitant and resident of this commonwealth, who shall have resided therein at least twelve months, or by a person who had made a declaration of his intention to become a citizen in due form of law, and shall also actually be a resident of the state, to take or catch oysters in any of the waters of Virginia, *except in such rivers and in such portions thereof* as are common property to this and some other state."

1845-6, (ch. 104, § 1, p. 71.) That no person whatever, other than an actual resident of Virginia, shall at any time, catch or take oysters in the waters of Accomac, except in such river or portions thereof, as are common to Virginia, and other states.

Act March 22, 1846-7, (ch. 86, p. 71.) 1. It shall be unlawful for any one not an actual inhabitant and resident of the commonwealth of Virginia, and who shall not have resided therein *two years* at least prior to the time of com-

mitting the supposed offence, and shall not have made an oath according to law in some court of record a declaration of his intention to become a citizen of the commonwealth, to catch or take oysters or terrapins at any time in the waters of Virginia, *except in such rivers and the portions,*" (thereof) "as are common property to this and some other state."

Code 1849, (ch. 101, p. 452, § 22.) If any person other than a citizen of this state, shall take oysters or terrapins in the waters thereof, or in the *rivers* Pocomoke and Potomac, he shall forfeit \$200. But this section shall not extend to a citizen of Maryland taking oysters or terrapins in the said mentioned *rivers*.

Code 1860, (p. 502, § 22.) Non-residents not to take oysters in waters of Virginia, or "in the *rivers* Pocomoke and Potomac," not to extend to citizens of Maryland taking oysters or terrapins in said *rivers*.

Act February 23, 1866, p. 156. (This excludes Maryland for the first time.) If any person other than a citizen of this state, shall take oysters or terrapins, or plant oysters in the waters thereof or in the *rivers Pocomoke and Potomac*, he shall forfeit, &c. § 23. (Re-enacts act of 1852, May 31, p. 119, which amends 10th §, ch. 101 of the Code.) "It shall be lawful for any citizen of this state to take oysters with any other instrument than common oyster tongs in the waters of Tangier and Pocomoke sounds or any of the waters adjacent thereto in the county of Accomac."

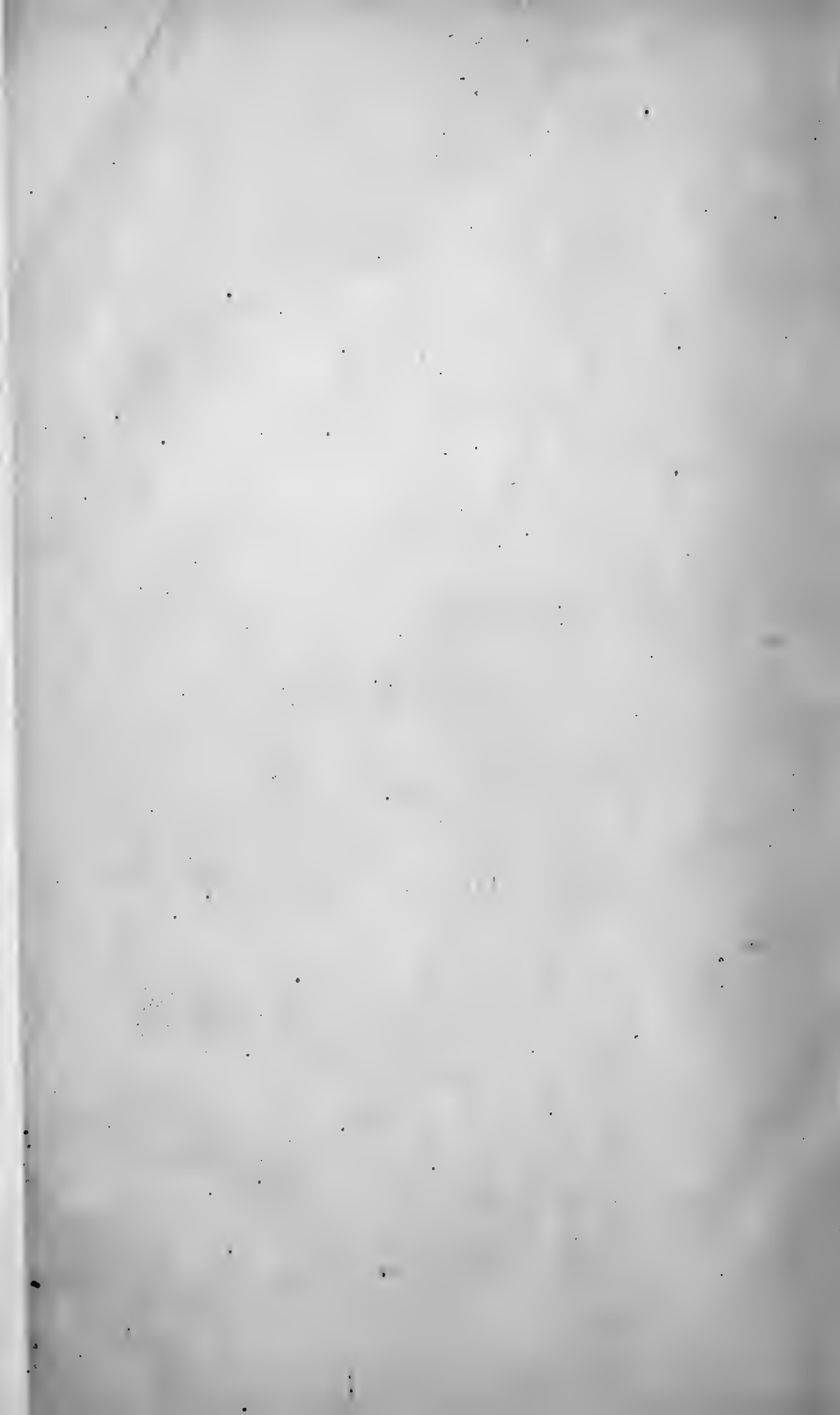
Act 1872-3, (p. 316, § 22.) It shall not be lawful for any non-resident of this state, to take or catch oysters, or any shell fish, in any manner; in any of the waters of this commonwealth."

Act April 17, 1874, p. 243, section 22. "If any person, other than a citizen of this state, shall take or catch oysters or other shell-fish in any manner, plant oysters in the waters thereof, or in the *rivers* Potomac or Pocomoke he shall forfeit," &c. But this section shall not extend to citizens of Maryland *taking* oysters in the said mentioned *rivers*."

From the above citations, it will appear to what extent the privilege of taking oysters in the waters of Virginia has been extended to the people of Maryland.

To reconcile the regulations as to jurisdiction and navigation in the Compact of 1785, on "*Pocomoke river*," as therein mentioned, with the restricted interpretation sought to be put on the same word (*river*) in the act last cited, would seem to be difficult. And if the word "*river*" in that act be taken in its strict literal sense, it embraces the *whole* river, including the upper part of it which undoubtedly belongs to Maryland, as well as the part "which may be in doubt;" and would present Virginia in the strange attitude of granting Maryland the right to take oysters in waters acknowledged to be hers. But the language of all the above cited acts previous to 1866, show the substantial privilege extended to Maryland, which she asked should be restored pending the arbitration.

R. T. DANIEL.





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