

ON THIS DAY IN WEST VIRGINIA HISTORY MARCH 26



Fairfax Stone, 1889

On March 26, 1858, the Virginia General Assembly passed an act authorizing the governor to appoint a commissioner to negotiate a boundary line between Maryland and Virginia from the mouth of the Potomac River at the Atlantic Ocean to the Fairfax Stone. The boundary dispute, later between Maryland and West Virginia, was not settled until 1910.

CSO: SS.8.14, SS.8.21, ELA.8.1

Investigate the Document: (*The West Virginia Review*, October 1935)

1. Name (3) factors that have often led to the formation of state boundaries.
2. What is the Mason-Dixon line? What *three* states' boundaries does the line separate?
3. What Supreme Court case resolved any issues regarding West Virginia's assumed obligations concerning the proper location of its boundary with Pennsylvania?
4. Where was the original Fairfax Stone planted in 1746? What was its purpose?
5. Where was it determined that the boundary between West Virginia and Maryland was located in 1910?
6. Regarding West Virginia's border with Virginia, what *four* counties were given the option to determine its destiny, based on the result of a popular vote?

7. Using your knowledge of West Virginia geography, determine whether the corresponding county borders another state. Write out the appropriate state(s) that borders the county, if applicable. If not, mark "N/A."
- Preston County-_____
 - Greenbrier County-_____
 - Lewis County-_____
 - Wood County-_____
 - Logan County-_____
 - Berkeley County-_____

Think Critically: Do you think sectional tensions and social conditions are more volatile along state borders? Do you think West Virginia's boundaries are appropriate based on acts of legislative bodies, surveying and economic/social conditions?

Boundaries of West Virginia

by Stanley E. Dadisman

WHEN THE FORCES OF nature began to shape the mountains and valleys on the earth's surface, territorial limits of the area now known as West Virginia were, to a great extent, determined. State lines have been designated with respect to the provisions of English patents, grants and charters. Acts of legislative bodies, labors of commissions and surveyors, sectional differences in economic and social conditions and decisions of the nation's highest court have contributed to the establishment of West Virginia boundaries.

The Pennsylvania Boundary—In the Charter for the Province of Pennsylvania, granted by King Charles II of England, February 28, 1681, to "Our Trustie and well-beloved Subject William Penn," the territorial limits were defined in part by these words:

... The said Lands to extend westwards five degrees in longitude, to be computed from the said Eastern Bounds (the Delaware river); and the said Lands to be bounded on the ... South by a Circle drawne at twelve miles distance from *New Castle* Northward and Westward unto the beginning of the fortieth degree of Northern Latitude, and then by a straight Line Westward to the Limit of Longitude above-mentioned.

Territory to the south had been granted to Lord Baltimore in 1632. When difficulties arose as to the true location of the boundary between the two grants, Charles Mason and Jeremiah Dixon, "astronomers of rising celebrity in London," were engaged "to mark, run out, settle, fix, and determine all such parts of the circle, marks, lines, and boundaries, as were mentioned in the several articles and commissions, and were not yet completed." The southern boundary of Pennsylvania was surveyed to a point "some thirty-six miles" short of the five degrees west of the Delaware River, the extent of the grant in the Penn Charter. Here the surveyors stopped at the request of the Indians. They were discharged December 26, 1767. This survey is well known in history as the Mason and Dixon Line.

Virginia, prior to the grants to Lord Baltimore and William Penn, had acquired lands to the "West and Northwest," a fact which gave rise to boundary settlements with Pennsylvania. Commissioners of Pennsylvania and Virginia, meeting in Baltimore, August 31, 1779, agreed:

To extend Mason's and Dixon's line due west five degrees of longitude, to be computed from the river Delaware, for the southern boundary of Pennsylvania, and that a meridian drawn from the western extremity thereof to the northern limit of said state be the western boundary of Pennsylvania forever.

The "Report of Commissioners appointed to run the southern boundary of Pennsylvania between the said State and Virginia," dated November 18, 1784, reads in part:

... And the underwritten commissioners have continued Mason's and Dixon's line to the termination of the said five degrees of longitude, by which work the southern boundary of Pennsylvania is completed. The continuation we have marked by opening vistas over the most remarkable heights which lie in its course, and by planting on many of these heights in the parallel of latitude, the true boundary, posts marked with letters P & V, each letter facing the state of which it is the initial. At the extremity of this line, which is the southwest corner of the state of Pennsylvania, we have planted a squared unlettered white oak post, around whose base we have raised a pile of stones.

Commissioners, submitting a final report on the western boundary of Pennsylvania, August 23, 1785, say in part:

We ... do certify, that we have carried on a meridian line, from the south-west corner of Pennsylvania, northward, to the river *Ohio*, and marked it by cutting a wide vista over all the principal hills, intersected by the said line, and by railing or deadening trees, (generally) through all the lower grounds; and we have likewise placed stones, marked on the east side P, and on the west side V, on most of the principal hills, and where the line strikes the *Ohio*; which stones are accurately placed in the true meridian, bounding the states as aforesaid.

West Virginia was admitted as a State, June 20, 1863, and assumed any obligations Virginia may have had relative to the Pennsylvania boundary. The Governor of West Virginia was authorized, by an Act of March 10, 1879, to appoint three commissioners to work with commissioners of Pennsylvania "to examine as to the true location of the monuments which mark the boundary line between this state and the state of Pennsylvania ... and to replace any monuments which have become dilapidated or been removed, on the boundary line of said states." West Virginia commissioners were Joseph C. Gist, John F. Shipley and Francis L. Hoge. James Worrall, James McCullough and William W. Walker represented Pennsylvania. This joint commission adopted a resolution which thus describes the western boundary of Pennsylvania:

Beginning at the granite monument marking the south end of the boundary line between Ohio and Pennsylvania on the north side of the Ohio river and passing the old monument on the south side of the Ohio river, recognized as a boundary stone between Pennsylvania and West Virginia, and on a straight line therefrom to the S. W. corner of Pennsylvania, marked by an oak post set in a pile of stones and lying fifty-four (54) feet five and one-half (5½) inches west of the true meridian, passing through the granite monument on the north side of the Ohio river.

It is well to observe here that, in terms of geography and history, the Northern Panhandle of the State of West Virginia is a product of the natural boundary formed by the Ohio River on the west and, on the east, of the provisions of the Virginia and Pennsylvania charters, the latter granting to William Penn territory extending five degrees west from the Delaware River.

In the "Report of the Survey of the West Virginia and Pennsylvania Boundary, 1883," accepted by an Act of the West Virginia Legislature, May 3, 1887, detailed information as to the location and permanent markings of the line is given. In this report the southwest corner of Pennsylvania is described as a "post in a heap of stones, consisting of about two cart loads." The eastern end of this Pennsylvania-West Virginia line, at the corner of Maryland, is well described in the report in connection with the decree of the United States Supreme Court in the case of *Maryland v. West Virginia*, 225 U. S. 1, 25.

The Maryland Boundary—In the Charter granted June 20, 1632, by King Charles I of England to Cecilius Calvert, Baron of Baltimore, the extent of territory therein adjacent to what is now West Virginia was described as within lines

... passing from the said Bay, called Delaware Bay, in a right Line, by the Degree aforesaid (fortieth degree of north latitude), unto the true meridian of the first Fountain of the River of Patowmack (*ad verum Meridianis primi Fontis Fluminis de Patowmack*), thence verging toward the South, unto the further Bank of the said River, and following the same on the West and South, unto a certain Place, called Cinquack, situate near the mouth of the said River, where it disembogues into the aforesaid Bay of Chesapeake ...

Maryland, it will be noted, was to extend west to a north and south line passing through the first fountain or head of the Potomac River and was to extend south to the southern bar of that stream.

October, 1935

7

King James II of England confirmed a grant of the Northern Neck of Virginia to Thomas (Lord) Culpeper, September 27, 1688. This territory was "bounded by and within the first heads or springs of the rivers" Rappahannock and Potomac. Lord Fairfax subsequently succeeded to the rights under the grant. To settle boundary disputes arising between the governor and council of Virginia and Lord Fairfax, commissioners were named to determine the limits described in the Northern Neck conveyance. These commissioners chose the Northern Branch of the Potomac as the one on which to locate the first head or spring. At this head spring the Fairfax Stone was planted in 1746.

By an Act of the General Assembly in 1788, accepting a survey and report of Francis Deakins relative to lands in the western part of the State, Maryland recognized the head spring of the North Branch of the Potomac River as the extent of her territorial limits. By an Act of 1852, the General Assembly authorized the governor to appoint a commissioner to cooperate with a commissioner of Virginia in determining the western boundary of Maryland "beginning therefor at the said Fairfax stone, and running thence due north to the line of the state of Pennsylvania."

At the request of the commissioners, presented to the Secretary of War, Lieutenant N. Michler, of the United States Topographical Engineers, was detailed to make this survey. His was a true astronomical line which, running north from the Fairfax Stone, intersected the Pennsylvania line at a point about three-fourths of a mile west of the Deakins line of 1788. This variance, creating a triangular area subject to disputed ownership, is explained by Lieutenant Michler in his report when, in speaking of the old line, he says: "The surveyor's compass was used for the purpose, and some incorrect variation of the needle allowed."

Virginia refused to accept the Michler line. West Virginia, by an Act of May 3, 1887, conditionally accepted the line but withdrew that acceptance by an Act of March 13, 1891. Maryland filed a bill in the Supreme Court of the United States, October 12, 1891, praying for a settlement of the boundary controversy. In the course of the subsequent proceedings she recited claims that her territory extended south to the South

Branch of the Potomac River and west to the Potomac Stone, a marker placed by a surveyor on the part of that state in 1897, six years after the suit was instituted. This stone was about one and one-fourth miles west of the Fairfax meridian. West Virginia, by answer and cross bill, asked that the Deakins survey be recognized as the western boundary of Maryland and set up the claim that the north bank of the Potomac River was Maryland's southern boundary.

On the basis of a prior decision (*Morris v. United States*, 174 U. S. 196), involving another controversy, the Court initially expressed the opinion, February 21, 1910, that Maryland extended to high watermark on the south side of the Potomac (*Maryland v. West Virginia*, 217 U. S. 1, 45). However, in the decree of May 31, 1910 (217 U. S. 577), the Court held, on a basis of long use and understanding by Maryland and Virginia and also the citizens of the respective states, that low watermark on the south side of the Potomac River was the boundary between Maryland and West Virginia.

Maryland's claims to the South Branch of the Potomac River and to the Potomac Stone were not well taken. On a basis of general acceptance over a long period of years, the "Deakins or old state line" was decreed to be the western boundary of Maryland. Pertinent provisions of the decree of May 31, 1910, are:

Beginning at the common corner of the states of Maryland and Virginia, on the southern bank of the Potomac river, at low water mark,



Section of pioneer road along the route of the Seneca Trail, near St. George

at or near the mouth of the Shenandoah river (near Harper's Ferry), and running thence with the southern bank of the said Potomac river, at low-water mark, and with the southern bank of the North Branch of the Potomac river at low-water mark, to the point where the north and south line from the Fairfax stone crosses the said North Branch of the Potomac, and thence running northerly, as near as may be, with the Deakins or Old State line to the line of the state of Pennsylvania. (217 U. S. 577, 582.)

The final report of Julius K. Monroe and Samuel S. Gannett, two of the commissioners appointed pursuant to the decree of May 31, 1910, "to run, locate, and permanently mark, with suitable monuments, the Deakins or old state line," is confirmed, with its much detailed information, in the final decree of the United States Supreme Court in this cause. (*Maryland v. West Virginia*, 225 U. S. 1, May 27, 1912.)

The Virginia Boundary—The boundary between Virginia and West Virginia has its roots deep in the political, economic, social and geographical factors entering into the formation of the latter State, a story which need not here be retold. "An ORDINANCE to provide for the formation of a new State out of a portion of the territory of this State," adopted August 20, 1861, by a convention of Virginia delegates in Wheeling, proceeded, after indicating the "desire of the people inhabiting the counties . . . mentioned," to strike a boundary, following county lines, so as to include thirty-nine Virginia counties in the new State, excluding therefrom the counties of McDowell, Mercer, Monroe and Pendleton and permitting the constitutional convention, for which provision was made, to alter the boundary so as to include Greenbrier, Pocahontas, Hampshire, Hardy, Morgan, Berkeley and Jefferson counties. Summers, Grant and Mineral counties were, of course, subsequently created.

The original Constitution of West Virginia, initially voted upon the first Thursday in April, 1862, changed the suggested boundary so as to embrace forty-four Virginia counties, including McDowell, Mercer, Monroe, Greenbrier and Pocahontas. By Section 2 of Article I the counties of Pendleton, Hardy, Hampshire and Morgan were to be included in the new State, if a majority of the votes cast in the election therein favored the adoption of the Constitution. In the event that these four counties were included, then the counties of Berkeley, Jefferson and Frederick, if a majority of the votes cast therein gave approval to the Constitution,

also were to form a part of West Virginia. Illustrative of the many suggestions as to the extent of territory to be included in the new State is an Act of the General Assembly, passed February 4, 1863, consenting to the inclusion of twenty-one additional Virginia counties in West Virginia, if a majority of the votes in the respective counties were favorable.

Pendleton, Hardy, Hampshire and Morgan counties, as provided in the Constitution, became a part of the new State but "owing to the state of the country at that time, no fair vote could be taken" in Berkeley, Jefferson and Frederick counties. Subsequently, however, on a certification of election returns by the governor of Virginia, Berkeley and Jefferson counties were included. This action was sustained in an opinion of the Supreme Court of the United States in the case of *Virginia v. West Virginia*, 11 Wall. 39, decided March 6, 1871.

As in the case of the Northern Panhandle, in terms of geography and history, the Eastern Panhandle of the State of West Virginia is a product of the provisions of the Maryland Charter on the north and, on the south and east, of a vote of the citizens of the several counties, supported, as to Berkeley and Jefferson, by a decision of the nation's highest court.

The Virginia-West Virginia boundary is the sum of the boundaries of the respective border counties as defined in the Acts of the General Assembly of Virginia creating them. An exception is the case of Mingo County which was created by an Act of the West Virginia Legislature in 1895. These border counties, and the year of the Acts creating them and defining their boundaries are: Hampshire, 1753; Berkeley, 1772; Greenbrier, 1777; Hardy, 1785; Pendleton, 1787; Monroe, 1799; Jefferson, 1801; Morgan, 1820; Pocahontas, 1821; Mercer, 1837; and McDowell, 1858.

By an Act of February 23, 1877, the West Virginia Legislature authorized the governor to secure United States engineers and to name commissioners, who, in cooperation with representatives of Virginia, were "to ascertain and locate the true boundary line between the state of West Virginia and the state of Virginia, whenever the line is in dispute." This line, starting at the common corner of Virginia and Maryland, as designated in the decree of the United States Supreme Court

in the case of *Maryland v. West Virginia*, 217 U. S. 577, 582, extends in a general southwesterly direction, following crests of mountain ridges for miles and ending at the corner of Virginia and Kentucky as determined from a report of the Kentucky and Virginia boundary commissioners, a part of which is hereinafter quoted.

The Kentucky Boundary—In 1776, by an Act of the General Assembly of Virginia, three distinct counties were created within the territorial limits of the county of Fincastle. Kentucky, one of these newly created counties, had boundaries described in part by these words:

... All that part thereof which lies to the south and westward of a line beginning on the Ohio, at the mouth of Great Sandy Creek, and running up the same and the main or north easterly branch thereof to the Great Laurel Ridge or Cumberland Mountain ...

On December 18, 1789, the General Assembly passed "An act concerning the erection of the district of Kentucky into an independent state." Consent of Congress to the formation of the new State was given February 4, 1791. Boundary controversies, subsequently arising between Virginia and Kentucky, resulted in the appointment of boundary commissioners representing both states. The general course of the present Virginia-Kentucky boundary is north forty-five degrees east. After reporting on the southern part of this line, the commissioners continued with words pertinent to an understanding of the present West Virginia boundary:

... thence with a line to be run north forty-five degrees east until it intersects the other great principal branch of Sandy commonly called the northeastwardly branch; thence down the said northeastwardly branch to its junction with the main west branch, and down main Sandy to its confluence with the Ohio ...

This line, as set forth in the report of the commissioners, was confirmed by Kentucky, December 12, 1799, and by Virginia, January 13, 1800.

Wayne County has for its southwestern boundary the Big Sandy River, as provided in an Act of the General Assembly of Virginia in 1842. Tug Fork of Big Sandy is the State line and the southwestern boundary of Mingo County, as defined in an Act of the West Virginia Legislature in 1895.

The Constitution of West Virginia, in Section 1 of Article II, reads:

... The State of West Virginia includes ... so much of the Big Sandy river as was formerly included in the Commonwealth of Virginia.

Relative to the boundary of what is

now Mingo County, the West Virginia Supreme Court of Appeals has said, *obiter dictum*:

... The boundary line in that locality between the States of West Virginia and Kentucky is as it was between Virginia and Kentucky at the date of the formation of West Virginia ... The stream called "Tug Fork" is here the boundary, and the line between the States is its middle. (*McNeely ex parte*, 36 W. Va. 84, 86.)

While the Big Sandy and Tug Fork rivers form the Kentucky-West Virginia boundary, no satisfactory authority has been found defining the exact line between the two states.

The Ohio Boundary—The Second Charter of Virginia, granted May 23, 1609, by King James I of England, included within its bounds all of that territory two hundred miles north and two hundred miles south of Point Comfort "up into the Land throughout from Sea to Sea, West and Northwest ... " Congress recommended, September 6, 1780, that the states owning and holding "waste and unappropriated lands in the western country" cede the same to the United States. By a resolution of January 2, 1781, the General Assembly of Virginia agreed:

... That this commonwealth will yield to the congress of the United States, for the benefit of the said United States, all right, title, and claim that the said commonwealth hath to the lands northwest of the river Ohio ...

Acting pursuant to another resolution of the Virginia Assembly, Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe conveyed to the United States, by deed dated March 1, 1784:

... all right, title and claim, as well of soil as of jurisdiction, which the said commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being, to the northwest of the river Ohio ...

The opinion of Mr. Chief Justice Marshall, of the United States Supreme Court, determining the Ohio River boundary between Kentucky and Ohio, reads in part:

When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one state is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly-created state extends to the river only.

Virginia was the original proprietor. Kentucky, admitted as a state in 1792, had succeeded to Virginia's rights respecting the Ohio boundary. Ohio was the newly-created state and her territory extended "to the river only." This case, as well as many others, holds that the true boundary line between the states is

October, 1935

9

the low watermark on the northwest or Ohio side of the river. (*Handly's Lessee v. Anthony et al.*, 5 Wheat. 374, 379-380.)

The West Virginia Constitution, in Section 1 of Article II, provides:

... The State of West Virginia includes the bed, bank and shores of the Ohio river. . .

West Virginia, as in the case of Kentucky, succeeded to the rights of Virginia in respect to the Ohio boundary and, therefore, her territorial limits extend to the low watermark on the northwest or Ohio side of the river. The West Virginia Supreme Court of Appeals has expressed an opinion that:

Low water mark within the intendment of our law, as related to the Ohio River, is the point to which the water recedes at its lowest stage. (*Union Sand and Gravel Co. v. Northcott*, 102 W. Va. 519, Point 5 of Syllabus.)

This boundary extends from a point at low watermark on the northwestern side of the Ohio River opposite the mouth of Big Sandy River to the common corner of Ohio and Pennsylvania, marked by a granite monument as indicated in the report on the Pennsylvania boundary.

In summarizing it is to be observed that the Pennsylvania boundary of West Virginia is well marked as indicated in the "Report of the Survey of the West Virginia and Pennsylvania Boundary, 1883." The western boundary of Maryland is set forth with great particularity in the report confirmed in the decree of the United States Supreme Court in the case of *Maryland v. West Virginia*, 225 U. S. 1. The Potomac River boundary of Maryland is defined by nature and will vary only as the low watermark on the West Virginia

side may vary under the doctrine of accretion. The Virginia-West Virginia boundary, the sum of the boundaries of the several border counties, is determinable by an interpretation of the legislative Acts by which the counties were created and their limits defined. In the Big Sandy and Tug Fork rivers a natural boundary is provided between this State and Kentucky. The Ohio-West Virginia boundary is as definite and permanent as is the Ohio River and will vary only as the low watermark varies on the northwest or Ohio side.

Not frequently will one find a political entity or subdivision into the shaping of whose territorial limits so many factors have entered as have entered into a determination of the boundaries of the State of West Virginia.