

It is not deemed necessary to take any further notice of this order in council, as Calvert county does not now claim the line described in it as the division line between the two counties, but claims a boundary running from Marshe's Creek, on the south side of it: to Lyon's Creek, and thence into Patuxent.

Now the question occurs, upon which hangs the whole dispute, so far as it depends upon record evidence of a line established by law—and that question is, where is Marshe's Creek? The records in which Marshe's Creek is mentioned as the beginning of the line, are an act of assembly and an order, both passed the same day, that is, on the 20th of October 1654, only four months after the date of the order in council above mentioned.

The act is entitled, "An act erecting Patuxent into a county," in which the boundaries of said Patuxent or Calvert county are thus described: "The bounds thereof to be from the south side of Marshe's Creek, commonly called Oyster Creek, extending down the bay, including all the families and lands on the south side of said creek," &c. The order is for changing the name of Anne-Arundel into that of Providence, in which the bounds of said county are described to be Herring Creek, including all the plantations and lands unto the bounds of Patuxent county, that is to a creek, called Mr. Marshe's Creek, otherwise called Oyster Creek.

Calvert county contends, that Marshe's Creek is a creek, which falls into Herring Creek near its mouth, and extending westwardly with said creek to one of the heads of Lyon's Creek, and thence with Lyon's Creek to the Patuxent river, is the division line. The commissioners however, who were appointed by the legislature in 1623, to examine into the subject, and to take and report the testimony, expressly and unanimously declared, as well those of the commissioners who were citizens of Calvert, as those who belonged to Anne-Arundel county, and the fifth commissioner who belonged to neither, that "no testimony has been obtained to prove that this line is or ever has been the northern bound of Calvert county;" and that the reason for supposing the creek, just described, to be Marshe's Creek, is "the circumstance of Mr. Marshe's having taken up a tract of land on its bank about three years previous" to making the order for changing the name of the county, in which the bounds are immediately mentioned. The patent of Mr. Marshe's land is dated the 27th of October 1751, marked A A. amongst the accounts reported by the commissioners at the last session, and is for only a small tract of 151 acres. In this patent, moreover, it is expressly mentioned, that this creek is called "Parker's Branch" and is described as a branch of West Creek, which is on the west side of Herring Creek.

On the other hand, Anne Arundel contends that Marshe's creek is what is now called Fishing Creek, eight or ten miles below Parker's branch, for the same reason urged by Calvert, for supposing Parker's branch to be Marshe's Creek, to wit, that Mr. Marsh who took up the small tract of 151 acres of land on Parker's branch, the very next day after, that is, on the 28th day of October 1751, took up a large tract of land containing _____ acres, lying on both sides of the creek now called Fishing Creek, but which at the date of the _____ herewith exhibited, marked B B, had no established name, and was therefore, in the opinion of your committee, more likely to receive a name from the owner of a large tract of land lying on both sides of its mouth, than a creek already designated by the known name of Parker's branch, in a patent for a very small tract of land on one side of it. This opinion is strengthened by the circumstance, that Parker's branch is not a creek, which term, it is believed in the part of the country in question, is understood to imply the flowing of tide within it, and becomes, as your committee think incontrovertible, when coupled as it is with the circumstance, that the patents of land taken up on the north side of Fishing Creek, and the whole of the boundary line claimed by Anne-Arundel since the erection of Calvert into a county, were issued, and have been recorded as for land in Anne-Arundel county.

Any other supposition is inconsistent with the words in the before mentioned order, for changing the name of Anne Arundel, in which the bounds are described to be "Herring Creek, including all the plantations and lands, unto the bounds of Patuxent county, that is, to a creek called Mr. Marshe's creek, otherwise Oyster Creek." These words necessarily mean, that the bounds of Patuxent, or Calvert county, are below Herring Creek, and that the creek called Marshe's Creek is below Herring Creek, and can be no other than the creek upon both sides of which Marsh took up the large tract of land above mentioned. This is now known by the name of Fishing Creek, and as the beginning of the division between Calvert and Anne Arundel, and has been so known for 160 years, as reported unanimously by the commissioners at the last session of the general assembly.

Your committee also beg leave to state, that it appears, that the before mentioned commissioners were not, at the time of making their report to the legislature at their last session, in possession of the fact, that Thomas Marsh had taken up land at the mouth of Fishing Creek, the next day after taking up that on Parker's Branch, from which they believe, that said commissioners would have given it as their opinion, that Fishing Creek was in fact the creek called, in the act of assembly erecting Calvert into a county, Marshe's Creek, or Oyster Creek.

Besides, the evidence furnished by the patents and deeds for lands on the north side of the line claimed by Anne Arundel, go back to a period as early as 1663. There was exhibited to the commissioners before mentioned, a record from the register of St. James' parish, the lowest in Anne-Arundel, dated the 31st day of January 1694, in which the southern limits are described as "bounding on the east with the great Bay of Chesapeake, lying down southerly to a creek called Fishing Creek, and then west with the said creek, and the bounds of Anne-Arundel and Calvert county to Lyon's Creek, then with said creek to Patuxent river," &c.

A decision of the house of delegates in 1777, that a Mr. Mackail, who lived on the north bank of Fishing Creek, was not entitled for want of residence in Calvert county, for which he had been returned a delegate, to hold his seat in the house of delegates of the state, was also exhibited to said commissioners, to prove that in 1777, Fishing Creek was the southern boundary of Anne Arundel county. The witnesses examined before the commissioners prove, as is reported by the commissioners, "with the exception of a few instances of a contrariety of evidence, that the line, thus located, meaning the line claimed by Anne-Arundel, has always been, as far as their recollection extends, considered as the divisional line, and several of them farther allege, that they never heard of any dispute concerning it up-