Table of Contents

Magazine of the

Jefferson County Historical Society

Volume LXII
December 1996

Table of Contents

Magazine of the JEFFERSON COUNTY HISTORICAL SOCIETY



Volume LXII December 1996

CONTENTS

Officers of the Society 3
Membership Fees 3
Publications Available 4
List of Members 5
The Story of the Jefferson County Courthouse,
by Judge David Hartley Sanders 17
Hite v. Fairfax and the Case of Terrapin Neck,
by Elizabeth H. Hyman 44
Fragments of a Diary of Shepherdstown — Events
During the War 1861-5 83
Trivia — Charles Town Is One of the Thriving Little
Cities of West Virginia 97
Summer Picnic, by Florence H. Moore 104

"No man is fit to be entrusted with the control of the present who is ignorant of the past, and no people who are indifferent to their past need hope to make their future great."

"History by apprizing them of their past will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of man; it will enable them to know ambition under every disguise it may assume, and, knowing it, to defeat its views."

© Jefferson County Historical Society, 1996

JEFFERSON COUNTY HISTORICAL SOCIETY

Organized May 21, 1927
Post Office Box 485
Charles Town, West Virginia 25414

OFFICERS

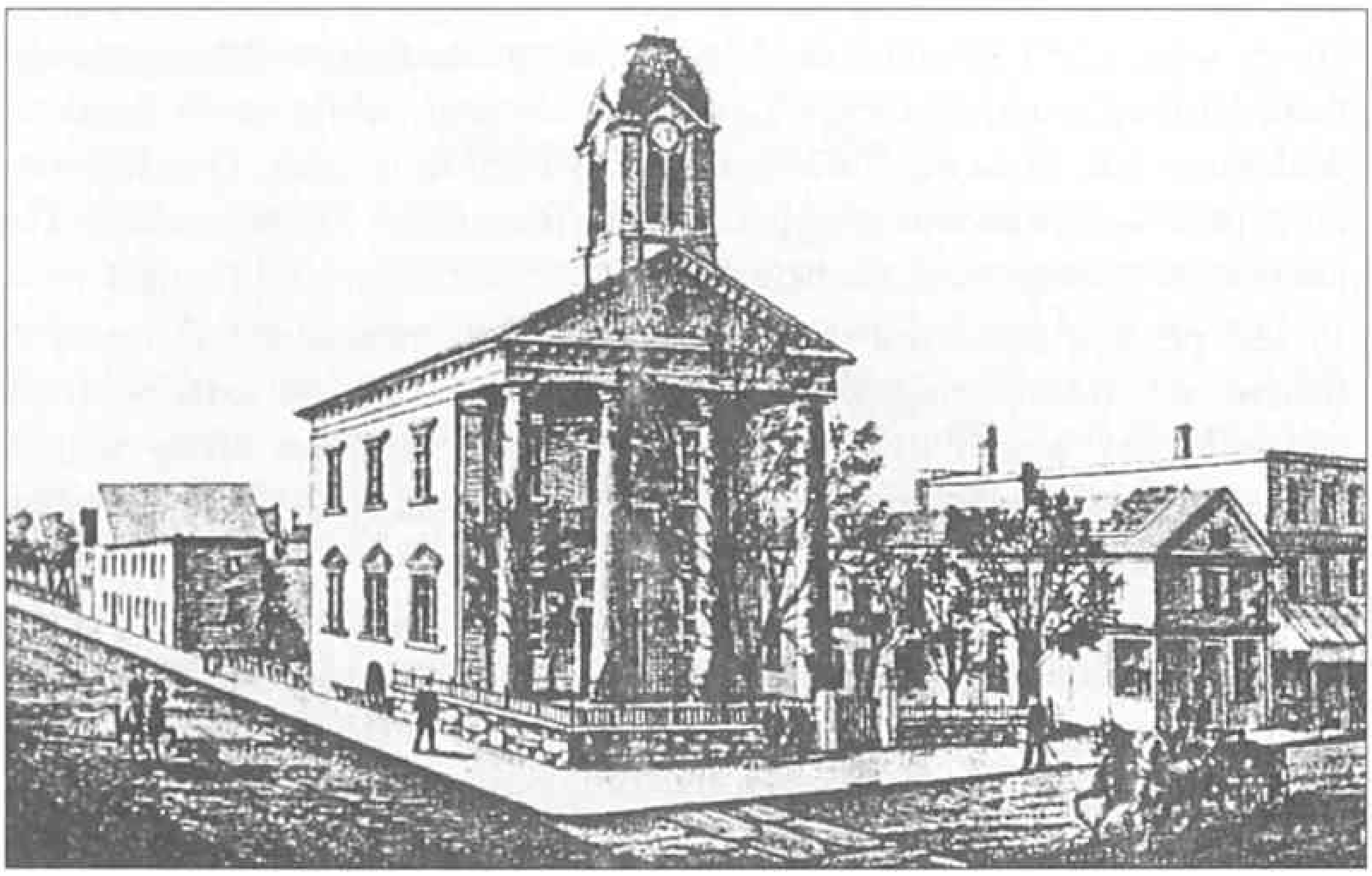
President—Dr. John E. Stealey, III, Shepherdstown
Vice-President—Mr. Roger J. Perry, Charles Town
Treasurer—J. Blackwell Davis, Jr., Charles Town
Recording Secretary—Mrs. James E. Byron, Shepherdstown
Membership Secretary—Mr. Hugh E. Voress, Charles Town
Corresponding Secretary—Mrs. C. William Moore, Charles Town
Curator—William H. Wilson, Charles Town
Directors—Mr. Robert W. Butler, Charles Town; Mrs. L. W. Cain, Charles Town; Mrs. Thomas C. G. Coyle, Kearneysville; Mrs. Archie W. Franzen, Harpers Ferry; Mr. Garland Moore, Charles Town; Mrs. Roger Perez, Charles Town; Mrs. Edward S. Pritchard, Charles Town; Capt. John B. Schley, Shepherdstown.
Publications Committee—Mrs. Moore, Dr. Stealey, Capt. Schley.
Emeritus Officers—Frank Buckles, Mrs. John A. Washington.
Membership—Open to all who have interest in the history of Jefferson County. Annual dues of $5.00 may be sent to Membership Secretary, P.O. Box 485, Charles Town, WV 25414, after the beginning of the fiscal year on January 1.

PUBLICATIONS

One copy of the Magazine is mailed to each person holding a paid membership. Until the publication of next year's Magazine, members may purchase additional copies for $4.00 each; order these from The Society, Box 485, Charles Town. Original volumes or facsimile reproductions are available to all persons at $5.00 per Magazine; quantity discounts are allowed. The Society also has available copies of *The Washington Homes of Jefferson County* for $10.00 each, mailed, Michael D. Thompson, *Calendar and Index to Recorded Plats in the Jefferson County, West Virginia (Virginia), Courthouse, 1801-1901* for $25.00 each, mailed, and *Between The Shenandoah And The Potomac: Historic Homes of Jefferson County, West Virginia,* for $45.00 each, mailed.

The Story of the Jefferson County Courthouse

by Judge David Hartley Sanders



IN THE BEGINNING

In the year 1634 the Commonwealth of Virginia was established consisting of eight counties. The area today comprising Jefferson County as then part of an Indian District beyond those counties known as Chickacoan. This later became Northumberland County. As time passed the area now Jefferson County was separated into ever smaller political subdivisions: first into Lancaster County, then into Old Rappahannock County, then into Essex County, then into Spotsylvania County then into Orange County, then into Frederick County, and, in 1772 into newly created Berkeley County Virginia. A Court House was built soon thereafter at the county seat of Martinsburg.

PETITION FOR NEW COUNTY

In 1800 the citizens of southeastern Berkeley County petitioned the Virginia General Assembly for the creation of yet another county. The great

distance to the County Court and the expense of doing business there were factors. Northern Berkeley citizens counter-petitioned that the county remain intact.

Sectionalism and vision had grown, based on difference in land, lifestyle and economy. For example, in 1800, the Berkeley section to the north had 488 slaves with 1,547 households while the southern section had 1,452 slaves with 1,357 households. Much of north Berkeley settlement came from Pennsylvania, of German and Irish descent, while south Berkeley settlement was from the Tidewater and of English descent. One historian described southern Berkeley as more affluent and "aristocratic." The petitioners wished to call the new county "Richland."

The petition described the future county seat of Charles Town as "a handsome and flourishing town, situate at the crossing of the principal roads of the Valley, nearly in the center of the lower division." The petition further offered that the expense of a Court House and other public buildings could "be defrayed by public subscription."

Col Charles Washington, brother to George, and for whom Charles Town is named, much desired the establishment of a separate county and promised, upon the event, to give the four corners of the town square to the town for public buildings. Charles died in 1799, the same year as George.

JEFFERSON COUNTY IS BORN

The new county was established by Act of the Virginia Assembly dated January 8, 1801, and was named for the former Governor *Thomas Jefferson,* then Vice-President and President-elect. October 26, 1801 was the date for the division to become effective. Charles' son *Capt. Samuel Washington,* of Spotsylvania County, deeded the promised four corners August 31, 1801.

Jefferson County officials assembled for the first time in the home of *John Mines* (earlier *Basil Williamson's*) in Charles Town, November 10, 1801. Persons commissioned by then Governor (later President) *James Monroe* were sworn in as magistrates. These persons constituted a Court and exercised the powers now vested in the County court. They were empowered to try criminal and civil cases, hear chancery suits, probate estates, authorize the erection of bridges, and to build courthouses, jails and other public buildings. The original magistrates were: *Richard Baylor, Jacob Bedinger, John Briscoe, Daniel Collett, Gen. William Drake, Abraham Davenport, Ferdinando Fairfax, George Hite, John Kearsley,*

William Little, Gen. Daniel Morgan, George North, John Packett, Van Rutherford, Joseph Swearingen, and *Alexander White.*

Efforts were made to raise funds for a Court House and other public buildings, on February 10, the Court requested Matthew Frame, Thomas Hammond and David Humphreys to continue their service of soliciting.

The county's first grand jury was empaneled on March 9, 1802, foreman, one George Washington.

FIRST COURT HOUSE

On December 14, 1802 the Court ordered Sheriff *William Little* to pay to *John Young* $100 toward the building of a small brick Court House at the corner of North George and East Washington Streets, on land donated by Washington. Similar payments were made in February and April of 1803 No pictures or written descriptions are available of this Court House but it was probably built in the Georgian or Federal or Neo-Classical style. The first Court was convened in the new Court House on July 12, 1803.

A new jail was authorized February 12, 1806 and the building of this brick structure was supervised by *David Humphreys.* The clerk's office was moved into the old jail.

SECOND COURT HOUSE

The new county grew quickly and it was soon apparent that larger county facilities were needed. In the *Virginia Free Press,* July 7, 1830, appeared the following;

> "... the Court of this county, at its June term, appropriated $750 for the commencement of a new courthouse. A like-sum will probably by wanted each year for three years to come. The increase of taxation to accomplish this objet, will be small; and we have not heard of much objection to the appropriation. The present building affords but poor accommodation for jurors, witnesses, and other persons attending Court."

And in November 14, 1833, the following:

> "It is a point conceded, by almost everyone, that the building at present used, is totally inadequate for the purposes of a courthouse. The people. . . are not only willing, but anxious, that a new courthouse should be provided — one indeed, not merely more suitable for the public business, but in every way more worthy of the county."

The County Court had determined upon a new site for this courthouse, away from the public square. The first Court House was to be sold to raise funds for the new one. The *Virginia Free Press*, September 19, 1833;

> "The Committee appointed by an order of Court, to report on the subject of erecting a more commodious Court House, have recommended the sale of the present buildings, and erection of an entirely new edifice, with sufficient room for the Clerk's offices. They also recommend the choice of a new site — the lot east of Mr. Beckham's Hotel. It is calculated that the amount already levied, ($3,000), with the proceeds of the old buildings and lots, will be sufficient to erect a courthouse sufficiently large and handsome."

It was soon realized that a reversion clause in thee original grant would return the land on the square to the Washington family if not used for the courthouse.

The *Virginia Free Press*, November 28, 1833;

> "The County Court of Jefferson decided on Monday week, in favor of building a new Court House in the rear of the old one. Eighteen magistrates were present, and the vote stood 10 to 8. A building committee was appointed, to prepare a plan, which is to be reported to the Court, and to superintend the erection of the building. It is the design of the Court to erect a plan, but commodious edifice — combining convenience and beauty in a degree creditable to the character of the county.
>
> The present Court House was put up principally by private subscription — the levies of the county having been applied in but a very small proportion. The citizens will, therefore, not complain of a moderate tax for a purpose of such obvious utility."

In December of 1835, *S. N. Lackland, T. N. Douglas* and *Andrew Kennedy* were appointed by the Court to arrange for and supervise the planning and construction of the new courthouse. It was to be built on the site of the 1803 building but it became necessary to enlarge the lot. *Andrew Hunter* owned some adjacent land north of the site, which the court bought for $200. The clerk's office built on the sight of the old jail was sold to help finance the 1836 building and the clerk was moved to the Court House.

The *Virginia Free Press*, January 28, 1836;

"TO STONE MASONS AND BRICKLAYERS.

The undersigned will receive proposals in writing until the 17th of February next for building the stone and brick walls of a new COURT HOUSE in Charles Town, Jefferson County.

The foundation walls of stone will amount to about 300 perches. The proposals to set the price per perch in the wall — of 18 inch and 36 inch wall.

The walls of brick will, it is estimated contain at least 300,000 brick.

We will take separate proposals for — 1st the bricks thousand delivered on the ground; 2d. laying the bricks, the undertaker finding all the other materials and tenders; and 3d. furnishing the bricks built in the wall at so much per thousand.

The material and workmanship in all cases to be of the best and most substantial kind.

Plans of the building will be furnished by the undersigned, and any information on the subject can be had at the office of Andrew Kennedy, in Charles Town.

And. Kennedy
Sam 'l W. Lackland
I.R. Douglas
Bushrod C. Washington
Geo. Reynolds
Commissioners"

The new Court House was built as a modest Doric temple with a four-columned portico. Grecian Doric columns of brick and plaster, shorter than those on the present Court House, supported an angular pediment. A square bell tower, topped by a weather vane, was erected a top the portico. The red brick building had rounded, Romanesque arches above the large first-floor windows.

A large courtroom occupied the greatest part of the first floor. Drawings of the interior indicate that the judge's bench was a raised area across the entire rear wall, with a railing and turned balusters. Three shuttered windows were in the wall behind the bench. The jury box appears to have been directly in front of the bench, facing out, a common arrangement in Virginia courts. Square wood and plaster columns within the courtroom supported the second floor. Wooden stairs led to a second story. The second

story windows were smaller than those below, and had straight, undecorated lintels. The roof line, lacking any significant cornice or entablature, was only a few feet above the second story windows.

The Court House was set high on a stone foundation and separated from the street by a small yard, with a stone retaining wall. This yard extended around the side, along George Street, to the rear of the building. A small building, possibly a clerk's office, stood in the front yard.

The *Virginia Free Press,* October 20, 1847;

> "After a lapse of several years our Court House is about to be enclosed with iron railing. The railing is of a neat pattern, and was cast by Mr. Hugh Gallaher at his Foundry in Harper Ferry, thus clearly demonstrating that 'some things can be done in Jefferson, as well as others.' The top of the wall has been capped with large rock, and on these are placed the railing — two large and massive blocks of stone, which have been worked into a comely shape, are used as posts on which the heavy iron gates are hung. The Court House yard has a number of Locust trees all thrifty and growing, which will render it a delightful retreat for gentlemen of leisure, next summer, particularly after it shall have been seeded. The road to justice will then be suitably guarded, and decorated, and rendered somewhat smooth, though we will not vouch for it, after you shall have become entangled in the 'meshes of the law.' It will be found to grow rougher as you advance, without any seeming end. The better plan is to keep clear of all litigation."

JOHN BROWN'S TRIAL

The new courthouse was only 22 years old when it became forever famous for a trial that took place in this ground floor courtroom.

In midsummer 1859 mysterious strangers arrived in Harpers Ferry, Jefferson County. One of them was an old man, abolitionist *John Brown.* already infamous as "Old Osawatomie" of "Bloody Kansas," Brown had a price on his head of $250 offered by President James Buchanan for a series of murders back in Kansas. He and his band slipped unnoticed into the Harpers Ferry area with boxes full of weapons and a plan to overtake the government arsenal and inspire a general revolt and insurrection of the slave population. They lay low on a farm in nearby Maryland and planned an attack.

On October 16, 1859, Brown and his band of followers attacked the

Federal arsenal and armory at Harpers Ferry. Five persons died, victims of this raid. October 18 saw the arrest of Brown and the conspirators by troops under the direction of U.S. Col. *Robert E. Lee.* They were brought to Charles Town, the county seat, to stand trial. A horrified, and divided, nation looked on.

Brown's raid on Harpers Ferry rocked the nation and is considered to have precipitated the coming civil war. The trial was covered by all of the nation's leading journals and newspapers. The town's facilities were strained to accommodate the influx.

Brown's trial began on Wednesday, October 26, and lasted through Monday, October 31. The charges were treason against the Commonwealth of Virginia, advising and conspiring with slaves to rebel, and murder. Judge *Richard Parker* presided. Governor *Henry A. Wise* appointed notable Charles Town attorney *Andrew Hunter* to assist the Commonwealth attorney *Charles B. Harding* in prosecution. (A portrait of Andrew Hunter is the sole picture hanging in the present courtroom.)

From among the local bar the court first appointed *Charles James Faulkner,* who did not serve. (Faulkner was soon to be United States Minister to France in Buchanan's administration, then an aide to "Stonewall" Jackson, and later would argue *Virginia v. West Virginia* in the U.S. Supreme Court.) The Court then appointed Lawson Botts and, at Brown's request, Thomas C. Green. An attempt by these lawyers to have Brown plead insanity was refused by him. Brown then announced that he had no confidence in his lawyers and upon his motion, and theirs, the lawyers were allowed to withdraw on October 28.

A young Boston attorney, *George H. Hoyt* arrived that same afternoon and volunteered to represent Brown. He was joined in the defense by Hiram Griswold of Cleveland Ohio and Samuel Chilton of Washington, D.C. Trial resumed the next morning, a Saturday, and all witnesses were concluded that day. Final arguments were heard Monday and after a half-hour deliberation the jury returned its verdict of guilty on the treason and murder charges. The next day Brown was sentenced to death by hanging.

Brown remained in the jail, a brick building diagonally across the town square, while the issue was appealed to the Virginia Supreme Court. The appeal having failed, on December 2, 1859, Brown was driven to the site of his execution in a wagon, sitting upon his own coffin. His sentence was carried out on a scaffold in a field on Rebecca Hunter's farm not far from the Court House. Co-conspirators, Edwin Coppoc, Shields Green, John

Copeland, and John Edwin Cook, were similarly tried and hanged.

During these trials Charles Town was bursting with activity. Curiously, many barn fires occurred at that time and jurors seemed to be the principal victims. More than a thousand soldiers were stationed in Charles Town for the trials. Among the troops was John Wilkes Booth who entertained listeners with dramatic readings from Shakespeare at "The Episcopal Lecture Room" at Liberty and Lawrence.

Some years after Brown's trial and execution, a new jail was constructed on the site of the old, during periods of snow in the midst of winter, a clear path would appear, miraculously, in the snow along the route taken by Brown from the Court House to the Jail. Skeptics and those who look for mechanical explanations for everything, think this had something to do with the heating pipes passing under the street to the jail from the furnace in the Court House.

The scaffolding was dismantled after the last of the executions and the lumber used to build a porch on a residence at the corner of Lawrence and Liberty street, alter the property of Col. Jno. M. Coyle. In 1884 the lumber was removed to make way for a newer porch and the scaffold boards were put away as relics. In August of 1889, it was reassembled by Joseph H. Cockrill, son of Capt. David H. Cockrill, one of the four men who originally built the scaffold. In 1892 the lumber had been sold to a General James B. Coit, a collector of relics, and was shipped to Washington, then on to Chicago. The John Brown Fort, from Harpers Ferry, would likewise find its way to Chicago and the World's Fair.

CIVIL WAR

Although Jefferson was a large slave-holding county, its citizens were overwhelmingly pro-Union in sentiment prior to the conflict that loomed on the horizon. The county had given a large majority to the Constitutional ticket of *John Bell* and *Edward Everett* in the 1860 election. However, once these sons of the Old Dominion of Charles II realized that the Commonwealth was going with the South, and secession, they went with their heart's first loyalty, with Virginia.

It soon became clear that war would involve Jefferson County and the county's court records were transported to Lexington Virginia for safekeeping. Later, during the war, the county seat was moved by the Federals to Shepherdstown so that the troops stationed along the B&O railroad could guard it. The Court House in Charles Town was left

abandoned and was used to quarter occupying Federal troops and as a stable.

IMBODEN'S RAID

On October 18, 1863, Confederate *Gen. John D. Imboden* marched to the vicinity of Charles Town, which was occupied by a large force of Federal troops. *Col. Simpson's* 9th Maryland Regiment of Infantry and *Capt. Summer's* Cavalry Company were quartered, the first in the Court House, and the later in the jail. To Gen. Imboden's demand for surrender Simpson's reply was "Take us if you can!" A brief artillery barrage followed with several shots fired through the Court House. The Federals immediately evacuated the Court House and were captured by waiting Confederate troops. The Court House was heavily damaged in this attack.

Col. Simpson later requested a court of inquiry to clear his name. Eyewitness testimony recorded by the Judge Advocate General's Office follows:

Lt. Col. Cloudslay testified;

"I went to the upper part of the Court House and could distinctly see the artillery being placed in position. <> Col. Simpson had every part of the Court House manned by the Inf., loop holes cut through the walls, and every preparation made for defense. The building opposite, known as Redmond's Hotel, was occupied by as many as could get access to the windows, and also the jail, which was loop-holed. The palisade <> was also fully manned."

"... a shell struck one corner of it (the Court House), and glancing from there against the log palisade, exploded. <> Every shot they fired struck the Court House. The third shot entered it, and exploding in the passage way, wounded very badly the Adjutant and one private. There was at the same time some guns, do not known how many, posted on a hill south of town, about 300 yds. distant from the Court House, playing upon us. To the best of my knowledge there were from 10 to 20 shells struck and exploded in the Court House and around it. There were two men wounded in the upper story of the Court House."

Major Church, 9th Md. Vol. Inf. Testified as follows;

"On Sunday morning, Oct. 18th, as I was dressing myself, I heard some confusion near my quarters, and someone exclaimed 'they are coming.' I put on my coat, took my sword and belt in my hand and

ran over to the Court House, where I found *Col. Simpson* engaged in rallying the men. I assisted him in forming the companies, and in assigning them their positions, until he ordered me upstairs in the Court House to take charge of the men there. I posted the men at the windows and port holes and cautioned them not to get excited. Almost immediately after that a flag of truce was brought in, demanding a surrender in the name of *Gen. Imboden.* I did not hear *Col. Simpson's* reply, as I was upstairs, but I heard the men cheering him. His reply was sent by *Lt. Col. Cloudslay.* I then went to the windows looking to the north side of town, and saw the rebels wheeling their artillery into position near the track of the Winchester Rail Road. Just at that time a second flag of truce came in, making some request, I believe, with regard to the women and children, and almost immediately after the bearer left to return, the first shell was fired.

The men upstairs with me opened on the enemy's gunners from the windows, causing them to shift their pieces behind a house and them. The shells then commenced to come very rapidly, from both the north and south side of town. When the 3rd or 4th shell struck, I heard a cry. I asked what it was, and someone replied that the Adjutant was struck. After some 12 or 15 shells had been fired, it became too uncomfortable where we were, and *Col. Simpson* ordered the men to form in column in the street."

The Judge Advocate noted in his findings;

"... it is notorious that the population of Charles Town is composed almost wholly of active or warmly sympathizing colabores (sic) and friends of Gen. Imboden in the work of rebellion."

DEVASTATION

Following the war the Jefferson County Court House stood as a ruin in the middle of town. In January of 1868 the Board of Supervisors directed that the relics be collected and secured from further vandalism and depreciation from exposure to inclement weather.

A 1869 account of the Court House appeared in the *Chicago Tribune.* Written by *Mr. G. A. Townsend* it was entitled "A John Brown Disciple Visits Harpers Ferry and Charles Town."

I took the train on Saturday for Charles Town, and spent 4 hrs. There. It is an inland town 4 miles from the Shenandoah, and, strange

to say, is growing, and in the direction of the gallows of John Brown; for four new houses now stand on part of the site of his suspension. The gallows spot is a corn field, full of shocks of fine tall corn, and it has changed in few respects since the execution. The only ruined parts of Charles Town are the Court House and the Jail. The former maintains its walls and outlines, and the four brick and plaster Doric columns before it are still standing; but the roof is reduced to a few beams, the whole interior is torn out, and the edifice has now only one floor - the cellar - and is to speak truthfully, the cess-pool for all the vagrants in the village. To look into the interior is to feel revolted, yet to say (sic); "The place is accursed!" Opposite the Court House is the Jail, also roofless and torn out; but its jailyard is perfectly enclosed by the stone wall, and many of the iron-barred windows, iron-gratings etc., remain while the Jail interior exhibits accurately the sites of the floors, stairways, cells, etc. The ruined Court House and Jail had been despoiled by soldiers to make quarters, and tens of thousands of men have marched through Charles Town, singing: "John Brown's body lies mouldering in the grave, His soul's marching on!"

Charles Town is probably the deadest place in the Valley of the Shenandoah, and it feels mean. Its very loafers shrink before the glare of day and it is, although a town of 2 thousand people, as silent as a grave. I roamed through its graveyards visited some of its people, and felt relieved at last to take the train and quit it."

An 1871 account from the *Virginia Free Press* reads,

"Were we to say that the Court House at Shepherdstown has no roof to it or that the jail there has no doors to it we should feel that our credit for veracity - or sanity - (most likely the former) would be greatly impaired, and yet either of these representations is in every respect as true as the declaration that "the old walls (of the Court House at Charles Town) have crumbled away and fallen down, through the effects of years of exposure to winds and rains."

These walls, as most of our readers know, are still standing firm and strong unimpaired by the weather and ready to sustain and support the reconstructed building. This is not our opinion only, but that of some of the best and most reliable mechanics of the county who have made the examination. The structure having been partially unroofed by the Federal soldiers and its floors destroyed by them near

the close of the war, the walls have sustained none of the damage to which fire would have subjected them to and hence are in the sound and reliable condition in which all who have taken the trouble to inspect them or even look at them know them to be."

RIVALS FOR THE COUNTY SEAT

The above quotation displays partisan sentiment born of the battle for the county seat then raging between Charles Town and Shepherdstown. In February 1865 the county seat of Jefferson County, West Virginia was moved to Shepherdstown. This was at first a war measure to provide the protection of Federal troops stationed along the Baltimore and Ohio Railroad. February 15, 1866 legislation fixed Shepherdstown as the permanent county seat. By June, 1866, a handsome new Jefferson County Court House (now McMurran Hall on the Shepherd College campus) was completed with the two wings in Shepherdstown. This new Court House was constructed as a Greek Temple, with fluted Corinthian columns supporting a triangular pediment and crowned with an elegant cupola containing both a town clock and a bell. Intended originally as a town hall, its owner, *Rezin D. Shepherd,* offered it to the county on the condition that Shepherdstown remain the county seat.

The County Board of Supervisors decided to sell the brick and property of the old Court House and jail in 1869. Shepherdstown saw no reason to save the Charles Town remains. However Charles Town citizens were successful in blocking the sale on the grounds that the property belonged to the citizens of Charles Town and not to the county.

The *Spirit of Jefferson,* January 25, 1870;

"THE COURT-HOUSE.

The improvements on the Court-House at Shepherdstown has just been completed, and $10,000 more taken out of the pockets of the taxpayers."

The *Spirit of Jefferson,* April 19, 1870;

"AT THE COUNTY SEAT.

Last week, during the first two days of the Circuit Court, we had occasion to visit Shepherdstown, our present county seat. . .

The Circuit Court convened on Tuesday, Judge Chapline presiding, and was largely attended, a great deal of important business being before it. We were especially pleased to see within the

bar the familiar faces of our old lawyers of ante-bellum days, who for nine long years had not met in a regular term of the Jefferson Circuit Court. It reminded us of days "lang syne." Judge Chapline, it gives us pleasure to state, earned the reputation of conducting the Court with impartiality and fairness."

Both towns wanted the distinction of being the county seat. It was a bitter contest and feelings ran high. When the West Virginia Supreme Court of Appeals decided the issue July, 1871, in favor of Charles Town, Shepherdstown and its neighbor, Scrabble, nearly left the county.

STOLEN COUNTIES

Another wartime measure, not so easily undone, was the inclusion of Jefferson County into the new state of West Virginia. Jefferson and Berkeley had not been part of the December, 1862 Act of Congress providing for West Virginia's admission.

Federal troops were in control of Jefferson County when, on May 28, 1863 an "election" was held. Many only learned of the "election" weeks after it had happened. Only two polling places in the county had been open, Shepherdstown and Harpers Ferry. Most voters were away fighting for the southern cause or unwilling to sign a test oath of loyalty to the Union. In spite of the areas overwhelming sympathy with Virginia, only two votes were received against joining West Virginia.

Virginia brought suit against West Virginia for the return of the stolen counties. The matter was first argued before the United States Supreme Court, May 6 through 9, 1867, with Judge Benjamin R. Curtis of Boston, a former U.S. Supreme Court Justice, and Andrew Hunter, of Charles Town, arguing for Virginia. With the death of one Justice, an eight person Court evenly divided on the issue. It was not until February 27, 1871 that the matter was re-argued. This time Charles J. Faulkner argued powerfully for West Virginia. On March 6, 1871, the matter was decided by a six to three vote, the counties would remain in West Virginia. Jefferson had lost a connection that was most dear.

RESTORATION

In March of 1871 the West Virginia legislature passed a bill "To restore the county seat of Jefferson to Charles Town in said county." That bill provided that,

> "... *Logan Osburn, James H. Moore, John E. Cockerell, David Howell, Sr.*, and *John J. Lock* be appointed as commissioners to carry

out the purposes of the act, by causing the public records to be removed from Shepherdstown to Charles Town, and by causing to be procured at Charles Town, rooms suitable to contain the records and to be used as offices by the county officers."

The cost for restoring the Court House was estimated at $10,000 and jail at $5,000. A contract for the restoration was let in October of that same year. The work began, supervised by a committee appointed by the court. The *Virginia Free Press,* October 14, 1871.

> "The contract for repairing the court house in Charles Town has been closed so far as the Carpenter, Brick and Stone work. *Messrs. Phillips* and *Cockrill* to do the wood work and *Mr. Jacob Tutwiler* the stone and brick. Operations have already been commenced. The plastering, painting, & etc., will be given out in November."

The 1871 work followed the design of the earlier building, building upon the existing walls and columns. It was work of restoration and repairing and of new construction. A photograph of the earlier Court House reveals that many important changes were made. The walls of the Court House were built higher to accommodate larger second story windows, equal to those on the first floor. A broad entablature, or cornice, was added, raising the roof well above the newly raised brick walls. The Doric columns under the front portico, which before rose only to the middle of the upstairs windows, now were made taller, topped off with additional brick and plaster. (The fluted bases of cast iron around each column were not added until 1885.) First floor windows were treated with angular pediments, echoing the design of the portico, concealing the Romanesque arches.

The *Virginia Free Press,* November 16, 1872;

> "The building is 76 by 52 feet, and 42 feet high - to the top of the Dome 110 ft. The masonry of the building was the work of the Messrs. Tutwiler; the wood work by Cockrill & Phillips - Capt. D. H. Cockrill giving his personal supervision to the whole, and doing a considerable share of the most important parts of the work himself. The plastering, by C. Frank Gallaher, is in the best city style, rough-cast and white coated; the tin work - roofing and spouting, contracted for by McCurdy & Duke, executed in the best manner by their employees, E.R. Harrell, their experienced foreman, supervising and doing a large portion of the work. The painting by Wm. Kimes is a very marvel of beauty and skill. The iron-work of the fire-proof

vaults, by John E. Hilbert, is of the most substantial character."

The roof was raised significantly to accommodate a grand courtroom on the second floor.

"The Courtroom occupies the second story, and is approached by two continued stairways, noticeable for their beauty of structure and easy ascent. The Courtroom is 53 by 49½ feet - ceiling 24 feet - is very conveniently arranged, the Judge's stand, bar, clerk's and sheriff's desks being handsomely railed in - the apartments all in a style of true elegance, and an entire absence of flashy or gingerbread work. The floor is covered with cocoa matting and two large, handsome stoves diffuse a grateful warmth over the apartment. A roomy gallery 49½ by 10 feet, overlooks the Courtroom, with private entrance, and comfortably fitted up - designed especially for the ladies. Upon the same floor are two jury rooms 10 by 20 feet - entrance from the Courtroom. Upon the first floor are the Clerk's Offices - one 18 by 43, the other 18 by 20 feet. Portico 52 by 18 feet. Without, in front, heavy columns, painted a deep brown, and handsome cornice in front and rear and extending upon either side of the edifice, add greatly to its imposing appearance. A cupola is in course of construction, and a fine deep-toned bell, procured from the Troy Foundry by Maj. Jas. Law. Hooff, already sounds the call for Court to the citizens far and near, to be used also as the striking bell for a four-dialed Town Clock (ordered by Messrs. McCurdy & Duke) which is to point and mark the fight of time."

The new balcony, overlooking the grand courtroom would serve a Jim Crow purpose in the years to come, however, upon its inauguration it was described as a "Ladies Listening Gallery." The *Virginia Free Press*, May 18, 1872.

"We have thought that in the erection of our court house, a suitable portion of the audience room should be reserved expressly for the accommodation of ladies, many of whom are as fond of hearing an eloquent speech or an ingenious argument, and quite as capable of entering into the merits of a case as the "lords of creation;" and we see no reason why they should be excluded, particularly as few legal bars in the country can exhibit such an array of talent, ability and brilliant oratorical power as our own at this time;. . . .

The skillful architect of the court house has however, anticipated our suggestions, and intends constructing an open gallery over the jury rooms, which is to be comfortably arranged and set apart for the benefit

of the ladies, and where they will be aloof from the crowd and in a good position to hear all that is said.

This is an advance in civilization that we like to see, tho' we are not in favor of woman's rights (so called), nor care to have any of our fair friends occupy a place at the bar or in the jury box, yet we would like to have them share in our enjoyment of the frequent flashes of genius and human which emanate from the lips of our able lawyers."

The two grand stairways ascending to the second floor, at the front of the Court House, had turned balusters newel posts. The wooden railings dividing the courtroom and the judge's bench, featured turned balusters and newel posts. An expensive curtain, put up on the window behind the judge's bench, created a minor controversy. The other large windows in the second-floor courtroom were shaded by wooden shutters. A large, heraldic molding, in the shape of the Star of David, with a vented center, was placed square in the center of the vaulted ceiling.

The *Virginia Free Press,* November 9, 1872;

"The new Court Room will be ready for occupancy on Tuesday next. New seats are provided for the comfort of all in attendance - We trust the officers of the Court will adopt such Rules as to prevent the defacing of the room, by persons elevating their feet on tables and railing."

Among the new and comfortable seating were two generously sized sofas, or "settees," which arrived and were placed in the Courtroom in late October 1872.

The new copula , directly above the portico, was a greatly enlarged, two storied structure capped by a squared dome. In a room at the top, fully four stories above the courtroom floor, a wooden shed contains a clock, about the size and shape of a small harpsichord, of cast-iron with Queen Anne legs, manufactured by E. Howard & Co. Of Boston Mass. The clock mechanism is open and the gears are of brass. A universal gear transfers the clock's motion to the four clock faces by way of drive-shafts. Originally run by weights and gravity, the clock was electrified in March of 1946. It rings the hour by way of pulleys to a large hammer by the bell on the floor below. The 36 inch bell was founded by Jones & Company at the Troy Bell Foundry in New York. It bears the date of 1872. The *Virginia Free Press,* October 26, 1872;

"The Bell for the Court House, procured by Maj. Jas. Law. Hoff from the manufacturers at Troy, has been placed in position by Capt. D.H.

Cockrill. It weighs about 950 pounds, has a remarkably sweet tone and is of considerable power."

The old grand floor courtroom, in which John Brown had been tried, was now partitioned into rooms, whose weight-bearing walls support the new courtroom above. Furnishings and fixtures from this period fill the Court House today, and Court officials still faithfully prohibit feet on tables and railings..

AND IT WAS GOOD

The newly restored Court House was open for the November session of Court in 1872. The *Virginia Free Press* remarked approvingly,

> *"Altogether the new court house will, for generations to come, proclaim the energy, enterprise and architectural skill and taste of Jefferson in 1872."*

Final cost of restoration had come to $18,500 and as skeptical an observer as the editor of the S*hepherdstown Register* pronounced himself in 1872, "very highly pleased with the good taste and excellent workmanship apparent in all its parts.".

NEW JAIL

The *Spirit of Jefferson*, July 22, 1873;

> "The new jail building has been completed, the finishing strokes having been put on it yesterday. . . . it is one of the finest structures of the kind of the two Virginias."

SUPREME COURT IN JEFFERSON COUNTY

In 1873, Charles Town was designated as one of the three places in the state where the West Virginia Supreme Court of Appeals would sit and hear cases. From August 6th of that year, until 1912, all appeals of case from counties east of the Alleghenies were tried in the Jefferson County Court House. After 1912 the Supreme Court heard its cases only at Charleston.

COURT HOUSE STABLE

The *Virginia Free Press*, June 10, 1876;

> "The Town Council has had under consideration a petition of citizens for the removal of the stable in the rear of the Court House. It is regarded by many as a nuisance that ought to be abated, and if so found to be by the Committee appointed to investigate the matter, favorable action upon the petition will doubtless come."

Then, November 30, 1878;

"We understand Mr. Chas. Wall had a horse taken from the stable in the rear of the Court House a few days ago, during broad daylight. He immediately went in search and traced the animal into Loudoun county, and overtook a colored boy, about fourteen years of age, mounted thereon. He returned to town, bringing along horse and rider..

NO HEAT

The *Virginia Free Press*, September 15, 1877;

"The chimneys smoke so badly, they cannot kindle a fire in the Court Room, and the stoves are useless. Jurors and persons having business in Court are made sick by the cold. During the cold weather, several hundred citizens are compelled to remain in a room, week after week, without a fire. This is a fact which reflects no great credit upon our County Court. The building cost upwards of $50,000, and we have 14 justices at $3 a day each, with a President at $3, who are employed to attend to matters of this kind.

We do not want a job, under the pretense of building a furnace; we want simply the good old fashioned chimneys, which will cost a mere trifle. A furnace will cost $1,000, and require a man to run it. We call on the proper persons to quit gassing about paying off the County debt and reducing taxation, and do something practical. If you can't get a chimney built, you must not expect us to believe that you are great public benefactors. Attend to this at once, and have the chimneys ready for the Circuit Court. I came near freezing in the jury box last November, and several of my friends were made sick by the gas.

JUROR".

POOR ACOUSTICS

The *Virginia Free Press*, September 7, 1878;

"Mr. Julius C. Holmes having been awarded the contact for improvements at the Court House at $1,200, has commences the work - the drawings are by Mr. Baldwin, and the distinguished Baltimore Architect. The work is for the correction of the faulty acoustics of the Court Room mainly...

Then, on December 7, 1878;

"The changes necessary to achieve success in the acoustic properties of the room have been unavoidably expensive... 8,000 feet of the best quality of lumber was necessary to the work! Plastering and stucco work by Mr. C. Frank Gallaher...

Frescoing of the walls and ceiling done by the brothers Taylor and Jno. O. Johnson... The seats for spectators, the arrangements for the accommodation of the Court, Clerks, Sheriff, Lawyers, Jurors, and Witnesses admirable.

One thing we think the County Court omitted to provide. Night sessions of the Circuit Court are sometimes necessary - good lights are indispensible... we respectfully suggest a handsome Chandelier pendant from the beautiful centre piece as requisite to the equipment and finish of the room."

LAWYER'S ROW

The *Virginia Free Press*, September 27, 1879;

"The foundation for the 'Law Building' in the rear of the Court House, on George Street has been commenced. This building was projected by James M. Mason, Esq., and will be one hundred feet front, twenty-six feet deep, one story high, of brick and will contain six double offices and Law Library Room - all the offices, but one, communicating with the Library. The offices will be occupied by; Baylor & Wilson, Frank Beckwith, Wm. H. Travers, Daniel B. Lucas, James N. Gallaher, Wm. Burnett. This structure will not only improve the street, but will enhance the value of property adjacent thereto. At the expiration of the lease the property will revert to the County."

CHANDELIER

From the ceiling above today's courtroom hangs a circular chandelier, a hoop 15 feet in diameter. It is illuminated by 60 light bulbs each with a glass shade.

The *Virginia Free Press*, January 18, 1879;

"The Spirit gives us the following very accurate description of the Court Room Chandelier furnished by Messrs. N.F. Henderson & Company, and placed in position on Saturday last:

'Its cost is $140 furnished, complete and put up. It is a twenty four-light, kerosene soil chandelier, bronze in extra gilt finish, with

eight-inch cut-glass globes and latest improved burners. It was lighted up on Saturday for the inspection of the committee, and presented a most handsome appearance."

FROZEN LOCK

The *Virginia Free Press,* January 6, 1887;

"The town clock, for several hours on Thursday, maintained a superb reticence. The occasion of the taciturnity of the town time-piece was, we learned, a freeze up. Our fire laddies vainly attempted to throw over the Court House weather-vane, and deluged the clock. The boys must be agents for the Waterbury watch."

STEAM HEAT

The *Virginia Free Press,* November 18, 1891;

"It having been found that the chimney-flue in the jail building was inadequate to carry off the smoke of and afford sufficient draft for the new furnaces, and consequently making the steam heating of the Court House not all that was expected, a large boiler-iron smoke stack has been placed on the east end of the jail, reaching from the pavement to some considerable distance above the roof - giving our handsome jail the appearance of a factory building. However, its placement there is only an experiment, and if it turns out to be what is needed to make the steam-heating apparatus a success, it will be placed within the wall. This immense smoke stack, that looks like it belonged to an ocean steamer, was made and put in position in a day by the Farrin Boiler Works in this town, and in some measure gives an idea of the capacity of our new industry."

The *Virginia Free Press,* July 19, 1892;

"Mr. Wm. Gore has taken down the smoke-stack in use at the jail during the past winter, enlarged the flue and increased the height of the chimney - alterations which it is thought will remedy all defects in the heating arrangement for the jail and Court House."

COURT HOUSE ENLARGED

A much-needed enlargement of the Court House was begun on March 29, 1910, when the County Court opened bids for the construction of an annex. A large part of the money for this improvement was already at hand, so it was unnecessary to levy a special tax. The wing, very much in the style of the historic Court House, was added to the rear to accommodate

judge's chambers, witness rooms, a large jury room, and, on the first floor, offices for the circuit clerk and room for storage. It was soon completed.

NEW JAIL

Directly behind the Court House annex, on a site formerly known as "Lawyers' Row", a new jail was completed and ready for occupancy on March, 1919. Until then prisoners had been kept in the same building that had held John Brown and his men. The United States Government then bought the old jail lot at the corner of South George and West Washington Streets and constructed the present Post Office there in 1922.

A SECOND TREASON TRIAL

In the spring of 1922, sixty-three years after *John Brown's* trial, the eyes of the nation again turned to the Jefferson County Court House as it became the scene of a second set of treason trials.

In the distant southwestern coal fields of West Virginia, 250 miles from Jefferson County and a world away culturally, a violent conflict was playing out between "robber baron" coal operators and those who would unionize the last non-union counties. Logan County was ruled over by its "Czar," the high sheriff Don Chafin, "a hard-drinking, swaggering, bragging, bullying gunman, who ruled his 'Kingdom of Logan' with a mailed fist." He maintained a standing army of 300 plus deputies whose salaries were paid by the coal operators and whose purpose was to keep the union out.

By August of 1921, "Bloody" Mingo County had been in the throes of a year long bitter strike, the Matewan Massacre had occurred, the Battle of the Tug had been fought, and many persons had been killed. Mingo was under martial law. At the urgings of 91 year old Mother Jones, "a vulgar foul-mouthed, old agitator," and of union leaders, an army of 6,000 well armed miners prepared to invade the "Kingdom of Logan," to hang Don Chafin, to overthrow martial law in Mango, and to unionize both counties.

What followed is known as the Battle of Blair Mountain. Along the fifteen mile crest of Blair Mountain 3,000 defenders, supported by 150 State police, armed with machine guns, sub-machine guns, and tear gas bombs, waited the attack. A squad of airplanes, lead by Billy Mitchell, dropped explosives on the miner's encampments. Fierce warfare ensued. 2,000 Federal troops were required to stop the fighting in early September, 1921.

Immediately, a special grand jury was convened in Logan County. Four

union leaders, including "Gen." Bill Blizzard, and 735 miners were indicted for murder, conspiracy to commit murder, accessory to murder, and treason against the State of West Virginia. The union began a nationwide campaign to raise money for a "Miners Defense Fund," and built a "War Chest" of over fifty thousand dollars. It was agreed the trials would be transferred to Jefferson County.

The trials were scheduled to begin April 24, 1922. On April 21, a special train called the "Red Special," carrying 1,000 defendants and witnesses, left Charleston for Charles Town. That same day a special day coach loaded with prisoners, guarded by Chafin's deputies, left Logan, also bound for Charles Town. The next day, lawyers for the prosecution, witnesses for the State, coal operators, private court reporters, and newsmen left Charleston by special train for Charles Town.

As in 1859, Charles town was transformed from a quiet small town into a bustling center of activity. The town became very overcrowded. Again in the spotlight, receiving national publicity, Charles Town was host to the likes of *John L. Lewis* and *Governor Ephraim F. Morgan.* The miners' union established temporary quarters for its nearly 1,000 defendants and witnesses. Hundreds of miners filled the streets, hotels and loitering places of Charles Town. Lawyers, court reporters, newsmen, and coal operators descended upon the town. 40 heavily armed members of the newly formed state police patrolled the streets. Charles Town took on the appearances of an armed camp. All eyes were on the Court House.

A furious propaganda campaign was undertaken to influence potential jurors. Voting lists were copied and the county was flooded with the most lurid and inflammatory literature. The union sent well paid agents into the county posing as salesmen for books or sewing machines who would make personal contacts and then let it drop that they had just worked in Logan County and had seen the oppression of the miners by the coal barons. All this had the effect of violently dividing this previously quiet community into hostile camps, one pro-union and one anti-union. Long time friends fell out over the issue.

Judge *John Marshall Woods* of Martinsburg presided over these trials. Jefferson County Prosecuting Attorney *John T. Porterfield, Forrest W. Brown* and *George M. Betzhoover, Jr.*, all local, represented the state, along with *John Chafing,* and the "Coal Dust Twins," *A. M. Belcher, and C. W. Osenton. James M. Mason, Jr.*, of Charles Town, represented Blizzard. Other defense lawyers were *Harold W. Houston, Tom C. Townsend,*

Charles J. Van Fleet, L. P. Hager, L. F. Fulton, and *Samuel Montgomery.*

Separate trials were demanded by the defendants, as was their right by law. The State argued that separate trials would make the proceedings a comedy and would take fifty years.

"During the discussion, a tall, lank mountaineer arose in the rear of the courtroom and gravely addressed the Court:

'Your Honor,' he said, 'may I say a word?'

Being advised by counsel that they did not recognize the inquire, the Court said: 'You are a citizen, and have a right to be heard. What is it, sir?'

'Your Honor,' said the mountaineer, 'I'm one of the defendants. Both sides agree that it will take fifty years to try all these cases; and, if it's all the same to you, Sir, I'd like to have my case tried last."

The first trial, that of Blizzard, began on April 27 and lasted until May 27. The jury deliberated five hours and found Blizzard not guilty. Other trials followed. The *Reverend James E. Wilburn,* whose trial began June 13, was found guilty of second degree murder. His son John was likewise found guilty of second degree murder on August 12. *Walter Allen's* trial for treason began August 29. He was found guilty of treason on September 16.

After that, the venue of the other trials was moved, first to Morgan County, then to Greenbrier County, then finally to Fayette County, where, without further convictions, the remaining indictments were dismissed by the now hopelessly discouraged operators. Only three persons had been convicted in all of this, and all in Jefferson County. Of these, Walter Allen jumped bail while his appeal was pending and was never again heard from, and the Wilburns were both pardoned by Governor Gore in 1925.

NO MORE JAIL

In 1989 the Eastern Regional Jail in Martinsburg replaced the county jail's function. The county jail is closed and now used only as a holding facility. The sheriff's office is still located in this 1919 building, however, the County Commission has begun to plan and design a Court House annex which would require its demolition.

TODAY, THE LIVING COURT HOUSE

For all its age and historicity, the Jefferson County Court House continues today as a working Court House. It adds a sense of history to modern endeavors undertaken within its walls. During court hearings on

windy days the tin roof is heard, through the Star of David vent, to rumble loudly. On sunny days light plays interestingly through the wooden shutters. The clock and its bell still chime the passing of each hour. Andrew Hunter still keeps his watchful eye on the cavalcade of human events which parade before the venerable bench.

Justices of the West Virginia Supreme Court of Appeals who served in the Jefferson County Court House: 1873-1912

1873,	Alpheus F. Haymond, *(Marion County)*	John S. Hoffman, *(Harrison County)*	James Paull, *(Ohio County)*	Charles P.T. Moore *(Mason County)*
1874,	Haymond,	Hoffman,	Paull,	Moore
1875,	Haymond,	Hoffman,	Paull,	Moore
1976,	Haymond,	Mathew Edmiston, *(Lewis County)*	**Thomas C. Green** *(Charles Town, Jeff.Co.)*	Moore
1877,	Haymond,	Okey Johnson, *(Wood County)*	**Green,**	Moore
1878,	Haymond,	Johnson,	**Green,**	Moore
1879,	Haymond,	Johnson,	**Green,**	Moore
1880,	Haymond,	Johnson	**Green,**	Moore
1881,	Haymond,	Johnson,	**Green,**	James French Patton *(Monroe County)*
1882,	Haymond,	Johnson,	**Green,**	Adam C. Snyder *(Greenbrier County)*
1883,	Samuel Woods, *(Barbour County)*	Johnson,	**Green,**	Snyder
1884,	Woods,	Johnson,	**Green,**	Snyder
1885,	Woods,	Johnson,	**Green,**	Snyder
1886,	Woods,	Johnson,	**Green,**	Snyder
1887,	Woods,	Johnson,	**Green,**	Snyder
1888,	Woods,	Johnson,	**Green,**	Snyder
1889,	Henry Brannon, *(Lewis County)*	John W. English, *(Mason County)*	**Green,**	Snyder
1890,	Brannon,	English,	**Daniel Bedinger Lucas,** *(Jefferson Co., upon the death of his former law partner, T.C. Green)*	Snyder
1891,	Brannon,	English,	**Lucas,**	Homer A. Holt
1892,	Brannon,	English,	**Lucas,**	Holt
1893,	Brannon,	English,	**Lucas,**	Holt, Marmaduke H. Dent *(Taylor County)*
1894,	Brannon,	English,	**Lucas,**	Holt, Dent
1895,	BRannon,	English,	**Lucas,**	Holt, Joseph M. Sanders *(Mercer County)*
1896,	Brannon,	English,	**Lucas,**	Holt, Sanders
1897,	Brannon,	English,	**Lucas,**	Henry C. McWhorter, *(Kanawha County)* Ira E. Robinson *(Taylor County)*
1898,	Brannon,	English,	**Lucas,**	McWhorter, Robinson
1899,	Brannon,	English,	**Lucas,**	McWhorter, Robinson
1900,	Brannon,	English,	**Lucas,**	McWhorter, Robinson
1901,	Brannon,	George Poffenbarger, *(Mason County)*	**Lucas,**	McWhorter, Robinson
1902,	Brannon,	Poffenbarger,	**Lucas,**	McWhorter, Robinson

1903,	Brannon,	Poffenbarger,	Warren Miller, *(Jackson Co.)*	McWhorter,	Robinson
1904,	Brannon,	Poffenbarger,	Miller,	McWhorter,	Robinson
1905,	Brannon,	Poffenbarger,	Rank Cox, *(Monongalia Co.)*	McWhorter,	Robinson
1906,	Brannon,	Poffenbarger,	Cox	McWhorter,	Robinson
1907,	Brannon,	Poffenbarger,	William N. Miller, *(Wood Co.)*	McWhorter,	Robinson
1908,	Brannon,	Poffenbarger,	Miller,	McWhorter,	Robinson
1909,	Brannon,	Poffenbarger,	Miller,	L. Judson Williams, *(Greenbrier County)*	Robinson
1910,	Brannon,	Poffenbarger,	Miller,	Williams,	Robinson
1911,	Brannon,	Poffenbarger,	Miller,	Williams,	Robinson
1912,	Brannon,	Poffenbarger,	Miller,	Williams,	Robinson

Circuit Judges who have served in the Jefferson County Court House:

From the creation of Circuit Court in Jefferson County Virginia:

1. **Richard E. Parker,** of Winchester, assigned April 1831, opened first term of court.
2. **John Scott,** of Winchester?, served September 1831 until September 1832.
3. **Richard E. Parker,** of Winchester, September 1831 until his death in 1836.
4. **Isaac Richardson Douglas,** of Charles Town, appointed June, 1837 and served until his death in 1850.
5. **Richard E. Parker Jr.,** of Winchester, appointed in 1851, and served through 1860.
6. **John W. Kennedy,** of Charles Town, of the 12th Circuit, sat in for an absent Judge Parker October, 1860.

Break in regular proceedings due to the Civil War.

After the transition to West Virginia;

First election held May 28, 1863, Judges elected in this election were to serve from June 20, 1863. This pre-dates our county. The first Jefferson County West Virginia judge was appointed. Jefferson was in the same judicial circuit with Berkeley, meaning they shared a judge.

1. **John W. Kennedy,** of Charles Town, appointed July 12, 1863.
Kennedy was impeached in January 1865, and;
2. **Lewis P.W. Batch,** of Leetown, appointed May 4, 1865.

An election was held October 28, 1865 for judges who would serve from January 1, 1866, until January 1, 1869. This was the first regular election after the war in the Panhandle. Once the Radical Board of Supervisors threw out the votes against its candidates, Ephraim B. Hall was announced the winner over

John W. Kennedy.

3. **Ephraim B. Hall,** of Marion, (Radical Candidate), certified "elected" November 1865.

Another election was held October 1868, to elect judges to six year terms starting January 1, 1869, but was vacated December 31, 1872, by the revised Constitution.

4. **Joseph A. Chapline,** of Charles Town, (Radical Candidate), was appointed October 1868 to replace Ephraim B. Hall, after Hall was elected but declined to qualify or serve. Chapline died in office.
5. **Thayer Melvin,** Judge of the 1st Circuit, presided over first term, upon return of county-seat to Charles Town, September 12, 1871. Served only for that term.
6. **Ephraim B. Hall,** of Marion, after Chapline's death, was appointed in September 1, 1870, was re-elected in August of 1872 and resigned October 20, 1872.
7. **John Blair Hoge,** of Martinsburg, was appointed November 1, 1872, resigned September 1880.
8. **Charles James Faulkner Jr.,** of Martinsburg, appointed on September 23, 1880, following Hoge's resignation, then, on October 10, 1880 was elected for the unexpired term.
9. **Frank Beckwith,** of Charles Town, appointed May 9, 1887, after Faulkner resigned during his second term to become a United States Senator, only served until the next election.
10. **Joseph S. Duckwall,** of Berkeley Springs, elected November 6, 1888, for term starting January 1, 1889. Died in office in 1892.
11. **E. Boyd Faulkner,** of Martinsburg, appointed at the death of Judge Duckwall in 1892. Elected without opposition at the next election.
12. **Charles James Faulkner Jr.,** of Martinsburg, elected November 1904, for term beginning January 1, 1905.
13. **John Marshall Woods,** of Martinsburg, elected November 1912, served from January 1, 1913, until 1925 when he resigned and moved to Kanawha county.
14. **Decatur H. Rogers,** of Martinsburg, first appointed in 1925, then elected 1928, began the first of his four 8 year terms on January 1, 1929. Served until defeated in 1960 by Gray Silver Jr. Judge Rogers' 36 years on the bench is a record for the circuit.
15. **Gray Silver Jr.,** of Martinsburg, elected November 1960, served from January 1, 1961 through a second term ending December 31, 1976.
16. **Vance E. Sencindiver,** of Martinsburg, elected November 1968, served from January 1, 1969 through a second term ending December 31, 1984.
17. **Pierre Dostert,** of Charles Town, elected November 1976, served from January 1, 1977 through December 31, 1984, with periods of disability and removal from bench.
18. **Thomas W. Steptoe Jr.,** of Charles Town, elected November 1984, served from January 1, 1985. Re-elected November 1992 and serving second term since January 1, 1993.
19. **Patrick G. Henry,** of Martinsburg, elected November 1984, served from January 1, 1985 until December 31, 1992.

20. **David Hartley Sanders,** of Charles Town, elected November 1992, serving since January 1, 1993.
21. **Christopher Wilkes,** of Gerrardstown, elected November 1992, serving since January 1, 1993.

The Jefferson County Bar, Attorneys who have practiced in the Court House:

Those admitted to practice on November 11, 1801,

William McGuire, Edward Christian, Lewis Elsey, Matthew Whiting, John Dixon, Samuel Reed, Elisha Boyd, William Tate and Hugh Holmes.

A *Virginia Free Press,* Business Index for Charles Town, dated January 20, 1887, indicated the following attorney's were practicing, (or at least willing to pay for an ad);

Forrest W. Brown, Braston D. Gibson, Thomas C. Green, James H. Grove, Cleon Moore, Charles Porterfield, W. H. Travers, White & Trapnell, Attorneys at Law.

Clerks of the County Court:

1801-1817, George Hite
1817-1823, Robert G. Hite
1823-1840, Dr. Samuel J. Cramer
1840-1889, **Thomas A. Moore**
1889-1896, Gerald D. Moore
1897-1908, W. F. Alexander
1909-1934, Charles A. Johnson
1934-1968, Emily A. M. Stanley
1969 - present, John E. Ott

Clerks of the Circuit Court:

1831-1861, Robert T. Brown
1861-1865, The Civil War
1865-1872, William A. Chapline
1872-1877, Robert T. Brown
1877-1878, Bushrod C. Washington
1879-1886, Frank P. Lynch
1887-1894, T. W. Latimer
1895-1913, John M. Daniel
1913-1936, Charles W. Conrad
1936-1962, William M. Jones
1963-1981, Mary Lynn Bane Riggleman
1981-1986, Rosa Lynch
1986-1986, Linda Butner
1986-1994, Doris Whiting
1994-1994, Linda Cross
1994,-present, Patsy Noland

Hite v. Fairfax and the Case of Terrapin Neck

by Elizabeth H. Hyman

In February 1792 two farm properties on Terrapin Neck in the Shepherdstown district of Berkeley County, Virginia (now Jefferson County, West Virginia) — one said to be 400 acres and the other some 300 acres, both held under grants from the late Lord Fairfax — were conveyed to a Maryland family for token sums. About ten years later a local person buying land on the neck paid $1800 for the 400-acre tract.[1]

Local histories record that the Terrapin Neck holders lost their land when decades of litigation between one Joist Hite and Thomas, Lord Fairfax, Proprietor of the Northern Neck of Virginia ended in 1786 and the Hites were awarded title to numerous Fairfax grants in the Lower Shenandoah Valley.[2] However, they do not relate how the courts came to rule as they did in *Hite et al. v. Fairfax et al.* to expropriate the Fairfax holders or tell the role of the holders themselves in the long-drawn-out dispute. Partly this is because the basic archive of court records that would supply the information is missing, destroyed by the fires accompanying the evacuation of Richmond in 1865. Records of the case scattered here and there do much to explain the circumstances of the 1792 transfers and tell the story of holders who lost their land.[3] Nevertheless, given the historians' focus on prominent personages the Fairfaxes, the Hites, John Marshall

---

1 Case papers, *Swearingen v. Shepherd* (Superior Court of Chancery, Augusta County Court house, Staunton, Va., N.S. 30), f. 5: Case papers, *Boydston v. Shepherd* (Superior Court of Chancery, Augusta County Court House, Staunton, Va., N.W. 3, f.7. (Hereafter cited as *Swearingen* and *Boydston.*) The current value of this $1800 is about $24,000; John J. McCusker, *How Much Is That in Real Money? A Historical Price Index for Use as a Deflator of Money Values in the Economy of the United States* (Worcester, Mass.: American Antiquarian Society, 1992; Reprinted from the *Proceedings of the American Antiquarian Society,* 101, pt. 2, October 1991), 333.

2 William T. Doherty, *Berkeley County, U.S.A.* (Parsons, West Va.: McClain Printing Co., 1972), 17, for example.

3 Aside from a 1786 decision (with excerpts from arguments by counsel for the parties) in the Virginia Court of Appeals printed in Daniel Call, *Reports of Cases Argued and Decided in the Court of Appeals of Virginia, 1779-1825,* 6 vols., (Richmond, Va.: Robert I. Smith, 1833; hereafter cited as *4 Call*) that is usually relied upon for much of the story, there are three main surviving sources: 1) the General Court record of proceedings in *Hite v. Fairfax,* 1749 to 1771, escaped destruction in the Richmond fires, a copy having been forwarded to London in 1772 on appeal to the Privy Council. It is available in the original at the British Library, Add. Mss. 15317, pp. 1-238 (SR 2) and also in a well-indexed transcription, *Fairfax Land Suit,* by Hunter Branson McKay, a descendant of a Hite Partner (Berryville, Va.: Virginia Book Company, n.d.; hereafter cited as *FLS*); 2) a Hite family archive, given in 1952 to The Filson Club of Louisville, Ky., MSS A.C 593, Clark-Hite Papers, (hereafter cited as *CHP*), includes about two thousand pages of expense

involved in the litigation, these records have been used only to footnote larger actors and doings of the period.[4]

What happened to the Terrapin Neck and numerous other landholder defendants in *Hite v. Fairfax* tracks with a long and eventful era in the Shenandoah Valley from the first settlement of the region to the early nineteenth century. As settlers poured in from Pennsylvania during the 1930s and 1940s, this region, far as it was from the center of government across the Blue Ridge in Tidewater Virginia lay open to a largely uncontrolled land rush. The succeeding era of proprietarial rule from the 1750s to the Revolution imposed a more orderly process of development, including a central registry of land titles, and established official authority in the region. At the same time the value of Valley land kept rising and with it the stakes for the contending parties. When litigation resumed in the aftermath of the Revolution, the renewed scramble for the disputed land took place within a new order and was presided over by a new judiciary that was just becoming organized.

The main parties in *Hite v. Fairfax* played prominent roles in the Shenandoah Valley affairs of their times. Joist Hite was a large-scale dealer in Valley land and Thomas, Lord Fairfax, claimed ownership of the entire Lower Shenandoah Valley as the Proprietor of the Northern Neck of Virginia.[5] Their dispute over twenty-seven tracts of land, although it first

---

accounts, land prices, court orders, lists of properties claimed, land sales, briefs and memoranda by counsel, letters, etc. connected with the litigation that do much to cover the post-revolution phase of the case in the Virginia higher courts, particularly as it concerned the Hites; 3) records in the Augusta County Court House at Staunton, cited above, note 1, that date from early 1800s appeals to the Superior Court of Chancery (a section then sitting there) in connection with the Terrapin Neck properties. Indispensable to interpreting this material is Galtjo L. Geertsma, *Cadastral Index Maps of Berkeley, Jefferson, and Morgan Counties, and other Sections of Old Frederick County, Virginia;* 10 cadastral index and 12 United States Geological Survey quadrangle maps (Martinsburg, West Va.: G.L. Geertsma, 1969), and Geertsma's 17 maps of patents, grants, and surveys in Old Frederick County found in Cecil O'Dell, *Pioneers of Old Frederick County, Virginia* (Marceline, MO.: Walworth Publishing Company, 1995).

4 For example, in *The Papers of John Marshall*, edd. Herbert E. Johnson and Charles F. Hobson, 7 vols. (Chapel Hill, N.C.: University of North Carolina Press, 1974-93); hereafter cited as *PJM*, they are used to describe Marshall's practice at the Virginia bar.

5 Depending on the source, Hite is described as having been a speculator, huckster, or entrepreneur and identified variously as a German baron and an indentured immigrant. See Henry Z. Jones, Jr., Ralph Connor and Klaus Wust, *German Origins of Joist Hite, 1685-1761* (Edinburg, Va.; Shenandoah History, 1979), 9-10, and Klaus Wust, *The Virginia Germans* (Charlottesville, Va.: University Press of Virginia, 1969), 32-35, for a well-documented account of Hite's origins. Stuart E. Brown, Jr., *Virginia Baron, the Story of Thomas, 6th Lord Fairfax* (Berryville, Va.: Chesapeake Book Company, 1965), supplies the story of Lord Fairfax and how his Northern Neck Proprietary came into being. Fairfax actually was a baron, courtesy of a Scottish title purchased by a Fairfax ancestor from the needy Charles I in 1627. His mother inherited the Culpeper family interest in the Northern Neck grant made by Charles II to a number of loyalists while in exile during the Commonwealth years.

entered the courts in 1749 when Joist Hite filed his bill of complaint, had been under way since the 1730s. The Hite plaintiffs claimed the land through 1730-31 colonial government grants — all told 140,000 acres — under which they were to carry out stipulated surveys, completing them before a 25 December 1735 deadline set by the Council of the Colony.[6] The Hites demanded conveyance of title to land totalling 36,686 acres that they had surveyed but had been prevented from carrying into patent, including the 1200-acre survey of Terrapin Neck. Fairfax asserted a prior title to the land as Proprietor of the Northern Neck under a 17th century crown grant that was defined and reaffirmed by the British Privy Council in 1745.[7]

Fairfax had set the state for litigation when he established a land office at Winchester in 1749 to serve would-be settlers in the Valley. His agents at once began to grant land in the region, apparently including in their grants all but two of the Joist Hite surveys in dispute. In most cases, purchasers from Hite were given Fairfax grants following resurveys but, in numbers of cases, division or realignment of the Hite tracts altered the extent of the Hite surveys.[8] The issue posed to the General Court at Williamsburg in

---

6 The 140,000 acres granted by the council included 40,000 acres that Joist Hite acquired from an associate, John Van Meter (described therefore as the Van Meter grant) and a 100,000 acre Council grant to Hite and three partners. Hite had already surveyed and patented, i.e. gained title to, 47,278 acres by 1735 under the Van Meter grant. Hite summarized the Council's land grants in his 1749 brief; *FLS*, 1519-21.

7 See *FLS*, passim, particularly the parties' briefs presented to the General Court, 1512-58, and Brown, *Virginia Baron*, 71-77, 89-90, 111-17, for the bases of the claims and counterclaims of the parties. The cast of complainants and defendants in the case expanded considerably with the passage of time. As to the complainants, the Hite family was acting on its own account as holder of the 40,000 Van Meter grant and as one of four partners ("the Company") under the 100,000 acre grant. The Hite partners (including Joist Hite, Robert McKay, William Green, and Robert Duff) are referred to here as "the Hites", or "Hite and partners", or "the Company", except where opposing one another. Joist Hite and his sons are referred to as such or as "Hite" or "the Hite family", but where clear from the context also as "the Hites". The defendants, "Fairfax, et al.", included, in addition to Lord Fairfax, the actual holders in the surveys, that is, both Hite assignees who had taken Fairfax grants and grantees from Fairfax only. Hite's bill of complaint supplied several different lists of defendants (*FLS*, 1522, 1528, 1584-85, 1591, indexed at 1703-04), but these lists were admittedly incomplete and did not distinguish between holders under both Hite and Fairfax and those having Fairfax grants only. The most usable list of landholder defendants appears in the 1771 General Court decree, which was drawn from the memorial of a court-appointed Commission that surveyed the properties in 1770; *FLS*, 1663-64. In addition to the 143 holders listed by the Court, as many as another 40 holders were identified by the Commission in its log or report as to three surveys — one denominated Terrapin Neck and two South River. Five holders in the former were referred to by the court as "other persons not named in the said memorial in possession of the 1200 acres of the West side of Shanando"; thirty-odd holders in the latter were left off the list because not Fairfax grantees.

8 Although Fairfax neither made grants in the two Hite surveys on the South Fork of the Shenandoah nor opposed Hite claims there (*FLS*, 1743, 1745) a dispute over these properties arose amongst the partners themselves and so became part of the litigation.
See O'Dell, *Pioneers*, 371-2 and 462-3, maps 11, 11a, 15 and 15a for examples of the Fairfax redistribution.

1749 was essentially the validity of the Fairfax grants as opposed to the claims of the Hites or their assignees in the 38,686 acres originally surveyed by Joist Hite and then regranted by Fairfax either to Hite's assignees or to others.

Joist Hite was one of a dozen or more entrepreneurs active in land-dealing on a large scale during the early days of Shenandoah Valley settlement. They operated along similar lines: lists of settler families concocted to get grants confirmed by the Williamsburg authorities, usually somewhat slapdash ways of surveying and settling the land, and dreams of large profits to be made from serving as go-betweens for settlers swarming in and seeking some kind of title security from a colonial government several hundred miles away. Hite sometimes "sold" to settlers already on the land and wanting the kind of security to be had from a survey under a council grant with some evidence of ownership. In many cases he accepted cash payment for land and gave out bonds for title to purchasers on which payment could be demanded if the title proved faulty and the settlers should lose their improvements as well as their land to someone with a better claim.[9]

The pattern as much as the extent of Hite land claims (also what seemed

---

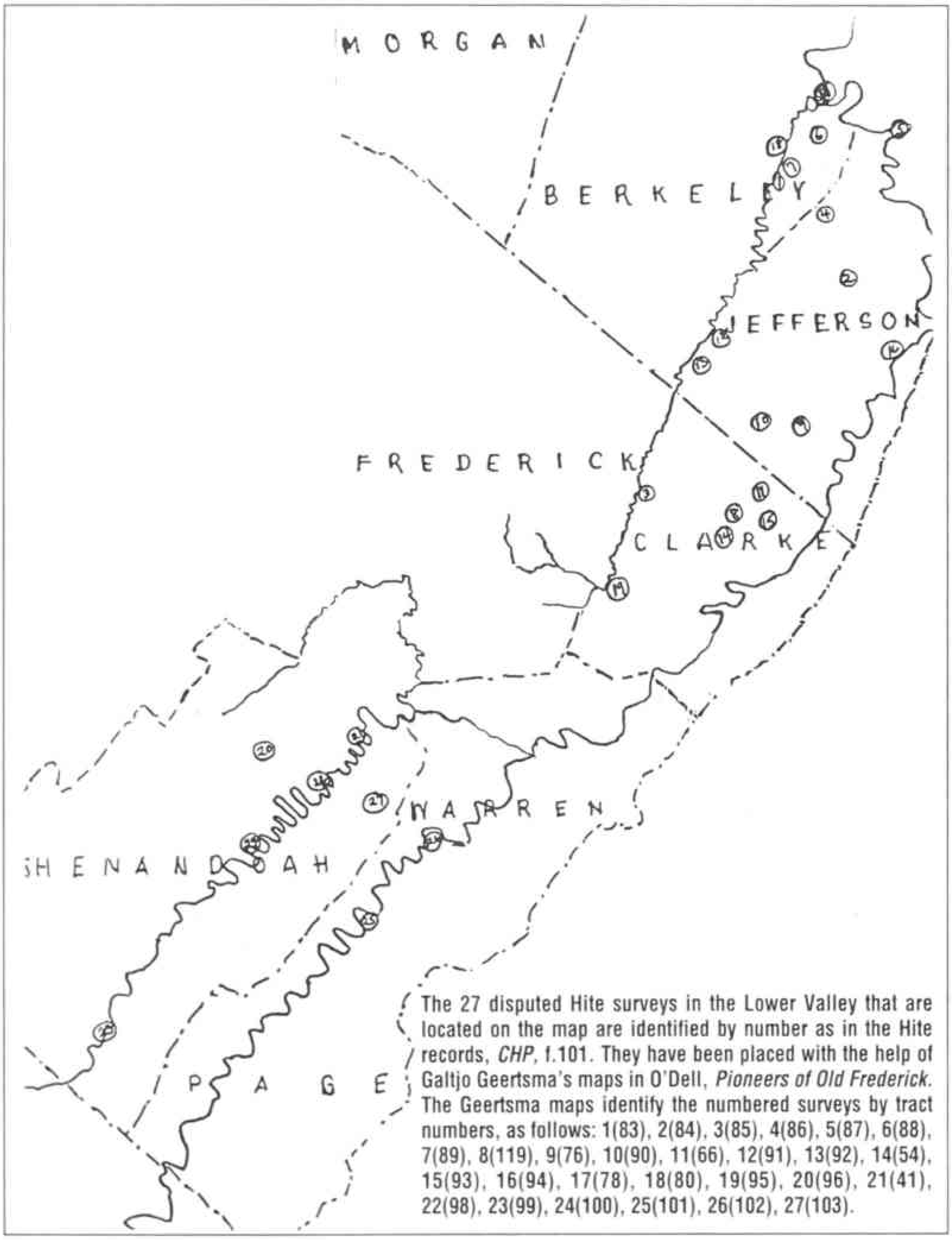
[9] Wust, *Virginia Germans*, 27-35, gives an account of how land dealers descended on the Valley in the 1720s and 1730s. The official language of orders-in-council grants to them, decrees, regulations, entitlements, etc. usually relied upon to explain the process of how the land was taken up misses the realities produced by what was a loose and muddled granting of large tracts with no very specific location. What Joist Hite and his fellow entrepreneurs had to do with their hunting licenses was to locate land not already granted to or by Fairfax agents or one of their own number, find buyers or "sell" to settlers already on the land and wanting more than "head rights" and apply to the Council for patents as entitled by the alleged settlement of a number of families (1,000 acres given to a developer per family settled) either before or after the survey of the land in question. This process supplied the facade for Hite's land sale schemes which combined locating land not preempted by other developers, preferably on water, finding buyers, and giving bond that he would made a good title complete with government patent, so promising protection to the purchaser (a new or established settler) who made improvements on his tract. In the 1730s and early 1740s, when most active, Hite usually asked £3 per hundred acres, although sometimes as much as £8; *FLS*, 1581-82. At the same time Hite set aside thousands of acres as family assets or for later resale and those acquiring large tracts from Hite were able to do likewise. For the settlers, Hite can be seen as supplying a service, a kind of title insurance in the form of bonds either to new settlers or those already on the land. See *FLS*, 1743, for Fairfax reference to holders already settled who purchased from Hite. When Fairfax himself offered land at 10 shillings per 100 acres annual quit rent, he too was offering a kind of title insurance covering the settlers' improvements under his proprietary title. But his aim was to encourage orderly settlement and improvement of the land and he placed restraints on speculation, e.g., prohibiting sale of warrants issued to authorize surveys. The whole process as experienced by the settlers is summed up in one family's tradition of how their land was paid for: "First, a cow, a calf, and a piece of red cloth to the Shawnee Indians; next a sum of money to the King's agent; and finally a sum of money to Lord Fairfax", William Couper, *The History of the Shenandoah Valley* (New York: Lewis Historical Publishing Company, Inc., 1952), 224.

to Fairfax his effrontery) prevented the parties finding a compromise such as Fairfax reached with other developers in the Valley. The total acreage in dispute (38,686 acres in 27 surveys) plus other lands acquired by the Hites under their Council grants (47,278 acres in 50 some patents) represented only a small part of the 5,200,000 acres encompassed by the Proprietary or even of its 1,351,000 acres in the Lower Valley. If taken up in one or several blocks including a wide range of land types of varying value (as true in other cases), Hite's land claims might have been more acceptable to Lord Fairfax. However, the Hite surveys and patents centered around rivers and creeks and formed an archipelago of properties snaking along water courses (including much bottom land) and stretching throughout the Lower Valley. (See figure 1, Map: Location of Hite Surveys in the Lower Shenandoah Valley.) As Fairfax complained, Hite had engaged in "selling the Waters and Springs together with the best land thereto adjoining... leaving great Tracts useless and untenantable."[10]

Ruling in October 1769 after extensive delays in taking depositions up and down the Valley, the General Court admitted Hite claims to the 27 surveys made under the 140,000 acre grants but never patented or recognized by Fairfax. Although the Court did not allow the Hites the rents and profits from the land since 1749 that they sought, otherwise its rulings

---

10 *FLS,* 1547-48. Hite's surveys are usually described as confined to one or several blocks of land or located beyond the more accessible or desirable regions of the Valley, for example, by Brown, *Virginia Baron,* 163, 166-67, 205; *PJM,* 1: 150-53; and Robert D. Mitchell, *Commercialism and Frontier: Perspectives on the Early Shenandoah Valley* (Charlottesville: University Press of Virginia, 1977), 28-29. However, as described by Warren R. Hofstra, "Land Policy and Settlement in the Northern Shenandoah Valley," *Appalachian Frontiers: Settlement, Society, and Development in The Preindustrial Era,* ed., Robert D. Mitchell (Lexington, Ky.: University Press of Kentucky, 1991), 107, the Council's large grants of land were not actual land grants but "orders authorizing their recipients to enter the valley and to distribute a given quantity of land within a large territory vaguely defined by prominent geographical features." One influential member of the Council was given a grant to land at Antietam Creek across the Potomac in Maryland in the belief that it was located in Virginia; *FLS,* 1722. The actual location of the 27 surveys is not made clear in the sources beyond very general references to settlements nearby, to counties, waterways, etc. However, Geertsma's cadastral survey maps of present-day Berkeley and Jefferson counties with their accompanying index of land grants, including both Fairfax grants and Hite patents and surveys, and his maps of Old Frederick in O'Dell, Pioneers show exact locations for the disputed surveys as well as for the many tracts Hite patented there under his Van Meter grant. When matched with U.S. Geological Survey quadrangle maps, they make clear that Hite claims were indeed, as said by Fairfax, centered around sources of water, with corresponding designations of branch, run, creek, pond, river, fork, etc. for the surveys. One patent singled out for notice by Fairfax was a 300-acre tract in the name of one Israel Friend on the Potomac below Shepherdstown that extended five miles along the river front; *FLS,* 1547. Large surveys up the Shenandoah were located on the North and South Forks and tributaries; they extended miles along waterways with one hundred acres or less stretching along a mile or two of water front; *FLS,* 1812-20. See Figure 1, Map: Location of Hite Surveys in the Lower Shenandoah Valley, for distribution of the 27 disputed surveys throughout the Valley.



The 27 disputed Hite surveys in the Lower Valley that are located on the map are identified by number as in the Hite records, *CHP*, f.101. They have been placed with the help of Galtjo Geertsma's maps in O'Dell, *Pioneers of Old Frederick*. The Geertsma maps identify the numbered surveys by tract numbers, as follows: 1(83), 2(84), 3(85), 4(86), 5(87), 6(88), 7(89), 8(119), 9(76), 10(90), 11(66), 12(91), 13(92), 14(54), 15(93), 16(94), 17(78), 18(80), 19(95), 20(96), 21(41), 22(98), 23(99), 24(100), 25(101), 26(102), 27(103).

Figure 1. Location of 27 Disputed Hite Surveys.

seemed to satisfy their demands for redress. But before issuing orders to implement its decree, evidently in view of the time elapsed and many land transfers in the decades since the original Hite transactions, the Court set up a fact-finding commission. This commission was directed "to certify who at

this time are in possession of sundry tracts of land surveyed for Jost Hite and others under the sundry orders of the Governor and Council of this Colony before the 25th day of December one thousand seven hundred and thirty-five and by what title the Persons at this time in possession of the Land lay claim to them. . . ."[11]

The Commission was supplied with information and was accompanied by representatives of both parties as it traveled through the Lower Valley—from the northern to the southern end of the Proprietary there—during the summer of 1770 to survey, take depositions, and report on the tracts in dispute. Sons of the late Joist (d 1761) supplied information about the original surveys, bonds, etc. and the Proprietor's man produced copies of the surveys lodged with him by the Hites. The Fairfax representative, "the Council for his Lordship," by his presence reassuring the settlers whose lands they traversed in the surveys, was in a position to take note of evidence affecting title claims and raising issues of equity. Thomas Marshall, chief surveyor for the Commission, was another reassuring figure through his long association with the Proprietary.

The procedures of the Commission as it traveled up and down the Lower Valley and reviewed the Hite surveys marked how much the scene had changed since the original surveys were made in the 1730s. Commission surveyors corrected often impressionistic lines of Hite's surveyors and enumerated suspicious discrepancies and erasures in the original log of surveys lodged in the county court.[12] They took numerous depositions and heard stories of how the land was settled. These depositions and others taken earlier by the parties illustrate a process that hardly coincided with the official concept of settlement, that is, moving a prescribed number of families into a designated tract such as historians deduce from the official language of Council and court proceedings. Settlers not already there before Hite's surveyors appeared only gradually trickled in during the later 1730s and 1740s as Hite became a recognized source of land that was well situated along waterways and was warranted under a Council grant or with a bond from Hite if not yet patented. Those seeking him out were prepared

---

11 *FLS*, 1593. The Commission decide that it should make its own survey of a disputed tract when persons in possession denied holding within the Hite survey in question. Then it would give public notice of the time of meetings with the holders; ibid, 1593-94.

12 Erasures included names of those purchasing from Hite (his "assigns") and, if accepted, would leave Hite to appear the holder under the surveys in question. See *FLS*, passim, for references by the Commission to erasures in the log. Later referred to by Hite counsel John Taylor (letter of 20 July 1789) as apt to cause trouble for his clients and requiring some explanation by them; *CHP*, f. 116a.

to undertake improvements on land with this assurance of title. Those already settled "bought" their land for purposes of title insurance. Purchases could be made in barter of goods and services. The original sale to now shadowy assignees, some of them apparently "straws" for Hite, and later conveyances to settlers could be attested through bills of sale, wills, or deeds. But often there were scrawled notes in German and tales of "old piece of paper" that had been lost or mutilated.[13]

The Commission's findings did much to bring the facts of the case into focus and reconcile conflicting data, backed up as they were by deposition and resurveys as well as information from the parties. Its report showed that all but a few tracts in the surveys at the north end of the Lower Valley had been sold by Joist Hite or his assignees and that most of the land was simply regranted with some adjustments by the Proprietary. Also that he or other members of "the Company" had sold or promised the land to those under whom most holders claimed in the large surveys up the forks of Shenandoah. Moreover, Fairfax had grounds for an appeal to the Privy Council on evidence of fraud and misstatements by the plaintiffs.[14] That

13 *FLS*, 1592 ff. for Commission log; 1784 ff. for report. The Commission's report gave the Hites as well as the General Court a better understanding of the situation, including what had been sold and who the buyers were than could be gleaned from Joist Hite's brief or the records he produced. These included lists of buyers, grantees, holdings, etc. that do not jibe with each other, e.g., the "54 families" allegedly settled, *FLS*, 1694-95; Hite's bonds to purchasers, *CHP*, f. 103; and a memorandum of lands sold in the 27 surveys as of 1770, *CHP*, f. 69. Responding to a Fairfax request in 1749 for a "list of such persons as I know claim under our grant," Hite had delivered a document that proved on examination to be "very imperfect and unintelligible". *FLS*, 151. Hite had also left paper floating around that further confused the record regarding contracts of sale and bonds issued to purchasers; *CHP*, f. 168. See also Brown, *Virginia Baron*, 112-13. Like Lord Fairfax, historians have found Hite's lists of settlers, buyers, and grantees somewhat confusing when they try to establish actual disposition of land and settlement patterns in the Valley; Brown, *Virginia Baron*, 166-67, and Mitchell, *Commercialism and Frontier*, 28-29, reflect this confusion. The list of "54 families" allegedly settled on the partners' 100,000 acre grant is an example. No more than a third of the original (1736) list said to have been settled (so entitling Hite and associates to the 38,686 acres claimed under the 27 disputed surveys and to the surplus of the earlier Van Meter grant) can be identified as holders. The names of the others were not included in Hite's 1749 brief or named in subsequent legal proceedings or in surveys of holders made in 1770 and 1786. See O'Dell, *Pioneers*, passim, for land transfers and settlement of numbers of these families.

14 Aside from suspicious erasures in the survey log and numerous discrepancies that appeared as to the size and location of the tracts, questions arose about the credibility of the surveyor himself, even in one case whether a survey had actually been made or, in another case, made within the council deadline. One survey (Powell's Fort) for 9,860 acres under the partners' 100,000 acre grant, when reviewed in 1770 by the Commission, proved to extend to only 6,500 acres, the original "survey" being a kind of notional sketch of land at a certain point on Passage Creek; *FLS*, 1660-62. See *FLS*, 1797, for a deposition by the chain carrier in Hite's surveying party suggesting that no survey had been made. Another survey (South River) said to extend to 7,000 acres, was found actually to total 11,520 acres and to run 13 miles along both sides of the river, much of it bottom land; *FLS*, 1817-18. The Terrapin Neck survey is repeatedly referred to in the Commission's log and report as made past the 1735 Council deadline, on 21 May 1736; *FLS*, 1600-01, 1750, 1774, 1782, 1810. The Hites denied this dating, as in *CHP*, f. 101[718], but it was

there was agreement on the principal questions of fact—who then held the properties in dispute and by what title—appears in an elaborate tabulation of the surveys by the Hites that follows Commission findings, confirms Hite sales in the great majority of cases, and includes Hite notes on mostly minor questions of fact in controversy.[15]

Although the Commission report probably opened the way to compromise of claims at issue, this was forestalled when the General Court, evidently on motion of Fairfax counsel, reopened the case and again heard argument by either side. It allowed new objections to be stated for example, that erasures in the survey book substituting the name of Joist Hite for the buyer's name evidenced the plaintiff's bad faith, that it was hard for the settlers to lose not only their land but the improvements they had made, and the equity that would be done by simply offsetting Hite claims on the settlers with settlers' claims against the Hites.[16]

On 15 October 1771 the Court produced a new ruling that confirmed Hite rights to the Council's grants and to both the land patented or only surveyed within the total 140,000 acres granted.[17] However, the Court awarded title to the Fairfax grantees then in possession of the unpatented land, whether with or without deeds from Joist Hite. All they had to do was to pay £3 per hundred acres (as the original) amount usually asked by the Hites) or to complete payments as stipulated in contracts with Hite plus interest to the plaintiffs. Bonds given by Joist Hite were to be cancelled. Thus both the 89 holders listed by the court order as having contracts with the Hites as well as Fairfax grants and the 54 holders who held by Fairfax grants only were essentially home free.[18]

The General Court's changes in its 1769 decree are hardly surprising given the nature of Hite operations and claims revealed by the Commission's report, also given the standing of the Proprietary. So deciding the Court avoided a likely reversal by the Privy Council. If

---

cited in numbers of official records including the conveyance from a holder to the Hite assignees in 1792; *Boydston*, f. 7; see also Chancery Judge Wythe's decree of 5 August 1790, dismissing Van Swearingen's claim (*Swearingen*, f.2) and the Hite reply to Swearingen's claim (*CHP*, f. 165).

15 *CHP*, f. 101. The handwriting in F. 100 is identified by biographer David John Mays (*Edmund Pendleton, 1721-1803: A Biography*, 2 vols., Cambridge, Mass.: Harvard University Press, 1952; reprint, Richmond, Va.: Virginia State Library, 1984), as being that of the later chief justice of the Court of Appeals, Edmund Pendleton; the script in f. 101, which includes the tabulation of the surveys, appears to be in the same handwriting.

16 *CHP*, f. 100.

17 *FLS*, 1662-65.

18 Added to this list would be the five Terrapin Neck holders identified by the Hites as holding land in the 1200 acre survey; *FLS*, 1601-02, See note 7 regarding holders not listed.

sustained on appeal, the Court also avoided a legal morass: having to make innumerable rulings on the equities in each case and in the multitude of claims and counterclaims sure to spring up throughout the Lower Valley as the Hites contested settlers' claims and settlers who were Hite assignees in turn attacked titles of Fairfax grantees who had acquired part of an original claim derived from Hite.

The Hites were disappointed and angry over the Court's changes in its 1769 decree. The heirs of the original partners, particularly the numerous Hite family, by now had begun to see a substantial part of the disputed land sold by Joist Hite or distributed by his partners as rightfully belonging to them, theirs to claim and a highly valuable prize. The new court order would yield only a small fraction of the amount they had foreseen and should probably even impose a net loss considering expenses already incurred in the litigation.[19] Although the decree freed them of obligations to either convey land or make good on bond to original purchasers (the dilemma apparently impelling Joist Hite to sue in the first place), otherwise the Court was offering them nothing.

The Hites at once proceeded to appeal to the Privy Council in London to set aside the General Court's new decree.[20] Meanwhile the settlers could continue to reply upon the exertions and influence of the Proprietary to protect them and the title to their properties that had gained so much in value over the years. The small annual quit rents that the Proprietor received from the landholders did not justify the costs of prolonged litigation, but Lord Fairfax seems to have been determined to protect their claims and ready to have his lawyers put up a sustained defense of their interests.

The appeals from the General Court to the Privy Council were overtaken by the Revolution and were never ruled upon in London. By the 1780s, when the Hites revived their suit and *Hite et al. v. Fairfax et al.* came to be heard on appeal, the scene had changed in many ways.[21] Commonwealth of

---

19 For an account of expenses as of early 1786, see *CHP*, f. 76. The Hites, calculating after the 1769 General Court decree, had guessed they would realize £20,000; *CHP*, f. 100.

20 Fairfax also appealed certain parts of the decree, apparently wanting to deny the Hites even the modest settlement offered under the 1771 decision.

21 See *PJM* 2: 140ff. for situation of the Fairfax estate. In 1783 the Hites had considered trying for a settlement (*CHP*, f. 102, Isaac Hite, Sr. to Attorney General Edmund Randolph, 6 August 1783). But they may have found the Fairfax executors too distracted by other problems to focus on those of the Fairfax grantees, at least on terms the Hites were ready to consider. By 1784 the Hites had begun to prosecute their appeal in the Virginia high courts that succeeded to the jurisdiction of the British Privy Council over the case. See *Swearingen*, f.13, for notice of order continuing the suit to the next term, 2 November 1784.

Virginia courts had succeeded to the Privy Council's appellate jurisdiction. Moreover, with the Revolution the Proprietary had become the property of aliens and former enemies and had passed to heirs resident in England on the death of Lord Fairfax in 1781. This once strong, well-established organization no longer had the income and influence needed to fight the prolonged legal battles that it now faced on several fronts: on the one hand to withstand claims of the new Commonwealth government to expropriate assets of the Proprietary and those of Lord Fairfax's estate in Virginia; on the other to defend itself against the Hites' demands for rents and profits in the disputed surveys while at the same time trying to protect its grantees from expropriation under a court decree in favor of Hite claims. What appears from the record is that lawyers for the Fairfax estate devoted their primary efforts to salvage operations, a last-ditch struggle to hold on to Lord Fairfax's several hundred thousand acres of manor lands, the most valuable remaining family asset. There is no evidence in the record of concern amongst Fairfax heirs, executors, or lawyers over the fate of the many Fairfax holders in the 27 disputed surveys.

As the case came to trial, the landholders' connection to the Proprietary, rather than a protection, clearly had become a liability under Fairfax's successors, shadowed as the latter were by the now alien and ambiguous status of their organization and preoccupied with their own worries. Commonwealth Attorney General Edmund Randolph, who made an appearance along with Hite counsel, John Taylor, for the appellants, went so far as to cast doubt on the original Fairfax title to the Northern Neck lands. John Marshall, appearing as counsel for the Fairfax estate, focused his remarks, as reported, around defense of this title and seems to have had little to say about the pros and cons of the Hite claims as opposed to those of the Fairfax grantees in the disputed surveys.[22]

The Virginia Court of Appeals (constituted by higher court judges—General Court, Chancery and Admiralty—of the new Commonwealth) heard *Hite v. Fairfax* argued in April-May 1786. The changes in court organization and the bar following the Revolution were considerable. The colonial General Court had been made up of the Council of the Colony, a body presided over by the Governor, guided in its deliberations as a court by a lawyer member, and subject to appeal to the Privy Council in London. The new courts were staffed entirely by lawyers; their judgments, except where appeal lay to federal courts, were final.

---

22 *4 Call* 57; *PJM* 1: 150-64.

Despite these changes, numbers of the same people were active in the case, so providing some continuity to the litigation. Chancery Court members Edmund Pendleton (chief judge), who had served as counsel for the Hites in the earlier litigation, and George Wythe, who had argued for Lord Fairfax at the 1771 General Court rehearing of the case, were the two dominant figures on the bench. In 1786, as in 1771, the lawyers on either side were leaders at the Virginia bar.[23] Hite counsel, John Taylor, was a cousin and adopted son of Judge Pendleton. The main counsel for the proprietary, John Marshall, was a son of Thomas Marshall of the 1770 Commission, a former student of Judge Wythe, and a rising member of the post-revolutionary bar. Significantly for the *Hite v. Fairfax* litigation, a further reshuffling of the high courts took place in 1788: a new Court of Appeals of five judges headed by Judge Pendleton was set up and Judge Wythe became the sole Chancery Court judge. Because Chancery Court decisions were subject to appeal to the new Court of Appeals and because Pendleton and Wythe were rivals of long standing, the change made for discord and strains between the two high courts of the Commonwealth dealing with *Hite v. Fairfax.*[24]

On 6 May 1786 the Court of Appeals ruled that the Hites not only had title but could demand conveyance of lands in the 27 surveys, to this extent reinstating the original General Court decree of 1769.[25] It then went further, excepting from the order to convey titles to the Hites only those

---

23 Lawyers for the Hites at previous stages of the case in addition to Pendleton had included the now Attorney General Edmund Randolph (*CHP*, f.112) and James Mercer, a member of the 1786 Appeals Court (*CHP*, f.102). Leading Valley lawyer Gabriel Jones, counsel for the Proprietary along with George Wythe in the earlier stages of the proceedings, was serving in 1786 and later as an executor of Lord Fairfax's estate; Brown, *Virginia Baron*, 191. The judges involved at earlier stages of the litigation as counsel for one party or another did not have to recuse themselves in the 1786 proceedings.

24 For the court reorganization and relations between the judges, see Mays, *Edmund Pendleton*, 1:226-32, 2: 277-300, 290-96.

25 That the General Court decrees of 1769 and 1771 and the Court of Appeals decree of 1786 all agreed in affirming the right of the Hites to land surveyed under their crown grants (*FLS* 1592, 1662-63; *4 Call* 84) is usually construed to mean all three accepted Hite claims to conveyance of land in the 27 disputed surveys—the real thing at issue in the litigation. For example, see Brown, *Virginia Baron*, 163, 166-67, 205; Harry C. Groome, *Fauquier during the Proprietorship* (Richmond, Va.: Old Dominion Press, 1927), 78-79, fn.33; Fairfax Harrison, *Virginia Land Grants: a Study in Conveyancing in Relation to Colonial Politics* (New York: Arno Press, 1979; 1st ed., Richmond, Va.: Old Dominion Press, 1925), 165-66, fn. 186; *PJM* 1: 150-53. As shown above, the final 1771 decree of the General Court gave the Hites only a nominal sum by stipulating settlement of claims at the original selling price of £3 per hundred acres instead of at current much appreciated prices and quieted the Fairfax holders in possession on their making such payments where due. The Court of Appeals decreed that, except for one minor provision favoring the Hites, the 1771 decree "ought to be reversed and annulled" as sought by the Hites in their appeal and the land of the Fairfax holders conveyed to the appellants; the terms of this reversal put the burden of proof on the holders and enabled the Hites to press specious claims to land that Joist Hite had sold.

"landholders in possession" under Fairfax deeds who were able also to supply proof of purchase from the Hites or those who had some other claim in equity. This imposed a heavier burden of proof on the settlers than only showing that their land had been sold by the Hites and was so listed by the General Court's Commission in its 1770 report.[26] The Court in addition ruled for the Hite claim to rents and profits from the Proprietary on the lands in question, to be paid for the period form 1750 to 1786 by the estate and by holders thereafter until they yielded possession. Any surplus in the settlers' holdings over the original surveyed acreage found on resurvey was to accrue to the Hites with improvements thereon.[27] The three chancery court judges, then including both Pendleton and Wythe, were charged to carry out the Court of Appeals decision by ruling on equitable claims of the holders. Commissions were at once appointed to determine the extent of improvements on the land and to calculate rents and profits over and above the value of improvements made by the holders, which were to be credited as deductions in favor of the Fairfax estate. Counsel for the parties began taking depositions on matters of proving title.

With so many facts in the case hard or impossible to discover, the 1786 Court of Appeals decision made the proceedings into a kind of compulsory gamble for the parties, a lottery in which the settlers had all to lose. It gave lawyers much work to do as they juggled the complex and tedious process set in motion by the decree. It overloaded a new court apparatus ill prepared to handle this multitude of cases. At the same time the stakes continued to rise. Land prices had much appreciated and the Hites were targeting considerably more land than in the earlier phase plus seeking rents and profits.[28] Furthermore the family saw itself entitled to the lion's share of the

---

26 Hite assignees or holders deriving title from them, though originally listed as plaintiffs, had gradually faded out as such in court decrees on the case. Whereas the General Court ruling of 1769 had granted the Hites *and their assignees* title "to all the lands actually surveyed before Christmas 1735" (*FLS,* 1592) in accordance with Hite's own plea in his 1749 bill of complaint (*FLS,* 1542-43), the court's 1771 decree simply quieted titles of those in possession under Fairfax, however arrived at; *FLS,* 1663-64. The Hites appealed against this ruling insofar as it confirmed title under the Fairfax grants "to any Persons not claiming under the Plaintiffs...."; *FLS,* 1665. In the 1786 decree (*4 Call,* 82-83), the Hite assignees were referred to simply as landowners in possession: defendants who were being allowed to state their claims before the court to being "such persons who are in possession of land under contracts derived from the appellant or their ancestors." This gave the lawyers more room to argue regarding chain of title, etc., whether or not it could be shown that the Hites had actually sold the land in question, that is, even if the holders had been listed by the 1771 court decree as deriving title from a Hite assignment.

27 The report of the resurvey commission has not survived but the surplus acreage and improvements on it may have reached a substantial amount. See case of one John Daniels who lost a property of 103 acres including a mill valued at £800; *CHP,* f.81 [330-53]; f. 134 [405,412,427]; f. 145[509].

28 For inflation see McCusker, *How Much Is That in Real Money?* and William Z. Ripley, *Financial History of Virginia, 1609-1776* (New York: Columbia College, 1893), 132-44. On the problem of

overall proceeds from theirs and the partnership's recovery.

The Appeals Court decree invited or impelled most of the now several hundred parties involved in the *Hite v. Fairfax Case* to become engaged: the Hites and their partners (heirs now numbering in the dozens) to deny the landholders' claims, take the land, and maximize Proprietary and settlers' obligations for rents and profits;[29] the landholders claiming under Hite to make proof of title against the Hites; the Fairfax grantees without claims under Hite to defend themselves on equitable grounds from seizure of their properties by the Hites or claimants under them; the Hite family to assert a claim against their partnership for over half the proceeds rather than a partner's one-quarter share of the land recovered, and to take back land annexed by one of the partners; the other partners to protect their claims;[30] the Proprietary to reduce claims for rents and profits by the Hites or claimants under them and assert offsetting claims for improvements made by the holders, also to withstand any claims Fairfax grantees might lodge against the Proprietary such as compensation for improvements being confiscated by court order along with their land, and oppose Commonwealth claims on the estate.[31] Many of these litigants would be fighting out their legal battles on several fronts and would engage each other in chancery courts, in local courts, and again back to Chancellor Wythe or to the Court of Appeals with its final say.

In the maze of court actions growing out of the 1786 decree, few of the landholder defendants were well prepared to meet the Hite onslaught from their own resources. Nevertheless, it was that or submit to losing their properties. If anyone succeeded to the commanding role of Thomas, Lord Fairfax, in the eyes of the holders, it had to be John Marshall. The lawyer in charge of litigating for the Fairfax estate against Commonwealth and Hite claims, he was one to be sought out by many holders. Eventually he was

---

comparing prices in the late colonial period, see Mitchell, *Commercialism and Frontier*, 72-73; also Harrison Clark, "Northern Virginia Agriculture in 1791," Jefferson County Historical Society, *Magazine*, 35 (1969): 32-33.

29 For the Hite family alone, heirs included the survivors of Joist Hite's eight children and 55 grandchildren as calculated by their descendants; "Washington Home," 10, *Washington Post*, 8 September 1994.

30 See note 101 below for basis of Hite claim.

31 Initially the Commonwealth sought the entire unappropriated lands of the Proprietary, and in addition manors held by Lord Fairfax totalling 220,000 acres; Groome, *Fauquier*, 74-77.
In 1796, when the state compromised its claim with John Marshall acting as attorney for the Fairfax executors, it took the unappropriated land (about two million acres) and conceded the manor lands. By then Marshall and associates had an option to acquire these valuable lands from the estate but faced long-continuing litigation of various kinds. They were able to make the final payment on their purchase only in 1806; *PJM* 2: 140-49.

retained by 65-70 clients in sixteen of the surveys contested by the Hites, serving them either as individual clients or in groups of two or more. This made up perhaps two-fifths of holders fighting expropriation in the courts.[32]

Perhaps because Marshall represented so many landholders who were being pursued by the Hites, he is said to have, in his role of "counsel for the Fairfax family in Hite v. Fairfax", sought to make good the equitable claims of Fairfax grantees who lacked Hite title to the contested land.[33] In fact, his clients were a mixed group and his fees were paid by them, not by the now beleaguered Proprietary. About forty of these clients were Fairfax grantees who also had claims to title from Hite (as did the great majority of all landholders in the 27 surveys) and claimed under the first exception to the decree, namely, as persons "... in possession of lands under contracts derived from the appellants or their ancestors, and have since procured deeds of confirmation from the late Lord Fairfax." Other Marshall clients had neither Hite contracts nor Fairfax deeds and made equitable claims, notably twelve in the South River tracts whose land was held from a Hite partner (himself a defendant in a Hite suit) and had no Fairfax title, and who were sued by Hite in the name of the partnership. Still others had only Fairfax grants. Finally, Marshall represented the heirs of an individual who in 1736 had paid Joist Hite £36 for the Terrapin Neck land. They were seeking to make good their own claims against Hite and then oust the Fairfax grantees holding the Terrapin Neck properties. These claimants under Hite and adversaries of the Fairfax grantees had never occupied, probably never even seen, the Neck survey. Hence the one thing Marshall's

---

32 *CHP*, dd. 137-76, supplies a partial list of the litigants, including 40 suits mounted by some 160 landholders. In the post-revolutionary phase of Hite v. landholder litigation the case style of *Hite, et al. v. Fairfax, et al.* no longer means much, the virtual dissolution of the Proprietary having left the holders on their own as defendants vis-a-vis the Hites. Defending themselves in dozens of cases against seizure of their properties by the plaintiffs or by claimants under them, the holders brought their own actions against these plaintiffs and hence became the active parties and counterclaimants in the process. At one point Hite chief counsel John Taylor submitted bills for defending 51 suits in Chancery Court; *CHP*, f. 112.

33 See *PJM* 5: 62. The Marshall papers editors transcribe records relating to a number of his cases in *Hite v. Fairfax*, but these do not convey the tangled and convoluted pattern of relations between the holders, other parties, and their lawyers. they refer to Marshall's "argument on behalf of those... who claimed title to their lands on the basis of grants" from the Proprietor. But two pages later the dispute is construed as pitting the Fairfax estate against the settlers, i.e., "the narrow controversy between the proprietor and the settlers under Hite"; *PJM* 1:152. "Narrow controversy" of counsel fails to describe this litigation as a whole, involving as it did so many landholders and extending over many years in a number of courts. There is no evidence of any significant controversy between the holders under Hite and the Proprietary, although conflicts of interest as to liability for improvements by the settlers did exist. The adversary relations centered in contests between Hite and the landholders, either those who were Hite assignees as well as Fairfax grantees or simply Fairfax grantees.

clients had in common was that they were contesting Hite claims, not that they were Fairfax grantees in possession of the land.

The odds favoring the Hites in their contest with the landholders were improved by Marshall's personal situation, by the complexities of the litigation, and above all, by his lack of financial support from a strong client. A rising figure on the post-revolutionary scene, he was a man in a hurry. He was not prepared to make a laborious case-by-case review or explore the various weaknesses in the Hite position based on actualities of the earlier period when the settlers took up their land.[34] But in order to counter the claims of the Hites' counsel, the landholders needed to have their cases argued from such materials as the log and depositions of the 1770 Commission and the report it submitted to the General Court to show how haphazardly Hite and company had conducted their land sales, to recall the primitive conditions of fifty years earlier on this Virginia frontier, and to prove that fraud by the Hites was a factor, as apparent from the original survey log.

The Hites were ready to mount a well-financed, focused, and organized campaign as they set out to capitalize on the Court of Appeals decision.[35] In framing their arguments, the Hite lawyers inventively depicted an orderly, businesslike, and carefully spelled out series of transactions that produced contracts and bonds. The settlers, they said, must present these in order to sustain the burden of proving that they or those selling to them had purchased the land in question.[36] This of course ignored the findings of the

---

34 One bill submitted by Marshall for a complainant was returned by the judge with the notation that it was a "bill stating neither what land, nor under whom, nor in which way they claim," in order word, a blank. It was ordered dismissed, the plaintiff to pay the costs; *CHP*, f. 136[440]. Taylor congratulated his clients on a concession made by Marshall to speed up the proceedings—taking depositions before filing briefs of the parties in Chancery Court: "this would at once disclose to you the testimony on which the people depended," so assisting a Hite rebuttal; *CHP*, f.116a.

35 See *CHP*, ff. 108a, 112, 113 for legal fees and ff. 88-89 for examples of the Hite family agents' (Isaac Hite, sr.'s sons-in-law Jonathan Clark and James Williams) accounts with the Hite family and the company. The agents operated after 1798 under special commonwealth legislation that enabled them to act for the ever-growing roster of partners' heirs; *The Statutes at Large of Virginia*, ed. Samuel Shepherd... a Continuation of Hening (New York: AMS Press, 1970), 1(1792-1806): 420-21. A statement submitted to the partnership by Isaac Hite, sr. showed 441 days devoted to attending General Court, the commissioners, the surveyors, the taking of depositions, etc. from 1769 to 1789. When attending to *Hite v. Fairfax* business during active phases of the suit, 1769-71 and 1786-89, he would have averaged perhaps sixty working days per year on the case. Thus, beginning with Joist Hite in the 1730s, the disputed surveys were a preoccupation and source of income to the family over three generations. Chief Hite counsel John Taylor probably took substantial fees. Henry H. Sims, *Life of John Taylor* (Richmond, Va.: The William Byrd Press, Inc., 1932), 36, puts Taylor's earnings at $100,000 for the years between leaving the army and his retirement, 1779 to 1791.

36 *CHP*, f. 116a.

1770 Commission that purchase from Joist Hite could involve no more than a barter transaction with or without a piece of paper serving for a contract or bond.[37] The Hites' lead counsel, John Taylor, had words of both cheer and caution for his clients. An experienced litigator, Taylor referred to "the complexity, variety, and novelty" of the matters being contested. He advised them that "old Mr. Hite's admission in his original bill of complaint to having sold much of the land in the disputed surveys (repeated in the 1770 Commission report) was troublesome. Even so, he urged contesting every claim where any doubt could be cast on the landholder's chain of title.[38]

The Court of Appeals when it called upon all Fairfax holders as listed by the 1771 decree of the General Court to state their claims in equity, directed them to show why they should be excepted from the decree awarding title to the Hites, whether as assignees of Joist Hite or on other grounds.[39] Most often the holders' evidence, although seldom documenting title, was good enough to support prolonged legal skirmishes revolving through state and local courts.[40] In another time the evidence could have sustained the burden of proof in almost all cases, especially given the backing of an influential Proprietary. Even after the Revolution the holders had a well-informed and probably friendly individual on the bench in the person of Chancellor Wythe through his having served as counsel to the Proprietary in the 1771 General Court proceedings.[41] But then they had to contend with appeals

37 Sales from the Great Cave survey included the exchange of a horse and saddle in protracted negotiations for one piece of land. A mulatto slave woman figured in another sale from this survey. Both were attested by surviving witnesses but left no written record; *FLS,* 1639-42.

38 See *CHP,* ff. 103, 108a[925], 109, 116a[68], for some Taylor letters and memoranda on the litigation. The Hites were advised to allege conspiracy and combination by neighboring holders, play up the landholders' presumed wealth (guilt by association with a British baron), cast doubt on the motives and veracity of witnesses, especially of those holding in the same contested survey, question the right of original purchasers, even where there was evidence of a Hite sale, to divide and sell off surveys, examine whether, when title was subsequently transferred, the seller warranted a Hite contract, and make the settlers' efforts to reinsure title by having their land resurveyed and granted by the Proprietary appear to discredit their claims and to constitute a form a conspiracy between Fairfax and the purchasers from Hite. He suggested how to rationalize evidence of Hite contradictions or fraudulent or irregular practices and appeared willing to withhold material evidence.

39 *A Call,* 82.

40 One problem was that, in passing title to land, the deeds on durable parchment of the established and prestigious Proprietary, signed and sealed by Lord Fairfax and recorded at the proprietary headquarters (Brown, *Virginia Baron,* 111) came to be preferred to the "old pieces of paper" showing purchase from the Hites (even assuming a written contract had been made). Thus a chain of title from the Hite assignee through heirs or purchasers might not be provable. Taylor urged trying to "recover of all intruders tho it should appear that we had actually sold the land to others," and insist on the holder showing a title from the Hites. See *CHP,* f. 116a [56].

41 Thus in rejecting the Hites' argument that their assignees in one case had compromised title from Hite by taking Fairfax grants, Wythe commented that the purchaser from Hite had sought

always taken by the Hites to the Court of Appeals (where Chief Judge Pendleton, counsel to the Hites in the earlier litigation, may have been less sympathetic) as well as to bear the expense of long-drawn-out proceedings at far distant Richmond courts.

Different outcomes of the litigation did not necessarily relate to the weight of evidence offered by a landholder. Holders who won generally seem to have had more or less airtight cases.[42] Where there was no room for dispute with the holder the Hites seem to have either tacitly yielded on their claims or reached compromise settlements, perhaps after some preliminary litigation. But in the majority of cases evidence about the original purchase and subsequent chain of title proved cloudy when exposed to the tests set up by Hite counsel. Numbers of those who were listed by the 1771 General Court decree as having claims by purchase from the Hites had cases good enough to win in Chancery but then lost in the Appeals Court. Claims identifiable as deriving from one or another of the "54 families" whose alleged settlement entitled Joist Hite and partners to their right to 54,000 acres from the 100,000-acre Order-in-Council in addition to Hite's 40,000-acre grant and thus entitled to the additional acreage in the Van Meter/Hite grant and the 27 disputed surveys seemed to carry no special weight.[43]

The impact of the litigation varied from county to county. In the event about twenty holders in present-day Berkeley and Jefferson counties seem to have given up some or all of their land within six of the thirteen surveys in those counties, usually having the choice of buying or renting it back from the Hites or their assignees at current prices. Tracts ranging from small parcels to 400 acres in size and scattered throughout the area changed

---

"protection against litigation which going one way would have ruined him and the other cost him more expense than would have purchased the peace of both parties." The judge noted that the Hites originally asked only that title be awarded to them or to "their assignees". He characterized the litigation as "expensive, tedious, and uncertain in the event" and rebuked the plaintiff Hites for prosecuting the suit "without attempting to adjust the matter," terming their conduct "vexatious and oppressive." *CHP*, f. 105[849]. For a Wythe reprimand in another case, see f.105[853].

42 An exception was Corbin Washington's share of an 850 acre Bullskin Creek survey tract. In this case Marshall had warned his client that he found "a chasm in title which is absolutely necessary to supply," that is, that he needed to give written evidence of transfer as property passed though successive hands. Hite's bond to the original purchaser was missing and there was no evidence of any payment by this purchaser. The General Court list of 1771 accordingly included Washington as a Fairfax grantee only. Nevertheless Washington was quieted in possession under a negotiated settlement of 23 May 1790, agreeing to pay the Hites £3 per hundred acres for the land plus interest since 1738. Marshall was paid a fee of £6 for his services; *PJM* 1: 192; 2: 37-38, 106, 391; *CHP*, f. 118[15].

43 See Note 103 below. Even the McKay family, listed among the legendary "54", was treated as having no special claims except through the partnership.

hands for a total of 2500 acres, or about two-fifths of the total acreage in dispute there.[44] Frederick County had only six of the surveys, in all totalling about 4400 acres, and Hite claims and loss of property by the holders in that home county of the Hites were minimal.[45] In five of the eight Shenandoah County surveys most of the properties sought by the Hites were surrendered, as many as ninety all told or about half the number of farm units in the surveys there and totalling as much as 16,000 acres, or more than half the 28,000 acres disputed in the county.[46]

The Case of Terrapin Neck

The story of what happened to the landholders of Terrapin Neck supplies detail on the *Hite v. Fairfax* litigation in the aftermath of the 1786 court decrees. It offers perspective on how the fictions of the 1730s emerged as irrebuttable presumptions and the facts of the pre-revolutionary era got short shrift from the newly organized courts as they decided upon the equitable claims of holders. In particular the case papers that survive—a trove of briefs, depositions, opinions, decisions, etc. regarding this 1200-acre survey—have much to tell about how the law courts responded to the many problems that ensued from the Appeals Court decision of 1786 in favor of the Hites. The Terrapin Neck cases had their own special features: the survey evidently took place well past the Council deadline; the Hite assignees never settled the land; and the case may have been exceptional for its lack of due process under the new court system. But the landholders were engulfed by the same legal processes and machinery as others in the region.

The Terrapin Neck holders were well settled on their land and had made some substantial improvements by the time of the 1786 court decisions. This Potomac River track was among the earliest occupied in the Lower Valley. Just upstream a mill was operating before 1734 on a marshy tributary of the Potomac.[47] The Terrapin Neck tract offered good bottom

---

44 See for example, *CHP*, ff. 95, 97, 115[10], 133, 179. Including Terrapin Neck there were about 100 farm units lying within the disputed surveys in Berkeley and Jefferson counties.

45 In Frederick the main litigation arose in a suit by holders in one large survey to recover from the Hites on bonds; it was dismissed by both the General Court and the Court of Appeals.

46 *CHP*, ff. 118a, 121, 133, 179, 180. Lands in the partnership claim plus 1100 acres in the one Hite family survey located in Shenandoah County were to yield as much as £30,000 in sales plus rents and profits assessed on holders after 1786, sales of surplus acreage and revenues from leases; *CHP*, ff. 112, 115.

47 The Josiah Jones mill on Rocky Marsh Run, present boundary of Berkeley and Jefferson Counties (then Jones Mill Stream); Berkeley County Historical Society, *The Berkeley Journal* 13(1989), 1:20. Patent to 834 acres of land under the 40,000-acre Van Meter grant was issued 3 October 1734

land on one side and a big spring as well as five miles of river frontage for its less than two square miles of land. Also appealing to early settlers, the land was near the main routes connecting seaboard ports and southern Pennsylvania to the Shenandoah Valley: a major river crossing and wagon road upstream at what is now Williamsport and another several miles downstream at Pack Horse Ford just below what is now Shepherdstown. The existence of a mill and a road in the vicinity—revealed in 1734 surveys—suggests that settlers had already put down roots in the region. One Jeremiah Yorke, the first to leave a record of settlement on the Neck, could have arrived by 1730.[48] Jost Hite's surveyor, James Wood, appeared at Terrapin Neck on 21 May 1736 according to his log and calculated its extent at 1200 acres.[49]

When the Fairfax proprietary land office opened for business at

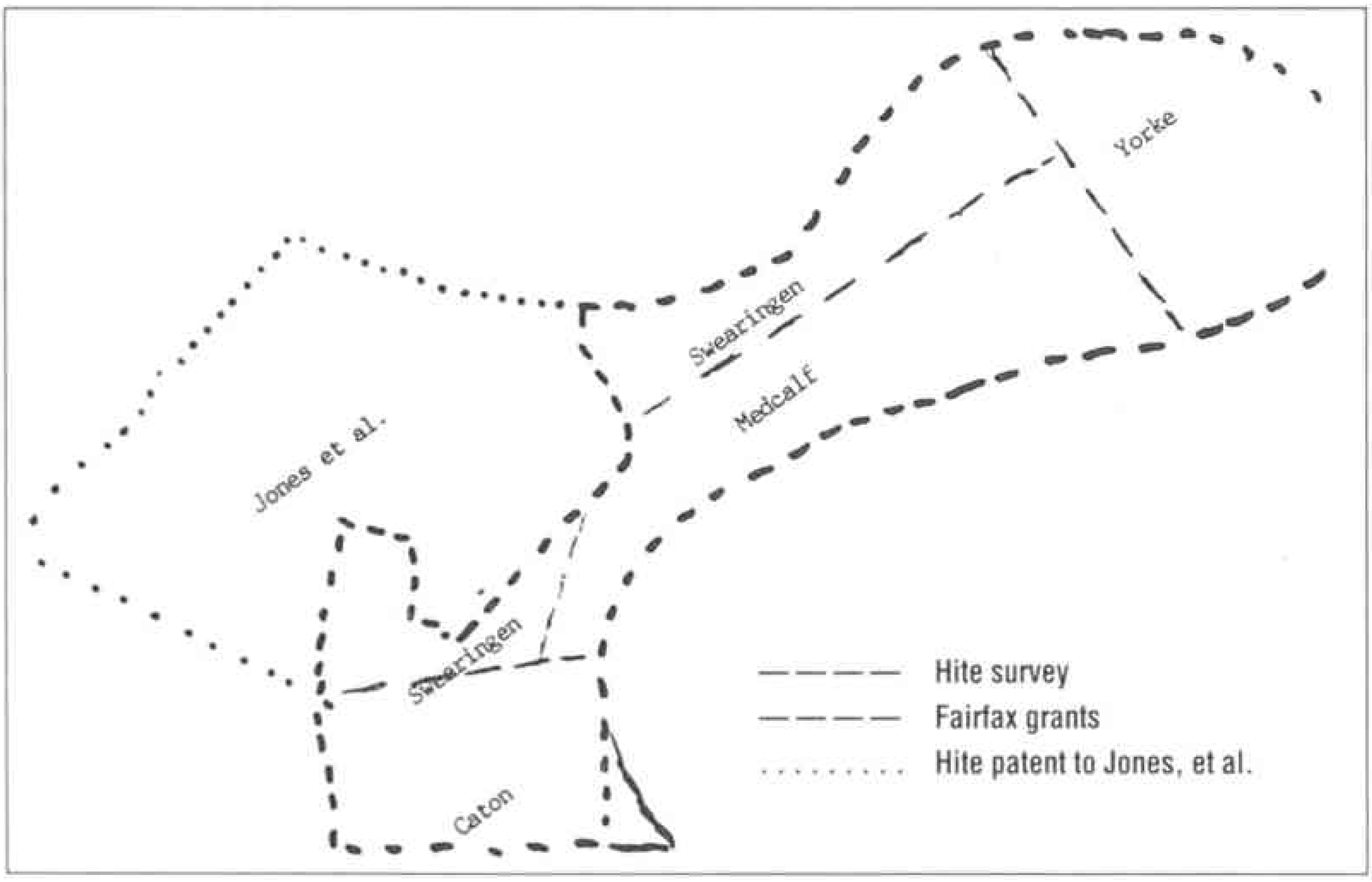


Figure 2. Terrapin Neck. Hite Survey, May 1 and Fairfax Grants, 1751-1760.

---

to Jones, Richard Paulson, and Joseph Mounts. A case of Hite "selling" the land to prior occupants who took his deed as a form of title insurance. Purchasers from Jones et al. later in turn prudently reinsured their title with grants from the Proprietary.

48 Yorke paid taxes in Chester County, Penna. to 1729; O'Dell, *Pioneers*, 41-42. See also *Boydston*, f. 1[11], deposition of Anthony Turner, 13 February 1798.

49 *FLS*, 1601. The survey line described a terrapin-like head connected by a narrow neck to a roughly square piece of land at the base. At the upper end the line followed the Jones et al. survey line; at the downstream end the surveyor's line came just short of the river, then turned upsteam, possibly to give access to a big spring through this narrow strip for the use of the downstream settler, who may already have laid claim to it or shared it with his upsteam neighbor.

Winchester in 1749, Terrapin Neck holders were among the many Valley settlers who put in applications for warrants authorizing surveys to be made preparatory to receiving a Fairfax grant. Jeremiah Yorke obtained a grant for 323 acres (4 June 1751). Van Swearingen, who arrived about 1744 from Maryland, took up 187 acres, part of the Neck (14 January 1752), and later entered for 200 acres there (9 April 1760). Other Fairfax grants were issued to Thomas Caton (196 acres, 31 May 1751) and Vachel Medcalf (300 or 336 acres, 7 January 1755).[50] (See figure 2, Map: Hite Survey and Fairfax Grants, Terrapin Neck.)

Landholding on the Neck during the first half century of settlement was stable when compared with frequent changes in ownership and continuing speculation common throughout the region. In 1753 a local landholder, William Chapline, had acquired the Yorke tract.[51] In 1764 one Thomas Boydston paid £60 to purchase the 196-acre tract granted to Caton who meanwhile had taken land a few miles upstream at Whitings Neck.[52] Boydston later bought 112 acres and optioned another 56 acres from Medcalf heirs.[53] In other changes, by 1770 a Williamson family had acquired some acreage on the Neck adjacent to their other land holdings. Swearingen had sold 100 acres of his 1760 grant to one Adam Money; and he seems to have acquired the Yorke tract from Chapline heirs and then transferred it to a son, Van Swearingen, Jr.[54] By the time Jonathan Clark surveyed improvements in 1786, Boydston, the Swearingens, and the Medcalfs were owners of most of the land under cultivation and accounted for the more substantial buildings on or adjacent to the Neck.[55] In 1783

50 Gertrude E. Gray, *Virginia Northern Neck Grants*, 2 vols. (Baltimore: Genealogical Publishing Co., Inc., 1988), 2 (1742-1775): 49, 50, 57, 81, 116. The Fairfax land grants in the Neck as listed by Geertsma, *Cadastral Survey*, totalled 1096 acres; the Wood survey total of 1200 acres may have overstated the extent.

51 Frederick County, *Deed Book* 3:90.

52 Frederick County, *Deed Book* 5:354. Caton to Starks, 2 October 1759; 9:369 Starks to Boydston, 4 September 1764.

53 *Boydston*, ff. 1, 23.

54 Williamson, Frederick County, *Deed Book*, _____; _____; Swearingen to Money, Berkeley County, *Deed Book* 4: 108 (23 March 1775); Swearingen holding of Yorke tract, *CHP*, f. 185.

55 *CHP*, f. 185, provides details of buildings on these and some other properties in the disputed surveys and acreage cultivated as of 1786. On the main Boydston place there was a framed and plastered two-story dwelling built in the mid-1760s. Twenty-six feet long by twenty wide, it had a stone cellar, double and single outside chimneys, and a five-foot wide portico running the length of the house. (This structure, one of two pre-revolutionary frame buildings still standing in Jefferson County and the only one still habitable and occupied, was extended in the 1850s but is still a central part of the main house on "Boydston's Place". Outbuildings included a large clapboarded kitchen and outhouse and a new round log barn sixty-six by twenty-two feet, described as "finished". A big spring perched at the river's edge, later known as Stillhouse Spring, lay a distance from and about 100 feet below the elevation of the main house.

The other Boydston place had an old clapboarded log dwelling twenty by sixteen feet with

Swearingen paid £8 S.12 in tithes (including his property upstream adjoining the Neck tract), Boydston £7, Medcalf £2 S.7, and the Williamsons £5 (including adjacent property).[56]

By the 1780s, as land values in the Lower Valley made a steep rise through a generation of improvements on the land and settling of the region at large (the real rise further exaggerated by war and postwar inflation), Terrapin Neck shared in the prosperity.[57] If its brakier parts remained in timber, this was no drawback at a time when lumber and firewood were increasingly valued commodities. In 1783 Thomas Boydston agreed to pay the Medcalfs £100 specie (silver) by weight in taking an option for another 56 acres of the Medcalf grant.[58]

The successive court decrees in *Hite v. Fairfax* — 1769, 1771, and 1786 — held different possibilities for the Terrapin Neck holders. The 1769 decree meant that they, like others in the 27 surveys claimed by the Hites who had no Hite contracts or only weak proof to offer, might have lost their land to the Hites or to Joist Hite's assignee. However, repeated statements by the 1770 Commission based on surveyor James Wood's logbook that the Neck survey was made almost five months after the Christmas 1735 deadline would have stood in their favor.[59] In the practiced hands of Fairfax counsel, Gabriel Jones or George Wythe, the Commission's statement by itself would doubtless have sufficed. Evidence of slipshod survey practices

---

outside chimney and one new clapboarded barn sixty by twenty. On his two places Boydston had 146 acres under cultivation and held an option on another piece with 45 acres were under cultivation. *CHP*, F. 185 Medcalf improvements consisted of old log structures plus a new round log corn house sixteen by eight feet and clapboarded; 60 acres were under cultivation.About 1759 Swearingen had built himself a stone house on a large tract he had acquired from the Jones, et al. holders adjacent to Terrapin Neck which was the site of a big spring (now headquarters-to-be for the National Training Center of the U.S. Fish and Wild Life Service). One of Swearingen's Neck holdings had three cabins, presumably to house some of his slaves; the other had "one indifferent cabin" and 130 acres under cultivation. Together Boydston, the Medcalfs and the Swearingens held 90 percent of the 420 acres of cultivated land on the Neck in 1786.

56 As shown in the 1783 Berkeley county tithable list, the Terrapin Neck landholders had some forty horses and ninety head of cattle between them, about two-thirds of the total divided between the Boydstons and Swearingen. Swearingen held 12 slaves, the Boydstons 10, and the Williamsons 4. Swearingen's personal property figures (slaves and livestock) refer to his total holdings both on and adjacent to the Neck, these being combined in the Tithables list. List of Tithables, 1783, Max W. Grove, Reconstructed Census, 1774-1810, Berkeley County, Virginia (American Museum, Colesville, Md., 1970), 45-47.

57 See note 28.

58 *Boydston*, f. 23.

59 The only one of the 27 surveys so described (*FLS*, 1774) and also the only one described as "said to have been made" by the 25 December 1735 deadline rather than simply "made"; *FLS*, 1600, 1750. As noted above the odd contour of the survey reflected the pre-existing grant upstream which included a big spring. The hurried surveyor may have overlooked this obvious Hite target and repaired the omission later. This was also the only survey never occupied, or subsequently sold for occupation, by a Hite assignee.

and fraud by the Hites made clear elsewhere in the 1770 report could have outweighed the surveyor's statement under oath that he surveyed the Neck tract before the deadline, thus enabling a settler appeal to the maxim that "iniquity should not have equity."[60]

The General Court's 15 October 1771 decree that amended the 1769 decree as to remedies due the Hites clearly favored the Neck holders. This appears in a bitter complaint by the Hites that singled out the Terrapin Neck survey as an allegedly glaring example of the injustice being done by the Court, in this case to Hite assignee John Browning, described by them as "the Original Settler."[61] Nevertheless the Court issued no explicit findings on the matter of whether the Terrapin Neck survey had been made past the deadline. The 1770 Commission had not surveyed the Neck properties and who was in possession as directed by the Court because they were ordered off the land by Swearingen who "forbid the survey claiming land on both sides of the surveyor's first course."[62] Hite records note that the commission was refused entry to the Neck tract (apparently the only case in which this happened) because it was claimed to be outside the purview of the Court, having been surveyed by Wood after the Christmas 1735 deadline.[63] The only holder's name appearing in the Commission's report to the Court was Van Swearingen. The other holders were alluded to in the Commission's log but only as said to be on the land. Not present when the Commission appeared to make its survey, they were never summoned before this body, unlike the holders elsewhere who were notified on the spot to appear after the survey and state their claims to the land they held, as required by instructions from the Court. In any case the list of holders in the final 1771 decree of the General Court referred to those on Terrapin Neck simply as "other persons not named in the said memorial in possession of the 1200 acres on the West side of Shanando" and having their deeds from

---

60 *CHP*, f. 101: Brown, *Virginia Baron*, 111, 143-49, has a critical note on Wood's reputation.

61 *CHP*, f. 100. The Hites would be paid £92 by their assignee, "one Mr. Browning," for the original purchase price of £36 plus 30 years' interest. Those in possession under Fairfax grants would then pay the Brownings £36 for the 1200 acres plus a few years' interest. So what the Hites described as "the Original Settler" (i.e., Browning) was "to be £50 out of pocket to save the land for those Intruding Possessors." But in later 1786-91 proceedings the Hites argued that the Browning heirs had no claim, never having entered (that is, settled) the land and that it had thus reverted to themselves. *Swearingen*, f.3[2].

62 That is, he held land in the old Jones, et al. tract north of the Neck boundary line as well as on the Neck; *FLS*, 1601.

63 *CHP*, f. 101[718]. Boydston, according to an 1805 deposition by a neighbor on a tract adjoining the Neck who was present at the 1770 attempt to survey the land, was not present at that time; *Boydston*, f. 26, 13 September 1805.

Lord Fairfax.[64] The decree of course gave the Neck holders along with all others in the disputed surveys who had Fairfax grants the chance to clear their titles of the Hite claim by paying nominal sums in settlement. At the same time it left standing the Hite claim to the Neck despite evidence as to fraud regarding the date, and thereby stored up trouble and confusion for the future.

When the Court of Appeals reversed the General Court's decision, it called on all Fairfax holders as listed by the General Court to state their claims in equity: to show why they should be excepted from the award, whether as assignees of Joist Hite or on other grounds. The Neck holders seem to have had a fair shot at contesting the Hite claim and quieting their title to the land, given evidence that the Neck survey was made past the Christmas 1735 deadline and no evidence of settlement by a Hite assignee. Like other holders they were ordered to state their claims within 90 days of being served with the Court's decree prior to the next term of court.[65] However, in notifying the holders, the Chancery clerk of court evidently relied upon the General Court's 1771 list of holders and the 1770 commission's report to instruct the sheriff of Berkeley County, the official serving the decree, so that the only Terrapin Neck landholder served by the Court was Colonel Van Swearingen. And this holder responded to service of the 1786 decree with an unconvincing claim to have purchased 400 acres of land from a Hite assignee.[66] In his omnibus 5 August 1790 decree ruling on the dozens of briefs filed by the parties in *Hite v. Fairfax*, Judge Wythe made short work of the Swearingen case.[67] Swearingen having died in 1788, his executors seem not to have been active parties in the ensuing

---

64 The holders' names were not listed in the report and index of the General Court record of Hite v. Fairfax, except as "Swearingen et al." (*FLS*, 1750, 1805-7) but were reported in the log of the Commission (*FLS*, 1601) as given it by the Hite representative. The Hite list included not only the Neck holders at that date (Swearingen, Boydston, Chapline, Medcalf, and Williamson) but two neighbors—another example of the Hites' impressionistic record of the basic facts of their claims; *FLS*, 1601.

65 For list of Fairfax holders, see *FLS*, 1663-4; for court order, see *4 Call*, 82. All persons receiving the order were directed "to state such equity to the high court of Chancery, at any court next succeeding the expiration of three months after they, their husbands, or guardians, as the case may require, shall have been served with a copy of the decree of that court in the suit.... and all such persons as do not state their cases, within that time, are to be bound by the said decree, unless upon good cause shown, the said high court of Chancery shall grant a further day for stating such equity."

66 See Swearingen v. Hite, *Swearingen*, f. 9 and Hite reply, *CHP*, f. 168. Swearingen's offer of one of the "old pieces of paper" that Joist Hite left floating around did not provide convincing evidence for his claim. A similar claim made to a nearby tract of 360 acres was contested by the Hites as actually applying to a tract of the same size in the neighborhood (a tract also contested by the Hites); this claim was still being litigated in the early 1800s; *CHP*, ff. 106, 107.

67 *Swearingen*, f. 2

litigation or to have lodged an appeal from Wythe's decree. Thus, in a memorandum on how the case was going, the Hites could list the *Swearingen v. Hite* case as "gained".[68]

After he rejected the claim made by the only Neck holder who was served with the 1786 decree and appeared in court to defend title and so ruling in favor of the Hites to his 400 acres of land, Wythe had another Neck claim before him, one submitted by the Browning heirs. It asked that, once title was awarded to the Hites, they be made to convey title to themselves as heirs of Hite's assignee to the 1200 acres.[69] These heirs of the Hites' so-called "original Settler" invoked by the Hites in protesting the 1771 General Court decree had been ushered into the proceedings through the good offices of one Captain Abraham Shepherd, an enterprising war veteran of Shepherdstown. By some means he had learned of their claim (perhaps through his wife, related to the Swearingens by marriage, or through his own relatives, the Van Meters who held the original 40,000 acre grant) and then managed to locate them in Kent County, on Maryland's Eastern Shore. He offered to buy their claim and the offer being rejected, agreed to prosecute the case in return for a one-sixth share in whatever amount could be recovered.[70] The heirs, except that, uniquely among the holders in the disputed surveys, they were connected with the land claimed only by a paper transaction, appeared to have a strong case against the Hites. Thus they could show an exceptionally full record of their ancestor's transactions with Joist Hite in 1736 as well as the bond he gave for title. Once the Hites made good their claim against the Fairfax grantees—always assuming the Brownings could counter a Hite argument that the heirs had forfeited their claim to Terrapin Neck by failure to settle on the land, they should be able to force conveyance to themselves.[71] To argue the Browning claims Shepherd hired that other enterprising war veteran, John Marshall, by then in the thick of litigation over land claims in the 27 surveys. In his *Browning v. Hite* brief seeking transfer of the Hite title to the heirs plus rents and profits due from Fairfax or the Fairfax holders, Marshall named all the Fairfax holders in possession of the land, describing them as "intruders".

After ruling for Hite against Swearingen, Judge Wythe proceeded to disappoint the expectations of both Hites and Browning heirs with a ruling

---

68 *CHP*, f. 135[440].
69 *Swearingen*, f. 3
70 See *Boydston*, f. 17, for Shepherd contract with the Browning heirs.
71 *CHP*, f. 138[463]; *Swearingen*, f. 3 [2].

on Terrapin Neck issued as part of his 5 August 1790 omnibus decree. Aside from Swearingen the Fairfax holders in possession, as must have been obvious on the face of papers in the case, had never been served or made parties to the litigation. By rights Wythe should then and there have had them served and brought into the case, allowed to plead their case in court and exercise their basic rights not to be deprived of their property without due process of law. Instead he apparently tried to patch together a fair solution. Although the text of Judge Wythe's decree has not survived, it can be reconstructed as it bore on the Neck properties from references and quotations in the record by the parties.[72] The judge ruled that, with regard to the whole 1200-acre tract, the chancery decree of 8 May 1786 should not be carried into effect "but that the possession thereof be quieted" in the hands of the present holders. These individuals he described as "Tenants of Brownings Representatives," that is, holders who had acquired title to the land from the Browning heirs.[73]

How Judge Wythe reached this, to the Hites and Brownings, unwelcome even bizarre conclusion has to remain a matter of speculation. From having represented Fairfax as counsel in the 1771 General Court proceedings, Wythe knew of the 1770 Commission's report and furthermore had it before him, having cited its language in other parts of the 5 August 1790 decree. Hence he doubtless knew of the survey date at issue and himself recited 21 May 1736 as the date of the Neck survey in his decree rejecting the Swearingen claim to title under an alleged Hite assignee. Then he had before him also the Hite brief admitting that Browning was an assignee of Joist Hite but contesting the rights of the heirs on the grounds they had never settled the land. Wythe knew from the 1770 log naming the holders, from the General Court's list of 1771, from the 1786 Clark survey of improvements, and from Marshall's brief for the Brownings listing all the holders that the Neck properties were, and had long been, in the possession of Fairfax grantees. Finally he may have expected Marshall, in view of his close association with the Fairfax interests as lawyer for the estate to be protective of the Fairfax holders.

---

72 The 5 August 1790 decree on the Neck properties (not found in the case papers at Staunton although said to be enclosed as an annex to the Boydston pleading in Chancery Court there, *Boydston;* f. 16) is pieced together here from statements by both parties in *Boydston,* f. 1[2], 16[4-5], and 19.

73 None of the Terrapin Neck holders were listed in commissions of rebellion issued by the court 9 October 1790, presumably because Wythe's decree had quieted them in possession of the land as "tenants of Browning." The term "tenant" is used here and elsewhere in the proceedings usually to refer to property owners, not lessees. But see Clark notebook, *CHP,* f.185 where "tenant" refers to lessee.

Ruling as he did for the Fairfax holders had the advantage of avoiding questions about the equities of a situation that was clouded by an apparent fraud in the survey date on the part of the Hites and the lack of occupation by the Hite assignee. It would likewise avoid having to deal with the awkward fact that holders of most of the land were to be expropriated without having been served and had their day in court, and the embarrassment of reopening the case at a late date, serving the 1786 decree on the Terrapin Neck holders, and thus allowing them to become parties. It rationalized the failure of the older holders to appear: they were represented by the Browning heirs as Hite assignees. And probably in view of the basic flaws in the claims of both Hites and Brownings, they might be inclined to accept Wythe's ruling for the Holders and refrain from pursuing the case into Judge Pendleton's Court of Appeals.

Shepherd and Marshall, unaware that Judge Wythe had decreed the land to the holders, meanwhile were pressing the Hites to turn over their attachment from Wythe against Swearingen, threatening otherwise to sue for conveyance. In early 1791 Marshall was assuring Shepherd that, once they had the Hite attachment, "the business will be settled without further trouble" and that it "could not have bin conducted differently, without endangering the loss of the land...."[74] But the way forward seemed less clear by late March as the Hites held out, Marshall decided to sue, and he was somehow reminded that others held the land under Fairfax and had not been included in the decree against Swearingen. Remarkably enough, as regards the Fairfax holders, he told Shepherd "to demand possession of them and if they refuse to give it, Let me know immediately—only their names, that I may commence suits against them—Let me know by what title they hold...."[75]

Then, belatedly and in a roundabout way, Shepherd heard of the Wythe ruling in favor of the neck holders.[76] As he later recounted the story: "Upon a copy of that decree [of 5 August 1790] being forwarded to this Respondent he was astonished that the persons in possession *who were no*

---

74 Shepherd to Isaac Hite, *CHP*, f. 116a[76], 9 March 1791. Marshall to Shepherd, Richmond, 4 February 1791; *Swearingen*, f. 17.

75 Marshall to Shepherd, Richmond, 28 March 1791; *Swearingen*, f.18. Marshall ignored the fact that the Wythe decree in Swearingen v. Hite applied only to Swearingen and his 400 acres; this assumed that the other holders could simply be evicted without further process — a view which his client Shepherd adopted throughout the litigation.

76 A copy was forwarded to him attached to a routine notice that a survey could be made prior to the final decree by the Court of Appeals, presumably sometime during the summer of 1791 in order to be submitted in advance of the Appeals Court decree due in early November; *Boydston*, f. 19.

parties in that claim [italics supplied] should be called Tenants of Brownings Representatives and wrote his Counsil; that the decree was afterwards and by consent of the Parties to that decree set aside the Judge being convinced of the error, and a Compromise made with Hite... that in pursuance of the power given by that compromise an attachment was issued against the Plaintiff [Boydston] and others who had not obeyed the decree of 1786 although served upon him [sic] and had shown no cause against it...."[77]

As Shepherd said, Wythe had indeed been persuaded to withdraw his decree in favor of the holders. To win this reversal Marshall and/or Hite counsel Taylor may have urged that the issue of the survey date was *res judicata* as evidenced by the listing of Terrapin Neck as subject to the 1771 General Court decree. There was also the fact that the holders had not purchased their land from the Brownings. Finally they could have indicated they would appeal if Wythe did not reverse. Whatever, Wythe at that point in effect washed his hands of the case and silently ruled against the holders by withdrawing his award to them, probably in hopes that they would be ready to make a settlement with the Hites and not insist on having their day in court. As to the Hites and Browning heirs, the judge presumably suggested that they resolve their dispute out of court.

The Hites by now have been ready to surrender their claims to the Browning heirs in return for rents and profits due from the Fairfax estate prior to 1786 and on 2 November signed an agreement, Taylor and Marshall acting as counsel.[78] In fact, the Hites may have come to consider the Neck award of dubious value, given that it applied to only one-third of the survey tract as well as being opposed by the well-documented Browning claim. Then as later they may have believed the holders would have a good case to present, once they could get a hearing in court.[79] John Taylor, the canny Hite lawyer was, in addition, probably aware that the Hite attachment was invalid if used by another claimant than Hite and in any case was good only against Swearingen since the other holders had not been served and hence had not responded and become parties to the decree.

Marshall could have also been aware that the Hite attachment was

---

77 These fictions about service on the holders appear repeatedly in Shepherd's briefs; *Boydston*, ff. 1, 19; *Swearingen*, f.4. They are never documented and of course are contradicted by the record of his attempts to get possession of the land.

78 *Swearingen*, f.3[3-4].

79 In a conversation some time in 1793, Isaac Hite said he "believed Boydston would hold the land if he conducted matters right or words to theat effect" according to a deposition by his nephew John Hite; 13 February 1798, Boydston, f.1[pt.3].

legally unenforceable against the holders but at the same time realized that for the Browning heirs to try to extract more from Judge Wythe was to risk losing their whole claim by bringing all the holders into court to argue their case regarding the date of the survey and the lack of settlement. Judging by later briefs and depositions Shepherd himself was satisfied that the attachment against Swearingen by itself would be sufficient to get possession of all the Neck properties, believing that rights to the whole survey passed to the Hites under the 1790 decree against Swearingen and that considerations of the equitable claims of the holders were not important, no more than formalities.[80] As shown by his account of Wythe's decision in favor of the holders, he insisted upon claiming that the holders were not parties but were subject to the decree for having been served but failed to submit their claims. That the Hite attachment against Swearingen named none of the other holders did not apparently shake his confidence in its value.

November of 1791 was a busy month in the Terrapin Neck litigation. Soon after the Hite and Browning representatives signed their 2 November agreement to transfer the Hite attachment against Swearingen to the Brownings, the Court of Appeals issued a final set of decrees intended to close the door to further litigation. Far from approaching the Neck holders to reach a compromise settlement as Wythe may have hoped, Shepherd at once proceeded to use the Hite attachment to get legal title from them, gain possession of the properties, and ascertain rents and profits they owed the Browning heirs for the period since 1786.

When Shepherd appeared at Thomas Boydston's house on a cold and rainy November night, he was accompanied by the local sheriff and a lawyer. This was the first official notice any of the holders except the Swearingens had had of court action affecting their properties. Only Colonel Swearingen had encountered the surveyors in 1770 and, as seen above, only he had been served in 1786. As to the 1790 decrees, the holders had doubtless heard from the Swearingen executors that his plea had been rejected in the 5 August omnibus chancery decree, but may well also have heard that providentially the Neck holders had been quieted in possession. Whether or when they had word of Wythe's subsequent withdrawal of the decree sometime in 1791 does not appear in the record.[81]

---

80 As expressed in a brief of 18 September 1797 that dismissed any issues of fact arising before the 1786 decree as in effect *res judicata; Boydston*, f.1.

81 One question not answered in the Terrapin Neck case papers is what the holders knew about the litigation and when they knew it. Officially, of course, they were not aware of this process

Shepherd advised Boydston that he was under court order to convey his land to the Browning heirs, and that he could be taken into custody and jailed under an attachment from the Court of Chancery were he to refuse.[82] These warnings were subsequently renewed and Boydston signed a conveyance in the following February before the next term of Chancery Court when he allegedly faced contempt proceedings and a jail sentence if he persisted in refusing.[83] The Swearingen executors who were likewise served also signed a conveyance as, apparently, did the other holders.[84] But thereafter the holders got advice that the attachment, because issued in the name of Hite, was unenforceable by the Brownings and refused to yield possession to them.[85] Boydston, who emerged as the active leader in defense of the holders' rights, further asserted the conveyances had been obtained by threats and fraud.[86]

Shepherd had indeed practiced a kind of fraud in getting the conveyances signed, that is, by convincing the holders that he had an enforceable attachment against them, even though they had never become parties to the proceedings. Up to this point Shepherd had been helped by the leading role of Van Swearingen in the litigation until his death in 1788.[87] By forbidding a survey in 1770 Swearingen had shut off a hearing that would have recorded the Fairfax holders' possession of the land and automatically brought all of them into the 1786-90 proceedings. In addition his brief in response to the service of the 1786 decree on him failed to explore issues of equity that needed to be raised, that is the survey date and the lack of settlement by Hite or his assignees. Then the resulting decree of 5 August 1790 made his tract subject to recovery through the attachment

---

threatening their properties, not having been served with the court order. Unofficially, at least from the May 1786 Court of Appeals decision and the appearance of Jonathan Clark soon thereafter to survey improvements on their properties, they must have been aware of, if also confused by, what was going on.

82 *Boydston*, f. 1[13].

83 *Boydston*, f. 7[1-2].

84 *Boydston*, ff. 1[13], f.8. The Swearingen executors were named in an attachment of 21 January 1792; others named were a miscellaneous collection of non-owner residents on the Neck and one part owner of a small tract;1 *Boydston*, f. 9.

85 *Swearingen*, f. 11, Memorandum by T.T. Mason, 4 December 1792. This is the first evidence that Boydston had got competent legal advice, one year after the initial demand by Shepherd and months after signing the conveyance to the Brownings. Earlier he and the other holders not served may have followed the Swearingen executors who were conveying their Neck land in response to the court order of 5 August 1790 that rejected Colonel Swearingen's claim to have purchased from a Hite assignee.

86 With Swearingen gone and his executors inactive, Boydston had the largest interest among the holders in the Neck litigation.

87 Swearingen had probably been seen as the natural leader in the affair because of his prominence locally. He succeeded Samuel Washington as County Lieutenant for Berkeley County in 1777.

given Hite against him. Swearingen's executors not surprisingly believed that the estate had to convey the land to the Hite claimant. But in so doing they probably led the other holders to believe they had no choice except to do the same if they were to avoid jail for contempt of court. The sheriff accompanying Shepherd when he demanded that Boydston turn over his land seems to have let him draw the conclusion that he was named in the attachment and that it was enforceable against him for contempt of court unless he signed a conveyance. When Boydston later got advice that the attachment was invalid against him because in the name of Hite, he must also have discovered that he was not even named in the list of those to be held in contempt if not surrendering title to the Brownings, as he would have been had the decree of 1786 ever been served on him, and that only Swearingen's land was affected by the decree of 5 August 1790.

Shepherd had scored heavily by getting the holders to sign conveyances and their situation was quite difficult unless they could get the case reopened in the Chancery Court. When refused possession of the properties, Shepherd's next step had been to return to Chancery Court in late 1793 to ask for a decree forcing the Neck holders, by now all fully identified and named, "to convey. . . and to deliver the possession of the land they severally hold" to the Brownings and to account for the profits since the 1786 decree.[88] The attachment issued to Shepherd by Judge Wythe 9 December 1793 named all the holders. This met his needs first to validate the February 1792 conveyances by the holders to the Brownings, if retroactively, and then to proceed in local courts with actions in ejectment to gain possession of the properties.[89] The 1793 ruling by Wythe, issued despite the fact that Shepherd's claim to seize all the Neck properties was untenable and the holders apparently could not object to the changes in the attachment, was another turning point in the case and clinched Wythe's decision of 1790 not to reopen the case. From here on getting the facts

---

88 *Swearingen*, f.4. The attachment held by the sheriff in the November 1791 encounter with Boydston was the one just granted by the Hites to the Browning heirs and named only Swearingen. By the time Shepherd got the holders to sign conveyances in February 1792, he had somehow procured an attachment from Chancery Court dated 21 January 1792 described above, note 84. The attachment that Shepherd used in moving for ejectment of the holders named all the holders and was granted 9 December 1793; *Boydston*, f.9 This attachment responded to a petition in Chancery (Browning v. Swearingen) that claimed all the holders had filed their claim as "Swearingen and others" and now refused to give possession; Swearingen, f. 4. Thus the award to Hite against Swearingen for 400 acres was gradually transformed into an award to the Brownings against all the holders for the full 1200 acres, a case of the proverbial silk purse from a sow's ear.

89 *Boydston*, f. 9. There is no evidence that Shepherd's request for a new attachment was known to the holders, that they were made parties to the proceedings or that they had any kind of notification.

before the courts and gaining a ruling on the equities became an uphill struggle for the Terrapin Neck holders.

With an officially valid attachment against the holders, Shepherd again called on Boydston and demanded possession of the land. Being refused, he had the sheriff take Boydston to jail (although consenting to his release the same day) and had a jury summoned to the County Court in Shepherdstown.[90] Presumably Shepherd told the local jury what he argued to Judge Wythe in seeking an attachment and later to higher courts in Winchester, Richmond, and Staunton: that the holders had all been served, that they had in fact claimed an exception from the 8 May 1786 decree, and that they had so become parties to the proceedings and subject to the 1786 decree.

Shepherd's unfounded assertions and a claim that matters raised by Boydston had been adjudicated by the higher courts certainly gained weight when he was able to brandish the holders' conveyances as well as the amended attachment granted him by Judge Wythe. Boydston presumably argued as he did later that Shepherd had extracted the conveyances of February 1792 by threats and fraud (using an invalid attachment); that the Hite survey was done in May 1736 and so was beyond the Christmas 1735 deadline under the original order in Council; that the claimant Brownings had never settled the Neck land; that only Colonel Swearingen had ever been served with the decree of 8 May 1786; and that the other holders had never been served or been made parties to the litigation.[91] Faced with these arguments and evidently not impressed by the holders' conveyance or by the amended attachment from Wythe, the Shepherdstown jury voted against the plaintiff Shepherd, refusing to authorize the eviction of Boydston and the other holders.[92]

Shepherd's next move was to the District Court at Winchester. Probably his winning argument in this court was that, the High Court of Chancery having given the Brownings an attachment against all the holders, including Boydston, the dispute was *res judicata*, and that the holders were now simply defying the high court order. However this may be, the Winchester jury found for Shepherd and so cleared the way to eject Boydston and the other holders from their properties.

The process of evicting the Neck holders was delayed again when

---

90 *Boydston*, f. 2, "A Statement of Facts, 1730-March 15, 1798" and Davenport deposition.

91 *Boydston*, f. 1[8], 20 July 1797 which, Shepherd noted, was repeated in the Chancery Court brief found in the Staunton case papers; the same for Shepherd's brief; *Boydston*, f. 4.

92 See *Boydston*, f.1[31] in connection with the jury trial for some local reactions to Shepherd's pursuit of the holders.

Boydston appealed to the Chancery Court in Richmond for an injunction against the Winchester decree and Judge Wythe granted the injunction.[93] Wythe authorized depositions and heard the parties in 1797, a lengthy process finally completed in February 1798. At this time Wythe had before him the same arguments by the parties as those presented to the Winchester court plus an appeal by Boydston for a full hearing of the equities in his case. On 15 March 1798, dismissing the Boydston appeal and dissolving his injunction, Wythe made the uninformative sentence ruling that "the matter of equity stated in the bill" was "denied by the answer, which is not disputed." What this actually said was that Wythe did not care to reverse himself again, having meanwhile, by amending the Hite attachment in December 1793, strengthened Shepherd's claim that the equities had all been ruled on.

The Terrapin Neck holders were promptly evicted by the local sheriff and the Brownings finally got possession in the spring of 1798, in time for planting as sought by them, just twelve years after the 1786 Court of Appeals decision in favor of the Hites. Boydston still was not ready to give up. By now said to be aged and infirm, "with neither wife nor child", he authorized a younger relative to pursue the litigation. The proceedings meanwhile had been transferred to the newly established Superior Court of Chancery at Staunton in Augusta County.[94] His substantive arguments for equity having been rejected, Boydston claimed flaws in procedure—that his depositions had been suppressed or mislaid in transmission to Richmond and that his lawyer in the Chancery proceedings had agreed without instruction to a final hearing on the case. But, as the 1797-98 proceedings showed, by now an accumulation of adverse rulings weighed against any efforts the holders could make to regain the offensive. They could not overcome the inertia of the process set going by Judge Wythe's reversal of his 5 August 1790 decree in their favor, confirmed as it was in the November 1791 final decree of the Court of Appeals, and then made irresistible by the amended attachment granted by Wythe to Shepherd in December 1793. Although the final decree closing the case was dated 13 April 1807, twenty-one years after the Supreme Court of Virginia handed down its ruling in *Hite v. Fairfax*, Boydston's case had been decided much

---

93 *Boydston*, f.1[4]; court order, 31 July 1797, f.1[5].

94 Boydston's agent, John Welsh; succeeded in gaining a rehearing at Staunton, probably through alleging these procedural flaws. Also litigating at Staunton were grandchildren of Colonel Swearingen then living in Ohio County, evidently to appeal against the award of profits levied against the estate of their father. Van Swearingen, Jr.

earlier and before being heard.[95]

There was a kind of post mortem on the Terrapin Neck litigation when local people gave their depositions at Abert's tavern in Shepherdstown during the final 1805-06 stage of the litigation. They agreed amongst themselves that the Neck holders would have won had they ever had a fair hearing on the issues. But, as Abraham Shepherd himself was quoted as saying by several deponents, at some point "the business was so riveted that it could not be again gone into."[96] The holders' equitable claims, though seemingly strong enough, had not been heard early in the case through failures of judgment and process in what seems to have been a chaotic and irrational course of litigation. These claims had simply been cancelled out with the passage of time. The holders' long-continued struggle did little more than exact a cost in legal fees from the plaintiffs and delay their getting possession of the land. Yet the holders did deposit a record in the Augusta County Court achieves that shows how they resisted the taking of their properties and saved one fragment of this Lower Valley story from the flames of Richmond.[97]

Winnings from the Litigation

What the Hite family as main plaintiffs gained from *Hite v. Fairfax* can be guessed at in part from their agents' scattered entries regarding cash collected and land conveyed.[98] In 1771 they had foreseen a return of £20,000 when targeting no more than half the land they were able to recover after the 1786 decree in their favor. This was without counting returns from rents and profits which must have yielded a substantial sum either from the Fairfax estate or the holders.[99] Prices had risen sharply by the time the land came to be sold in the 1790s and later. However, the 1771

95 Superior Court of Chancery at Staunton, Microfilm Reel #94, p.1ii, 540, 13 April 1807, Chancery District, Staunton, August County, Virginia State Library.

96 *Boydston*, f. 5[2-3, 16-17]. In the same depositions Shepherd is quoted as complaining that he was apprehensive of legal costs and also of the ill-will of "the people" [8]; that it was contrary to Boydston's "religious profession" [he was a Methodist] to resist the law [2]; and that Boydston lost his land through his own negligence in not buying out the Browning heirs [2-3]. Boydston had visited the heirs on the Eastern Shore but reportedly returned saying "he did not choose to purchase land which was his own." 16-17].

97 And so supplies a sample of litigation records of other landholders in the disputed surveys that may still be found in local courts.

98 For example, *CHP*, ff. 76, 115, 124, 136.

99 See *CHP*, f. 185, Clark's notebook, for his survey of improvements, basically the extent of cultivated acreage in each tract but also including some notes on dwellings and houses. The notebook covers 16 of the 27 surveys, including 231 farm units. Although the record for the remaining 11 surveys is missing from the archive, total cultivated acreage for each of the 27 surveys is given in f. 115[12] and there were probably as many as 300 units in all. About 30 percent of the total acreage was rated as "improved". (The Old Berkeley County properties had

estimate seems to have been exaggerated. Perhaps no more than £40,000 to £50,000 may have been realized in the final reckoning of gross receipts.[100]

The actual returns to the Hite family and partners were of course affected by expenses of litigation and collection that mounted over the years. As of 1786, these expenses totalled more than £2500 and the heaviest outlays were yet to come. In 1797 they calculated that most of the £7,000 in rents and profits recovered from the Fairfax estate had gone for legal an other expenses of the case. Costs to the Hites extended to such miscellaneous items as a month's board bill for a stubborn litigant committed to jail. Litigation and collection costs that continued for another ten years or more probably amounted to several thousand pounds. Of the net proceeds the Hite family took a 55 percent share and the other partners 15 percent each, minus for the McKay family the amounts paid to keep their South River lands and also minus McKay payments to the partnership of rents and profits of other properties in that survey was finally determined in a decree of 1807.[101]

---

more than half their acreage under cultivation according to the survey.) An initial award by the court-appointed commission for rents and profits, presumably using Clark's figures of improved acreage as the basis for calculations made, totalled £14,000 after deductions for improvements. It was reduced to £7,000 to meet objections by lawyers for the Proprietary; *CHP*, f. 76. As Hite's agent Clark would probably not have been inclined to overestimate the value of improvements.

100 Thus, instead of getting the £10,000 foreseen in 1771 for properties in the Narrow Passage survey, they showed receipts of £6691 as the return in an accounting of 1802. The total gross return estimated includes about £36,000 in land sales, an unknown amount for the value of land retained, and rents and profits due from Fairfax before and holders after 1786 of another approximately £12,000 net.

101 If the Hite family took their 55 percent of the company's net returns, they would eventually have received about £20,000. The cash flow from sales, rents, etc. in the early 1790s was probably useful in paying the bills for the Belle Grove mansion being built by Isaac Hite, jr. at the time (assessed at $7,500 in 1815 and since 1964 a National Trust for Historic Preservation property). See National Trust for Historic Preservation, *Belle Grove* (Washington, D.C.: The Preservation Press, 1981), 8. The 55 percent share of the Hite family was the result of long litigation with the other partners. *CHP*, f. 76, gives an account of this litigation in a brief presented by Jonathan Clark in 1805. *CHP*, f. 101, provides the Hite rationale as follows: from the total 140,000 acres granted by the Council, Hite had surveyed and patented 47,287 acres. Titles in this acreage were not contested by Lord Fairfax, they having been confirmed by patents. Hite had then made the 27 surveys in dispute covering 38,686acres as enabled by the 100,000 acre grant. Of this total 21 surveys covering 15,365 acres were said to be part of Joist Hite's "separate claim". The remaining six surveys, all in Shenandoah County and totalling 23,321 acres, the Hite family recognized as partnership land under the 100,000 acre grant. The Hites summed up their claims to a total of 62,643 acres as follows (*CHP*, f. 101)

Orders in council	140,000	acres
Entitled through settlement of families		
(40 in Hite family claim, 54 in partners)	94,000	"
Surveys made and land patented	47,278	"
Surveys made and in dispute		"
21 surveys in Hite family claim	15,365	"
6 surveys in partners' claim	23,321	"
overlapping survey	3,300	"
Total surveyed and claimed	89,264	"

Landholder resistance to expropriation was active, persistent, and seemingly reasonable enough to exact an additional cost of the Hites in public opinion. The litigation became known far and wide as process servers, agents for the Hites, and sheriffs ranged up and down the Lower Valley in pursuit of their quarry. Jonathan Clark referred rather sourly to "the twenty-seven surveys so well-known throughout this Valley."[102] In some cases the Hites moved to enforce court orders in their favor by having a landholder jailed or his property seized. In others they simply threatened, using commissions of rebellion to intimidate recalcitrant losers into conveying their titles and yielding possession.[103] A major event was the auctioning of 28 properties in the 7,000 (or 11,000) acre South River tract in 1797.[104]

The cost to the Hites in local opinion was probably least in Frederick County, the family's main center in the Valley. Here only six of the disputed surveys were made and no substantial losses were recorded. In Berkeley and Jefferson counties a dozen law suits show up in the record and landholders in several surveys were litigating over title into the 1800s. But Hite family or partnership ties were not extensive there. Although Joist Hite's son Jacob was prominent in Berkeley County affairs for a time, in 1775 he left the area for South Carolina after losing out in several political and business disputes with other local leaders. Shenandoah County with its numerous small holders in big surveys, many of whom depended upon conditional or oral agreements with the McKay partner that were disavowed by the others, was the hardest hit and doubtless the most antagonized by the litigation.[105]

Total winnings of the Browning heirs and Abraham Shepherd from their

---

102 *CHP*, f. 76[264]. See for examples of resistance ff. 93, 95-97, 104-08, 128, 131, 133, 134, 136, 143.

103 As in the case of the Narrow Passage holders on the Shenandoah North Fork who were later listed as making payments to the Hites for their properties; *CHP*, ff. 97, 104, 116a. Evidently attachments were served after Wythe issued his omnibus decree; then, when losing holders failed to comply (and presumably did not appeal), they were served with commission of rebellion. See *CHP*, f. 108[902], 9 October 1790 and f.104[826], 2 October 1790.

104 Most of the land there was held by the McKay heirs and others to whom McKay had originally sold or distributed it. They were conceded the option of buying it back.

105 The Hite family and the other partners had different levels of involvement in the settling of the three regions and this accounts in part for the extent of litigation over the several parts of the surveys. Where the Hites had their main family center, in Frederick, and Hite had large blocks of land under his personal control, there was good oversight of the process of settlement. Shenandoah County suffered from the fact that most of the land there was in the partners' name and the partner who acted to distribute some of the land was later disowned by the others. As noted, settlers in Berkeley and Jefferson counties predated the Hites in many places, then relied on Fairfax to supply titles to their holdings, and were moderately effective in resisting expropriation.

20-year campaign for the Terrapin Neck properties can be roughly approximated by projecting from figures given for other properties in Old Berkeley county as to the price of land going rentals, allowances for improvements, etc.[106] The gross return in land, improvements (cultivated acreage, buildings, etc.) and rents and profits assessed against the holders could have totaled as much as £3500, or about $10,000.[107] The Browning heirs took most of their winnings in cash through sales to Shepherd and others.

Shepherd had his one-sixth of the recovery, a possible 200 acres (about $1,000) plus his share in the rents and profits, perhaps another $600. On the other hand, his legal expenses could have taken a substantial part of the cash return. In addition Boydston could have transferred other real property as well as personal property such as slave and livestock to family members and made himself judgment proof to the extent possible.[108] Hence Shepherd's recovery could have remained partly uncollectible. As to the properties, in 1803 Shepherd purchased 400 acres, described as what the Swearingens conveyed to the Brownings in 1792, paying $1800 for this land. At some point, perhaps as his share of the recovery, he acquired Boydston's home place and he may have purchased the additional 168 acres that Boydston had bought or optioned from the Medcalfs, making his total holdings on the Neck some 750 acres.[109]

---

106 Case papers, Collett v. McCormick (Superior Court of Chancery at Staunton, 1801-1813; Augusta County, Microfilm Reel 93 [89-124], Virginia State Library).

107 A parallel et of cases on profits due the Brownings from the Neck holders since 1786 had been under way while the ejectment proceedings and appeals were grinding through the courts. A Chancery Court Commission appointed 27 September 1794 reported on amounts due and two years later an attachment for contempt issued against the holders to force them to pay under a court order. During 1797-99, the Chancery Court issued a series of rulings on amounts owed plus costs to be charged to the defendants. See ibid, Microfilm Reel 94[69-70] for final decree in Browning v. Swearingen, 1 April 1803; Swearingen, ff. 7, 8, 10, 12. An incomplete total shows £819 plus costs, or about $2500. Of this the Swearingen heirs were to pay £391 and the other holders £428. Overall, for the years 1786-98, total rents and profits could have reached as much as £1200, the bulk probably to be paid by Boydston and the Swearingen heirs.

108 Thomas Boydston may have transferred property to his brother Benjamin, including a 24-acre tract in the adjoining patent downstream from Terrapin Neck. C.M. Shepherd purchased this land from Boydston's widow, 12 November 1833 (Jefferson County *Deed Book* 19:187). Thomas Boydston also gave Benjamin a number of slaves. See Benjamin's deed (*Deed Book* : 115-116, 1 February 1804 and : , 12 September 1818), and will (*Will Book* 5: 47-49, 19 November 1820, probated 22 August 1825) manumitting a total of 37 slaves. Twenty-five of these, named individually in the 1818 deed, were described as "sundry negro slaves and their descendants, lately the property of my brother Thomas Boydston... whose wish it was to manumit" them. The slaves must have been transferred prior to 1804, not being mentioned in Thomas Boydston's will of that date; *Will Book* 1:608-10, probated 11 September 1810.

109 That the Browning heirs did not at once settle on land they eventually occupied in the Medcalf grant is suggested by the fact that they were still employing a Shepherd as their agent in 1824; Jefferson County *Deed Book* :

Shepherd was quoted in one of the Boydston case depositions as bemoaning "the everlasting ill-will of these people" that he was bound to incur through his part in the litigation. Other depositions suggest that he felt local opinion questioned his role in the expropriation of the Terrapin Neck properties.[110] The Boydstons of course continued to harbor resentment. They long refused to concede the loss of their Neck properties and placed the blame on Shepherd for having ousted them from possession.[111]

Conclusion

In their litigation with the Proprietary the Hites owed much to the outcome of the revolutionary war. Even under the General Court's decree of 1769 ordering conveyances to the plaintiffs, they would have had slim pickings and no more than a handful of settlers would have been expropriated, if only because the Court's Commission of 1770 found Hite had sold much of the land in dispute. In the light of the Commission's findings the biggest gain realizable by the partnership would have been at the expense of the Mckay partners on the South Fork of the Shenandoah where no Fairfax grants had been made. The Hite survey of Terrapin Neck would probably have been ruled out by the Court as past the Council deadline. The Brownings, excluded in any case as never having entered the land, would have needed to sue the Hites on Joist Hite's bond guaranteeing title to Terrapin Neck's 1200 acres.

The Court of Appeals decision opened the door wider to expropriation of many holders but was by no means conclusive given the many weaknesses in the Hites' standing in a court of equity, that is, numerous indications of fraud and misstatements revealed in the earlier proceedings. However, the balance of power had shifted between the two sides. As the Proprietary declined from being a benevolent protector with the legal guns needed to withstand the Hites and other predators and became a poorly defended, alien-owned target in the post-Revolution era, the settlers faced the new challenges of the 1780s as individuals or in small groups and had none of the resources they formerly relied upon. The Hites, a somewhat marginal group before the Revolution as well as being open to charges of fraud an overreaching, were comparably much strengthened. They now had the

110 See *Boydston*, ff. 1,5.

111 The Boydston will cited above note 108, expressed the family's deep sense of grievance. Thomas referred to his former holdings as having been "wickedly, deceptively, artfully and fraudulently wrested from me by Abraham Shepherd" and still refused to concede the loss as final. Benjamin used similar language in his will of 1820.

advantage in organization and financial resources, were aided by able lawyers with not too many scruples about the facts, and were ready to pursue every argument and appeal to wear down the landholder defendants.

The Hites' ample resources were especially important given the somewhat haphazard processes of the new Commonwealth judiciary and the complexities of the matter. The colonial judicial system had not been geared to handle the deluge of claims, counterclaims, and appeals that later were to take a multitude of *Hite v. Fairfax* cases back and forth through the courts over many years. Prudently, the General Court had avoided this outcome. Although plunging ahead into a sea of litigation, the courts of the new Commonwealth were scarcely better prepared than their colonial predecessors to deal with the free-for-all let loose by the Court of Appeals decision of May 1786. Given that they were lacking the basic apparatus needed to administer justice with due process in some complex and extensive business, it is not surprising that the Terrapin Neck holders failed to get a hearing of their claims and became the victims of judicial expropriation. Never having been brought in as parties (except for Colonel Swearingen) because of the incompetence of court or local officials, the holders later found the courts resistant to reversing their decisions on appeal and were trapped in a procedural maze. Hence results that would have been highly unlikely under the aegis of the colonial establishment and the Proprietary materialized following the Appeals Court decision of 1786 and the errors became "riveted" over time.

The local people at the 1805-06 meetings held to take depositions in the *Boydston v. Shepherd* case were perplexed by the fate of the Terrapin Neck landholders in their battle through the courts over the previous twenty years is not surprising. It was hard for them to understand how the system had changed and why the holders had lost their land. In fact, what it took to produce this outcome was no less than a legal process gone out of control in the aftermath of the Revolutionary war, the dissolution of the Proprietary, and the "reinvention" of the judiciary under the Commonwealth. The holders had simply fallen into the official machinery in the turbulence and the scramble for Fairfax assets that ensued.

Fragments of a Diary of Shepherdstown
Events During the War of 1861-5

Contributed by D. C. Gallaher

Shepherdstown Register, April 23, 1925

Editor's Forward — Professor Cecil D. Eby brought these revealing diary extracts, contributed by Gallaher to H. L. Snyder's newspaper, to the editor's attention. Their contents will divulge why the editor deems them of substantial academic and historical importance. Their previous availability in a decades-old issue of the Shepherdstown Register had limited their accessibility to contemporaries. It is unfortunate that many names were deleted from the account. The value of the transcribed manuscript would have been even greater had the names been retained. Nevertheless, researchers must be grateful to Snyder's continuing interest in and sensitivity to Shepherdstown history and his willingness to run many valuable historical articles in his paper.

American Civil war historians have increasingly concentrated on the homefront in their explorations of the conflict in an attempt to reach beyond the familiar military aspects of the event. A few worthwhile works about the impact of the conflict upon civilian populations have recently appeared, but much work remains undone. A partial explanation for the absence of research about the civil aspects of the Civil War is the requirement of difficult research in obscure, widely dispersed sources for a synthesis about ordinary people in a destabilized time. Historians must move beyond the generals, the obvious military campaigns, and the political leaders to develop any original work about this defining domestic event. Sources like this tantalizing fragment enable scholars to plumb the depths of the war's effect on all active and passive participants.

Even with the selective name omissions, the diary reveals the wartime tensions of Shepherdstown. The Shepherdstowners who were loyal to the Union, those who were not, and the opportunistic chameleons who frequently vacillated for temporal personal advantage emerge. What disruptive war means to a community and its inhabitants becomes more than an abstract guess. The writer's obvious partisan rebel views and interpretation of events color the narrative, but these prejudices also account for the author's extended vigorous perception .The many effects of military events upon the population, though personalized, become quite

vivid and memorable.

Note: The writer some time since was shown portions of a diary kept by a then, but now long since departed, citizen of Shepherdstown, the major portions of which had been lost. Incidentally it showed also an accurate account of every change of the weather. These fragments were, many of them, torn and indistinct, and it was a patient labor to give them intelligibly but in the main correctly. The writer of the diary, as may be plainly seen, was a warm sympathizer of the Southern Confederacy, though I hardly think he set down anything in malice, but gave the cold and now almost unbelievable facts. He speaks sometimes of the "Yankees" and "Rebels," so what he set down should be viewed from the standpoint of those unhappy, bitter days, and not from the present day of amenity, forgiveness and a reunited country. Here follow portions of the diary with dates, etc.

Sunday, May 25, 1862. In the great stampede from Winchester the Yankee troops left everything behind them and made for the Potomac here and elsewhere. "Stonewall" Jackson was after them. Captain Kerl left Wade's Depot and Captain John Harner left Kearneysville with their companies, all passing through the town to the north side of the Potomac, and many of the Union citizens of the town also fled for Maryland. (I omit their names, although he named many of these refugees.)

Monday, May 26, 1862. Sharpsburg rowdies and refugee Virginians brought a cannon to the Maryland river bank and made threats to fire across, but did not.

May 27. Today all the stores in Sharpsburg were by the military kept closed and the next day some boys from our town crossed over the river and came back with the cannon. Captain John Harner, who had fled across the river with his soldiers, appeared on the north river bank and demanded the cannon be returned, but it had already been sent to Winchester and he was told that if he would "apply to Colonel Ashby he might at least see the cannon."

May 30th. Great cannonading at Harper's Ferry.

May 31st. The Confederates fell back from Martinsburg and Harper's Ferry and on the same day some three hundred Yankees passed through the town with a great many empty wagons. (He then gives a very long list of prominent Union men of the town, which I here omit.)

September 9th. Thousands of Confederates are marching through the town all day and night and across into Maryland.

September 14th. Battle at Boonsboro.

September 17th. Battle at Sharpsburg. (Sometimes called Antietam.)

September 20th. Battle at Boteler's Ford, near town, where the Yankees were driven back across the river with bloody slaughter and many driven over the cliffs along the river and many drowned in their hasty retreat. Their dead lay thick on the sides and top of the cliffs.

September 25th. The Yankees crossed the river and captured E. W. Lee, and on the 27th they came over again and took all of Selby's hay and went on up the Martinsburg road to M. Billmyer's but were forced to retreat back across the river to Maryland.

October 2nd. Yankees crossed the river again, some twelve thousand cavalry, but left in great haste, with loss of men and horses in the fight here in town.

October 16th. About twenty thousand Yankees crossed the river and went up the Smithfield pike, and with heavy loss had to make quick retreat from Jackson's forces.

October 19th. "Stonewall" Jackson burned the railroad shops in Martinsburg and tore up the railroad tracks.

October 24th. Redmond Burke, a famous Confederate scout, was today shot and killed before day at his home here, and his two sons and Lapold and Hipsley and one other man were captured. Some negroes had piloted the Yankee soldiers with two white citizens along (naming them) at their head. On the same day in large numbers they broke into private houses and plundered them and took some citizens prisoners, Dan Rentch among them, who wrote a note back saying that H. Kyd Douglas had also been captured and that, he, Rentch, and others would be sent to prison at some fort and among them would be Captain Burke's men.

December 26th. The 12th Pennsylvania Cavalry — the "Bull Run Racers" crossed over the river ford into town and the refugees all came back home from Maryland with fire in their eyes and revenge for Mort Cookus's blood, who had been shot by Captain Burke's men, and declaring that every Southern Man's house should be burned down, etc.

January 12th, 1863. Captain Burke's house was searched for Rebels by the Yankees, piloted by Bill Colbert, a Union man. (He then gives a list of what he calls Tories, deserters, refugees, bounty jumpers and conscripts from the town.)

January 16th. Captain James Glenn was arrested by the Yankees, who

then robbed his home, stealing all of the plate, watches, jewelry, etc., of his wife. A military force took from the mill of Byers and Harris twenty-one barrels of flour and all of the meat in Byer's smoke-house. Dan Rentch is now out of prison and free from arrest and is sending wheat to Georgetown and Billmyer is doing the same, and Rentch and Stonebreaker are sending wagons with tobacco to Baltimore. Rentch says that Rebo Staley is in Baltimore. Michael Cookus gathered up a wagonload of cartridges left by the army in September, 1862, after the fight on the river cliffs, and sold them in Sharpsburg.

January 6th, 1864. Captain Corbin Blackford was captured and shot by "Jessie Scouts," who are Yankees who wear Confederate uniforms to deceive, in Newtown, near Winchester. They failed to relieve him of his arms and left him in charge of a guard and while alone with him he shot the guard through the body and then started to run away, but the guard shot him through the heart, when he fell dead. The wounded guard died on his way to a hospital in Winchester. George Byers, Sr., has discharged from his school all children who are not loyal to the Union side.

January 14th. A discharge by order of the military of various clerks in the stores, they not being "loyal." From Baker's store Jim Lane Towner and C. Huffman; from Cronise's store Daniel Hill; from Kearneysville M. Stanley and G. Hinkle.

January 19th, 1864. Dan Hill, Dan Rentch and Jim Lane Towner are arrested and taken to Martinsburg, and all later released and returned home, and on the 27th J. L. Towner is again arrested by the military and again taken to Martinsburg.

Feb. 10th, 5 P.M. The town is again infested with Yankees, who picketed the river and streets for the night. All the stores were ordered to be closed and not to be opened until allowed by military orders. Reported that J. L. Towner had been sent through the lines south.

January 29th. Some of Captain Kearney's Yankee camp came to town and went to the "Baltimore Store," where Mr. Woody refused to accept Confederate money offered him by the Yankees. They then helped themselves, taking what they wanted, and went to Cronise's store and compelled him to acc[e]pt their Confederate money.

January 31st. James L. Towner under a strong guard was returned to town to get his clothes and then taken back to the fort at Baltimore. Snowden & Company are taking their goods to Baltimore and Cronise took

his to Sharpsburg. Two companies of Yankee cavalry passed through and on to Martinsburg and the Rebels are said to be near that town.

February 6th. Other cavalry forces passed through town going to Martinsburg.

February 10th. The Yankees stopped James Adams from carrying the mail and passengers to and from Kearneysville. A Confederate force on a raid, "Mosby's men," stopped the up train at a point between Duffields and Kearneysville at night by aid of a red lantern, and entering the cars placed a guard over the engineer and fireman and took whatever things they wanted. From one good Union man they took $1,200.00 in money and from other Union men they took smaller amounts, and nothing from female passengers, whom they treated with respect. None now but Union men can travel and the military compelled Mrs. Jewett to prove her loyalty before she could travel to Baltimore to remain. A blacksmith, Andrew O-------, was refused travel to Baltimore to buy some plow points, iron, etc., because he could not prove his loyalty by John Boroff.

February 15th. The Lutheran clergyman from Winchester was arrested with two other men and taken to Harper's Ferry because they were driving along without passes from the military and were charged with flanking the pickets, and for that great offense they were arrested, but finally released. A Union man of this town had seen them and informed upon these gentlemen.

March 24th. C. Baker brought his store goods back to town from Maryland.

March 26th. Captain Richie left with his company of Yankees and, Captain Johnson takes his place. William Marmaduke last week moved back to Virginia from Maryland, and while on his way Josiah Baker handed him a letter with request to deliver it to Captain Richie. Upon opening it, the Captain said to Mr. Marmaduke, "This letter tells me you have two barrels of whiskey in your wagon." But upon examination only a little whiskey for the waggoner was found.

April 5th. Something new! Three hundred black Yankee soldiers come to town and some are quartered in the Jim Lane Towner store room, where they are in command of Colonel Perkins. Others with white skin and black hearts took Dan Rentch's parlor for headquarters. These negroes were hailed with much joy by some of our loyal citizens and some five or six negro soldiers were invited to breakfast with her by Mrs. C-----.

April 7th. The black Yankees left hurriedly for Harper's Ferry, for the

river was up and they could not get back into Maryland and the Rebels were reported to be coming.

April 9th. Twenty-six negro soldiers and a white officer came to town and quartered in Mohler's store.

April 12th. Twenty-four black Yankees and a white officer passed through, going to Martinsburg.

April 20th. Pickets at Smith's shop on the railroad shot Alex Lemon, returning from a visit to Clarke county. He received three wounds, in the hand, leg and bowels, and the next day died. He was killed without warning.

April 25th. Some Rebel soldiers came in and went to C. Baker and demanded the key to his store, saying they wanted some goods, and took about $100.00 worth. On the same day, Mr. H. L----- cut down in part the fence made by some citizens around the graves of Rebel soldiers, buried inside of Jacob Line's field, adjoining the Methodist graveyard. The next day out of shame he put the fence back.

April 28th. Some ten or twelve Yankees came down from Martinsburg and arrested Virginia, daughter of Samuel Brooke, upon the charge of being a mail carrier through the lines. She was arrested upon information of ----------, a Union man and informer.

May 4th. Some ten or twelve Yankees disguised in Rebel uniforms entered the store of William Cronise on the Maryland shore, placed guards over it helped themselves and left.

May 30th. Andrew Leopold's body, the Confederate scout, was brought from Baltimore, where he had been hung on the 24th at 5 a.m. His funeral was large, not less than 400 in attendance, in spite of the objection and threats of the Union men of the town, all of whom said they would back their leader, Mr. ----- in whatever he would order done. So they sent a man (naming him) to the graveyard to inform those in attendance that they had better go home and that the corpse would not be allowed to come across the river, but it was finally brought across and buried with the Confederate flag on the coffin. Some of the union citizens gathered in a group opposite Entler's Hotel as the funeral passed up the street and made loud threats that those in the procession would be sent to prison, etc., etc., "for this day's work." The horse and hearse were taken from the owner by these Union men.

July 3rd. The Yankee army retreated from Martinsburg through town

and across the river and some of the merchants and Union men (naming them) packed up and crossed with the army to Maryland.

July 4th. The Rebels in full force passed through town into Maryland, fording the river.

July 15th. Some of the Union men are returning from Maryland.

July 18th. The refugees are fleeing back across the river, as the Rebels are reported coming.

July 19th. Some of the Yankee 1st New York Cavalry burned down the homes of Alex R. Boteler and E. I. Lee, together with all of the outhouses and the Potomac river is picketed at all points by the Yankees. The Rebels are in Martinsburg and reported to be coming here.

July 26th. Many Union men again refugeeing to Maryland, and the Rebels under General William L. Jackson, Cavalry Brigade, come into town.

July 30th. Jackson's command are now occupying the woods at the west end of town. About 1 p.m. some Yankee scouts came across the river, but left in a great hurry, being informed by Mr. ----- (naming him) that they were in danger of capture.

August 4th. A corps of General Early's army crossed the river and are now in Hagerstown, while some crossed at Williamsport. General Imboden's Brigade of Confederate Cavalry are encamped in the west end of town.

August 8th. The Rebels fell back to the railroad. Some three or four hundred Yankees came into town, but being warned, left in haste.

August 15th. General Averhill's Yankee cavalry came in, having crossed the river. Some of General Sheridan's army made a forced march from Harper's Ferry here, but left in a hurry for Winchester and were met by General Early, who repulsed them with heavy loss, and drove them back through our town, crossing the river at Boteler's ford and at Knott's ford.

August 27th. A skirmish between some Rebels and Yankees through our streets and out on the pike, the Rebels falling back to the railroad.

August 28th. About four thousand Yankees crossed the river at Boteler's ford and went on to Charles Town and burned down some barns and haystacks of the Butlers, Browns and others. General Tolbert and staff came to town, but left in great haste when warned by some Union men that the Rebels were near and coming.

October 8th. Sam Martin, of Sharpsburg, was shot dead by a Yankee

soldier. Martin was accused of horse stealing and robbing William Osborne in daylight.

October 13th. The Rebels came in, commanded by Colonel Mosby, and near Kearneysville above Brown's shop they captured an express train and among others caught a Yankee paymaster with $150,000.00 in greenbacks!

October 27th. This is election day for the new State government, and some men professing to be Southern actually voted, and among them were (naming them.)

November 8th. Some men entered the house of John Snyder, who had a sick family, beat up the old man, shot his son Henry, who died from his wounds. From there they went to C. Reinhart's, at 10 p.m., demanded his money, and after he gave them his pocket book struck him over the head, cutting and beating him badly. These men wore masks and blew out the candles while pilfering and robbing the house.

November 10th. The Confederate Major Harry Gilmore of the "Maryland Line" and some of his command came in. They did not rob or molest anyone, but paid for some hats at the store.

November 15th. Some of Mosby's command came in and captured a Yankee scout named Alexander and at Mike Coleman's house they found some Yankee horses and took them away.

November 24th. A party of two hundred and fifty or three hundred Yankees passed through town on their way from Martinsburg to Harper's Ferry. Some of them went to Tom Butler's and there arrested John Keplinger and then to Henry Shepherd's and arrested and took him away. Some four hundred and fifty or five hundred Yankees passed through, going to Martinsburg. They said they were hunting Colonel Mosby and that if they found him in this town they would burn the whole town down.

December 1st. Henry Shepherd released and returned home, but they still hold John Keplinger a prisoner.

December 3rd. The Reverend Frary was robbed by ----- ----- and two other men out on the pike a half mile from town.

December 6th. The river picketed all along and nobody allowed to cross. Some twenty or thirty Yankees arrested and took away John Grant and Joe Stonebreaker and all of Grant's things from his shop and some from Thompson and crossed the river, and also took off Ben Graves and all of his goods to Harper's Ferry.

December 11th. William, son of Mike Coleman, blew himself up playing with a bombshell. He took it between his knees to get the powder out when it blew him to pieces and wounded several others.

December 13th. John Grant and Thompson are released. Three or four men piloted by a boy went to B. Lucas' house at night and demanded entrance, and being refused left, and then went to H. Shepherd's and there robbed John Shepherd of $40.00 and his gold watch. John recognized some of them and came to town and had the boy and one of the men arrested and taken to military headquarters.

December 16th. Stonebreaker released and returned home. Graves still held a prisoner.

December 17th. Mrs. Arthur's house burned down at midnight by the Yankee soldiers. Some of these soldiers went to the house of Lucy Hedges a black woman and demanded supper, who gave them the very best she had. They then carried away all the sausage and pudding etc., that she had in the house, also several hams. They had already taken all of Mrs. Arthur's meat and everything else they wanted.

December 18th. Soldiers from Kearneysville arrested Mrs. Arthur and young daughter and a man named Jarvis and took them all to Martinsburg.

December 21st. Some soldiers from Charles Town came over for the purpose of burning down Mrs. Arthur's house, but found it had already been burned down.

December 29th. Two Yankee wagons passed through town with some of the Hooff family from Charles Town, taking them as prisoners to Fort McHenry.

December 30th. A wagon with the remainder of the goods of the Hoff family and some women and children passed through on their way to Pennsylvania, where they were sent by the military.

Jan. 6th, 1865. Baker opened his store, as did also Chapline and Hill their stores up-town. The Arthur family returned to town.

January 10th. James P. Conley and James Hamill were said to be captured on their way home from the army. Conley had been wounded in the thigh.

January 11th. A party of Yankees came in the night to capture Hamill and Conley, but not finding them they arrested some citizens instead and took them away.

January 13th. George Lucas was shot dead by J. VanMetre at the

Tucker farm. His brother, Edward, while on his way to bring the body home, was arrested at Kearneysville.

January 19th. The Rebels made a raid at Duffields Depot, captured a train, took what goods they wished and left with no loss.

January 30th. About thirty Yankees came to town and entered the stores of William Chapline and Baker Brothers and took all they wished. Chapline had a guard, but he and the guard hid in the cellar. They left Henry Entler on the outside. Chapline from the voice thinks one of the raiders was Lampas, a Yankee scout in disguise. When they came to the door Lampas called out, "Come on, boys, hurry up, for I want to get across the river, for I have a dispatch for General Murray." They forced the door and searched Henry Entler and told him they knew him. These were Yankees in disguise.

January 22nd. A wedding at West Myers' house today.

January 27th. The Yankees arrested Joe Randall, James V. Moore and George Wilshire, who were required to give a bond of $1,500.00 for James VanMetre, who had killed George Lucas.

January 29th. Blockade on the river. No passage across. Chapline's store guarded by twelve Yankee soldiers.

January 30th. Doctor Lucas arrested. Released the next day. Colonel R. Lucas arrested and required to go a bond of $3,000.00 in the VanMetre case. A party from the Maryland side came over and robbed Joseph Staley's meat-house, and took forty chickens and then crossed on the ice and in their hurry dropped some of the meat and some of the headless poultry. Staley saw them but was told that if he came out of his house they would shoot him. ----- ----- piloted some Yankees to Mr. Atkinson's house and they took a lot of tobacco from him. Tobacco is very rare and commands a big price. Dan Hill drew out of the Chapline stores because it is said Chapline would not agree to make the people of Shepherdstown pay for the goods taken out of the store by the supposed Rebels.

February 5th. The smoke-house of Philip Wintermeyer was set on fire by some unknown person. Some ten days previously, David Hout, James Hiser, Andrew Brantner and Wintermeyer received notices that their house would be burned down, but no name was signed to the notice, which was in a female handwriting.

February 6th. Some Yankees came in from Kearneysville, got drunk, mistreated some citizens and went across the ice on the river to Maryland.

Some of the citizens crossed the river and secured a posse of Yankee soldiers, who arrested these raiders, and Kelly Osborne took them across the river to headquarters and from there they were sent to Kearneysville and put at hard labor and on bread and water.

February 13th. Douglas Bowers and Frank Licklider are arrested and sent to Hagerstown. A band of Yankee robbers came to town, entered the stores of G. Baker, William Chapline and J. V. Underdonk and John Keesecker, and after loading themselves up with goods left in the direction of the Yankee camp, but before leaving broke into a private house, and took money and watches.

February 23rd. John Davis arrested for telling Park Strode that all deserters from the army should be shot. Strode had come home without leave.

March 1st. A lot of Yankees from Martinsburg under a Captain Rider entered the home of Captain Reynolds and took two overcoats, five or six hundred dollars in money, various other clothing, etc., and also entered the homes of Mrs V. M. Butler and Jacob Miller, robbing the families of many valuables, such as clothing of all kinds, store goods, tableware, etc., and then went to Mr. Thompson's and ordered supper and fires to warm by in two rooms and on their way back to Martinsburg robbed James Baner, living on the road, of $600.00 in money.

March 2d. A lot of Yankees came across the river and entering by force the house of Mrs. Drusie Ray broke open bureaus and carried most of her clothing and also all of her son's clothing away.

March 15th. The members of the bogus court were sworn in today, judges, clerks, etc. The blockade guard has been removed to the Shenandoah.

March 30th. George Colbert and George Myers went to Summit Point to arrest a man named ----- on the charge of horse stealing, but they came back with bloody noses and had been disarmed by a strip of a boy, brother of the man accused. A second trip was made by them, calling in the military to help them. They got nobody on this second trip except the boy, and on their third trip they finally got the accused and our great (?) lawgivers not knowing what to do with him, turned him over to the military.

April 3rd. The news of the fall of Petersburg gives great rejoicing, also that of Richmond, to the Union people. Much shooting in the streets. All the church bells are ringing, loud and long all day and into the night. Flags waving from buildings.

April 5th. Flags were strung across the street, one from the Jim Lane Towner house to the Sheets corner, but when the Rebels were reported coming, the flags were taken down quickly.

April 8th. Flags hoisted again and some speeches were made by Joe Chapline and others. They are having quite a time in court. All loyal men can get Judgments but no one's evidence is allowed who would not take the oath of loyalty. Some Yankees from Kearneysville entered a house of a negro man here in town named Jordan and took him out of his bed about midnight and made him go undressed as he was and nearly naked and chilled to death to the Episcopal Church and ring the bell for about two hours over the fall of Richmond, finally telling the poor negro to go home and put his clothes on.

April 10th. The news of General Lee's surrender. The Tories were all out again marching up and down the streets with drum and fife, ringing all the church bells, etc. A motley crew, many of whom had never seen a Rebel except from across the river. Some had deserted from the Southern army, some had been supplied with meat and bread by Southern people to keep them and their families alive and from starving, and thus they showed their gratitude! One fellow did his first day's work for years by ringing a church bell. He and his family had been supported by kind Southern sympathisers for months and months.

April 11th. Some Yankees disguised in Rebel uniforms, a favorite deception of theirs, entered at night the shop of John Keesecker and carried away everything in sight.

April 15th. Long faces in town. Death of Abe Lincoln. Flags draped in morning. Store rooms hung with black cotton, etc., and all stores closed.

April 19th. Reverend Dr. Andrews, Reverend Mr. Miller and Reverend Mr. Craiglow and Reverend Mr. Whisler were all arrested for not praying for the President of the United States and all were finally released upon taking the oath, but it was ordered that all of their churches be kept closed and they were. They were all arrested upon information given by a Union man, Mr. -----.

April 22nd. A big love feast, for two thousand estimated, was in preparation, but they lacked about fifteen hundred. Soldiers from Harper's Ferry and from along the railroad and about fifty loyal citizens and a lot of negro men and women and some boys form the big procession. One of the leaders and marshal had lost a brother in the Southern army. Another had

lost a brother in the Southern army at Kernstown under "Stonewall" Jackson. There was a great uproar and the mob sang negro songs, etc. Many were drunk and there were many brawls and fights among themselves. Stores broken open, for all business had been ordered suspended and stores closed, etc. Some robbers entered by force the store of Colbert and carried away everything they wished and one struck Colbert on the head with a revolver and one struck down Mr. Lucas, and later Michael Sigler and shot and robbed of all his money.

April 23rd. A lot of Yankee scouts in town, arresting all paroled and returned Confederate soldiers. A granary of J G. Unseld was set on fire, but was discovered in time to be put out. Some of the paroled Confederate soldiers who had been arrested were ordered to report the next day to the military at Kearneysville. They did so and were released. William Arthur was given a pass to Winchester, there to get his parole, and when on his way there he was seized and taken to Martinsburg and confined in the guardhouse, stripped of his clothes, boots, cap and money, and ordered to take the oath or go to the prison at Fort Delaware. He felt forced to do the former and came home with some old Yankee duds on. All of his trouble was caused by a Union man of this town, Mr. -----.

April 28th. Yankees in town ordering all returned soldiers to take off their gray clothes or go to prison in some fort. Jacob Voorhees, a man with one arm, was arrested. He had lost the other at Bull Run. He was taken to Martinsburg and finally released. Arrested for wearing his old gray uniform.

May 4th. Major Henry Kyd Douglas, former member of "Stonewall" Jackson's staff, was arrested today for wearing gray pants and taken a prisoner to Martinsburg and after some time released.

May 6th. John Hill and another Confederate got home today from prison at Camp Chase.

May 18th. A Yankee understrapper stuck up a notice ordering all Confederates from Maryland to return there and stay there. This was aimed at Major Henry Kyd Douglas, whose home is just across the river in Maryland and who has spent most of his life here in Shepherdstown. Robert Thompson was drowned while trying to regain a boat that got away from the wharf at the river.

June 1st. William Sprinkle was killed instantly by a log falling from a wagon, and his son also was badly injured. All business is suspended today.

All churches are open and all persons forbidden to labor today under penalty of $5.00 and all informers of such violation to receive $10.00 reward, but some Union men worked all day with closed doors.

June 29. Major Henry Kyd Douglas again arrested today for remaining in town and not returning to his home in Maryland. Again released July 1st and returned to his home across the river.

July 7th. Major Douglas arrested for the third time and taken to Harper's Ferry and later released. Wearing gray is treason!

July 17th. The first session of the Superior Court today under Judge Balch, who charged the jury to indict and convict all Rebels and to let none escape who had not been loyal. C. Thompson was charged with the murder of Snyder. Rebecca Spotts was charged with the murder of H. Unseld and released on bail. William Edwards was put on his way to the penitentiary within three hours after he had been indicted. Judge Balch would allow him no counsel. Captain James Hurst was indicted for contempt of court, though he was living at Kearneysville, five miles away, and was fined $10.00. Balch told Hurst that he was letting him off easy and that even if the President to the United States was living at Kearneysville or anywhere else and was guilty of contempt of his court by not coming there when summoned, he would fine and imprison the President himself.

December 25, 1865. Frank Jones fell from his horse in Sharpsburg and fractured his skull while attending the funeral of Mrs. C. Reinhart. Today is Christmas day and the usually sober men are pretty much all drunk, while the usual drinkers all seem pretty much sober.

Note: Thus ends the diary so far as the fragments were found and shown to the writer hereof. It gives a somewhat inside view of those terrible days when the always good old town was torn and distressed with internecine bitterness, strife and sometimes bloody scenes and tragedy. The participants are pretty much all gone and but few now living can or will remember those unhappy days. I have omitted in the main the names of many for considerate and obvious reasons, and some of the names are indistinct. The mantle of charity of more than sixty years should and does hide the former animosity and ill feeling now in this year of grace and of a happy and united country, let us hope, for it is my wish as an ex-Confederate soldier, though there may be some who will neither forget nor forgive.

Trivia

Being a collection of historical material and relevant observations on Jefferson County offered by the Editor for the delectation of his readers on occasion as pieces come to hand. The editor respectfully urges readers to submit contributions to Trivia.

CHARLES TOWN IS ONE OF THE THRIVING LITTLE CITIES OF WEST VIRGINIA

The city of Charles Town, W. Va., holds a number of claims upon one's interest. It has peculiar charms. It does a large business without noise and confusion. It has a quiet efficiency. Its biggest noise is the honk of tourists' automobiles, and after that is the noise of the trains. There are many tourists and several trains a day.

There is a gentle calm about the old town that is refreshing. It mends the nerves of rush-worn people. There is no sense of hurry. The officials in the town hall, the county officers in the courthouse, the clerks in the stores, the men in the banks and the waitresses in the hotels have a quiet air and they treat time not as though each minute were the last, but as though there would be plenty of future. They have a philosophy that there is something bigger in life than furiously punching a cash register and something better to talk about than dollars and small change. Charles Town is in West Virginia, but it is very like what you would expect to find in old Virginia, and sometimes do not find.

The streets are wide and, except on Main Street, there is seldom anything approaching traffic congestion, and they have traffic signals at several crossings. A large extent of streets is paved with asphalt, and plans are making to give a hard, smooth surface to all the streets of the town. The residence streets are bordered by old trees and the homes are set in ample, well kept grounds. The sidewalks, mostly of cement, are clean and shady. Charles Town, though it has a population of only 3,500, occupies a larger area than many cities twice or thrice its population. In some sections of the town the homes are spacious and of that character and air which is usually termed "beautiful". Homes that are costly in the sense in which big-town are costly are few, but they spell content and repose. Even in those quiet parts of town where less leisurely people live the homes have trees, lawns, flower beds and some have a vegetable garden. Many of the homes large and small belong to an age that was, and many of the newer houses are patterned after the older style.

The men are as well dressed and as well groomed as men generally are and the women follow the fashions as they do here, but what we call "extremes" are not often seen in the streets of Charles Town, and when one sees extreme styles they are usually worn by people not of the town.

The church buildings are of large size and excellent architecture and the old church buildings are impressive. The shops — and every line of trade is represented — are full-stocked with goods, and the people of Charles Town can buy most of the grades and varieties of merchandise that are to be had in bigger and busier cities. The hotels are considerably above the usual small-town standard, several of the banks occupy suitable and adequate buildings, and the opera house is regarded as one of the handsome playhouses of the state. Moving pictures are shown there and traveling theatrical troupe takes it over for a night stand now and then. For the ordinary run of road attractions the people of Charles Town go to Winchester twenty two miles away, and for the greater operatic and dramatic representations they come to Washington or go to Baltimore. In many ways Charles Town is independent of the outside world for amusement. The city has musicians and readers of merit, the high school students and other young people put on shows that give pleasure, the people patronize the movies, there are various church societies in which they find entertainment and then there are teas, card parties and receptions.

Charles Town rests in a region of wonderful charm and the people make excursions to famous springs, to picture places in the valley and enchanting spots in the Blue Ridge, whose morning shadow reaches nearly to the town and they are but a few miles from the Shenandoah and the Potomac. There is a daily paper at Winchester and two well-written and well-edited weekly papers are published at Charles Town. There is a good deal of that quality in Charles Town which is commonly called "culture". Practically everybody is schooled, many of the people are well schooled and one meets finely educated men and women. Among old people one sees some who carry the "grand air" of the older period. It is a very happy and contented place.

Charles Town has two exceedingly interesting historic claims upon outsiders. Its associations with the family of which George Washington was the most illustrious member constitute one claim, and its association with the John Brown tragedy another.

Though Charles Town was established by act of the Virginia assembly in 1786 it is believed that there was a settlement of the site as early as 1750, near an old mill on Evitts Run, within the limits of the town. The direction of the main thorough fare — Washington Street — is nearly east and west

and the next streets paralleling it are Congress and Liberty, while the important north-and-south streets are George, Lawrence, Samuel and Mildred, which are Washington family names. The town has outgrown the site set out for it 135 years ago, and many new streets have been opened and the old ones lengthened.

One of the old and strikingly situated churches of the town is Zion Episcopal. It is of brick, and its walls are veiled with that member of the grape family variously called Boston Ivy, Southside Ivy and Ampelopais velchil. Around the church are a thousand tombs, and many of the Washingtons of Mount Vernon, Harewood, Happy Retreat or Mordington and Berry Hill or Cedar Lawn are at rest there.

The Star Man stood by a white marble headstone with this inscription: "John Yates Beall, C.S.A. Feb. 21, 1865, aged thirty years." This man was an agent of the Confederate states of Canada. One day he crossed the International bridge at Niagara and was arrested. He was tried, condemned to death and hanged at Governors Island, New York harbor. The charge against him was that he was a Confederate spy. Many of his kindred rest near him.

In Edge Hill cemetery is a Confederate burial plot with several hundred marble headstones marking the graves of southern soldiers killed at Antietam, Harpers Ferry and other places near Charles Town, and in the middle of that plot rises a Confederate monument reared by the women of the Lee Memorial Association and unveiled April 26, 1871. In this cemetery is the grave of William L. Wilson, long a member of Congress, chairman of the ways and means committee of the House, author of the Wilson tariff bill and Postmaster General in Cleveland's cabinet. The old home of this good and able man is near the entrance to the cemetery. It is a simple frame house, and the stateman's widow lives there.

Several members of the Washington family still live in Charles Town and are prominent in its business and social affairs. There are probably many other members of the Washington blood in the town, but The Star man was given these names: John A. Washington, Samuel Walter Washington and Miss Christian Washington. They are children of Richard Washington of Harewood. Samuel Walter Washington lives in a modern brick house on Mildred Street, and John A. and Miss Christian Washington live in one of the spacious and beautiful homes of the town on George Street.

Charles Town, like nearly all other towns, is governed by a mayor and city council. The mayor is A.M.S. Morgan and the councilmen, elected about two weeks ago, are A.D. Mahoney, H.N. Bradley, J.W Garney, W. H.

Baldwin, G.F. Conklyn, William H. Anderson, S. Lee Phillips and Frank Cockrell. James M. Mason, Jr. is the city attorney; D.C. Dolly, clerk and James A. Smith, collector and treasurer.

The water supply of the town is furnished by a corporation under the name of the Charles Town Water Company. The water flows from a spring into a reservoir, is pumped into a standpipe and thence is piped throughout the town. Lighting is supplied by the Northern Virginia Power Company, whose plant is on the Shenandoah river, three miles from the town. Fire protection is furnished by two volunteer companies, each of which owns its quarters and keeps a steam fire engine in readiness to answer fire calls. One of these fire companies is the Citizens and the other the Independent or the Charlie Rouse company, that company occupying a building for the erection of which Charles "Broadway" Rouss, millionaire merchant and philanthropist, made a substantial contribution. Opposite the courthouse is a building bearing a big gilt sign "Rouss Memorial Hall." And this fact suggests a few recollections of Charles B. Rouss, who for a good many years was much in the public eye and whose memory is cherished in the valley as well as in other parts of Virginia. He was born at Woodboro, Frederick County, Md., February 11, 1834, and was a son of Peter Hoke Rouss and his wife, Belinda Baltzell. The Rouss family was of ancient and distinguished Austrian ancestry, and the Baltzells were prosperous Maryland people before and during the American Revolution. The son's name is generally given as Charles Broadway Rouss. It was certainly Charles B. Rouss, and the writer of these lines believes, though he does not know, that the "B" in Mr. Rouss' name stood for "Baltzell", his mother's surname and that "Broadway" was a happy nickname suggested by Mr. Rouss' mammoth building at 549-53 Broadway, N.Y. and his nation-wide reputation as a Broadway merchant.

When Charles was five years old, in 1841, the family left Maryland and settled in Berkeley County, Va., buying a fine place called "Runneymeade" twelve miles from Winchester. Charles attended the academy at Winchester, and at fifteen years went to work as a clerk in a Winchester store. In 1861, he enlisted in the 12th Virginia Infantry, served until the surrender at Appomattox and after helping gather the thin harvest on the family place in the summer of 1865, went to New York City.

His first venture with a partner in keeping store was a failure. Later he opened a dry goods store on Church Street, using his business motto, "Cash before Delivery". He prospered brilliantly, and in a few years built a famous ten-story building on Broadway. This mercantile house dealt with more than 30,000 stores throughout the United States and had business

connections in South America and Mexico. Mr. Rouss was soon rated as a millionaire. He usually spent his vacations at Winchester, and made many splendid gifts to the town. Among other things, he contributed $30,000 toward the installation of Winchester's water supply system and $10,000 for the building of a fence around Mt. Hebron cemetery at Winchester. He gave $35,000 for the creation or extension of a physical laboratory at the University of Virginia and was the founder of Confederate Memorial Hall, often called the Battle Abbey of the South, at Richmond. Two years before the outbreak of the civil war he was married to Miss Margaret, daughter of George Keenan of Winchester. Charles Broadway Rouss became blind several years before his death, and the American public was deeply moved by the affliction of this prominent, rich and magnanimous man. Well, you see why one of the fire companies in Charles Town calls itself the Charlie Rouse Company and there is a Rouss Memorial Hall in the old town. Capt. Milton Rouss, a brother of Charles B., lives in Charles Town.

The principal of the Charles Town public schools is Prof. Wright Denny, and the postmaster is S.C. Young. The Jefferson Hotel is run by Maitland Riley and his brother Courtney, and the Palm Hotel by Mr. Weiss. The newspapers are the *Farmers' Advocate* edited by Robert C. Rissler, and the *Spirit of Jefferson,* generally called for short, *the Spirit,* and which was established in 1844 in opposition to the ancient *Federalist and Whig* newspaper, the *Free Press* edited by Clayton L. Haines, born in Charles Town, reared in a printing office, who has been mayor of the town and has been elected to the city council so often that he lost the count.

There are four banks in the town. One is the Farmers and Merchants Deposit Company. Another bank is the National Citizens. Then there is the Bank of Charles Town. Next there is the Jefferson Bank and Trust Company.

Two railroads, the Norfolk and Western and the Valley branch of the Baltimore & Ohio, lead to Charles Town. Transportation facilities are adequate. The Baltimore & Ohio freight agent is Frank R. Cockerell.

The pastors of the Protestant churches are the Rev. Conrad H. Goodwin, Episcopal; the Rev. Goodwin Frazer, Baptist; the Rev. G.G. Sydnor, Presbyterian, and the Rev. T.M. Swann, Methodist Episcopal South. The Catholic church is a chapel of St. Peter's at Harpers Ferry, and the congregation is served by the Rev. Father J. A. Curran of St. Peter's. The Rev. Dr. A.C. Hopkins, who was chaplain of the Stonewall brigade and for many years pastor of the Presbyterian Church at Charles Town, rests in Edge Hill Cemetery.

Charles Town has three pharmacies, run by Dr. J. William Brown, Dr. F.

B. Hood and Dr. Clyde Miller. The physicians are Drs. A.O. Albin, F.M. Phillips, Alexander Rouss, William Neill, Pitman, Miller and Hanes. Drs. Luke and Ramey are dentists. Charles Town has lodges of Masons, Odd Fellows, Knights of Pythias, Red Men and other Associations which help to make life more interesting. Edward G. Henson runs the Opera House.

The officers of Jefferson County, of which Charles Town is the capital, are: Judge J.M. Woods; clerk of the county court, Charles A. Johnson; prosecuting attorney, J. T. Porterfield; sheriff, and jailer, W. R. Alden; superintendent of Education, I.M. Bonham; commissioner of revenue, F.L. Watson; deputy commissioner of revenue, T.O. Link and R.E. Hammond; clerk of the circuit court, Charles W. Conrad. There is a court of five commissioners having jurisdiction of matters pertaining to the financial system of the county roads and records. N.R. Roberts is chairman and the associate members are C.H. Moore of the Charles Town district; Logan Shutt, Kablestown district; Dr. S.T. Knott, Shepherdstown district, and C.C. Hinkle, Harpers Ferry district.

The present courthouse is that in which the trials of John Brown and his men were held in 1859. Samuel Street has been extended through the field in which Brown was hanged and is now bordered on both sides by villa-like homes in large gardens. The spot on which the scaffold stood is not known. On the east side of the street are two large and handsome homes, one owned by William B. Packette and the other by Col. John Gibson. The Packette garden was pointed out to *The Star* man as the site of the scaffold, while Elijah Avey, who was living at Charles Town in 1859 and published a book in 1906 evincing personal knowledge of Brown's trial and death, says: "The scaffold stood in the center of a ten acre field at the south edge of the town, but since then it has been built up with fine buildings and is now the finest residence section of Charles Town. Col. John Gibson, a Confederate colonel, purchased this spot of ground and erected his fine residence there." Avey writing of himself, says that in the fall and winter of 1859-60 he was a boy learning the watchmaker's trade at Charles Town. John Brown was hanged December 2, 1859. Mr. Avey writes: "They were all hanged in the same field and from the same scaffold which was taken down each time and stored away in the jail yard, and was afterward transferred into a portico in front of Mr. Rannel's residence in Charles Town."

Mr. Avey lectured in many cities on the subject of John Brown's capture and death, and told many anecdotes of Capt. John Avis, Brown's jailer at Charles Town. The remains of John Brown were taken from Charles Town at 1 o'clock that afternoon, and delivered to his widow at Harpers Ferry. Thence they were taken to his old home, at North Elba Essex County, N.Y.

where they rest.

William Darke, one of the original trustees of Charles Town, and whose grave is near the venerable city, was a man of renown when the Blue Ridge and Shenandoah regions were the "wild west" of the American colonies. He was born in Pennsylvania in 1736, but his parents moved to a place about five miles from Shepherdstown when he was a child. he was an officer in the Virginia Provincial troops, serving with Braddock, and was present at the great defeat. He has been described as a man of "herculean frame, rough manners, strong, uncultivated mind, and of a disposition frank and fearless." An officer in the revolutionary army, he was taken prisoner at the Battle of Germantown in 1777, but on being released in the autumn of 1780 he returned to his home, and in the spring of 1781 was at Winchester organizing troops.

He rejoined Washington's army in command of a regiment recruited in Hampshire and Berkeley counties and took part in the siege of Yorktown. At the end of the revolution he resumed his farming. He was chosen as one of the representatives of Berkeley County to the Virginia convention of 1788 which had been called to approve or reject the proposed Constitution of the United States, and he voted for its adoption. He was an officer in Gen. St. Clair's army in the Indian wars during President Washington's administration, and his youngest son, Capt. Joseph Darke was killed in action. Gen. Darke (his regiment having been expanded to a brigade just before the siege of Yorktown) died on his farm November 20, 1801.

Jefferson county was formed in 1801 from Berkeley, and in Howe's book of 1845 is this: "It was settled principally by old Virginia families from the eastern part of the state, and the inhabitants will retain that high and chivalrous spirit and generous hospitality for which the race was so remarkable in the palmy days of its prosperity."

Washington Sunday Star, 21 June 1921.

Roger J. Perry

Summer Picnic

Wednesday, August 7, 1996 the Jefferson County Historical Society held their annual summer picnic at Historic Altona, home of Mr. and Mrs. Henry B. Davenport, III.

Writing this picnic up for those members unable to attend will not be easy. There is so much that could be said about an event described by all who were present, as perfect. The grounds were lovely, conducive to strolling and visiting. The food, as usual, was the best from casseroles, the salads and the desserts were enough to well serve the over 230 members and guests. The lemonade stand was in operation and reported an unusually busy evening due to the large attendance. According to the records this was a record attendance.

After the picnic the President, Dr. John E. Stealey, III, thanked the Davenports for hosting this event and for their gracious hospitality. Having lived here all his life, Henry Davenport, III, was then asked to give the group some of his recollections and a bit of the history of this house which survived the burnings of the Civil War.

Altona is known as the ancestral home of the Davenports. Major Abraham Davenport, Jr. bought the property from Charles Washington in a deed dated October 12, 1793. The original weatherboard structure was greatly enlarged by Colonel Braxton Davenport in the 1830's when he added a brick front, as well as the beautiful interior features. His wife, who was Elizabeth Bedinger, named the estate Altona after a Bedinger estate in Germany. For a while the property passed out of the hands of the Davenports, but in 1936, Henry B. Davenport, Jr. of Charleston, West Virginia was able to buy it back. Henry III was not yet two years of age when his parents, Benton S. Davenport and Imogene moved to Altona. While still very young Henry III lost his father.

In October 1958, Henry B. Davenport, Jr. died and at this time Altona passed into the possession of Henry B. Davenport, III. It was to this estate he brought his wife, Faye. At this time mother, Imogene, removed to the beautifully restructured building once used as a garage.

Colonel Braxton Davenport is credited with building the magnificent dry wall stones fences which border the road.

Altona has now been placed on the National Register of Historic Homes.

Members and guests were invited to tour the mansion house complete with candle light and docents to lead the way.

Florence H. Moore