

# REPORT

OF

# SPECIAL JOINT COMMITTEE,

APPOINTED UNDER

Joint Resolution, Approved March 4, 1896,

TO

INVESTIGATE AND REPORT UPON A CERTAIN SURVEY MADE UNDER AN ACT APPROVED FEBRUARY 26, 1894, WITH REFERENCE TO THE RIPARIAN RIGHTS ON FOX ISLAND IN ACCOMAC CO.

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## JOINT RESOLUTION:

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CHAP. 704.—A RESOLUTION to appoint a committee to investigate and report upon a certain survey made under an act approved February 26, 1894, with reference to the riparian rights on Fox island, in Accomac county.

Approved March 4, 1896.

Whereas William Ellinger, of Accomac county, in accordance with an act of the general assembly of Virginia, entitled, "an act to define and establish by straight lines the low-water-mark lines for the riparian owner of the shores of Fox island or Fox islands, in the county of Accomac, in the state of Virginia," approved February twenty-six, eighteen hundred and ninety-four, did apply to the fish commissioner to establish such lines; and

Whereas a survey was made and lines established, by which it does not appear that the aforesaid act has been properly complied with according to its true intent and meaning, or with due and proper observance of the interests of the state:

Resolved, That a joint committee of the general assembly, to be composed of two from the senate and two from the house of delegates, to be designated by the respective presiding officers, be hereby constituted to investigate into the facts pertaining to said survey and the establishing of the lines aforesaid, and to report as to what further action should be taken in the premises, and pending the next session of the general assembly, the attorney-general shall institute proceedings to protect the interests of the commonwealth in the proper court, should said committee report to him that the property rights of the commonwealth are being infringed upon by said Ellinger.

2. This resolution shall be in force from its passage.

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The Speaker of the House of Delegates appointed Messrs. HOWARD HATHAWAY and J. E. BOOKER, the Committee on the part of the House.

Maj. J. N. STUBBS and GEORGE W. LECATO, were appointed on part of the Senate.

# REPORT

OF

## SPECIAL JOINT COMMITTEE.

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*To the General Assembly of Virginia:*

At the session of the General Assembly of Virginia, 1895-6, a joint resolution was adopted to appoint a committee to investigate and report upon a certain survey made under an act approved February 26th, 1894, with reference to the riparian rights on Fox Island in Accomac county. The undersigned were appointed on said Committee and have performed the duties mentioned in said resolution, and now respectfully submit this report.

Your Committee has very carefully studied the true meaning and intent of the resolution under which it had to act; (see "Resolution," Acts of Assembly 1895-6., p. 773); also had to construe the act of the General Assembly entitled "An Act to define and establish by straight lines, the low-water mark lines for the riparian owner of the shores of Fox Island or Fox Islands, in the county of Accomac in the State of Virginia," "approved February 26th, 1894." (See Acts of Assembly 1893-4, pp. 469-70-71).

The preamble to the joint resolution, under which your Committee is now acting, states :

"Whereas a survey was made and lines established, by which it does not appear that the aforesaid act has been properly complied with according to its true intent and meaning, or with due and proper observance of the interests of the State."

The resolution directs that the Committee "investigate into the facts pertaining to said survey and the establishing of the lines aforesaid, and to report as to what further action should be taken in the premises, and pending the next session of the General Assembly, the attorney-general shall institute proceedings to protect the interests of the Commonwealth in the proper Court, should said Committee report to him that the property rights of the Commonwealth are being infringed upon by said Ellinger."

Your Committee submits the following "facts pertaining to said survey and the establishing of the lines aforesaid."

When Wm. Ellinger, Esq., owner of Fox Island, or Fox Islands, made application to the Fish Commissioner as provided in the Act approved February 26th, 1894, (Supra), Dr. John T. Wilkins was then Fish Commissioner, and paper marked "W. E." herewith filed is the application of Wm. Ellinger, Esq., to have survey made and lines established.

[Copy.]

WASHINGTON, D. C., *March 26th, 4.*DR. JOHN T. WILKINS, JR., *Fish Commissioner of Virginia.*

*Sir*: Pursuant to an act of the Legislature of Virginia, approved February 26, 1894, (a copy of which is herewith enclosed) it is made lawfull for me to apply to you, to establish by straight lines a boundary to be taken as a permanent low water-mark line for Fox Island or Fox Islands, in the county of Accomac, in the State of Virginia.

The said Act also makes it incumbent upon me to give you in writing a full description of the location and extent of the shores of the Island and Islands, and of the Island or Islands.

I enclose a map issued by the Coast and Geodetic Survey of the U. S. which fully shows the location and extent of said shores and said Island or Islands, enclosed map is a part of a chart of said Coast and Geodetic survey known as No. 133, said chart has a scale which fully enables all to ascertain area and extent and shows location in the most accurate manner known.

Having thus complied with the preliminary requirements of said act, and holding myself prepared to comply with all others, I respectfully apply to you herewith to perform all the requirements of said act, made incumbent upon you as Fish Commissioner of Virginia.

Truly yours,

(Signed)

WILLIAM ELLINGER,

Owner of Fox Island or Fox Islands,  
in the county of Accomac, in the State of Virginia

[Copy.]

WASHINGTON, D. C., *March 28th, 1894*

WM. ELLINGER, Present.

*Sir*: I herewith acknowledge receipt of your application to establish by straight lines a boundary to be taken as a permanent low water mark line of Fox Island or Fox Islands in the county of Accomac, in the State of Virginia pursuant to an act of the Legislature of Virginia, approved February 26th, 1894

(Signed)

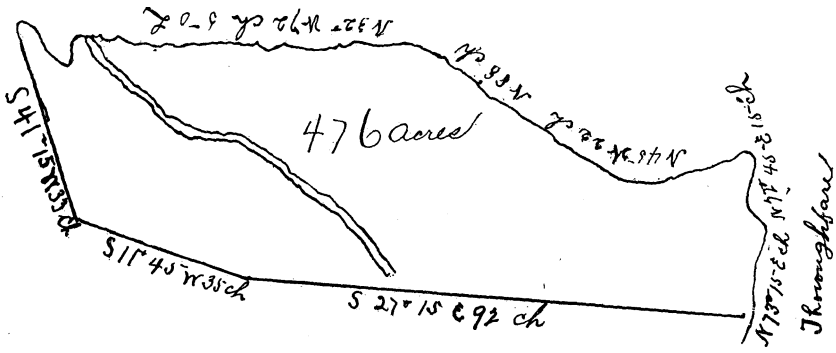
JNO. T. WILKINS, JR.,

*Fish Comm. of Va.*

NOTE—Date altered from 26th to 28th of March at time of my signature

Shortly after this application was made Dr. John W. Bowdoin was made Fish Commissioner, and he proceeded to act in the premises. Did the riparian owner make application as the Act of the General Assembly provides? (See Acts of Assembly, 1893-4, pp. 469-70-71.) "That in order to avoid the uncertainty of the boundaries of low water on the shores of Fox Island or Fox Islands, in the county of Accomac, in the State of Virginia, arising from the indented courses of said shores of said island or islands, it shall be lawful for the riparian owner thereof to apply in writing to the Fish Commissioner of the

State to establish by straight lines a boundary to be taken as a permanent low-water mark line. Such writing shall contain a full description of the location and extent of said shores and island or islands \* \* \*." Chart of Coast and Geodetic Survey, No. 133, was all that Wm. Ellinger furnished, although he had in his possession, at the date of the letter to Dr. Wilkins, paper marked "W. R. G.," herewith filed from the Register of the Land Office, showing the survey on August 10th, 1773, by Thos. Teackle, Surveyor, containing 476 acres.



Sacker Nelson, 476 Acres, Accomac. Re'd 22d November, 1784. Gt. 4th May, 1787.

ACCOMAC COUNTY, August 10th, 1773.

Surveyed for Sacker Nelson 476 acres of land in the parish of Accomac, and bounded (to-wit): Northerly and easterly on Poromock Sound, southerly on the Thoroughfare, westerly on the Tangiers Sound. Certified per me.

THOMAS TEACKLE,  
Surveyor.

I further certify that the variation between the magnetical and true meridian is 30 west.

Book 14, page 196. Acres, 476.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 5th day of March, 1894.

W. R. GAINES,  
Register Land Office.

Also a grant on 4th May, 1787, was given to Sacker Nelson, reciting in said grant the above survey, which is of record in "Register of Land Office" of Richmond, and a copy is filed herewith marked "S. P. E."

G. B. 11, Page 85.

Beverly Randolph, Esquire, Lieutenant-Governor of the Commonwealth of Virginia, to all whom these presents shall come, greeting. Know ye, that in consideration of the ancient composition of two pounds ten shillings sterling paid

by Sacker Nelson unto the Treasury of the Commonwealth, there is granted by the said Commonwealth unto the said Sacker Nelson a certain tract or parcel of land containing 476 acres by survey, bearing date the 16th day of August, 1773, lying and being in the county of Accomac and parish of Accomac, northerly and easterly on Pocomack Sound, southerly on the Thoroughfare, westerly on the Tangiers Sound, and vizt:

Beginning at the Thoroughfare, running thence N.  $73\frac{1}{4}^{\circ}$  E. 16 poles. N.  $42\frac{3}{4}^{\circ}$  E. 15 poles. N.  $45^{\circ}$  W. 22 poles. N. 88 poles, N.  $32^{\circ}$  W. 72 poles and fifty links. S.  $41\frac{1}{4}^{\circ}$  W. 33 poles. S.  $11^{\circ}$  and  $45'$  W. 35 poles. S.  $27\frac{1}{4}^{\circ}$  E. 92 poles, to the beginning with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Sacker Nelson and his heirs forever. In witness whereof the said Beverley Randolph, Esq., Lieutenant-Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond on the 4th day of May in the year of our Lord, 1787, and of the Commonwealth the 11th.

B. RANDOLPH.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 10th day of June, 1896.

SYDNEY P. EPES,

*Register of the Land Office*

Also on June 20th, 1796, a survey was made of old Fox Island by Parker Barnes, D. S. A. C., copy filed herewith marked "P. B." (This exhibit is not set out in this report, as it is a plat and a copy cannot be made.) Also survey made May 6th, 1892, by B. T. Gunter, Jr., Surveyor of Accomac county, filed herewith marked "B. T. G." (This exhibit is not set out in this report, as it is a plat and a copy cannot be made.)

Also deed from Crockett and wife to William Ellinger, dated 23d May, 1892, containing 476 acres as of survey made 16th August, 1773; copy of deed filed herewith marked "H. L. C."

This deed, made this 23d day of May, A. D. 1892, by we, Henry L. Crockett and Eliza J. Crockett, his wife, witnesseth that for and in consideration of the sum of one thousand two hundred and fifty dollars (\$1,250), to us in hand paid by William Ellinger, originally of Baltimore city, and recently of New York city, the receipt whereof is hereby acknowledged, we, the said Henry L. Crockett and Eliza J. Crockett, his wife, have granted, bargained and sold, and do hereby grant, bargain and sell unto William Ellinger, aforesaid, all that lot or parcel of upland and marsh, in the upper part of Accomac county, Virginia, called and known by the name of Fox Island or Islands, lying between Pocomack and Tangier Sounds, and to the south of and adjoining Cedar Straits and containing by survey made on the 16th day of August, 1773, four hundred and seventy-six acres, be the same more or less; it being the whole of said island or islands, as now existing, though some parts of the marsh land may have been

washed away since the aforesaid survey, together with all the buildings, privileges and appurtenances of any kind belonging to the land hereby conveyed.

To have and to hold the said Island, pieces or parces of ground and premises above described or mentioned and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto, and to the proper use and benefit of the said William Ellinger, in fee simple.

And the said Henry L. Crockett, and Eliza J. Crockett, his wife, covenant that they will warrant generally the property hereby granted, and that they will execute such further assurances of said land as may be requisite.

Witness our hands and seals.

HENRY L. CROCKETT. [Seal]  
her

ELIZA J. X CROCKETT. [Seal.]  
mark

Test: J. H. RILEY.

COMMONWEALTH OF VIRGINIA,

County of Accomac.

I, John H. Riley, a notary public of the County and State aforesaid, do certify that Henry L. Crockett, and Eliza J. Crockett, his wife, whose names are signed to the above writing bearing date on the 23rd day of May, 1892, have acknowledged the same before me in my county aforesaid.

And I do further certify that Eliza J. Crockett, the wife of Henry L. Crockett, whose names are signed to the said writing, personally appeared before me and being examined by me privily and apart from her said husband, and she, the said Eliza J. Crockett, acknowledged the same to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 23rd day of May, 1892.

J. H. RILEY,  
*Notary Public.*

Accomac County Court Clerk's Office, June 6th, 1892. This Deed from Henry L. Crockett and Eliza J., his wife, to William Ellinger, was, with the certificate of the acknowledgment thereof thereto annexed, received by me in the Clerk's Office this day, and admitted to record.

Test: M OLDHAM, JR., C. A. C.

A Copy—Test: M. OLDHAM, JR., C. A. C.,  
1896, August 20th.

Also deed from L. J. Gunter to Wm. Ellinger, dated 17th October, 1892, containing twenty-five acres, a copy of deed filed herewith, marked "L. J. G."

This deed made this 17th day of October, A. D. 1892, between Levin J. Gunter, of the one part, and William Ellinger, of the other part, both of the county of Accomack, in the State of Virginia—

*Witnesseth*, that the said Levin J. Gunter, for and in consideration of the sum of two hundred and eighty-seven dollars and fifty cents (\$287.50), in hand paid by the said William Ellinger, the receipt of which is hereby acknowledged, *does*

*grant* unto the said William Ellinger, with general warranty of title, all that certain tract of land known as "Little Fox's Island," in the county of Accomack and State of Virginia, and bounded as follows: On the north by the big Thoroughfare; on the east by the Pocomoke Sound; on the south by the Pocomoke Sound; and on the west by the Tangier Sound, supposed to contain twenty-five acres (25 A.), be the same more or less, together with all and every privilege, right and appurtenant belonging to the said tract or parcel of land; it being the same tract or parcel of land conveyed by Robert B. Lawrence and Eliza H., his wife, to said Levin J. Gunter, by deed bearing date the 31st day of August, A. D. 1892, and of record in Accomack County Court Clerk's Office; and the same which said Robert B. Lawrence (as Robert Lawrence) purchased of William Pruitt and Rachel, his wife, by deed bearing date the 4th day of June, 1877, and also of record in said clerk's office.

Witness the following signature and seal.

LEVIN J. GUNTER. [Seal.]

Witness:

JOHN H. AYRES,  
JOHN D. GRANT,  
JNO. J. BLACKSTONE.

Accomack County Court Clerk's Office, October 24th, 1892. This deed from Levin J. Gunter to William Ellinger was acknowledged by the said Levin J. Gunter as his act and deed, before me in the clerk's office this day, and admitted to record.

Test: M. OLDHAM, JR., C. A. C.

A copy—Test: M. OLDHAM, JR., C. A. C.

1896, August 20th

The application does not give "location" and "extent" of said "shores" and "islands;" the above surveys and deeds show number of acres, *exact* location and extent, and should have accompanied application for survey.

When application is filed with Fish Commissioner, what was his duty? "Upon its receipt the said Fish Commissioner shall request the Department of the United States Coast and Geodetic Survey to compute the acreage of the area between the high and low water mark lines along the said shores of said island or islands of said applicant, as shown by the public surveys and maps made and prepared by said department. Such computation of acreage shall be accepted as final by said Fish Commissioner and said riparian owner." This computation of acreage was not made as shown by the depositions of Dr. J. W. Bowdoin, Fish Commissioner.

"The said fish commissioner shall then ascertain the water area to which the riparian owner is entitled, according to the lines and metes and bounds of the survey of the riparian owner's property, giving preference always to a survey made under the laws of Virginia for granting lands of the Commonwealth, where such survey exists." This was not done as shown by the deposition of Dr. J. W. Bowdoin, Fish Commissioner.

"And in the event that the original marks fixing the metes and bounds of the survey of the property be destroyed or obliterated, said Fish Commissioner shall



re-establish them as nearly as may be" This was not done according to the deposition of Dr. J. W. Bowdoin, Fish Commissioner.

Dr. Bowdoin, Fish Commissioner, obtained the services of W. C. Hodgkins, Engineer and Surveyor, and turned over to him such papers as he had received from Wm. Ellinger to make survey and plat, &c. Your committee has obtained from the county Court Clerk's Office of Accomac, copy of a plat made by W. C. Hodgkins, Engineer and Surveyor, which is of record in said office, and filed along with this report. (See appendix.)

This plat shows Mr. Wm. Ellinger's holdings as of the date of the plat, viz: June 27th, 1895. The area within the blue lines shows what Mr. Ellinger claims before survey was made; the area between the blue and red lines is what was ceded to Wm. Ellinger by J. W. Bowdoin, Fish Commissioner of Virginia.

Read carefully the consideration mentioned on said plat, in the memorandum signed by J. W. Bowdoin and William Ellinger. Why was that area between the blue and red lines ceded to Wm. Ellinger? In the deposition of Dr. J. W. Bowdoin, he said that Mr. Ellinger claimed that he was entitled to the area from letter "C" to "Muddy Marsh," and thence to letter "D," this being in Pocomoke Sound; the Fish Commissioner, Dr. Bowdoin, exercising the discretion given him by act of Assembly, approved February 26th, 1894, gave him in lieu thereof the area in Tangier Sound from "E" to "F" on the red line, from "E" on the boundary line between Maryland and Virginia, thence to the point where the blue line intersects said boundary line, thence down the blue line to letter "E". Your Committee approves of the action of the Fish Commissioner, provided *the claim* of Mr. Ellinger be right, that he is entitled to "all in the blue lines and from letter "C" to Muddy Marsh and thence to letter "D". Your Committee is emphatic in saying that such a claim as this, by Mr. Ellinger is absolutely wrong, and no foundation whatever has been given, or can be given for such a claim. The record evidence contradicts, positively, such a claim. Your Committee does not attach any blame to Dr. J. W. Bowdoin, Fish Commissioner; he states frankly, that when the plat was made, and Mr. Ellinger claimed all within the blue lines, and down to "Muddy Marsh," and thence to letter "D," then he exercised "his discretion" as stated above.

How is it possible that Mr. Ellinger can sustain his claim? In his deed from Crockett and wife, dated 23rd May, 1892, he had conveyed 476 acres, and specially refers to survey of August, 1773; that survey gives *courses* and distances; and the grant to "Sacker Nelson," on 4th May, 1787, of this *very land*, surveyed August 1773, gives number of Acres at 476, and specifically states the exact boundaries. This grant to Sacker Nelson, signed by "Beverly Randolph, Lt. Gov. of Va.," Survey of June 20th, 1796, old "Fox Island" contains 142 acres.

The deed from Gunter, L. J., to Wm. Ellinger, dated 17th October, 1892, conveyed 25 acres.

Plat made by "B. T. Gunter, Jr., Surveyor of Accomac county," dated May 6th, 1892 [See Appendix, B. T. G.], (before deed from Crockett and wife to Mr. Ellinger, although the survey was made at the request of the attorney for Mr. Ellinger), that calls for  $5\frac{3}{10}\frac{3}{00}$  acres and  $140\frac{2}{10}\frac{8}{00}$  acres. When Crockett and wife made deed (thirteen days after that survey) they went back to the "Sacker Nelson" grant, and conveyed 476 acres instead of conveying number of acres in the "Gunter" survey.

Further, your committee files paper marked "M. O" [See Appendix] (this exhibit is not set out in this report, as it is a plat, and a copy cannot be made), showing total number of acres owned by Wm. Ellinger, Esqr., in Accomac county, assessed for taxation, viz: 177 acres. A letter has been filed marked "W. C. H.," which shows that W. C. Hodgkins, Engineer and Surveyor, endorses the *discretion* and *judgment* of Dr. Bowdoin, which your committee also approve, provided Mr Ellinger's claim is right.

U. S. COAST AND GEODETIC SURVEY,

*Poughkeepsie, N. Y., August 1st, 1895.*

DR. J. W. BOWDOIN, *Fish Commissioner, Blocom, Virginia:*

*Dear Sir*—When I saw you at Fox Island, some weeks since, you asked me to give you my impressions as to the equities of the case as between the State of Virginia and Mr. Wm. Ellinger, the owner of the Fox Islands, with relation to the rights of oyster culture granted, under certain conditions, to Mr. Ellinger by the Legislature of Virginia.

It gives me pleasure to comply with your request, with the premise that I do not claim to be a legal expert in such questions, and that I give you my opinion simply as that of an entirely disinterested individual, equally well disposed towards each party to the grant.

I doubt not that you are perfectly familiar with the circumstances which led to my presence at Fox Island, but it may do no harm to state here, that upon the application of the Governor of Virginia in pursuance of the legislation above referred to, the Hon. Secretary of the Treasury authorized the Coast and Geodetic Survey to make a survey of the Fox Islands for the purpose of obtaining the information called for by the act above-mentioned, with the understanding that all of the expenses of such survey should be paid by the parties interested.

I was placed in charge of that work, which, as you are aware, was completed at about the end of June.

Coming now to the question of the assignment of the boundaries of Mr. Ellinger's grant, a duty imposed upon the Fish Commissioner by the above act and by the decision of the State Courts that the Fish Commissioner had absolute discretionary power in the matter, it seems to me that you have struck a very fair balance between the claims which might be put forward as in behalf of the State or of Mr. Ellinger.

I certainly do not consider that you have shown any favoritism towards Mr. Ellinger in your decision, and I have reason to believe that he thought a much larger area due him.

None of the area assigned to him is now oyster ground, and the depth of water which covers a great part of it is so slight that I think it very doubtful if it was ever be of much value.

If Mr. Ellinger succeeds in converting the remainder into productive oyster beds and in protecting them from the incursions of the Crisfield pirates, he will render the State of Virginia a notable service, and will give her a revenue from territory which is now only a source of annoyance and expense.

Respectfully yours,

W. C. HODGKINS

The mandamus proceeding in the Court of Appeals is also filed with this report (see Appendix "Mandamus"); the decision of the said court does not touch the question as to the claim Mr. Ellinger asserts as to his original survey. Again: the plat made by Mr. Hodgkins does not give the number of acres, and your committee obtained the services of County Surveyor of Accomac county, and he gave the following: Total number of acres within the blue lines, about 2,300 acres. Total number of acres within the red lines, about 2,983 acres. Thus Mr. Ellinger now holds about 2,983 acres as against 476 and 25 acres which he purchased from Crockett and wife and L. J. Gunter in 1892.

As to the character of the ground embraced in the plat in the Pocomoke Sound, your committee refers to the depositions of "E. R. Thomas," "Alfred J. Lewis," and "John R. Thomas." Your committee will state, in justice to counsel for Dr. Bowdoin, that the above-named witnesses testified as to the value of the ground *not assigned by Dr. Bowdoin*, but taken up by Mr. Ellinger. Dr. Bowdoin's assignment refers only to that parcel in Tangier Sound between blue lines and red line. In the opinion of your committee, Dr. Bowdoin had no interest in contradicting the above-named witnesses, but it was the province of Mr. Ellinger to do so, if he had seen fit to do it.

Your committee deems it proper to refer to paper marked "A," protest of Hon. L. C. Bristow, counsel for Wm. Ellinger, Esq., and state that the views expressed by the committee as to the judgment of Dr. Bowdoin, "*Res Adjudicata*," but the judgment of Dr. Bowdoin did not bind the State to give Mr. Ellinger the large amount he claimed; it is simply this, in the opinion of the Committee—*if Mr. Ellinger's claim is right, that his area embraces all within the blue lines, and down to Muddy Marsh, and thence to letter D, then Dr. Bowdoin, Fish Commissioner, could cede to Wm. Ellinger all the area between the blue lines and red lines, in consideration that Wm. Ellinger cedes to the State, all that area from letter "C," to Muddy Marsh, and thence to letter D.*

Your Committee cannot refrain from some comments on the Act approved February 26th, 1894, to show that the conclusions reached by the Committee are correct. "That in order to avoid the uncertainty of the boundaries of low water on the shores of Fox Island or Fox Islands in the county of Accomac, in the State of Virginia, arising from the indented courses of said shores of said island or islands, it shall be lawful for the riparian owner thereof to apply in writing to the Fish Commissioner of this State, to establish by straight lines, a boundary, to be taken as a permanent low water mark line." If Mr. Ellinger's contention is right, that he is entitled to all within the blue lines and down to Muddy Marsh and thence to letter D, then, there is no "uncertainty of the boundaries" and no necessity "to establish by straight lines a boundary," for the plat shows as plain a *boundary* and as *straight* lines as can possibly be made. Look at the plat and see where are "the indented courses of said shores of said island or islands;" the plat fails to show, but all of the other surveys did show "the indented courses of said shores of said island or islands," and they also show that it would be equitable and proper to establish by straight lines a boundary, to be taken as a permanent low water mark line."

Your Committee is forced to the conclusion, that all that Wm. Ellinger, Esq., can possibly claim, is that given by the "Sacker Nelson" grant of 1787, and sur-

vey of 1773, and it is easy to take the grant and survey now and have a survey made with a definite certainty of the exact metes and bounds.

Your Committee had no authority under the resolution to have a survey and plat made, taking the "Sacker Nelson" grant as the basis for a survey, under which grant Mr. Ellinger can only claim, as reference is made in the Crockett deed to the survey of 1773, which said survey is mentioned in Sacker Nelson grant of 1787, your Committee therefore reports:

*First.* That the property rights of the Commonwealth are being infringed upon by Wm. Ellinger, Esq.

*Second.* That proceedings should be instituted forthwith, in the proper court, by the Attorney-General of Virginia, to protect the interests of the Commonwealth.

Respectfully submitted,

GEO. W. LECATO, *Chairman.*  
J. N. STUBBS,  
J. E. BOOKER,  
HOWARD HATHAWAY.

## DEPOSITIONS

TAKEN BY

## SPECIAL JOINT COMMITTEE.

## BASIS OF THEIR REPORT.

WEDNESDAY, JUNE 17, 1896.

The committee appointed by the General Assembly under a joint resolution, approved March 4, 1896, to investigate the grant of water area around Fox Island, Va., made to William Ellinger under an Act of Assembly, approved February 26th, 1894, met in Onancock.

*Present:* George W. LeCato, Chairman, and James N. Stubbs, on the part of the Senate, and J. E. Booker and Howard Hathaway, on the part of the House of Delegates.

The committee were taken on board the Virginia oyster police steamer Accomack, Capt. Costin, and carried out into the Chesapeake Bay, where they were transferred to the State steamer Chesapeake, Commander Hudgins, and with the Accomack, following as escort to the committee, proceeded to Fox Island, and inspected the water area included in said grant east of Fox Island.

The committee was organized with Frank P. Brent as Secretary. On returning down the bay the committee began the examination of witnesses, Mr. Ellinger, with Judge L. C. Bristow as his counsel, being present.

Captain Edward R. Thomas, of Accomack, being sworn, testified as follows:

I am in my 64th year, and live ten miles from Fox Island on the mainland of Accomack. I have been a sea captain from my early manhood, sailing mostly in Pocomoke Sound. I am intimately acquainted with waters around Fox Island. I have never known of any tradition connecting Fox Island with the tumps on the eastern side of that island, nor have I ever known the bottom between the island and those tumps to go dry at low water. The average depth of water between those tumps and the island at low water is from  $1\frac{1}{2}$  to  $5\frac{1}{2}$  feet.

Question. State to committee your opinion of the character and value of this area to the State?

Answer. I consider it very valuable crabbing ground. No better in the State. I suppose it could be used for planting oysters. I think some of it would be good oyster planting ground.

Ques. Are citizens using it for crabbing?

Ans. Yes, sir. I saw a large fleet of them to-day, and I see them whenever I come. The crabbing industry is very valuable to the citizens of Virginia. I do not think I could restore the original bounds of the island. Many crabbers make their living there. Some of them have told me they make on these crabbing grounds the money to buy the corn with which they fatten their hogs. Great Fox Island is  $1\frac{1}{2}$  miles long, and Little Fox Island about the same.

Ques. Who was the Fish Commissioner that assigned this water area to Ellinger?

Ans. Dr. Bowdoin, of Accomack.

Ques. Have these islands washed away any?

Ans. Not that I can see. They look to me about the same, except that Fox Island has washed away somewhat on the west side. The tumps look to be about the same as when I first remember.

Ques. Any improvements on these islands?

Ans. None except Ellinger's house. I remember when one house was on Little Fox Island and two on Great Fox Island, south of Mr. Ellinger's house.

Ques. What are tumps?

Ans. They are little islands.

Judge Bristow, counsel for Wm. Ellinger, stated that he would proceed to examine the witness with the understanding that he surrendered none of his client's rights. He presented a protest which was ordered incorporated in the proceedings.

#### A.

Judge Bristow, counsel for William Ellinger, offered the following objection, which was ordered to be incorporated in the proceedings of the committee:

William Ellinger protests, by his counsel, against each and every question asked witnesses, the answers to which might tend to show that the number of acres assigned by the Fish Commissioner to William Ellinger was greater or less than he was entitled to under the act approved February 26th, 1894, and he also protests against the introduction of any maps and charts or other evidence, written or oral, which may tend to show that said number of acres so assigned was greater or less than he was entitled to under the aforesaid act, because he says such questions and said charts, maps and other written or oral evidence tend to reopen and consider matters and questions which have been finally determined and adjudicated by the Fish Commissioner, to whose judgment all such matters and questions were committed. (See Act of Assembly, approved February 26, 1894, and case of *Ellinger vs. Bowdoin, Fish Commissioner*, recently decided by Court of Appeals.)

Signed,            L. C. BRISTOW,  
Attorney for Wm. Ellinger.

It is ordered by the committee that the foregoing protest of William Ellinger shall be recorded and considered in connection with all such evidence and questions asked or introduced.

Ques. by Judge Bristow: Do you know whether this water area is in the natural rock survey?

Ans. It is not.

Ques. How near does this natural oyster rock survey come to Ellinger's area?

Ans. It is some distance away. None of this area outside the natural rock boundaries between the line and Fox Islands has been rented out for oyster planting.

Ques. Did you know Isaac Sterling, of Somerset county, Maryland?

Ans. Yes.

Ques. Taws and others?

Ans. No.

Ques. by Stubbs: You said it was not rented out; why not?

Ans. Because crabbing is more profitable there. I know of no water area more profitable for crabbing. As I have said, citizens of Accomack may be seen crabbing there in great numbers.

Ques. by Bristow: Did Mr. Ellinger go with you over those grounds to-day?

Ans. Yes.

Ques. Did you hear him object to their crabbing on those grounds?

Ans. No, sir.

And further this deponent saith not.

Signed, E. R. THOMAS.

The Committee returned to Onancock Wednesday evening, and on the following day, June 18, continued the examination of witnesses.

Capt Alfred J. Lewis, being sworn, testified as follows:

I am sixty-four years old, and reside in Accomack county, Virginia. I have been a sailor from 1850, sailing mostly out of Pocomoke Sound. I am familiar with Fox Island and surrounding waters. I have sailed over the ground to-day with the Committee, and have had Ellinger's boundaries pointed out to me. Those tumps on the southeast side of the island have never in my time been connected with Fox Island. They were there in 1851. These tumps are to the best of my judgment, one mile from the islands. The average depth of water between the tumps and the island from 2 feet and less, to 5½ feet at low water. I have never seen the bottom between the tumps and the islands go dry at low water. My sons crab there, and say it is No. 1 crabbing ground. Some parts in Mr. Ellinger's survey can be utilized for planting oysters. I know that some part of this area has been applied for this purpose. This ground is more valuable for crabbing than for planting oysters. Many say the crabbing industry is as valuable and as profitable to our people on the bay side as the oyster industry. Crabbing season lasts about 3 months, from 10th May, to August 10th. The distance from north end of Great Fox Island, to south end of Little Fox Island, is about 4 miles. The shores of the islands are abrupt, and there is practically no low water line. You would not have to go to the tumps to establish low water line, because the bottom between the tumps and the islands never go dry. It is a mile from the tumps to the islands, and there is a channel between the tumps and the islands, in which water is never less than 5 or 5½ feet.

Ques. by Mr. Stubbs: In establishing a straight line to be taken as a low water mark line on the shores of Fox Island or Islands, on the south east side of said island, is it necessary in order to have that straight line established, to have these

tumps included in Mr. Ellinger's survey, as provided for in Act of Assembly approved February 26, 1894?

Ans. It is not necessary.

Ques. In running that straight line, how near would this straight line run to the tumps?

Ans. A mile, more or less.

*Cross examined by Judge Bristow.*

Ques. Have you ever read the Act of 1894?

Ans. I have heard the Committee read only a part of the first section of that Act.

(Judge Bristow here read the whole Act.)

Ques. by Judge Bristow: Suppose the Fish Commissioner had ascertained that the owner of Fox Island included 1500 acres of ground, water area as well as land, and if he was required after surveying that 1500 acres of ground, to go beyond and adjoining lines of that survey, a number of acres of water area equal in amount to the total acreage of low water grounds furnished him by the United States Coast and Geodetic Survey: in that event, are you prepared to say that that outer line would not have included those tumps of which you speak?

(The above question was objected to by Mr. Stubbs, because it was purely hypothetical as to number of acres.)

Ans. I am not prepared to answer that question.

And further this deponent sayeth not.

A. J. LEWIS,

Captain John R. Thomas, being duly sworn, testified as follows:

I am forty-one years old, and am captain of the State schooner Pocomoke; am stationed in Pocomoke Sound. I am familiar with Fox Island and the waters surrounding. Nearly all my boating has been in Pocomoke Sound. I have never heard that the tumps south-east of Fox Islands were ever accredited to that island. I have lain inside of these tumps, that is between the tumps and the main island for four days at a time, and never in less than five feet of water. The area in the grant is considered the best crabbing ground in Virginia. Crabbers in the first part of season make from \$16.00 to \$25.00 per week per boat. I have never known the tumps to be connected with the island by dry bottoms. About 29 years ago I was working with Captain Hinman and we harbored in the water between the tumps and Fox Islands. The tumps are, according to my judgment, from  $\frac{3}{4}$  to 1 mile from Fox Islands.

Ques. by Hathaway: In establishing low water mark lines along the shores of these islands, how close would it be necessary to go to these tumps?

Ans. There is a channel between Fox Island and the tumps and it never runs dry. This channel is about 300 yards wide. This strait low water line could have been run fully  $\frac{3}{8}$  of a mile nearer the islands than the line in Mr. Ellinger's survey.

JOHN R. THOMAS

D. F. White, being sworn, testified as follows:

I am forty-six years old, and by occupation surveyor. As county surveyor of Accomack I am the surveyor of the oyster bottoms in this county, and as such I



am familiar with Pocomoke Sound, Fox Island and surrounding waters. I have surveyed no grounds or waters in the immediate vicinity of Fox Islands.

Ques. by Senator LeCato: You have in your hand a copy of the grant to Sacker Nelson, bearing date May 4, 1787, referring to a survey made August 16, 1773. Do you consider the metes and bounds of said survey as recorded sufficiently explicit as to be restored?

Ans. I think they could be restored with tolerable accuracy.

Here John R. Thomas was recalled and testified as follows:

Ques. How long has the water area included in Mr. Ellinger's survey been used by the public of the State?

Ans. I have never known the time when it was not so used.

And further this deponent saith not.

JNO. R. THOMAS.

Mr. White resumes his testimony.

Ques. by Mr. Stubbs: Please look at a plat made by W. C. Hodgkins, Engineer and Surveyor, and state how many acres are within the red lines of said plat?

Ans. I have made a calculation and find it to be approximately 2,983 acres.

Ques. How many acres do you think are within the blue lines?

Ans. About twenty-three hundred acres.

Ques. Can you tell the distance between the middle tump and the nearest point of land on Fox Island?

Ans. About twelve hundred and fifty yards.

Ques. Can you give the distance between the middle tump and the blue line?

Ans. About one hundred feet.

Ques. How long have you been county surveyor of Accomack county?

Ans. Nearly three years.

Ques. How far back do the records of the surveys of Accomack, in your possession, extend?

Ans. I feel sure they extend back to 1736?

Ques. Have you ever examined the records of the surveys of Accomack county as to the survey of Fox Island?

Ans. I have.

Ques. Can you find in those surveys any plat of Fox Island?

Ans. I found a survey of what is called Old Fox Island, dated June 20, 1796, which is now known as Little Fox Island.

(Here a copy of the survey was submitted to the committee, which was read and examined.)

Ques. You say there seems to be some little conflict. Does not this intersection of blue and red lines, according to your interpretation of the statute, virtually destroy all that portion of the 4th section which requires the area of water within the limits of the riparian owner's survey to be included within the black lines and the blue lines, and that area which represents the area to be assigned by the Fish Commissioner to be bounded by the blue lines and red lines?

Ans. It would not with the exception of the following words in the 4th section, which are as follows: "between a blue line or lines and a red line or lines." These are the words I can't reconcile.

Ques. Then I understand you to say unless you can eliminate those words from the act your position would not be a tenable one?

Ans. No, I don't mean to say that.

Ques. What do you mean to say when you say you can't reconcile those words?

Ans. I mean to say that were I called on to construe the act as you asked me to do just now I should construe the words mentioned above, as they seem to read naturally to me, in connection with other parts of the act that are absolutely plain.

Ques. Do I understand you by this answer to mean that you do not regard in your construction, the words "between a blue line or lines and a red line or lines" at all?

Ans. I would rely upon the other parts of the Act for an explanation of these words. I find in another part of the 4th section, that the shore line was to be represented by black lines, and that the low water mark represented by blue lines. This evidently means the area between the high and low water mark.

I further find that to draw this permanent low water mark line so as to put all the area between the red line and the blue line, would necessarily give all the indentations of the shores to the riparian owner, and none to the State in exchange for the water area outside of the blue lines or low water mark lines. Consequently the State would not get any land above low water mark.

I further find in reading the fourth section, that the said William Ellinger was to cede to the State all of his low water mark area outside of the red lines. I find in the second section, after the lines are established which show the water area belonging to said riparian owner, the said Fish Commissioner shall assign to said riparian owner a number of acres equal in amount to the total acreage of low water grounds. Which I understand to mean the water area belonging to said Riparian owner. Said water area to be designated by a red line. Said assignment to be made by Fish Commissioner, on the basis of equity as to the interests of the State and said riparian owner, and not on a basis of acreage; and the State to cede all the land to the said riparian owner, as designated by a red line running entirely outside of the blue line, would be giving the riparian owner all the indentations formed by running a straight line from headland to headland counting the low water mark as the headland.

Ques. Suppose the Commissioner, acting under section 2, ascertained that the riparian owner was entitled under the old charts and surveys as provided for in that section to a very large acreage; and in re-establishing the metes and bounds he further ascertained an area that would include all the natural low water boundaries, and would extend to lines which would include a depth of water of 7 feet then and in that event, in making a proper adjudication and assignment, would it be necessary that the State should have area that would ebb bare?

Ans. I don't see how you could give the riparian owner any below low water mark unless he gave the State some above low water mark, and I think the Act contemplates this.

Ques. Such being your opinion, what would you do with the provision which reads, "when said lines of survey are thus established, the said Fish Commissioner shall assign to said riparian owner beyond and adjoining said lines of original survey, a number of acres of water area equal in amount to the total acre

age of low water grounds furnished him as above, provided for by the United States Coast and Geodetic Survey ? ”

Ans. This Act contemplates an irregular shore line, which in this case is a fact ; and when the shore line is established to run a straight permanent low water mark line; which was to be designated on the plat by a straight red line, I would get the required number of acres out of the indentations of the shore.

Ques. What is your experience as surveyor ?

Ans. I have been County Surveyor for nearly three years, and practiced surveying before I was made County Surveyor. I had been laying off lands in a rude way for nearly 15 or 20 years. The most of my work has been in water surveying, and have done all the work for the oyster inspectors of the county since I have been County Surveyor.

And further this deponent sayeth not.

D. FRANK WHITE.

D. F. WHITE—Continued.

Ques. Did you find any other surveys ?

Ans. I have found no other surveys.

Ques. of Senator LeCato: Have you carefully read the Act of the General Assembly, Chapter 399, of 1893-4, providing for a certain survey of Fox Island, if yea, then as a surveyor, with your knowledge of the Records and the location, has that act been strictly conformed to in said survey ?

Ans. I don't think it has. The act says the shore lines shall be traced in black color, and that all water between the black and the blue lines, represents the water area within the limits of the riparian owner's survey. I understand by that, that this area represents the acreage between the high and low water marks around this Island, as the shore line is actually indented with coves, etc., the blue line which represents the low water mark would necessarily be indented also, and I find on the survey that the blue lines are all straight lines. And further were this area around the island naturally crooked, the red lines which were to be straight lines, would necessarily cross the blue lines where the intention was to throw out as much of this area as was taken in ; and I find in this survey that the red line does not cross the blue line at a single point, and does not touch it only on the dividing line between Maryland and Virginia.

Ques. by Senator Stubbs: Look at the plat and give the distance between the blue line and the nearest point on Fox Island on the Tangier Sound side of said island.

Ans. About two hundred yards.

*Cross-Examined by Judge Bristow.*

Ques. You have said “ And further were this area around the island naturally crooked, the red lines which were to be straight lines would necessarily cross the blue lines where the intention was to throw out as much of this area as was taken in ; and I find in this survey that the red line does not cross the blue line at a single point, and doesn't touch it except at the dividing line between Maryland and Virginia.” As a matter of fact are not the shore lines naturally crooked ?

Ans. Yes.

Ques. Such being the case a proper adjudication of the area between the blue lines and the red lines would necessarily require an intersection of the one with the other?

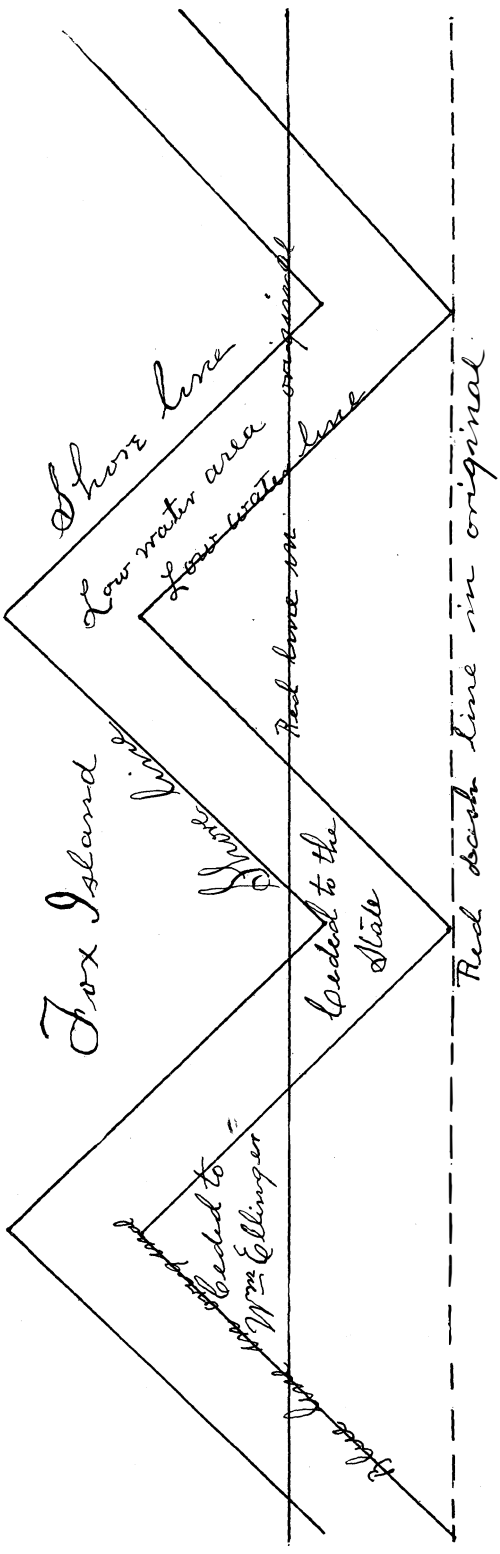
Ans. I think so.

Ques. How can you reconcile such a construction and such an adjudication with the provisions in the 4th section of the act which provides that all area between a black line or lines and a blue line or lines shall represent the area of water within the limits of the riparian owner's survey; all area between a blue line or lines and a red line or lines shall represent the area assigned by the said Fish Commissioner to said riparian owner in lieu of the cession, &c.? Would not your construction necessarily put a portion of what the act requires between the black lines and blue lines into the area between blue lines and red lines?

Ans. It would. While there seems to be some little conflict concerning the area as designated by the different colored lines, yet I find the first thing to be done in determining the strait low water mark lines, was to designate the shore line by a black line, then the low water line by a blue line, and as the shore has several deep indentations, almost necessarily the red or permanent line would intersect the blue line, and as the Fish Commissioner was required to see that the State got her right in acreage beyond the permanent low water mark, in consideration of the acreage granted the said riparian owner beyond his lawful survey, it necessarily follows that in case of the intersection of the blue line by the red line, the State would get some acreage outside of the red lines, but inside of the blue lines, and I further find that said Wm. Ellinger was to cede forever to the State his right to all of his low water mark area, outside of the red line or lines traced on the plat, and as the blue lines were down to low water mark, then it follows that the State would have to cross the blue lines and extend up to the red line or lines on the basis of equity. I further find that outside of said permanent low water mark so established, all water area shall become and remain the State's property, whether above the actual fall of the tide or not, and as the black and blue lines were to be first established, it follows that the red lines would have to be established, irrespective of whether it intersected the blue lines or not, and in case of such intersection the State would be entitled to all the area outside of the red lines, although it might be inside the blue line or lines.

Ordered by committee that the copy of survey made by Parker Barnes, D. S. A. C., bearing date June 20, 1796, of Old Fox Island be made a part of the proceedings of the committee. And that copy of survey made by Lieutenant Hodgkins, of Fox Island, the Acts of Assembly, approved February 26, 1891, and the mandamus proceedings of Court of Appeals in the case of *Ellinger vs. Bowdoin* be made a part of the record of the proceedings.

Dr. J. W. Bowdoin, Commissioner of Fisheries for Virginia, who had been informed as to the time and place of the investigation, appeared Thursday afternoon but declined to testify till he could consult counsel. He said he had not been summoned nor invited to be present till the night before, when he received a telegram from the chairman of the committee.



Upon the refusal of Dr. Bowdoin to testify, the committee adjourned to meet at Accomack Courthouse on Wednesday, July 22, 1896.

FRANK P. BRENT,

*Clerk to Committee.*

The Fox Island investigating committee called to order at Accomack Courthouse, July 22d, 1896. The following gentlemen composing the committee present: Dr. Geo. W. LeCato, Messrs. Hathaway, Stubbs and Booker.

Meeting called to order by chairman Dr. LeCato, and owing to failure of certain papers or record of previous meeting being mislaid, &c., the meeting adjourned to meet at Accomack Courthouse, August 19th, 10 o'clock A. M.

S. W. MATTHEWS,

*Secretary.*

Pursuant to adjournment of July 22, 1896, this committee was called to order by Dr. LeCato, chairman, at Accomack Courthouse, Va., this 19th day of August, 1896. Present: Geo. W. LeCato, chairman, James N. Stubbs, J. E. Booker and Howard Hathaway.

Whereupon Jno. W. Bowdoin, Fish Commissioner of Virginia, offered himself as a witness, and Judge Bristow, offered the following protest:

Judge Bristow, counsel for Wm. Ellinger, offers the following protest as follows:

Counsel for Wm. Ellinger protest against the introduction of Dr. Bowdoin, Fish Commissioner, because he says that said Fish Commissioner, under the act approved February 26, 1894, was invested with judicial and discretionary powers, and it is against public policy to introduce him as a witness.

Dr. J. W. Bowdoin, Fish Commissioner, sworn and testifies as follows: I am a Fish Commissioner, and have been in office two years.

Ques. Did you as Fish Commissioner perform those duties as required, Chap. 399- Acts 93 & 4?

Ans. Yes.

Ques. Did the United States Geodetic Survey furnish you a competent surveyor?

Ans. According to that act, I made a requisition on the Coast and Geodetic Survey. They sent me Capt. Hodgkins. This surveyor was one of the most expert men in the department.

Ques. About how long was he engaged in carrying out the requirements of this act?

Ans. About four months. Commencing in March, ending last of June.

Ques. State to the Committee on what basis you endeavored to carry out the provisions of that act?

Ans. The first thing that I did I examined the records in Clerk's office to ascertain as near as practicable the number of acres that Fox Island contained. Then Mr. Ellinger submitted to me the records in his possession. I found the number of acres Mr. Ellinger claimed to be between 1600 and 1700 acres. I found no plat in original survey from which I could form an initial point by which I could be guided; after examining all the conditions, I called upon Mr. Hodgkins

for his opinion. He informed me there were no land marks by which he could make a correct survey, and he would have to be guided entirely by the oldest Coast Survey Chart of that region, the disintegration for the last 36 years was about 40 per cent

Ques. by Dr. L. After you had received the written application of Mr. Ellinger, did you request the department of the Coast and Geodetic Survey, to compute the acreage of the area between the high and low water mark lines along the said shores of said Island, of said applicant ?

Ans. I made a request to that department for a surveyor, and requested him to do the work according to the act

Ques. by Stubbs. Does this the plat made by Mr. Hodgkins show the total number of acres assigned to Mr. Ellinger ?

Ans. The plat does not show it

Ques. Did you require the water area, to which the riparian owner is entitled, to be ascertained according to the lines and metes and bounds of the survey of riparian owners property, giving preference to survey made under the laws of Virginia for granting lands of the Commonwealth, where such survey exists ?

Ans. No, I do not get them by records and plats, because of their non-existence so far as I could ascertain ; if there is any initial point, I failed to find them.

Ques. by Stubbs. Then you say you could not find any initial point, then did you attempt to re-establish them as near as may be as provided by the statute ?

Ans. I did attempt to establish them as near as possible, being guided and assisted by judgment of the Geodetical Surveyor.

Ques. by Stubbs. Does the plat show the number of acres of water area assigned to Mr. Ellinger ?

Ans. I see none recorded there.

Ques. by Stubbs. Please state the number of acres on said plat embraced between said red lines.

Ans. Mr. Hodgkins said there was somewhere about 3,000 acres. I don't know myself.

Ques. by Stubbs. When Mr. Hodgkins made the survey, you trusted the whole matter to him in fixing the metes and bounds on the shore ?

Ans. Practically, I did ; I examined Mr. Hodgkins as an expert witness and scientist ; I accepted him as a witness in reference to the matter of the survey ; I made the assignment, and Mr. Hodgkins had nothing to do with it.

Ques. by Stubbs. Dr. Bowdoin who selected engineer ?

Ans. He was detailed by the Coast and Geodetic Department. Mr. Ellinger and myself having nothing to do with the selection, and I never saw or heard of him until he came to Fox Island to do the work.

Ques. by Stubbs. Dr. Bowdoin, do you know how many acres were claimed by Mr. Ellinger in the application filed under this Act of Assembly ?

Ans. I think 1635 acres, certainly over 1600.

Ques. by Stubbs. You have already stated, Doctor, that you have signed and sealed only one plat, and that plat is now in your possession as Fish Commissioner, and where is the other plat ?

Ans. Mr. Hodgkins has been unable to make out the other plat, on account of the United States Government work, being now employed on the Alaska boundary.

Ques. by Stubbs. How often did you visit Fox Island while the engineer was making the survey?

Ans. Twice—two days on first occasion and three on next, but was in constant communication with the surveyor.

Ques. by Stubbs. How long did the surveyor remain at his work?

Ans. The work covered a period of four months.

Ques. by Stubbs. Who was then with the surveyor at that time?

Ans. Mr. Maupin, of the Geodetical Survey, and six assistants or laborers.

Ques. You were acquainted with Fox Island before the survey was made?

Ans. I am familiar with it.

Ques. by Hathaway. Where is the data upon which this survey was made?

Ans. I don't know.

Ques. Do you know who furnished it?

Ans. I think the survey was practically based upon the oldest coast survey chart of this section in existence.

Ques. Do you know who furnished it?

Ans. I suppose from the department.

#### DR. BOWDOIN—Continued.

Ans. After he had shown me what in his opinion the island was under first survey, I accepted it as such. In arriving at the conclusion, Mr. Hodgkins nor any one else made any suggestions to me. I sought his opinion as an expert. The blue line in the chart represents Fox Island as it was when first patented as near as it was ascertainable; this was Lieutenant Hodgkins' opinion, and I accepted it. To the eastward, extending to what is known as Muddy Marsh tump, was a body of about 800 acres, which Lieutenant Hodgkins thought at one time was attached to the main island, but at the time the island was patented it represented the riparian right between high and low water mark; this amount was very valuable for crabbing purposes, but was claimed by Mr. Ellinger, but in the exercise of my discretion, I left that 800 acres open to the public, and gave him a like amount on the western side of the island, between the blue and red lines, which was practically useless to the citizens of this State. That, knowing that there will be objections to my actions, regardless of what the same might be, I asked the opinion of Lieutenant Hodgkins as an expert, as to the equity of the compromise effected under the said statute. In response I received from him a letter, which, in support of my intent in making this compromise, I ask leave to file. (Letter herein filed.) I desire to state that from the point A on the official map, thence to B, thence to C, thence to D, thence to E, that the red and blue lines actually are one and the same, that the apparent distance between the red and blue lines from those points is apparent only. Only one copy of the plat was made, that copy was delivered to Mr. Ellinger, who delivered it to Clerk of Accomack County Court, who spread it upon the records, and delivered the original to Mr. Ellinger. Mr. Ellinger gave that original to me, and it is now in my office as a public document, no other copy has as far as I know been made by Mr. Hodgkins; he has not had time or opportunity to have the other copy required by the statute made, because in the last interview I had with him he was busily engaged with government work.



*Cross-Examination by Judge Bristow.*

Ques. Dr. Bowdoin, you say you expect objections to your work in any event, or words to that effect. Why did you expect objections?

Ans. I know the oystermen pretty well, and they object by nature to leases of land covered by water.

Q. Did or did not that fact cause you to be very particular in proceeding to execute the duties assigned to you under the act?

Ans. So much so that I took the precaution to have the Court of Appeals decide this matter before I acted.

Ques. You said in your examination-in-chief, that Mr. E. claimed between 1600 and 1700 acres, and did he not, at the time, file with you surveys and other matter tending to show the justness of this claim?

Ans. He did not file them with me, but showed me them at his own home when I went over to see Mr. Hodgkins; he gave me sufficient information on which to act and to carry out the purposes of the act.

Ques. Do you not mean his home on the island?

Ans. I do on Fox Island.

Ques. Dr. Bowdoin, did or did not Mr. Ellinger ever at any time make any suggestions as to what he thought your judication ought to be?

Ans. None whatever.

Ques. In making the red and blue lines on the east side of the island, you have said those lines are practically one, did you or not did you make these blue and red lines in conformity with the law which required you to make a low water mark line?

Ans. I carried out the statute as I understood it.

*Cross-Examination by Dr. LeCato.*

Ques Did the riparian owner make application to you as Fish Commissioner under act in writing, and in such writing state the location and extent of his shores?

Ans. He made application to me in writing sufficient for me to act upon, but I do not remember that he stated the extent and location of his shores, the island and surroundings being perfectly familiar to me, I did not think it necessary.

Ques. Did he give you the location and extent of Fox Island or islands in said writing?

Ans. I do not think he did.

Ques. by Hathaway: Why was the survey of 1600 acres ever adopted when Mr. E.'s deed only calls for about 500 acres? Copies of which deeds are hereby marked 1 and 2 and made a part of the record.

A. I consider those deeds did not give all that was right and proper to Mr. Ellinger, because his rights were the same as those of the original patentees.

Ques. Do you know who owned the land prior to Mr. Ellinger, and, if so, how much land he paid taxes on?

Ans. I do not know who owned it nor how much he or they paid taxes on; neither do I know how much Mr. Ellinger pays taxes on.

Ques. Then in adjusting the matter did you think it equitable to give Mr. Ellinger hundreds of more acres than he paid taxes on, or his deeds calls for?

Ans. I did not consider that question at all.

Ques. by Hathaway: What consideration do you think the State got for what it ceded to Mr. Ellinger?

Ans. About 800 acres valuable crabbing ground for which he received about an equal acreage of valueless land lying on west side of Fox Island.

Ques. by Hathaway: Then as I understand, you had no data or maps yourself but left the matter entirely to Geodetical surveyor?

Ans. Tis true so far as the actual survey is concerned.

Ques. by Stubbs: Please look at the plat before you and show the assignment of Mr. Ellinger, and state in your judgment how much of the said assignment is below low water mark on Fox Island or Islands?

Ans. I don't know, and have no opinion to express. It would be mere guess work.

Ques. by Stubbs: Dr. Bowdoin, in your judgment give the distance of the three tumps on the line nearest to the line B. C., to Fox Island proper.

Ans. The average distance will be between  $\frac{1}{4}$  and  $\frac{1}{2}$  mile; but it is purely guess work.

Ques. by LeCato: Was the original survey of greater Fox Island made under the authority of State, August 1773, a matter within your knowledge when this survey and adjudication were made?

Ans. I did not know anything about it.

Ques. by LeCato: You were not aware that in that original survey, there were granted by the State only 476 acres; when this last adjudication was made, was the original survey of Little Fox Island recorded in Clerk's office of Accomack, and made 1796, a matter within your knowledge?

Ans. No.

Ques. You did not know that Little Fox Island embraced only 142 acres?

Ans. I did not know.

Ques. by Judge Bristow: You said in your examination in chief, that you did examine the records in the office?

Ans. I did examine the records, and found no survey, and had the assistance of the Clerk of Circuit Court, in fact he gave me a statement of the amount of acres Mr. Ellinger was entitled to, so far as he knew.

Ques. by Judge Bristow: In your examination by the Committee I think you stated that you did not know whether or not Mr Ellinger's written application to you contained all the law required it to contain.

I now wish to show you a letter purporting to be written by you, found in the record of the suit, *Ellinger* against *Bowdoin*, dated March 8th, 1895, (Counsel for Ellinger handing the records in that suit to the witness.) Was this letter written by you?

Ans. I did write it.

Ques. by Judge Bristow: Please read it, and tell the Committee whether or not that application complied fully to the law.

Ans. Yes. I did write the letter, and it is absolutely true; and in my opinion complies with the requirements of the law.

And further this deponent saith not.

J. W. BOWDOIN,

And then this Committee, on motion of Mr. Hathaway, adjourned until tomorrow morning, August 20th, 1896, at 9 A. M.

S. WILKINS MATTHEWS,

*Clerk to the Committee.*

by THOS. B. QUINLY.

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Committee called to order by Doctor Geo. W. LeCato, chairman, at 9 A. M., this 20th day of August, 1896, at Accomac Courthouse, Virginia, pursuant to adjournment of yesterday.

Counsel for Ellinger, without waiving any rights and still maintaining that the matters examined into before this Committee, have been adjudicated under the act approved February 26, 1894, by the Fish Commissioner, requests his client to be introduced as a witness for the purpose only of showing how and when he applied to the Fish Commissioner to establish by straight lines a boundary to be taken as a permanent low water line for the riparian owner of Fox Island or islands, as provided under Section 1, of said act.

And thereupon said William Ellinger, being duly affirmed, was introduced by his counsel for the above stated purpose.

Ques. by Judge Bristow: Are you the owner of Fox Island or islands?

Ans. I am.

Ques. Did you apply to the Fish Commissioner of the State to establish by straight lines a boundary to be taken as a permanent low water mark line?

Ans. I did.

Ques. Please state to the committee how, when and where, and all the facts connected with said application, and the result of that application.

Ans. I have a copy of the application made according to the requirements of the act approved February 26, 1894, showing how, when and where said application was made. I have also the Fish Commissioner's reply thereto, acknowledging receipt. Copy of my letter is herewith filed with the Committee, also copy of the original reply received by me. I enclosed to the Fish Commissioner the chart referred to in my letter to him.

(Copy of Ellinger's letter and reply from Fish Commissioner made part of the record and part of Ellinger's answer.)

After sending the letter referred to, Dr. Wilkins met me in Washington for the purpose of obtaining the data which the act referred to made incumbent upon him to procure, to-wit: A computation of the area as required by said act. At a later date the Coast and Geodetic Survey Department endeavored to give said computation, and found upon investigation that the data which they believed sufficient was insufficient. A correspondence then ensued between the Department of Coast and Geodetic Survey informing Dr. Wilkins that they could not, from the data they possessed at that time, make the computation referred to; stating that it would be necessary to make additional surveys to the end that they might meet the requirements of said act. The correspondence will show that Dr. Wilkins accepted the suggestion of the Coast and Geodetic Department,

but that the department made it a condition prior to the execution of this additional survey, that the Governor of Virginia should apply in writing to Secretary Carlisle, of the Treasury Department, of which, Department of Coast and Geodetic Survey is a branch, formerly requesting Secretary Carlisle to order said additional survey to be made. Said application on the part of the Governor of Virginia to Secretary Carlisle was duly made, whereupon Mr. W. C. Hodgkins, Assistant Coast and Geodetic Survey, was detailed by said department and actually began work of surveying, and installed the work on the 7th day of March, 1895. In the meantime Dr. Bowdoin became a successor of Dr. Wilkins, Fish Commissioner, and was duly informed by me that the work of survey referred to was proceeding, and Dr. Bowdoin was requested by me to carry out the work incumbent upon him in connection with said survey as required by said act, and he complied with the request.

And further this deponent saith not.

WILLIAM ELLINGER.

A paper, being a transcript of the original patent from the State for Fox Island to Sacker Nelson, dated May 4th, 1787, together with a certified copy of the plat, dated August 16, 1773, referred to in said patent was submitted by the committee and made a part of the record.

Also a paper, title: "Plat provided for by an act of the General Assembly of Virginia to define and establish by straight lines the low water mark lines for the riparian owner of the shores of Fox Island or Fox Islands, in the county of Accomac, in the state of Virginia, surveyed and drawn by W. C. Hodgkins, C. E.," being a certified copy from the Clerk of the County Court of Accomac county, was likewise submitted by the Committee and made a part of the record.

Also a paper, with accompanying letter addressed to W. A. Jones, February 27, 1896, from Department of United States Coast and Geodetic Survey, title: "Copied from original Top Sheet 272 in Archives of U. S. Coast and Geodetic Survey Office," was likewise submitted by the Committee and made part of the record.

Also copy of a plat made by B. T. Gunter, Jr., County Surveyor of Accomac county, of a part of Fox Islands was likewise submitted by the Committee and made part of the record.

NOTE—Counsel for Ellinger objects to introduction of all deeds, plats and charts made since the existence of the Commonwealth of Virginia, save and except the deed made from Henry L. Crockett to Wm. Ellinger, and the chart made by the United States Coast and Geodetic Survey, made in 1849–51, and a copy of the survey made by Mr. Hodgkins, under the adjudication of Dr. Bowdoin, Fish Commissioner, and the grant made by the Commonwealth of Virginia, to Sacker Nelson, and accompanying survey.

With the permission of the Committee, it is an admitted fact that the present dwelling house on Fox Island is within forty or fifty yards of Cedar Straight

Also the following records from the Clerk's office of Accomac county, viz:

The assessed value of the real estate owned by Wm. Ellinger in the county of Accomac, number of acres, &c., and deed from Henry L. Crockett to Ellinger, and deed from Levin J. Gunter to Ellinger, were submitted by the Committee and made part of the record.

Also a copy of the record of *Ellinger vs. Bowdoin*, mandamus in Court of Appeals of Virginia, was submitted by Committee and made part of the record.

NOTE—Counsel for Dr. Bowdoin moves that so much of the evidence of Edwd. R. Thomas, John R. Thomas, Alfred J. Lewis and D Frank White, heretofore taken as relates to the value of the property assigned Mr. Ellinger, and to the uses of the same, be stricken out of the record, on the ground that those matters are not germane or pertinent to the inquiries properly to be made by this Committee.

On motion of Howard Hathaway, this Committee adjourned to meet at Cape Charles, Virginia, on the 28th day of August, 1896, at 10 A. M.

THOS. B. QUINLY,

*Clerk to the Committee.*

# APPENDIX.

“MANDAMUS.”

IN THE

Supreme Court of Appeals of Virginia,

AT RICHMOND.

---

WM. ELLINGER v. J. W. BOWDOIN, FISH COM'R, &c.

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*To the Honorable Judges of the Supreme Court of Appeals of Virginia:*

Your petitioner, William Ellinger, respectively represents to your honors that he is the owner of certain real estate in the Chesapeake Bay, being a large island property on the eastern shore, and within the jurisdiction and limits of Accomac county, in the State of Virginia; said property being commonly known as Fox Island. The shores of said property are so curved and indented, with sharp points running out and shallow bays forming some distance inland, that it is impossible to define accurately by the rise and fall of the tide the actual low-water mark to which, under the laws of Virginia, the rights of petitioner, as riparian owner, extend. The low-water area and the waters adjoining said island afford valuable oyster planting grounds, and petitioner is engaged in the oyster culture. In order to establish permanently the boundary between the public waters of the State and the area of water properly belonging to petitioner as riparian owner, entitled to claim down to the low-water mark, the General Assembly of Virginia passed an act, approved February 26, 1894, entitled, “An Act to define and establish, by straight lines, the low-water mark lines of the riparian owner of the shores of Fox Island, or Fox Islands, in the county of Accomac, in the State of Virginia,” which is to be found on page 469 of the Acts of the General Assembly for 1893-4. It is there provided that the riparian owner of the shores of the said Fox Island property may apply in writing to the Fish Commissioner of the State to establish by straight lines a boundary to be taken as a permanent low-water mark line. It is further provided that the said Fish Commissioner shall thereupon request the department of the United States Coast and Geodetic Survey to compute the average of the area between the high and low-water mark lines along the shores of said island as shown by the public surveys and maps of said department.

The said Fish Commissioner is then directed to fix and establish in the manner pointed out in said act, the metes and bounds of petitioner's property. And it is then further provided in said act, in the second section thereof, as follows:

“When said lines of survey are thus established, the said Fish Commissioner shall assign to said riparian owner, beyond and adjoining said lines of original survey, a number of acres of water area equal in amount to the total acreage of low-water grounds furnished him, as above provided for, by the United States Coast and Geodetic Survey. Said acreage of water area shall be within straight lines, or the outer boundary thereof shall be composed of straight lines, extending in front of the riparian owner's shores, and said straight lines shall be permanently marked, staked or buoyed. The compromise or adjudication between the said riparian owner and the State shall be made by the said Fish Commissioner, or the person authorized to discharge the duties required under this act, on the basis of equity as to the interest of the State and said riparian owner, and not on a basis of acreage.” The subsequent sections of said act provide for the recordation of plats and for the mutual cession of rights between petitioner and the State.

Petitioner now further shows that several months ago, as riparian owner of the shores of said Fox Island property, he made proper application in writing, as provided in said act, to the Fish Commissioner of the State of Virginia, and that thereupon the said Fish Commissioner requested the department of the United States Coast and Geodetic Survey to compute the acreage of the low-water area mentioned in said act, and is now about to receive the result of that computation from said department. Such being the case, the petitioner on the 4th day of March, 1895, addressed to Dr. J. W. Bowdoin, Fish Commissioner, a communication requesting him to proceed, as early as practicable, to take the further steps provided for in the second section of said act; that is, to establish the lines of petitioner's riparian property, as early as possible, in accordance with the original lines of survey, and then to assign to petitioner, as riparian owner, beyond and adjoining said lines, a number of acres of water area equal in amount to the total acreage of low-water ground furnished by the Coast and Geodetic Survey, and within straight lines as prescribed in said act. A copy of said communication is now herewith filed, marked Exhibit “A,” and is prayed to be read and considered as part hereof. To this communication the said Fish Commissioner sent petitioner a reply dated March 8, 1895, a copy whereof is now herewith filed, marked Exhibit “B,” and is prayed to be read and considered as part hereof. In the reply the Fish Commissioner declines to assign to petitioner the specific number of acres computed by the coast survey, or any specific number of acres, and takes the position that in the matter of the quantity of water area to be assigned to petitioner beyond the re-established lines of survey, his duties are judicial and discretionary in their nature, and not merely administrative as his other duties under said act. The said Fish Commissioner quotes the concluding sentence of the second section of said act hereinbefore transcribed and says:

“It is, therefore, distinctly enacted that in assigning to you the water area outside of the lines of survey, I am not required to be guided altogether by the number of acres computed by the coast survey, but that I shall consider in connection with that number of acres all other considerations justly and fairly affecting the matter, and reach a conclusion as between you and the State, which shall be equitable, honest and just, having proper regard for the interests of both yourself and the State.



“This discretionary duty I shall faithfully discharge according to the best of my ability, and with all of the information that I may be able to gather; and by my decision in this matter, both yourself and the State will be finally bound. This being my clear conception of my duty under this act, I must altogether deny the right asserted by you that I shall assign to you the number of acres furnished to me by the United States Coast and Geodetic Survey.

“I therefore decline to take any steps, now or in the future, to assign to you such specific number of acres of water area, outside and beyond the said lines of the original survey.”

Petitioner further shows that the general course of the duties required of the Fish Commissioner under the terms of the said act are mandatory and not discretionary. It is apparent that the sentence in the second section of said act relied upon by him was an amendment to the act as originally proposed, was thoughtlessly worded in the hurry of legislation, and whatever may be its effect, does not deprive petitioner of the right just before provided for of having assigned to him the same number of acres of water area furnished by the Coast and Geodetic Survey.

Petitioner therefore prays that a peremptory mandamus be granted by this honorable court to compel the said J. W. Bowdoin, Fish Commissioner of the State of Virginia, to proceed in accordance with the second section of said act, hereinbefore mentioned, to re-establish, as nearly as may be, the lines of original survey of petitioner's riparian property on Fox Island or Islands and to assign to petitioner, beyond and adjoining said lines of survey, a number of acres of water area equal in amount to the total acreage of low-water ground furnished him by the United States Coast and Geodetic Survey, the outer boundary of said acreage of water area to be composed of straight lines permanently marked, staked or buoyed, as prescribed in said act of the General Assembly of Virginia.

And as in duty bound, petitioner will ever pray, &c.

WILLIAM ELLINGER,  
By Counsel.

BEVERLY T. CRUMP,  
For Petitioner.

State of Virginia,  
City of Richmond, to-wit:

This day personally appeared before me, deputy clerk of the Supreme Court of Appeals of Virginia, at Richmond, Bev. T. Crump and made oath that the statements contained in the within petition are true to the best of his knowledge, information and belief.

Given under my hand this 28th day of March, 1895.

G. B. TAYLOR, *D. C.*

EXHIBIT “A.”

FOX ISLAND, VA., *March 4, 1895.*

DR. JOHN W. BOWDOIN,  
*Fish Commissioner of the State of Virginia.*

Sir,—Permit me to call your attention to the proceedings that have been had under chapter 399 of the Acts of the Legislature of Virginia, 1893-4. As is

known to you, I am the owner of Fox Island or Islands mentioned in that act. Several months ago I applied in writing to your office, in accordance with the provisions of said act, and have established, by straight lines, a boundary to be taken as the permanent low water-mark line along the shores of said islands. The application made by me in writing was acceptable to your predecessor in office, Dr. Wilkins, and he thereupon requested the department of the United States Coast and Geodetic Survey to compute the acreage of area between the high and low water-mark lines along the said shores of said island or islands. The said department of the general government is now engaged, in accordance with that request, in making a computation of such acreage, and it will shortly be furnished for your further action, provided for in the second section of said act.

According to the terms of the said second section, you will observe that after having re-established, as nearly as may be, the original lines showing the metes and bounds of the water area of said islands, you are required to assign to me as riparian owner, beyond and adjoining said lines of original survey, a number of acres of water area equal in amount to the total acreage of low-water ground now about to be furnished to you by the United States Coast and Geodetic Survey, the outer boundary of said water area, thus to be assigned to me by you, to be composed of straight lines.

I now communicate with you for the purpose of requesting you to take proper steps for the re-establishment of said original lines of survey, in order that you may then assign to me a number of acres of water area beyond those limits equal in amount to the acreage furnished to you by the Coast Survey Department.

The season of the year in which this work can best be done is now near at hand, and I am at all times willing to assist you in the work in every way within my power.

Respectfully,

WILLIAM ELLINGER.

EXHIBIT "B."

BLOXOM, VA., *March 8, 1895.*

MR. WILLIAM ELLINGER,

Fox Island, Va. :

Sir,—Your communication of the 4th day of March, 1895, has been duly received.

I know that you are the legal owner of the Fox Island property in the county of Accomac, in this State.

You did make application in writing, according to Chapter 399 of the Acts of the last General Assembly, to this office to have your low-water mark boundary established according to the terms of that act. Upon the receipt of your application, the proper request was made by this office to the department of the United States Coast and Geodetic Survey to obtain from that department the computation of the low-water acreage as contemplated in the act. This request was granted, and, as stated by you, that department is now engaged in computing the acreage as requested, and I am expecting the result to be soon furnished to me.

As required by the terms of said act, I shall proceed to re-establish, as nearly as may be, the original lines of survey mentioned in the act. But I must decline

to assign to you the specific number of acres computed by the United States Coast and Geodetic Survey, and, as the Fish Commissioner of the State, it is my duty to deny that you have the right to require of me to assign to you any specific number of acres of water area outside of and beyond the re-established line of survey. While the duties imposed upon me in general under the terms of said act are administrative or executive, in this matter of the number of acres to be assigned to you beyond the lines of survey, my duties are clearly discretionary or judicial, and are therefore not subject to control. The concluding sentence of the second section of said act is in the following language: "The compromise or adjudication between the said riparian owner and the State shall be made by the said Fish Commissioner or the person authorized to discharge the duties required under this act on the basis of equity, as to the interests of the State and said riparian owner, and not on a basis of acreage."

It is, therefore, distinctly enacted that in assigning to you the water area outside of the lines of survey, I am not required to be guided altogether by the number of acres computed by the coast survey, but that I shall consider in connection with that number of acres all other considerations justly and fairly affecting the matter, and reach a conclusion as between you and the State, which shall be equitable, honest and just, having proper regard for the interests of both yourself and the State.

This discretionary duty I shall faithfully discharge according to the best of my ability, and with all of the information that I may be able to gather; and by my decision in this matter both yourself and the State shall be finally bound. This being my clear conception of my duty under this act, I must altogether deny the right asserted by you, that I shall assign to you the number of acres furnished to me by the United States Coast and Geodetic Survey.

I therefore decline to take any steps, now or in the future, to assign to you such specific number of acres of water area, outside and beyond the said lines of original survey.

Respectfully,

J. W. BOWDOIN,

*Fish Commissioner of the State of Virginia.*

DR. J. W. BOWDOIN,

*Fish Commissioner of the State of Virginia:*

Please take notice that on Thursday, the 28th day of March, 1895, at the courtroom of the Supreme Court of Appeals of Virginia, I shall present to the Honorable Judges of the said court, at their session held on that day, a petition for a peremptory writ of mandamus to compel you to proceed in accordance with an act of the General Assembly of Virginia, approved February 26, 1894, to re-establish, as nearly as may be, the lines of original survey of my riparian property on Fox Island or Islands, and to assign to me, beyond and adjoining said lines of survey, a number of acres of water area equal in amount to the total acreage of low-water ground furnished you by the United States Coast and Geodetic Survey.

A copy of said petition and the exhibits therewith accompany this notice, to be delivered to you as a part of the same.

Respectfully,

WM. ELLINGER,

By Counsel.

I accept legal service of within notice and acknowledge the service and delivery to me of a copy of within mentioned petition for mandamus and exhibits therewith.

J. W. BOWDOIN,  
*Fish Commissioner of Virginia.*

VIRGINIA :

In the Supreme Court of Appeals, held at the State court-house, in the city of Richmond, on Thursday, the 28th day of March, 1895.

This day came Wm. Ellinger, by counsel, and filed his petition praying for a peremptory mandamus to compel J. W. Bowdoin, Fish Commissioner of the State of Virginia, to proceed in accordance with an act of the General Assembly of Virginia, approved February 26, 1894, to re-establish, as nearly as may be, the lines of original survey of the petitioner's riparian property on Fox Island or islands, and to assign to the petitioner, beyond and adjoining said lines of survey, a number of acres of water area, equal in amount to the total acreage of low-water ground furnished said Fish Commissioner by the United States Coast and Geodetic Survey; and thereupon the defendant appeared by counsel and demurred to said petition, in which demurrer the petitioner joined.

A Copy—Teste:

GEO. K. TAYLOR, C. C.



## EXHIBIT

## EXTRACT FOR INVESTIGATING COMMITTEE FROM 1894 LAND

Name of person who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water-courses, mountains, or other places on or near which it lies.	Distance & bearing from the Court-house.		Value of land per acre, including buildings.	Value of buildings.
					Bearing from C. H.	Miles.		
Ellinger, Wm.	Accomack co., Va.	Fee	150	"Fox Island Marsh"	W	25	50	
" "	" "	" "	2	" " "Arable"	W	25	75	100
" "	" "	" "	25	"Little Fox Island"	W	25	1 00	

" M. O."

## BOOK OF ACCOMACK COUNTY, AS TO WM. ELLINGER'S LANDS.

	Total value of the land and buildings.	The am't of tax on the land and buildings, at 30 cts. on every \$100 value thereof for the support of governm't.		The amount of tax on land and buildings, at 10 cents on every \$100 value thereof for the support of the public free schools.		TOTAL TAX.	Amount of tax levied for County Purposes, 10cts.	ROAD TAX, 20 cts.	FREE SCHOOL PURPOSES.		
									Amount of tax levied for county free school purposes, 10 cts.	Amount of tax levied for district free school purposes, 10 cts.	Total levy for county and district free school purposes.
75		22	08		30	08		15	08	08	16
150		45	15		60	15		30	15	15	30
25		08	03		11	03		05	03	03	06

The foregoing is a correct extract from the Land Book for the year 1894, made out and filed in the clerk's office of Accomack County Court by William D. Funnell, Commissioner of the Revenue for District "No. 2" of said county, on the 5th day of July, A. D. 1894.

Test:

M. OLDHAM, JR.,  
Clerk of Accomack County Court, Va.,  
August 20th, 1896.

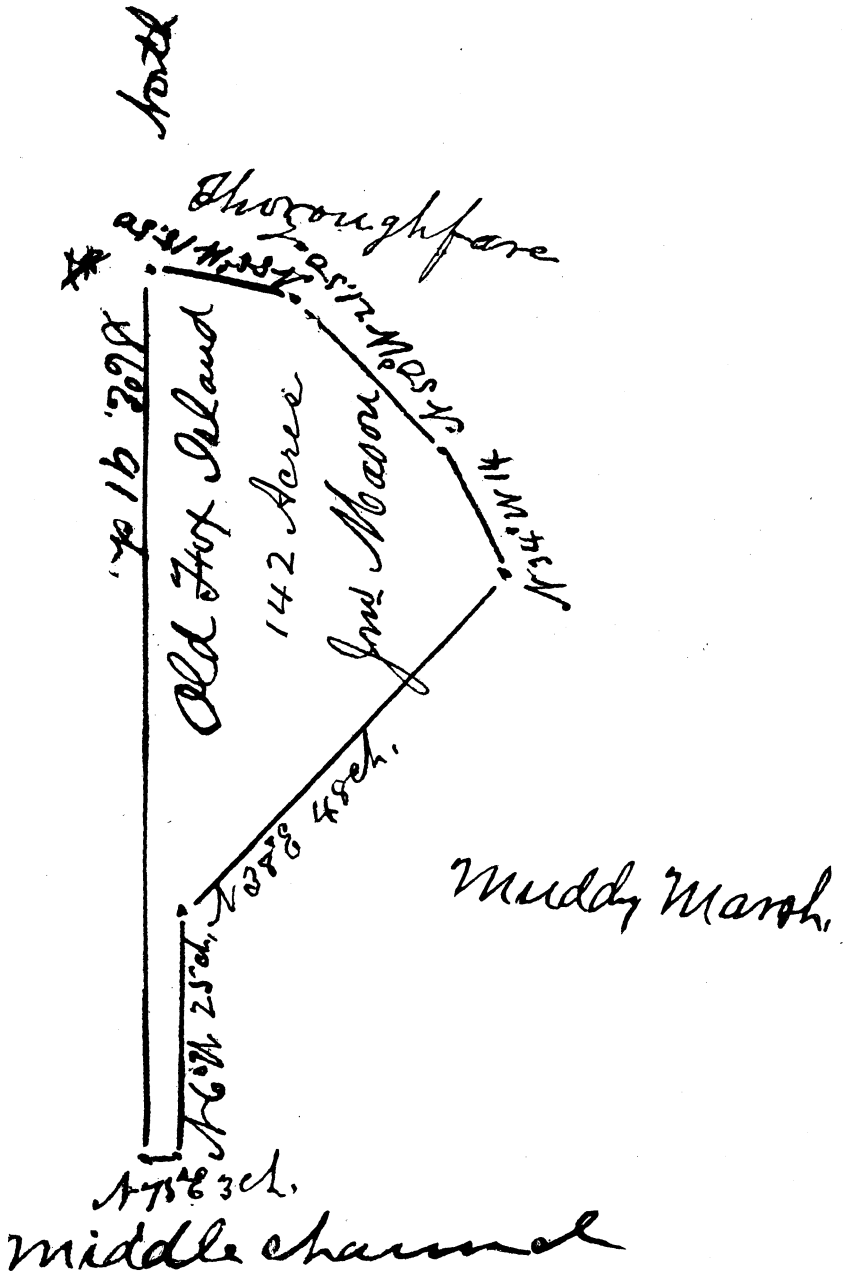
## EXHIBIT "P. B."

JUNE 20TH, 1796.

In consequence of a prior location of a land warrant, No. —, made by John Mason, Assignee of Wm. Gibb, with Thomas Evans, Principal Surveyor of Accomac county, proceeded to survey the land expressed in said location as follows, to-wit: Beginning at a thoroughfare called Foxes Island Thoroughfare and running S. 6° E. 91 ch.; thence N. 75° E. 3 ch.; thence N. 6° W. 25 ch.; thence N. 38° E. 48 ch.; thence N. 34° W. 14 ch.; thence N. 50° W. 21.50 ch.; thence N. 85° W. 15.50 ch. to the mouth of the thoroughfare at beginning.

PARKER BARNES, *D. S. A. C.* See Plat Annexed.





## EXHIBIT "B. T. G., JR."

At the request of Clarence Hodson, Attorney for William Ellinger, I surveyed two islands, the same being part of Fox's Island, situated in the county of Accomack, and State of Virginia, just south of the State line, and lying between the Tangier Sound, and found Blizzard's Point to contain five and  $\frac{3}{1000}$  acres ( $5\frac{3}{1000}$ ), and Great Fox's Island one hundred and forty and  $\frac{9}{1000}$  acres ( $140\frac{9}{1000}$ ). For courses and distances and further particulars, see plat annexed. Scale: 10 chains to the inch.

May 6th, 1892.

B. T. GUNTER, JR.,  
*Surveyor of Accomack County.*

Beginning at a point marked A on plat annexed, the following are the courses and distances:

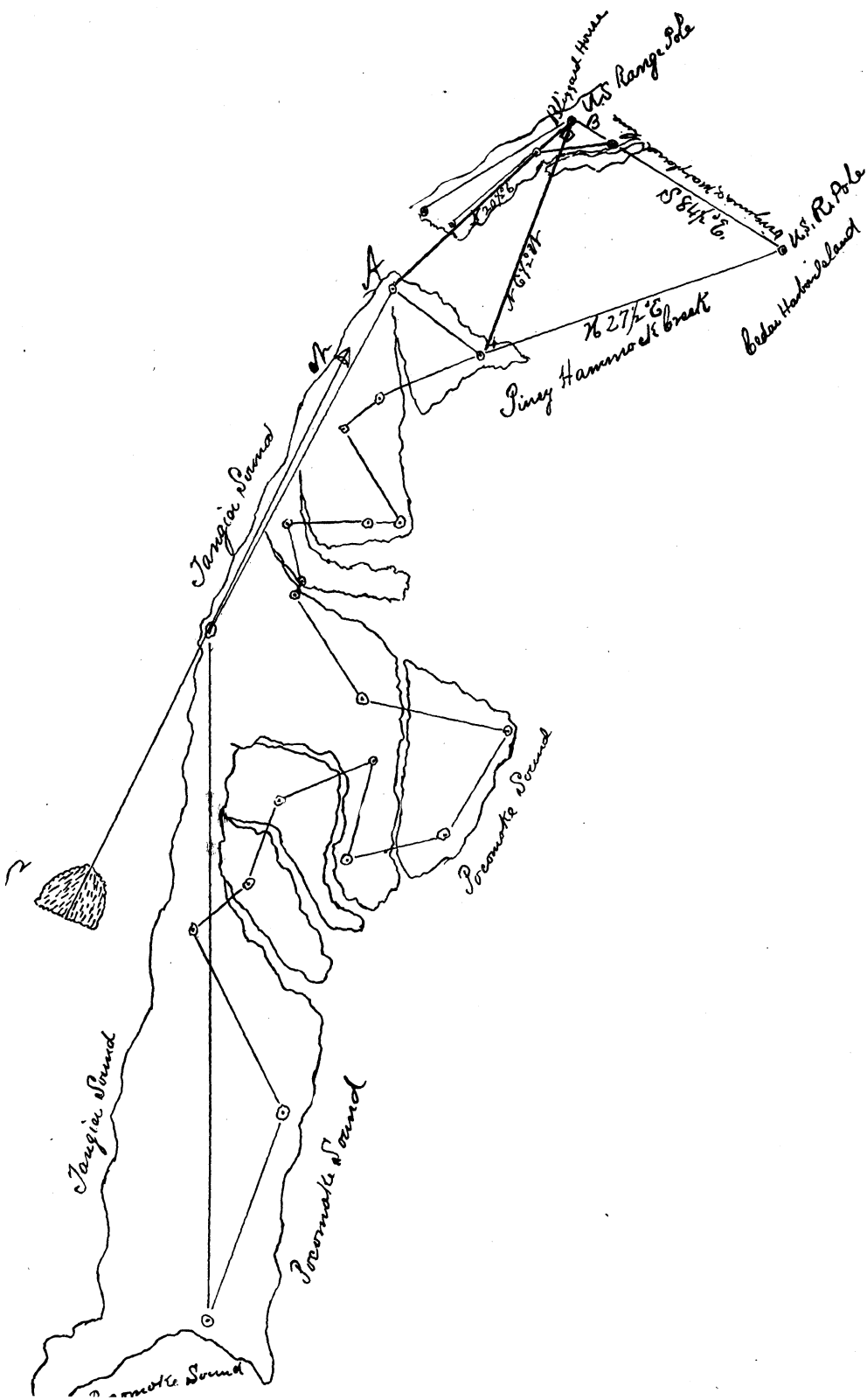
S. $80\frac{1}{2}^\circ$ E. $13\frac{4}{100}$ ch.	S. $5^\circ$ W. $14\frac{3}{100}$ ch.
S. $40^\circ$ W. $13\frac{2}{100}$ ch.	S. $51^\circ$ W. $11\frac{8}{100}$ ch.
S. $25^\circ$ W. $5\frac{3}{100}$ ch.	N. $10\frac{1}{2}^\circ$ W. $12\frac{1}{100}$ ch.
S. $57\frac{1}{4}^\circ$ E. $13\frac{1}{100}$ ch.	S. $41\frac{1}{2}^\circ$ W. $12\frac{1}{100}$ ch.
S. $67\frac{1}{2}^\circ$ W. $4\frac{8}{100}$ ch.	S. $7^\circ$ E. $10\frac{5}{100}$ ch.
S. $65^\circ$ W. $9\frac{3}{100}$ ch.	S. $23^\circ$ W. $8\frac{4}{100}$ ch.
S. $42^\circ$ E. $7\frac{1}{100}$ ch.	S. $54^\circ$ E. $23\frac{2}{100}$ ch.
S. $1^\circ$ E. $1\frac{5}{100}$ ch.	S. $7\frac{1}{2}^\circ$ E. $25\frac{2}{100}$ ch.
S. $60\frac{1}{4}^\circ$ E. $14\frac{2}{100}$ ch.	N. $27\frac{1}{2}^\circ$ W. $80\frac{8}{100}$ ch.
N. $76^\circ$ E. $18\frac{6}{100}$ ch.	N. $\frac{1}{2}^\circ$ E. $47\frac{7}{100}$ ch.

Beginning at a point marked B on plat annexed, the following are the courses and distances:

S. $84\frac{1}{2}^\circ$ E. $5\frac{6}{100}$ ch.	N. $87^\circ$ W. $3\frac{5}{100}$ ch.
S. $60^\circ$ W. $9\frac{1}{100}$ ch.	N. $33^\circ$ E. $20\frac{1}{100}$ ch.
S. $23\frac{1}{2}^\circ$ W. $13\frac{5}{100}$ ch.	

I certify that the above is a correct copy.

D. FRANK WHITE,  
*County Surveyor.*



## UNITED STATES COAST AND GEODETIC SURVEY,

WASHINGTON, D. C., *February 27, 1896.*

HON. W. A. JONES, M. C.,

*226 New Jersey Avenue, Washington, D. C. :*

SIR—I have the honor to transmit under another cover a tracing of the original topographic survey of the Fox Islands as requested by your secretary. The approximate area of Great Fox Island, shown on the tracing, is 457 acres, that of Little Fox Island 120 acres.

Respectfully yours,

W. W. DUFFIELD,  
Superintendent. See Plat Annexed.