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CONCURRENT JURISDICTION OF A NAVIGABLE BOUNDARY RIVER

*Barnes v. State*¹

Appellant who claimed to be a resident and voter of the state of Virginia, was indicted by the grand jury of Prince George's County, Maryland for committing rape on a citizen of Virginia. The crime took place on a steamboat running on the Potomac River en route from Norfolk, Virginia to Washington, D. C. and passing through Prince George's County, although at the time of the crime the evidence showed that the boat was in the waters of adjacent Charles County.

Appellant filed a plea to the jurisdiction to which the State's demurrers were sustained. The appellant was then tried and convicted. After conviction he filed a motion in arrest of judgment but this was overruled and he was sentenced to be hanged. The Court of Appeals affirmed judgment without costs and a petition for writ of *certiorari* was denied by the United States Supreme Court.²

¹ 47 A. (2d) 50 (Md. 1946).

² *Barnes v. State of Md.*, 329 U. S. 754 (1946).

The instant case raises important questions concerning the concurrent jurisdiction of the courts in cases of crimes committed on a navigable river, as between two counties within a given state which border the river, and as between two states whose boundary is the river.

The appellant denied that the Circuit Court for Prince George's County had jurisdiction to enter judgment on the basis of two principal contentions:³ *First*, because the record failed to show that the defendant was brought before a Justice of the Peace in Prince George's County, under the provisions of Section 631 of Article 27 of the Code of Maryland, 1939, and the offense occurred outside Prince George's County. *Secondly*, because the tenth article of the Compact of 1785 between the States of Maryland and Virginia which was still operative, entitled him to be tried in a court of the State of Virginia.

The Court ruled that the State of Maryland had jurisdiction over the appellant properly exercised through the Circuit Court for Prince George's County. In answer to the first contention, the Court held that by a reasonable construction of Section 631, Article 27 of the Code, (a) the statute was not intended to require a preliminary examination of the accused as necessary to give jurisdiction to the Court in which a grand jury had indicted him; (b) that such an allegation is not required to be shown on the record; and (c) that the legislative intent was to give jurisdiction over an offender to the county which first used the ordinary processes to hold him preliminary to indictment, thereby ousting the jurisdiction of another county having concurrent jurisdiction to try the case.

As to the second contention the Court decided that the Tenth Article of the Compact of 1785 between Maryland and Virginia providing that certain offenses committed on sections of the Potomac River where the boundary was doubtful shall be tried in the state of the offender, became inoperative when the boundary line was subsequently established with certainty; that the exclusive common law territorial jurisdiction of Maryland over the Potomac River remained with one exception, *viz.*: concurrent jurisdiction over violations of fishing laws was yielded to Virginia.

³ *Supra*, n. 1, Appellant's brief and appendix, No. 120, 11, for Appellant.

CONCURRENT JURISDICTION OF COUNTIES

Originally enacted April 10, 1880⁴ with no subsequent material changes, Section 631, Article 27 of the 1939 Code provides:

“Any person who may commit an indictable offense on a steamboat or railroad train within the State of Maryland, may be presented, indicted, tried and convicted in any county or city from, to, or through which the said boat or train may run, and on arrest be taken before, and in the case of bailable offenses, be held to bail by any justice of the peace in any such county or city; but such presentment, indictment, and trial shall be in the same county and city in which such justice of the peace shall be.”

By the first half of this statute, Maryland gives concurrent jurisdiction to the various counties from, to, or through which may run the steamboat or train on which an offense is committed. Thus, although the crime was actually perpetrated while the boat was in the waters of adjacent Charles County, by this statute Prince George County had concurrent jurisdiction. It is clear from the code that if a person commits a crime on a steamboat within the state of Maryland, he may be tried in any county or Baltimore City, from, to, or through which said steamboat may run.

It is concerning the construction of the latter section of the statute that a problem arises. Appellant argued for a strict construction which should require, as a condition precedent to the acquisition of jurisdiction, that the accused must be taken before a justice of the peace of the county in which the indictment is subsequently brought; that compliance with this procedure is a necessary part of the due process by which the offender is entitled to be tried; that such is a jurisdictional allegation which must show in the record. Since there was nothing in the record to show the appellant was ever brought before a justice of the peace anywhere before he was indicted, it was contended that the state could not prosecute in the circuit court of Prince George's County under this statute.

The Court refused to take such a position. Justifying a reasonably broad application of the statute, the Court

⁴ Md. Laws, 1880, Ch. 485. It is understood that a proposal will be introduced in the General Assembly of 1949 to extend this concurrent jurisdiction also to crimes committed on highway busses and airplanes.

cited prior decisions showing Maryland's adherence to the well established rules of statutory construction which require such construction which best answers the makers' intention which may be collected from the cause or necessity for passing the act or from foreign circumstances, and "when discovered ought to be followed although such construction may seem contrary to the letter of the statute."⁵

*Mode of Acquiring Jurisdiction—Necessity
of Preliminary Hearing*

The Court recognized that the procedure of bringing a person charged with a felony before a magistrate who after a hearing or waiver of hearing holds the accused for the action of the grand jury, is a customary practice in Maryland. However, the Court was quick to point out that it is not necessary to give jurisdiction to a court whose grand jury has indicted.

In the instant case the Court did not cite previous decisions on the point. Nevertheless, it has long been the rule in Maryland that prosecutions may be instituted in the first instance by the grand jury without a preliminary hearing before a magistrate.⁶ In 1891 in the case of *Blaney v. State*, the Court ruled squarely that "in this state grand juries have plenary inquisitorial powers, and may lawfully themselves, and upon their own motion originate charges against offenders though no preliminary proceedings have been had before a magistrate, and though neither the court nor the State's Attorney has laid the matter before them."⁷ This view, it was conceded, was in accordance with the English practice then obtaining, and was generally accepted at the institution of the federal government. Subsequently, the Court affirmed this position in a series of cases,⁸ the most recent prior to the present case being that of *Brack v. Wells* in 1944.⁹

Thus in Maryland it is possible to start a criminal proceeding with investigation and indictment at the grand jury level. The grand jury can indict someone who has never been arrested. The grand jury then issues a bench

⁵ *Supra*, n. 1, 52.

⁶ HOCHHELMER, *THE LAW OF CRIMES AND CRIMINAL PROCEDURE* (2nd Ed. 1904) 101.

⁷ 74 Md. 153, 156, 21 A. 547, 548 (1891).

⁸ In re Report of Grand Jury, 152 Md. 616, 137 A. 370 (1927); *Colbenty v. State*, 164 Md. 558, 166 A. 45 (1933); *Heitzelberger v. State*, 173 Md. 435, 196 A. 288 (1937).

⁹ 184 Md. 86, 40 A. (2d) 319 (1944).

warrant,¹⁰ a process issued by the court itself or "from the bench", for the arrest of the accused, and a warrant of commitment reciting the fact of indictment and describing the crime.¹¹

In general, a grand jury may investigate and present offenses without any preliminary examination and commitment of the accused, in the absence of a statutory provision to the contrary.¹² In some states a grand jury's investigation is restricted to such offenses as are called to its attention and directed by the court or prosecuting attorney.¹³ In other states, as in Maryland, a grand jury has plenary inquisitorial powers, and may itself begin the proceedings against the accused.¹⁴

In the instant case, by a strict construction of the statute it would follow that a preliminary hearing was required. This would by implication limit the powers of the grand jury to originate the charge. The Court, however, was insistent that the legislative intent, based on general practice and legal precedent in Maryland, was not to require a preliminary examination as a basic indispensable fact without which a court in which a grand jury had returned an indictment could not acquire jurisdiction. This is a more reasonable and natural construction.

Moreover, this decision is consonant not only with state policy and a substantial body of respectable authority, but it grows out of practical considerations. The general rule is that no preliminary hearing of accused is necessary where an indictment has been returned against him by the grand jury.¹⁵ The preliminary examination is not a trial, but a procedure whereby the magistrate determines whether an offense has been committed and if there is probable cause to hold the accused for trial. This serves to prevent the escape of the guilty, detention of the innocent, and abuse of power.

¹⁰ 10 C. J. S. 246, n. 2; 22 C. J. S. Sec. 404.

¹¹ Some jurisdictions early held similarly with Maryland, *supra*, n. 6, 101, 104, for citations of early cases. Connecticut held that a grand jury had the right to originate charges against offenders without forewarning them of the proceedings against them, *State v. Walcott*, 21 Conn. 272 (1851). Missouri concurred in *Ward v. State*, 2 Mo. 120 (1829).

¹² 38 C. J. S. Sec. 34(c), n. 23; Sec. 34(d), n. 27.

¹³ *Petition of McNair*, 324 Pa. 48, 187 A. 498 (1936).

¹⁴ *People v. Doe*, 272 N. Y. 473, 3 N. E. (2d) 875 (1936); 38 C. J. S. 1031, n. 35.

¹⁵ 22 C. J. S. Sec. 332; although under special circumstances the Court may require such an examination for the purpose of bail, *State v. Pichon*, 148 La. 348, 86 So. 893 (1921).

The right to a hearing, although recognized as a substantial right, generally is not a constitutional right, and is granted only when required by statute.¹⁶ In the absence of statute, no preliminary hearing is necessary, the proceeding being unknown to the common law.¹⁷ The District Court for the Western District of Virginia in the case of *U. S. v. Averett*¹⁸ quoted the Maryland rule established in *Blaney v. State* and stated that there is no "right" to a preliminary hearing after indictment; that the formalities and safeguards surrounding the action of the grand jury seem to afford, in themselves, sufficient guaranties to constitute due process and to satisfy the early constitutional amendments. The Court then flatly ruled that where an indictment had been found against the accused by a grand jury, no preliminary hearing is necessary because the legitimate purpose of the preliminary examination has been accomplished by a tribunal of superior rank to that of an examining magistrate.

In the instant case, under the facts, the offense is not bailable. Thus, one of the essential purposes of a preliminary hearing, that of determining the bail, is not present. When the indictment was returned against the appellant, not only had it been decided that the offense had been committed, that there was sufficient evidence to hold him for trial, but a further step had been taken, the form of the charge had been definitely fixed. Therefore, there was no practical or logical reason for a preliminary hearing. The Court seemingly preferred not to construe the middle clause separately,

"and on arrest be taken before, and in the case of bailable offenses be held to bail by any justice of the peace in any such county or city;"^{18a}

but to consider it in the light of the terms of the entire statute, and the legislative intent. The Court's broad construction is compelling.

Jurisdiction to Be Shown By Record

In deciding that the Statute did not require an entry into the court records of such a preliminary hearing,¹⁹

¹⁶ *Ex Parte Gregory*, 86 Ca. App. 10, 260 Pa. 320 (1927); See 22 C. J. S. 484, n. 19.

¹⁷ 22 C. J. S. Sec. 332, n. 16.

¹⁸ *United States v. Averett*, 26 F. (2d) 676, 678 (W. D. Va. 1928).

^{18a} Md. Code (1939) Art. 27, Sec. 631.

¹⁹ In *Kane v. State*, 70 Md. 546, 17 A. 557 (1889), and *State v. Stafford*, 160 Md. 385, 153 A. 77 (1931), the Court of Appeals ruled that in the case

the Court reviewed trial procedures in Maryland. Under normal circumstances where a crime has been committed within the territorial limits of a given county, or where a county has concurrent jurisdiction, there is nothing in the records of the trial before the Circuit Court to show any action prior to the grand jury. The proceedings start with presentment and indictment.²⁰ The Court's inference is that the legislative intent could not have been to require such an allegation in the record.

It is interesting that the court considered it significant that the appellant did not allege that he was not taken before a justice of the peace in Prince George's County, or that he was taken before a justice of the peace in a county other than that in which he was indicted; but contended that the record did not show a preliminary hearing was held. The implication is that the customary procedure was followed. Therefore, in spite of the Court's pronouncement against the requirement of a preliminary hearing and its entry into the record under a similar fact situation, in the light of the fact that few controversies have reached the courts on this point, it could well be assumed that the Court looks with favor on such a procedure, at least as a precautionary measure, and that it is almost inevitable in Maryland trial proceedings.²¹

Ouster of Jurisdiction

The Court indicated that the primary intent of the latter section of the statute was to freeze the jurisdiction in that county having concurrent jurisdiction which first uses the ordinary processes to hold the offender preliminary to the indictment.²²

of magistrate's courts sitting in the exercise of a special and limited jurisdiction, it is well settled that there must be affirmative proof in support of the regularity of the proceedings; in both cases, the fact that accused was informed of his right to jury trial and elected to be tried before a Justice of the Peace must affirmatively appear in the record.

²⁰ *Supra*, n. 1, 51.

²¹ An inquiry as to what actually took place in the instant case reveals the following circumstances. The crime took place between 2:45 a.m. and 3:15 a.m. on August 4, 1945. At 3:40 a.m. the master of the boat was notified, and with other officers and members of the naval patrol took into custody the appellant, who was employed as a cook on the boat. He was confined until the boat reached Washington, at which point the Metropolitan Police detained him, *supra*, n. 3, 14. He was extradited from Washington. The Justice of the Peace of Prince George's County placed his case on the Magistrate's docket and issued a commitment for him. However, it has not been established that a formal hearing was ever held before the Magistrate.

²² *Supra*, n. 1, 51.

It is a well established rule, both under the statutes and in the absence thereof, that where several courts have concurrent jurisdiction of the same offense, the court which first acquires jurisdiction of the prosecution retains it to the exclusion of the others.²³ The purpose of the rule is to prevent confusion and conflicts in jurisdiction between the different courts, and to prevent a person from being tried twice for the same offense.

The holding in the instant case is a recognition by the Court of the legislative intent to make statutory provision for the application of what has been described as "the doctrine of ouster of jurisdiction".²⁴ Similar provision is made in other statutes. For example, crimes on the Chesapeake Bay, outside the body of any county, may be tried in any county in which the accused is arrested or is first brought;²⁵ crimes occurring near county lines, also may be tried in that county which first assumes jurisdiction by issuing process for the offender.²⁶

In 1935, the Court of Appeals recognized the rule of "ouster of jurisdiction" in the case of *Woodcock v. Woodcock*.²⁷ The Court held there that the prior filing of the husband's suit for divorce *a mensa et thoro* in Wicomico County, ousted the jurisdiction that existed in Baltimore City for a similar suit by the wife.

CONCURRENT JURISDICTION AS BETWEEN STATES

On the question of the extent of Maryland's jurisdiction over the Potomac River, although this marked the first time a case had been brought into this court under section 631 of Article 27 in the sixty-eight years since its enactment in 1880, and the first time under the Tenth Article of the Compact since its enactment in 1785, the decision revealed a historic dispute between Virginia and Maryland over their boundary waters. In ruling that Maryland has exclusive criminal jurisdiction over offenses committed against the person on the Potomac River, the Court reviewed the history and background of the entire Compact of 1785 between Maryland and Virginia.²⁸

²³ 22 C. J. S. Sec. 111, n. 37.

²⁴ Note, *Proper Venue of Suit for Alimony Without Divorce—Ouster of Jurisdiction—Amendment—Woodcock v. Woodcock*, (1936) 1 Md. L. Rev. 85.

²⁵ Md. Code (1939) Art. 27, Sec. 630.

²⁶ Md. Code (1939) Art. 27, Sec. 632.

²⁷ 169 Md. 40, 179 A. 826 (1935).

²⁸ SCHARF, II HISTORY OF MARYLAND (1879) 528.

The Compact was preceded by a series of boundary disputes between Maryland and Virginia due to contradictory charters granted to Lord Baltimore for Maryland and to Lord Culpepper and the London Company for Virginia. As to the Potomac, Maryland contended for the boundary line at high water mark on the Virginia shore; Virginia argued for low water mark. By joint legislative action in 1785, which was consented to by Congress, the two states entered into an agreement as to rights, obligations, and jurisdiction over the waters,—although the boundary line had not been agreed upon.

The seventh and eighth articles of the Compact provided for common fishing rights and the concurrent enactment of laws for the preservation of fish in the Potomac. The Court reviewed decisions of Maryland, Virginia, and the Federal Courts,²⁹ and statutes enacted by the two states³⁰ recognizing that these two articles are still effective. The Court conceded that Maryland yields to Virginia concurrent jurisdiction on the Potomac over violations of the fishing laws.

The tenth article of the Compact provides that in sections of the Chesapeake Bay and in the Potomac and Pocomoke Rivers "where the boundary is doubtful" there should be concurrent jurisdiction over "piracies, crimes or offenses", and that an offense committed by a citizen of one state against a citizen of the other should be tried in the courts of the state of which the offender was a citizen. The appellant contended that this article was still operative, and under it Maryland did not have jurisdiction over the appellant who was a Virginia resident.

Since the boundary line was still unsettled in 1785 when the Compact was enacted, the Court holds that by the tenth article concurrent jurisdiction was not yielded to Virginia over those parts of the waters which were admitted by both states to belong to Maryland; that it was only intended in those sections which were uncertain.³¹ Further, that as far as the extra-territorial rights predicated upon an admiralty jurisdiction over navigable waters, i.e., "piracies", such jurisdiction ceased to exist with the adoption of the Constitution of the United States and what remained

²⁹ *Middlekauf v. Le Compte*, 149 Md. 621, 132 A. 48 (1926); *Ex Parte Ballinger*, 88 F. 781, 782 (D. Va. 1882); *U. S. v. Bevans*, 16 U. S. 336 (1818); *St. Clair v. United States*, 154 U. S. 134 (1894).

³⁰ Md. Code (1939) Art. 39, Sec. 65-74, and Md. Code Supp. (1947) Art. 72, Sec. 8; Va. Code 1942, Ch. 129, Sec. 3299 and Ch. 130, Sec. 3305, *et seq.*

³¹ *Supra*, n. 1, 58, 59; *Ex parte Marsh*, 57 F. 719, 731 (C. C. E. D. Va. 1893).

was the common law jurisdiction which had continuously been exercised by the counties of Maryland lying on the Potomac over offenses committed opposite their shores.³² The Court then upheld the State's contention that when the two states and Congress had consented to the Black Jenkins Award of 1877,³³ by which the boundary line on the Potomac was definitely fixed at the low water mark on the Virginia shore, Virginia's jurisdiction over the offenses described in the tenth article ceased by operation of law. Complete jurisdiction as far as the tenth article was concerned remained in the Maryland Courts, because the boundary line was no longer doubtful. The Court concluded that "when the obvious reason for the agreement has been done away with by the parties, that part of the agreement falls with the subsequent change in the circumstances".³⁴ Maryland therefore could properly exercise jurisdiction over the appellant.

Additional support for this holding was secured by the fact that while Maryland and Virginia have enacted concurrent fishing laws, indicating the intention of both states to exercise concurrent jurisdiction over fishing act violations, on the other hand, the two states by affirmative actions have mutually recognized Maryland's exclusive jurisdiction over the offenses stated in the Tenth Article. In 1819 Virginia repealed a statute which gave the General Court of Virginia jurisdiction to try cases of crimes against the person on the Potomac. Today, under the statutes and decisions of Virginia there is no longer any Virginia court with jurisdiction to try offenses on the Potomac other than those under the concurrent fishing acts. But Maryland in 1880, close on the acceptance of the Black Jenkins Award, passed the statute under which the instant case is brought, and in 1908 enacted what is now Section 161 of Article 75, 1939 Code which emphasizes that the jurisdiction of the counties lying on the river extends to the ultimate limits of the state (low water mark on the Virginia shore). Decisions of Virginia, Maryland, and the Federal Courts were cited and interpreted by the Court as further indications of the understanding between the two states.³⁵

An interesting aspect of the decision in the instant case is the delineation between offenses against the person, *i.e.*,

³² *Supra*, n. 1, 61.

³³ *Maryland v. West Virginia*, 217 U. S. 577 (1910).

³⁴ *Supra*, n. 1, 61-62.

³⁵ *Biscoe v. State*, 68 Md. 294, 12 A. 25 (1887); *Farewell v. Commonwealth*, 167 Va. 475, 189 S. E. 321, 323 (1937); *Ex parte Marsh*, *supra*, n. 34.

rape, and offenses against the state, *i.e.*, violations of the fishing laws. While the Court does not debate the point, there is quoted with seeming approval the distinction of the U. S. Supreme Court, in *Wharton v. Wise*³⁶ that violations of the fishing acts were offenses against the state over which Virginia has jurisdiction, whereas the tenth article referred to offenses against the person. This means then that the seventh and eighth articles of the Compact which refer to "offenses against the state" are still operative; and the tenth article which refers to "offenses against the person" is no longer effective.³⁷

Comparison of Maryland's Exclusive Jurisdiction

In general, where a navigable river forms the boundary between two states, if the original property in the bed of the river was in neither, the territorial boundary is the middle of the main channel of the river.³⁸ For example, prior to the Revolution, the title to the bed and channel of the Delaware River remained in the British Crown. After the Revolution, all the rights of the Crown were vested in the several states, so that the title of New Jersey and Pennsylvania extended from their shores to the middle of the river.³⁹

Where one state is the original proprietor of the territory through which the river flows, and grants territory on one side of the river only, it retains the river within its own domain and the territorial boundary of the state created extends to the river only.⁴⁰ This is the position of states bordering the Ohio River. The territory Virginia ceded to the United States out of which the state of Indiana was formed, was "northwest of the Ohio River". Kentucky succeeded to the rights and possessions of Virginia as they existed when she was admitted to the Union. Therefore, when Kentucky became a state, her boundary extended to

³⁶ 153 U. S. 155 (1894).

³⁷ An extensive study of the Compact prepared by the Maryland Legislative Council concludes that the Compact though still existing in its original form, continues to control only the fishing rights of citizens of both states in the lower Potomac River; that the other sections are no longer effective because of being superseded by the Federal Constitution, and by judicial constructions and restrictions in the Courts of Maryland, Virginia, and the Federal Government, *see Compact of 1785*, Research Report No. 26, submitted Sept. 1946 by Carl N. Everstine, Research Division, Legislative Council of Maryland.

³⁸ Note, *Jurisdiction over Boundary Rivers*, 65 L. R. A. 954, 5.

³⁹ *Tinicum Fishing Co. v. Carter*, 61 Pa. 21 (1869); *see also State v. Davis*, 25 N. J. Law 386 (1856).

⁴⁰ 59 C. J. Sec. 26.

the low water mark on the north side of that river, *i.e.*, the low water mark on the Indiana shore.⁴¹

In some states where the boundary is the center of the river, this determines the extent of the criminal jurisdiction of the states. By an interstate compact entered into in 1856 between New Jersey and Delaware, each state has jurisdiction both civil and criminal to the middle of the river; thus, the commission of an offense on the river becomes a question of fact for the jury. Accordingly, it was held by the Supreme Court of New Jersey in 1919 that where the offense was committed well to the east of the middle line, it was within the jurisdiction of the easterly state, New Jersey.⁴²

However, with the majority of the states whose boundary line is the center of a navigable river, by constitutional provision, by Act of Congress, by compact between the states, or by tacit agreement, criminal jurisdiction is concurrent over the river,⁴³ because of the well recognized difficulty of determining the location of particular acts with reference to such line, and to prevent the river from becoming a place of lawlessness.⁴⁴ Concurrent jurisdiction seems to be favored by Congress, and in creating territories and states, it has been voluntarily inserted in the organizing acts of Congress and forced upon many states.⁴⁵ The rule of ouster of jurisdiction also is the usual practice.⁴⁶

It reasonably follows then that where one of two states bordering a river can show title to the entire stream, it may extend its laws over the entire water and enforce them to the same extent as it can upon the land.⁴⁷ The decision of the Maryland Court of Appeals in the instant case is a logical ruling, for all of the Potomac River is within the

⁴¹ *Indiana v. Kentucky*, 136 U. S. 479 (1890); *Henderson Bridge Co. v. City of Henderson*, 173 U. S. 592 (1899).

⁴² *State v. Cooper*, 93 N. J. Law 13, 107 A. 149 (1919).

⁴³ 16 C. J. Sec. 215, n. 99.

⁴⁴ See Note to *Roberts v. Fullerton*, 117 Wics. 222, 65 L. R. A. 953, 959.

⁴⁵ This was true of Washington and Oregon, as to the Columbia River; Minnesota and Wisconsin as to the Mississippi; Iowa and Illinois, as to the Mississippi; and Iowa and Nebraska, as to the Missouri River. See *Nielsen v. Oregon*, 212 U. S. 315 (1909); *Miller v. McLaughlin*, 231 U. S. 261 (1930).

⁴⁶ The Supreme Court of Mississippi held in 1912 on a question of criminal jurisdiction as between Arkansas and Mississippi over a crime committed on the Mississippi River, that where the act is a crime in both states, the state first acquiring jurisdiction shall conduct the prosecution to its final termination; and it is a bar to any further proceedings in the courts of the other state, *State v. Cunningham*, 102 Miss. 237, 59 So. 76 (1912).

⁴⁷ *Supra*, n. 43, 953.

territory of Maryland. It is clearly proper for a state to punish crime within its borders, whether on land or river.

Nevertheless, in contrast to Maryland's position, under the Constitution of Indiana and the Act of Virginia of 1789 erecting the district of Kentucky into an independent state, the state of Indiana is given civil and criminal concurrent jurisdiction over the Ohio although Kentucky owns the entire river.⁴⁸ The states of Ohio and Virginia have concurrent jurisdiction of crimes and offenses committed on the Ohio River although the boundary of Ohio is the northeast side of the river.⁴⁹ The United States Circuit Court for the District of Oregon in the case of *In re Mattson*⁵⁰ held that "concurrent jurisdiction between states separated by navigable rivers is an established rule in this government, although in some instances the entire river is within the territorial limits of one state. . . . It is a practical necessity in the administration of government".⁵¹

Yet, by interstate compact between New York and New Jersey approved by Congress in 1834, the middle of the Hudson River is the territorial boundary between these two states, but in Article 3 of the Compact, New York was granted the exclusive criminal jurisdiction over the waters to the low water mark on the New Jersey shore.⁵² The Court of Appeals of New York has held that this agreement "wisely considered the necessities of the case, the welfare of the two states, the exigencies of commerce, the interests of the city and port of New York in particular in whose prosperity, as the metropolis of the country, New Jersey had a common interest, required that there should be a unity of control over such waters and a single and exclusive jurisdiction exercised over them by one of the said states".⁵³

In any event, there could be less attack on Maryland's exercising exclusive criminal jurisdiction over the Potomac when her territorial limits include the whole river. In addition, the long acquiescence of Virginia to the exercise of exclusive common law, and later statutory criminal jurisdiction over the river by Maryland, the absence of any

⁴⁸ *Welsh v. State*, 126 Ind. 71, 25 N. E. 883 (1890).

⁴⁹ *Booth v. Hubbard*, 8 Ohio St. Rep. 244, 249 (1858).

⁵⁰ 69 Fed. 535 (C. C. D. Oregon, 1895).

⁵¹ *Supra*, n. 50, 537.

⁵² *In re Devoe Manufg. Co.*, 108 U. S. 401 (1883).

⁵³ *People v. Central R. R. Co. of N. J.*, 42 N. Y. Rep. 283, 295 (1870).

court in Virginia with power to try such crimes as in the instant case which occur on the river, can only be regarded as a general recognition between the two states of Maryland's right which should not be disturbed.⁵⁴

⁵⁴ On May 13, 1948, the U. S. Circuit Court of Appeals, Fourth Circuit, reversed a judgment by the jury in the U. S. District Court for the Eastern District of Virginia which had awarded \$56,000 in damages to the victim of the crime in the instant case, her husband, and a fellow passenger.

The civil action for damages had been brought against defendants Dichmann, Wright, and Pugh, Incorporated, operators of the steamboat on which the felony occurred, who were under contract with the War Shipping Administration. The theory of the case was that Dichmann as a common carrier owed to the plaintiffs as passengers the duty to use the utmost or highest degree of practicable care and diligence in the selection and supervision of members of its crew and the carrying of the passengers safely to their destination.

Following the U. S. Supreme Court decision in the case of *Caldarola v. Eckert*, 332 U. S. 155, June 23, 1947, the Circuit Court of Appeals ruled that the general agency contract between the United States which owned the vessel and the defendants, specifically provided in Articles 1 and 3A(d) that the defendants were agents of the United States; that while they were appointed to manage and conduct the business of the vessel, this did not place them in the position of owners *pro hac vice* in possession or control of the vessel so as to make them liable to the plaintiffs. Judgment was entered exonerating the defendants of liability.