

This compact, of the 28th of March, 1785, is confined exclusively to matters of jurisdiction and navigation; it leaves the territorial rights of the parties untouched. In rivers flowing through conterminous states, a common use is presumed; if there be no proof of a peculiar property excluding the universal or the common use. (*f*) But, in this instance, there is the most satisfactory evidence of an exclusive right. The boundary, called for in the charter to the lord proprietary of Maryland, is from 'the first fountain of the river Potomac, thence verging towards the south unto the further bank of the said river, and following the same on the west and south unto a certain place called Cinquack, situate near the mouth of the said river,' &c. (*g*) To the full extent of this call for the right bank of the Potomac, (*h*) Maryland has always held; and under that holding, all the islands in the river have been granted by patents issuing from the land office or under legislative enactments, or titles derived from this state; (*i*) and the whole of the bed of the river, above tide, it is believed, has always been admitted to be rightfully parcel of the territory of Maryland. Whether the south, or the north branch should be considered as the true boundary has long been, and still is, a matter of controversy; but, before the revolution, many patents for lands, lying between the north, and south branches, were issued by the lord proprietary of Maryland. (*j*)

Hence I feel perfectly satisfied, that the Potomac, above tide,

(*f*) Vattel, b. 1. c. 22; The Twee Gebroeders, 3 Rob. Ad. Rep. 339; Wright v. Howard, 1 Cond. Chan. Rep. 95; Handly's lessee v. Anthony, 5 Wheat. 379, Landhold. Ass. 170.—(*g*) Chart. Maryland, s. 3.—(*h*) This mode of designating the sides of our long and winding rivers is much more generally accurate than that used in the Charter of Maryland, or than that of north or south, east or west, and has for its sanction the highest classical authority. The river is personified and supposed to be looking and moving towards its outlet, when its banks are on its right and left hand; and, in reference to that supposition, they are so designated accordingly. Thus Horace, speaking of the Tiber says:

'Illic dum se nimium querenti
Jactat ultorem, vagus et sinistra
Labitur ripa, Jove non probante,
uxorius amnis'—*Carm.* lib. 1. od. 2.

Gibbon says, 'If we inquire into the present state of those countries, we shall find, that on the *left hand* of the Danube,' &c. 1 Gibbon Decl. of Rom. Emp. 26. Phil. Ed. And again he says, 'He was deprived of the country on the *right* of the Tiber.' 5 ib. 170.—(*i*) 1822, ch. 54.—(*j*) Landhold. Ass. 173. Proce. Conven. Maryland, 30th October, 1776; Resolutions 1785, No. 1; 1795, No. 3; 1796, No. 5; 1801, No. 10; 1806, No. 10; Foster and Elam v. Neilson, 2 Peters, 307; 3 Jefferson's Correspondence, 347; Votes and Proc. H. Del. 24th January, 1824.