

The 1929 Annexation From Arlington by Alexandria

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Since 1792 Alexandria's boundaries have been enlarged nearly a dozen times at the expense of what is now Arlington County, but it was not until 1870 when city-county separation became effective that annexation by the City was detrimental to the interests of the County. Until then, taxes for county purposes continued to be levied within the city. Between 1870 and 1915 there were no substantial changes in the boundary between the two jurisdictions. In the latter year, however, a major transfer of territory took place.¹

The City's petition of 1911 had been dismissed in 1913 by the Judge of the special annexation court convened to hear the case. But upon appeal, the Supreme Court of Appeals overruled this decision and granted the annexation in part.² The City had sought 866 acres from Arlington County (then known as Alexandria County); the Court permitted the acquisition of some 500 acres from Arlington³ and about the same amount from Fairfax County. Major points cited by the Court as the reasons for reaching this decision were the overcrowded condition of the City, the need for the City to control the Hooff's Run drainage basin for purposes of proper sanitary sewage disposal, and the need to link the developing areas of the County adjacent to the City with the City street system. In other words, it accepted the City's contentions virtually *in toto* even though they were applied to a smaller area.

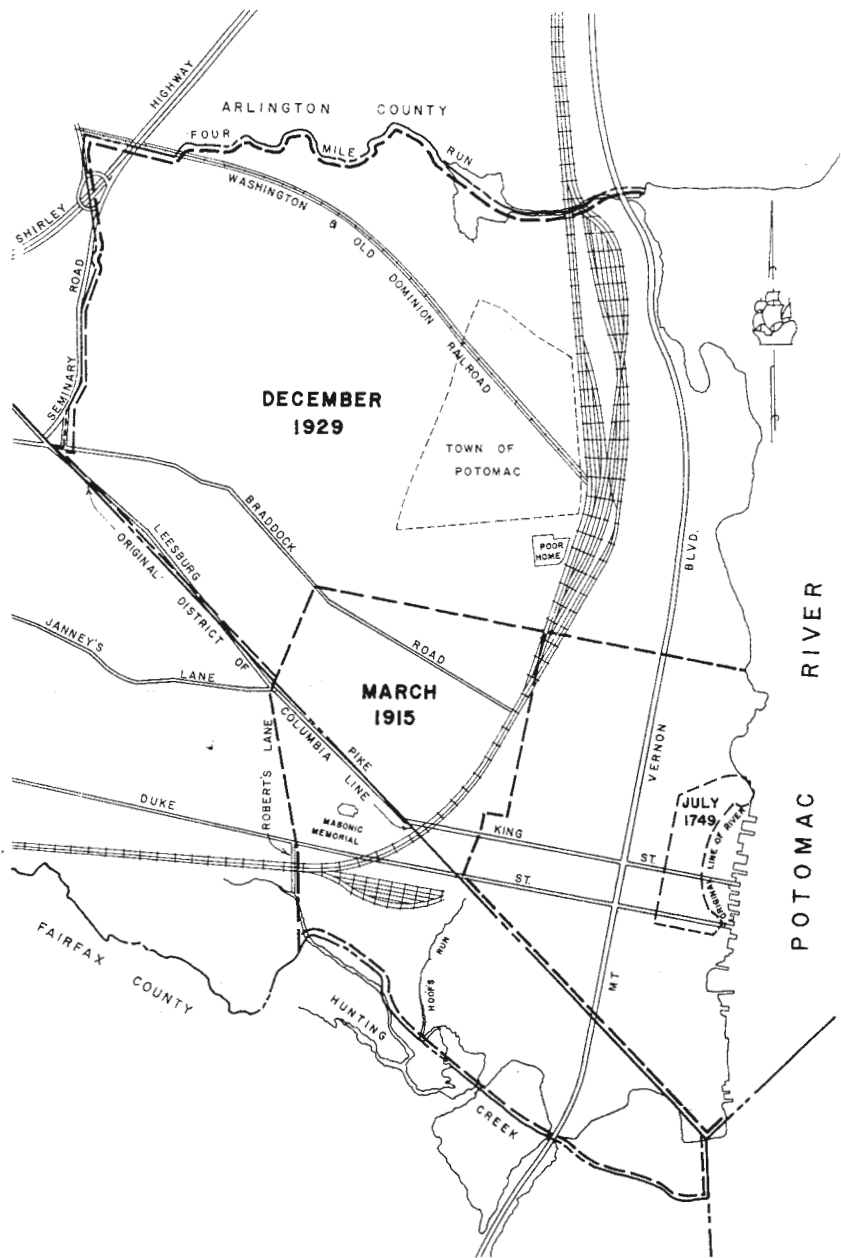
Alexandria was not satisfied with the half loaf which it had been given. Indeed, in the 1915 case, a member of the Alexandria City Council (A. D. Brockett) testified that he was opposed to the annexation petition on the

¹ *Arlington Historical Magazine*, Vol. 2, No. 4 (1964); "Annexation of a Portion of Arlington County by the City of Alexandria in 1915."

² *The City Council of Alexandria v. Alexandria County, et als.*, 117 Va. 230.

³ The original petition described the area to be annexed as running from the "north side of Lloyd's Lane to the Washington-Georgetown turnpike where it crosses the railroad tracks, then to the river and down the river" to the existing boundary. The Court order, reading in a reverse direction, simply extended the north line of the City westward thus cutting off all the area between that line and a line drawn to the River from the extension of the north line of Lloyd's Lane. The *Brief* mentions (p. 5) that the earlier annexation had covered "about 500 acres." In this respect *A History of the Boundaries of Arlington County, Virginia* (Office of the County Manager, Arlington, Virginia; 1967 (2nd Ed.)) is in error, crediting Alexandria with having gained the entire original request of 866 acres.

NOTE: This account is based largely on the *Brief on Behalf of Arlington County, in the Circuit Court of Arlington County, City Council of Alexandria vs. Board of Supervisors of Arlington County*; hereafter cited as *Brief*; and the Common Law Order Books of the Arlington Circuit Court (LOB).



Areas Annexed by the City of Alexandria in 1915 and 1929
 Drafted by W.B. Allison and B. Sims

ground that the area sought did not go far enough; if it had included territory up to Four Mile Run thereby taking in Potomac Yards, he would have voted for it. Only twelve years later, the Alexandria City Council adopted an annexation ordinance which formed a petition to annex not only the territory it had been denied in 1915 but over 2,000 acres more (2,584.32 acres all told). At the same time it sought additional area from Fairfax County.⁴

The Alexandria petition of October 18, 1927, was cast in the classic form—a form virtually prescribed by the statutes and the decisions of various annexation courts.⁵ The reasons stated for desiring the additional area were an echo of those pled earlier: the congested condition of the City, the superior service which the City could render the inhabitants of the area, the need to control the area for the purpose of providing an adequate sanitary sewerage system, and to improve the street and park systems.

Arlington County was represented by a galaxy of counsel. The then Commonwealth's Attorney, William C. Gloth, had associated with him Crandal Mackey, the crusading Commonwealth's Attorney whose election in 1903 had signaled the end of corrupt government in the County; Frank L. Ball, Commonwealth's Attorney between 1916 and 1924, then Senator in the General Assembly; Charles T. Jesse, former Delegate in the General Assembly and prominent Arlington lawyer; Walter U. Varney, member of the Council of the Town of Potomac within the County; and John S. Barbour, prominent attorney and State political figure.

The Governor designated Judge Don P. Halsey of the 6th Circuit (Lynchburg) and Judge Frederick W. Coleman of the 15th Circuit (Fredericksburg) to sit with the Judge of the Arlington Circuit Court, Samuel G. Brent, as an Annexation Court to hear the proceedings.⁶

Arlington's first major attack was on Brent. On December 15, 1927, the County served notice that it would apply for a writ of prohibition on the grounds that the Court had been improperly constituted and that Brent could not serve without bias. He had been one of the counsel for the City of Alexandria in the 1915 case; he was President of the Alexandria Na-

⁴ Fairfax capitulated without doing much more than going through the motions of a protest. On November 15, 1928, an order was entered in the Common Law Order Book of the Arlington Circuit Court incorporating the terms of an agreement reached by Alexandria and Fairfax under which the first received the territory it sought from the second. LOB 11, p. 566

⁵ For an informative discussion of annexation procedures, cf. Chester W. Bain, *Annexation in Virginia; the Use of the Judicial Process for Readjusting City-County Boundaries*; Charlottesville, 1966.

⁶ LOB 11, p. 145 (November 6, 1927). Under the terms of the statute, one Judge should be from a "remote" circuit (Lynchburg) and one from an "adjoining" circuit if the jurisdictions in controversy lay within the same circuit as was the instant case.

tional Bank; and his daughter (Mrs. D. Milton French) lived and owned property in the area sought to be annexed. Thus he had pecuniary interests in the outcome of the case. Brent had refused to disqualify himself saying that to do so would be "an act of moral cowardice." The writ was denied on the ground that the demurrer had been dismissed not by Brent but by the Annexation Court.

There was more legal maneuvering but late in December the Court began to hear evidence. The case was continued between January 6, 1928, and March 26, 1928, to permit Senator Frank L. Ball to attend the session of the General Assembly. More evidence was heard on several days in the Spring. Then, on May 6, Judge Brent died. On May 19, 1928, the Governor appointed Howard W. Smith, then Judge of the Corporation Court in Alexandria, to sit temporarily in the Court for the 16th Circuit (Arlington). (The appointment was made permanent on July 24, 1928.) Judge Smith disqualified himself as a member of the Annexation Court, and on September 8, 1928, the Governor appointed E. W. Hudgins of the 34th Circuit (Halifax-Chase City area) to sit in his place. On November 15, 1928, a motion by Arlington that in view of Judge Brent's death, all previously taken evidence should be suppressed, was granted.

The newly constituted Court began to hear the evidence again on November 21, 1928. It sat for six days in that month, five in December, seven in January, five in February, on March 1 and May 1. The Court made its decision on May 4 and entered an interlocutory decree to which Arlington excepted. The final order, containing a metes and bounds description of the area to be given to Alexandria and the terms of the financial settlement agreed upon by Alexandria and Arlington, was entered on June 12, 1929. The transfer was to become effective at midnight on December 31, 1929.⁷ Arlington again noted exceptions to all the terms of the order other than the financial agreement but apparently no appeal was perfected.

The *Brief* submitted by Arlington is a closely reasoned document. It answered the various allegations of Alexandria in detail. It denied that a crowded and congested condition of the City necessitated expansion of territory, and cited the existence of large undeveloped areas. It maintained that Alexandria had summoned very little evidence in support of its contention that the annexation was necessary to allow the City to plan for orderly development of streets and parks, and brought out that the County of Arlington had exercised subdivision control since 1914.

On the point of the need for sewage control, the County showed that ever since the Howell survey (1921) all sewers constructed in Arlington, whether public or private, had been done under the supervision of the County Engineer and so planned as to fit into an over-all sewerage system.

⁷ LOB 12, p. 293.

The Court was taken on a tour in which it saw sewers in the central part of the City in bad repair—this to support the contention that Alexandria did not have an adequate sewerage system even in the territory under its long-time control.

Testimony was given on the adequacy of various public services provided by the County: garbage disposal and scavenger service, police and fire protection, and street and highway lighting. A comparison was made between the Health Departments of the City and the County, and between their respective school systems. All of this makes interesting reading, drawing a colorful picture of the two communities at the time.

A petition with over 1,000 signatures opposing the proposed annexation had been presented. In arguing the propriety of the consideration of this petition from people in the area involved, the decision of the Supreme Court of Appeals in *Bennett v. Garrett* (132 Va. 397; decided June 15, 1922. At issue was the incorporation of Clarendon as a town within Arlington County) was cited: "The mere fact that a large number of residents of a county oppose the incorporation is a proper matter for the consideration of the court."

Main reliance, however, was placed by Arlington on its claim that Alexandria had not lived up to its declared intentions at the time of the 1915 case. Nothing had been done about a sewerage system in the Hooff's Run basin; no streets had been extended to link the annexed area with the City; (actually the railroad posed—and poses—a formidable barrier to such a project); and instead of developing parks and recreational areas the City had promptly (and illegally) sold one park area which it had gained.

Furthermore, it was argued that no benefits would accrue to the inhabitants of the area sought to be annexed were it to come under Alexandria jurisdiction, and that both the County and the inhabitants of the area involved would suffer positive injury if the transfer were allowed to take place.

As to the inhabitants: "It would increase their taxes and subject them to excise and special taxes to which they are not now subject; . . . [they] would be relegated to a strange political environment with a minority voice in a far less efficiently operated government with a far less healthy financial outlook, greatly to their detriment. It would deprive these inhabitants of the benefits of the highly efficient governing machinery in Arlington County which they have helped to foster and develop, and in which they take a natural pride; and, notably, the benefit of a better water system, a better sewerage system; a better school organization; a better health department; a fire department more nearly fitted to their present needs; and of an equally efficient police department, with no corresponding benefits."

The County at large would suffer, too. "The smallest County in the state will be deprived of eighteen percent of its available territory, and of the same proportion of its taxable values, and a like proportion of its revenues. It will practically destroy the smallest magisterial district in the County, by taking 65 percent of its territory, its population, its revenues. This in turn will throw the entire county system of government out of equilibrium by giving this small remnant of a small district with but one-seventh or one-eighth of the population, wealth, and territory of the county, equal voice with each of the other two districts thereof, though having less than half of the population, wealth, or territory of any of the others.

"It will paralyze in a large degree the most important experiment in local self-government by rural communities, which has been fostered by State laws and Constitutional amendments for fifteen years last past, and which now seems on the brink of success."

Nonetheless, the Court found it "necessary and expedient" for Alexandria to extend its boundaries over the disputed area. At this distance in time, and to the non-legal observer, it seems clear that the Court was less concerned with the health and well being of the County than in acceding to the wishes of Alexandria for aggrandizement. Perhaps such a result is inescapable in view of the way in which the annexation statutes are cast, and the body of court decisions which give more weight to the consideration of the "health" of a city than to the harm that will be done a county by the loss of what is usually its most populous and wealthiest area in which public improvements have been most fully developed.

Although there are references to the circumstance that the Potomac Yards of the Richmond, Fredericksburg and Potomac Railroad, largest freight marshalling yards in the East south of New York, lay within the area which Alexandria wanted, nowhere is it explicitly stated that this was the main motivation for the move. Yet the suspicion cannot be stilled that such was the case. In terms of direct revenue to the public treasury, the Yards were an important factor. They accounted for 451 acres or 1/6th of the area sought to be annexed. The assessed value of public utility tangible property in Jefferson District in 1928 was \$1,920,882; in the disputed area, \$1,420,374, probably almost all of it attributable to the Yards. The loss to the County, were this installation severed, is given as \$35,509. In addition, the Yards paid the County \$29,450 in taxes on capital. These were not negligible sums in a day when the total County revenue from all sources including State aid was \$866,832. As a source of employment, moreover, the Yards made a valuable contribution to the economic well being of the community within which they lay. This was, in fact, the prize that was being sought for so vigorously by both sides to the controversy. A fact which may have had some bearing on the outcome is that the prevailing assessment ratios imposed a heavier effective tax rate upon the Yards so long as they were in the County than would be imposed under City jurisdiction.

The to-be-annexed area also included the Town of Potomac, incorporated in 1908 despite the protests of the County Board of Supervisors. It adjoined the Yards, and was in some respects a "company" town. The Town Council vacillated in its position on the annexation. Initially, it adopted a resolution in favor. The sentiment of the people of the area, however, apparently was in opposition. None of the Council members was re-elected. The new Council adopted a resolution against the annexation. However, as the case dragged on, feeling changed again and this action was rescinded. In consequence, the answer filed by the Town was withdrawn, and Walter Varney, Counsel for the Town, was allowed to withdraw from the case.

The loss of nearly 2,600 acres, almost all of it from Jefferson Magisterial District, as a result of the decision was a severe blow to the County. Alexandria was forced to pay the County \$500,000 for the public improvements in the annexed area, and assume the outstanding debt of the Town of Potomac amounting to \$119,000. But the County lost its only High School, it was forced to build a new Health Center and a Fire Station, and its sewage treatment plans suffered a marked setback.

Moreover, the instruction that the boundary was to run in the middle of the channel of Four Mile Run created problems as the area on both sides of the stream began to be developed, and as the channel of the stream changed, partly through natural action and partly as the result of cooperative efforts by Arlington and Alexandria in the interests of flood control. Another chapter in the history of the Arlington-Alexandria boundary was written in 1965 when this portion was rectified by mutual agreement, following enabling legislation adopted by the General Assembly.⁸

The outrage felt by Arlington at the loss ("theft" would have been the popular term) of the large and valuable area given to Alexandria by the Annexation Court was reflected in the 1930 session of the General Assembly. The County's Legislative Delegation was able to secure passage of an Act which added a provision to the general law covering the extension of municipal boundaries to the effect that no part but only the whole of a county having an area of less than 30 square miles might be annexed.⁹ Moreover, the County Manager Act passed that year, under which the County Government was reorganized, contained a provision that no part of the County might be annexed, although the whole County might be following a referendum.¹⁰ Another general law was passed in 1938 which prevents the area of a County from being reduced below 60 square miles.¹¹

As matters stand at present, Arlington with less than 26 square miles, is safe from further incursions by the City of Alexandria.

⁸ *History of the Boundaries of Arlington County, Virginia*, p. 24.

⁹ Ch. 211, Acts of Assembly, 1930.

¹⁰ Ch. 167, Acts of Assembly, 1930.

¹¹ Ch. 22, Acts of Assembly, 1938.