Mr. President and Gentlemen of the Law Academy:

On looking over the long list of addresses delivered from time to time before your honorable and now venerable body, I was surprised to find that no one had attempted an examination of the Charter of Charles II to William Penn with a view of ascertaining the origin of its provisions, or of comparing them with those of other Colonial Charters, all of which, with the single exception of that of Georgia, were of earlier date. All public documents, expressive of political ventures or embodying plans of government, have, of course, a history, and their grants as well as limitations of power, if explored, can be traced to sources more or less remote. Such documents have an ancestry. However striking their characteristic features may be, they are never strictly singular; the marks of their relationship are apparent. Moreover, if their objects be similar and they follow each other at appreciable intervals, they display in their variations an enlargement of ideas, and a progressive scale of thought.
Genesis of the Charter of Pennsylvania.

The biographies of those particular instruments which have played a leading part in the establishment or development of our own institutions constitute an interesting as well as instructive chapter in a course of legal study. To Pennsylvanians none can be of more impressive importance than the Charter which passed the Great Seal on the 4th of March, 1681. It is my purpose to address you upon THE GENESIS OF THE CHARTER OF PENNSYLVANIA.

Let us consider the historical antecedents of the Charter. These belong to two distinct periods—the first being that of discovery, extending from 1496 to 1606; the second being that of Colonial grants, extending from 1606 to 1681, or, if Georgia be included, to 1732.

As to the first: English titles to the soil of America resulted from the right attaching to priority of discovery, the rights of the aborigines being regarded as those of mere occupants of the soil subordinate to the sovereignty of the discoverer. These principles, which soon became those of European polity supporting the right to enter upon and to cultivate savage and waste regions, are exhaustively discussed by Chief Justice Marshall in the case of Johnson v. McIntosh in a manner that leaves nothing of substance to be added by either historian or jurist. The question is also fully discussed by the Supreme Court of Pennsylvania in Thompson v. Johnston.

The English claim was based upon the discoveries of John Cabot, in 1498, on his second voyage, extending from New Foundland to Florida. The claim was kept alive in the reign of Elizabeth by the ill-starred efforts

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1 8 Wheaton 543. In his opinion, Marshall compresses the results of his profound studies of English discovery and colonization, which are embodied in the first volume of his six volumed Life of Washington. See also Story's Commentaries on the Constitution Vol. I, Chapter 1.
2 6 Binney, 68. See particularly the opinion of Justice Brackenridge.
of Sir Humphrey Gilbert, and of Sir. Walter Raleigh, the latter succeeding in giving the name of Virginia—in honor of the Virgin Queen—to an indeterminate territory co-extensive with the range of discovery.

Let us now turn to the Colonial Charters. I shall analyze such of these documents as are pertinent in the order of their date, and invite your attention to their salient features, because you will find in them, either by way of differences or as displaying a substantial identity of matter, the elements of the grant to William Penn.

The first Charter that took root was granted upon petition by James I, in 1606, to Sir Thomas Gates and numerous associates. Two colonizing companies were provided for, the first organized in London, the second in Plymouth, England. The London colony reached the shores of the James River in the year following the grant, but the Plymouth Company did not establish a colony until 1628, and then did so under the auspices of a new Charter to the Duke of Lenox in 1620. Care must be taken not to confuse this colony with the Pilgrim settlement at Plymouth, Massachusetts.

The first draft of the Charter, accompanying the petition of Gates, was probably drawn by Sir John Popham, Lord Chief Justice, but the final form was the work of Sir Edward Coke, as Attorney-General, and Sir John Dodderidge, as Solicitor-General.

It so happened that certain English refugees, who had been harboring in Holland for eight years, a band of noble though narrow zealots known to history as the Pilgrims, without the precaution of a charter, and without a proper territorial grant from the Plymouth Company, reached Cape Cod, through a mistake in reckoning on the part of their skipper, instead of the mouth of the Hudson River as had been intended. This was in December 1620. They entered the theatre of American affairs without reserved seats, but finding no one to challenge their presence they took what they chose, and subsequently obtained the consent of the manager to the retention of their places by securing a patent from the Plymouth Company in 1629, a patent, however, which was never confirmed by the Crown. They arranged their own affairs under the celebrated compact signed in the Cabin of the Mayflower.
By this time there were four charters outstanding, three for the territory of Virginia proper, and the fourth for what was thenceforth known as New England. The first provided for the colonies to be planted respectively by the London and Plymouth Companies. Each colony was to have a local Council of thirteen persons, appointed and removable by the Crown, to govern all matters arising within the colonies according to such instructions as should be prescribed by the King in Council. Each was to have a separate seal, but the local Councils were subject to the superior management and direction of a single English Council of thirteen appointed by the Crown, to be called "our Council of Virginia". The Colonies were given the right to mine for gold, silver and copper, yielding 1/5 of the gold and silver and 1/15 of the copper to the Crown; also the right to coin money for current traffic with the natives; to wage defensive war by land or sea; to take strange vessels found in harbors; to transport goods, armor, munitions, furniture, apparel and food out of England and Ireland for seven years without customs, subsidy or duty to the Crown; to have and enjoy all liberties, franchises and immunities as if abiding in England; and, finally, upon the nomination and assignment of the local Council to chosen individuals, to give and grant lands and tenements to be holden of the Crown as of "our Manor of East Greenwich, in the County of Kent, in free and common soccage only, and not in capite.\(^1\)

Perplexities ensued as to the character and permanency of these rights. The test of experience under strange conditions developed defects not foreseen. A

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second charter followed in 1609, designed as "an enlargement and explanation of the former grant of privileges and liberties." All ranks and conditions in life from great Earls to fishmongers and from Lord-Bishops to basket-makers, and all kinds of trading companies from those of weavers, salters and dyers to paint-stainers, cooks, and coopers, whether they went in their proper persons to be planters, or whether they went not, but adventured their monies or goods, were associated as one body to have perpetual succession and one common seal for themselves and their successors under the name of "The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia." The grant was now specifically to a corporation, and all of the privileges previously given to individuals were bestowed upon the corporation with an enlargement of trade privileges for 21 years. The corporate management was held firmly in the grip of the Crown. The local Councils in Virginia were abolished and their officers supplanted by the establishment in England of "one Council perpetually here resident," the fifty-three members of which as well as their Treasurer were named by the King in the Charter itself. Their successors were to be chosen out of the Company of adventurers by the voice of the greater part in their assembly for that purpose, and every newly elected Councillor was presented to the Lord Chancellor, the Lord High Treasurer or to the Lord Chamberlain to take his oath as a Counsellor of the Crown. This English resident Council was to nominate, confirm, or discharge all Governors, officers and Ministers needful to be used for the government of the Colony, and also to make all fit and

1 This was drawn in the first instance by Sir Edwin Sandys, but finally corrected by Sir Henry Hobart as Attorney-General, and Sir Francis Bacon as Solicitor-General.

necessary laws, instructions, forms and ceremonies of government and magistracy. Upon the arrival of the so chosen royal governor in Virginia, all laws and constitutions formerly made were to cease utterly and be determined. Before an emigrant was permitted to pass, an oath of supremacy was exacted so as to guard the Christian religion against the superstitions of the Church of Rome.¹

A third Charter followed in 1611–12. The principal changes were: a limitation of the territory of the “First Colony in Virginia” to a distance of two hundred miles North from Point Comfort, and from said Point Southward two hundred miles, and an extension of jurisdiction over certain islands now known as the Bermudas. Certain Bishops and Earls were by name admitted to the Company: a working quorum of the Council was fixed at twenty, which was declared to be a “sufficient Court”: there were to be four general Courts a year, with authority to manage the affairs of the Company and to make such laws and ordinances as should be thought requisite, so always, as the same be not contrary to the laws and statutes of the realm; the power was given to expel from the colony outlaws and disorderly persons, and to license lotteries with proper prizes for the advancement of the province.²

These three Charters taken together present the original conception of James I and of his greatly renowned law officers of the proper method of establishing a colony and of ruling a royal province. They had no precedents and no experience to guide them. Dr. Robertson, the famous author of the History of Charles V, in his long forgotten, but at one time most important, History of America, has remarked: “By placing the whole legislative and executive powers in a Council nominated by the Crown and guided by its instructions,

every person settling in America seems to have been bereaved of the noblest privileges of a freeman." The blackness of the picture was relieved by a gleam of light. The colony had been increasing, and the spirit of its members rose with their numbers. There was a clause in the first Charter that the colonists were to enjoy all liberties, franchises and immunities as if abiding in England, and the settlers grew impatient for what they had enjoyed in their native land. Twelve years of restraint quickened resistance. To quiet this uneasiness Sir George Yeardley, the royal governor, in 1619, sanctioned the formation of a quasi popular domestic assembly to regulate internal concerns, and permitted it to assume legislative functions, and "thus was formed and established the first representative legislature that ever sat in America."

Yeardley's concessions were afterwards recognized and buttressed by an Ordinance of the resident English Council, dated July 24, 1621. It was declared that to prevent injustice the Council had thought fit to make an "entrance". Two Supreme Councils in Virginia were established: the Council of State, to assist the Governor with care, advice, and circumspection, the members of which were chosen or displaced by the English Council; and the General Assembly, to be summoned by the Governor once a year, and once only, except for very extraordinary occasions, consisting of the Council of State, and of two burgesses for every town, hundred or other particular plantation, to be chosen respectively by the inhabitants, all matters to be determined by the majority of voices present, reserving to the Governor a negative voice. This Assembly had power to make and enact such general laws as appeared necessary for the behoof of the Colony, as near

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1 Robertson's History of America; Book 9.
3 Thorpe's American Charters, Vol. 7, p. 3810.
as might be in accordance with the laws, customs and manner of trial and other administration of justice prevailing in England. All such laws and ordinances were to be ratified and confirmed in a General Court of the Company in England; and when once the government had been settled in this manner, no orders of Court should afterwards bind the Colony, unless ratified in like manner in the General Assemblies.¹

We now turn to the Northern Charters. Although in strictness the two first of the Virginia Charters in terms extended to what became New England soil, yet owing to the misadventures and delays of the Plymouth Colony, their provisions never prevailed there. In November 1620, while the Pilgrims in the Mayflower were still at sea, James I became "graciously pleased" to assign distinct limits to his separate colonies. He cut off New England from Virginia, and, in effect abrogated the rights of Sir Thomas Gates and his associates in the Plymouth Company, by a new grant for Northern territory to the Duke of Lenox and forty associates whom by their proper names he incorporated with the usual features of perpetual succession, a common seal, the right to sue and be sued under a corporate name.² The new Council was empowered to choose its own President and fill vacancies subject to the approval of the Crown expressed through the Privy Council; to ordain all ordinances for the government of the Colony not contrary to the laws or statutes of the realm; to exercise martial law in case of rebellion; to correct, punish or pardon offenders; to mine for precious metals, to trade with the Mother country as a corporation, all subjects being forbidden to engage therein except with the license of the Council. Lands were to be held of the Crown in free and common soccage, and

¹ Thorpe's American Charters, Vol. 7, pp. 3810-11-12.
² Thorpe's Colonial Charters, Vol. 3, p. 1830. See also MacDonald's Select Charters, p. 23.
not in capite, yielding a fifth part of gold and silver ore; the colony was to be purged of lewd and mischievous persons, and the declaration was made that all inhabitants of the colony and their children should enjoy all liberties, franchises and immunities as if abiding in England.

In all this there was not a trace of local self-government. In 1629 an additional Charter was obtained from Charles I, which in effect was a confirmation of a special grant, made by the Council at Plymouth, under the Lenox Charter of 1620, to Sir Henry Rosewell and others for a limited territory upon the tenure of free and common soccage and not in capite or by Knight's service. Rosewell and his associates were created a body politic under the name of "The Governor and Company of Mattachusetts [sic] Bay in New England" with the usual corporate powers. There was to be one Governor, and deputy governor named by the Crown, with eighteen assistants elected and chosen out of the freemen of the Company, organized as a general Court to be held four times a year for the handling and despatch of business, to make laws and ordinances not contrary to the laws of the realm. The influence of the Crown was exerted through the concentration of authority in a surprisingly small working quorum of the General Court, which, as fixed, consisted of the Governor, his deputy and six assistants. As no place had been designated by the Charter for the meetings of this Court, it was boldly set up in the Colony itself.

Such were the origins and political organizations of the primitive Colonies North and South. The picture presented is that of royal provinces or civil corporations, managed through officials designated by the Crown, but checked in action by extemporized popular elements. Imperial control in reality could not exist, for neither the laws of the Assemblies, nor the judg-
ments of the Colonial Courts were subject to revision. This is the first phase.

We now enter upon the second phase. With the succession of Charles I to the throne the colonial policy of the Crown underwent a remarkable change. The powers so grudgingly bestowed by James I on companies were now lavishly if not recklessly squandered. The control of a royally appointed Council was discarded, and the burden of organizing governments was put upon the shoulders of single individuals. The purpose was to encourage private enterprises creating great feudatory principalities, with ecclesiastical as well as civil features darkened by the frowns of castles and forts and the erection of manorial Courts to exercise ancient baronial rights. The provincial proprietors were autocrats in a strict sense, saving only their allegiance to the Crown, and the avoidance of repugnancy to the laws of England in the ordinances they were empowered to make. The earliest illustration of a patent of this kind is to be found in November 1629.¹

The President and Council of New England executed an Indenture of two parts between themselves and Captain John Mason, a matriculate of Oxford, who had reclaimed the Hebrides and been a Governor of Newfoundland and later a Vice-admiral of New England, a zealous churchman and royalist, and a Crown favorite. The Indenture recited the Charter of 1620 to the Duke of Lenox and conveyed to Mason, his heirs and assigns forever, a tract on the Merrimack River extending to the Piscataqua which he intended to call New Hampshire. The tenure was in free and common socage and not in capite, to be holden of the Crown, yielding and paying 1/5th of gold and silver to the Crown in lieu of all other services and demands, and also yielding yearly 5 English shillings to the Council.

¹ Thorpe's Colonial Charters, Vol. 4, p. 2433.
The Council covenanted with Mason and his heirs for seisin, for quiet and peaceable enjoyment, for further assurance and general warranty. Mason covenanted for the payment of the royalties, and also for the establishment and continuance of such government as might be agreeable as near as may be to the laws and customs of England. He stipulated that if he should be charged with neglect of duty that he would reform the same according to the discretion of the President and Council, or in default thereof, it should be lawful for any of the aggrieved inhabitants, being tenants upon said lands, to appeal to the Chief Court of Justice of the said President and Council. This was followed in April, 1635, by a second grant to Mason, his heirs and assigns, of new territory including the Isles of Shoals "to be holden to the Council and their successors per gladium committatis (by the sword of a Knight) that is to say by finding four able men conveniently armed and arrayed for the war to attend upon the Governor of New England for the public service thereof within 14 days after warning given." What was still more remarkable, "power of judicature in all causes and matters whatsoever as well criminal, capital, and civil, arising or which may hereafter arise" was "to be exercised and executed according to the laws of England as near as may be by the said Captain Mason his heirs and assigns or his or their deputies, judges, stewards or officers, saving to the Council the power to hear, receive and determine the appeals of every person dwelling in the territory from all judgments and sentences."

This was followed in the same month and year by a Lease made by the Council to one John Wollaston, his executors and assigns, for a term of three thousand years without impeachment of waste either as to mines or timber, and this lease was assigned, with the ap-
proval of the Council, almost immediately by Wollaston to Mason.¹

You have now before you the original types of the three classes of Charters and patents, provincial, charter, and proprietary into which the royal grants have been divided by publicists; the first class being represented by the Virginia charters; the second by that to Massachusetts Bay, and the third by that to Mason. Amid the shadows of the past, you can perceive the material out of which the Charter to Penn was framed, gradually taking shape.

There next followed on the 20th of June, 1632, a Charter to Cecil Calvert, Baron of Baltimore, his heirs and assigns, for an irregularly bounded province named Maryland, after the Queen Henrietta Maria, a daughter of Henry of Navarre.² For a fifth part of all gold and silver ore, and two Indian arrows, to be delivered each year at the Castle of Windsor, the Baron found himself tenant in fee simple, upon the tenure of free and common socage, by fealty only for all services, and not in capite or Knight’s service, with the right and power of subinfeudation, the statute of quia emptores terrarum notwithstanding, not only of the soil with all woods, river and other water rights, and of fisheries of every kind as well as of whales, sturgeons and other royal fish, and of veins, mines, and quarries of precious stones, but furthermore of the patronage and advowsons of all churches within the region which shall happen to be built, together with the

¹ It may be said in passing that the covenants on both sides were broken, Mason, after trial and expense, succumbed to the force of circumstances and compensation to his heir—a grandson—was not made until 1680.

² Thorpe’s Colonial Charters, Vol. 3, p. 1677. It is a document drawn with noticeable skill and clearness divided into 23 sections. It was the work of Sir Robert Heath, and Sir William Noy, the latter the author and advocate of “ship money” which with other grievances cost Charles his throne and head.
license and faculty of founding and erecting churches, chapels and places of worship, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of England, with as ample rights, and royal liberties and temporal franchises whatsoever by sea as by land as had been exercised at any time, or enjoyed by any Bishop of Durham, within the Bishoprick or County Palatine of Durham in the Kingdom of England.

"For the good and happy government of the said province, free, full and absolute power" was given to Baltimore and his heirs "to ordain, make and enact laws of what kind soever, according to their sound discretion, whether relating to the public state of the province, or the private utility of individuals, by and with the advice, assent and approbation of the freemen of the same province, or the greater part of them, or of their delegates or deputies, whom We will shall be called together for the framing of laws, when and as often as need shall require by the Baron of Baltimore and his heirs, and in the form which shall seem best to him or to them." The restraint of a popular assembly, however, was suspended or qualified by the provision that, as it might well happen that the freeholders could not be summoned, "neither will it be fit that so great a number of people should immediately on such emergent occasion be called together", power was given to the grantee and his heirs to make "fit and wholesome ordinances from time to time," provided such ordinances were reasonable and agreeable to the laws of England, and did not extend to taking away the rights of persons in member, life, freehold or chattels. Power was given to constitute and appoint judges, justices, magistrates and officers in such form as to the Baron seemed fitting, and to remit, release, pardon and abolish all crimes and offences against the laws. There was license given to build forts and
castles and places of strength, to trade freely and to import and unload goods and merchandise from England and Ireland, saving subsidies and customs due to the Crown; to establish ports and harbors, and places of discharge, with the right to take tolls; to capture and vanquish enemies and pirates; to exercise martial law; to confer favors and honors upon inhabitants of the province, and to adorn them with titles and dignities; to erect and incorporate towns into boroughs, and boroughs into cities; to erect manors with courts baron, and view of frank-pledges for the conservation of the peace. All inhabitants and their children born in the province were to enjoy the privileges of Englishmen. It was nowhere required that the statutes passed by the freemen should be approved of by the Crown; there was no appeal to the Courts of the Mother country from the judgment of the Courts of the Colony; but—and this is a unique feature—there was an express royal covenant, that the King, his heirs and successors, "at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs, or other taxations, quotas, or contributions whatsoever upon the goods, lands, or merchandise within the province, or within the ports and harbors." Finally, all doubts in the interpretation of the Charter were to be resolved by the King's Courts in favor of the grantee. The Maryland Charter represents the height of the second phase.

In 1639 a Charter was granted to Sir Ferdinando Gorges, who had long been interested in American colonization, for the province of Maine, clearly copied from the Maryland Charter in its substantial provi-
sions, but set forth with greater pomp of language and amplitude of expression.¹

There was the same tenure and freedom from the provisions of the statute of quia emptores terrarum.

The same is true of the Charters of 1663 and 1665 to the Earl of Clarendon, then Lord Chancellor, and to his several associates for the province of the Carolinas.² The robust style of the Chancellor is visible in the strokes of his hand upon his charters, but substantially they were but replicas of the Maryland and Maine grants.

In 1669, the great philosopher John Locke, author of the Essay on the Human Understanding and immortal as the exponent of the true doctrines of Civil Liberty, through a strange perversion of his powers and aided by the ill-fated Earl of Shaftesbury, to whom he was then Secretary, undertook in a document entitled The Fundamental Constitutions of Carolina to define the royalties, properties, jurisdictions and privileges of a county palatine, as large and ample as the county palatine of Durham, which had been declared to be the measure of the rights granted in the proprietary charters just reviewed.³

The purpose was expressly stated to be that "the government of this province may be made most agreeable to the monarchy under which we live * * * and that we may avoid creating a numerous democracy." There were eight proprietors. The eldest was to be palatine; on his death the eldest of the seven survivors should always succeed him. There were to be seven chief offices, each held by a proprietor, and, at first, assigned by lot; on vacancy from death, the eldest proprietor should have his choice of the place. The province was divided into counties, each county had eight

² Ibid., Vol. 5, pp. 2743–2761.
³ Ibid., Vol. 5, p. 2772.
signories, eight baronies and four precincts. There should be as many landgraves or earls as there were counties, and twice as many cassiques or barons and no more. These constituted the hereditary nobility of the province, and by right of dignity they were to be members of the provincial parliament. This parliament was to consist of the proprietors, the nobility and of the representatives of the freeholders to be chosen by precincts who were clearly in a perpetual minority. They were to sit together in one room, and every member had but one vote. No one could be chosen a member unless he had five hundred acres of land within the precinct, and no freeholder could vote for a member unless he had fifty acres. No business was to be proposed until it had been debated in the grand council, consisting of the proprietors and forty-two counsellors, whose duty it was to prepare bills. There were six counsellors attached to each of the seven proprietors other than the palatine and they were to be chosen by the colleges, seven in number, consisting of six members, chosen out of the landgraves and the cassiques. No act was of force longer than until the next biennial meeting of the parliament, unless ratified by the palatine and a quorum of the proprietors. All laws were to become void at the end of a century without any formal repeal, and "since multiplicity of comments, as well as of laws have great inconveniences, and serve only to obscure and to perplex, all manner of comments and expositions on any part of these fundamental constitutions, or any part of the Common or Statute law of Carolina, are absolutely prohibited." The Church of England was alone allowed public maintenance, but every congregation might tax its own members for the support of its own minister. Every male of seventeen years of age was to declare himself to be of some church, his declaration to be recorded; otherwise he was not to have the benefit of the laws. There was to be a public
registry of all deeds and conveyances, but no man was to have an estate or a habitation who did not acknowledge a God, and that God was to be publicly worshipped. Every freeman was to have absolute power and authority over his slaves. No civil or criminal cause was to be tried but by a jury of the peers of the party, but the verdict of the majority was binding. "These Fundamental Constitutions, in number one hundred and twenty, and every part thereof, shall be and remain the sacred and unalterable form and rule of government for Carolina forever."

We now enter the third phase. We again turn our eyes to the North and observe a sudden switch in policy, due, doubtless, to the peculiar conditions existing in New England fostered by the regicides. In the same year (1662) as the first Carolina Charter, Charles II granted a Charter to the colony of Connecticut, and in the next year he granted one to Rhode Island. Both were made civil corporations with the usual franchises, with which we are familiar from the second Virginia and the Massachusetts grants. They contained the same provisions as to soil, tenure, trading privileges, mines, fisheries, and offensive and defensive rights, but reading as they do, apart from their formal provisions, like noble essays upon civil and religious freedom it is sufficient to quote Palfrey that "all that Massachusetts had given displeasure by claiming for herself was now expressly allowed to the new colony," and Bancroft, who says, "It confirmed to the colonists the unqualified power to govern themselves, which they had assumed from the beginning. Nothing was changed in their internal administration, nor in their relation to the Crown * * * * The King, far from reserving a negative on their laws, did not even require that they should be transmitted for his inspection, and

1 They lasted barely twenty-four years.
no provision was made for the interference of the English government in any Court whatever. Connecticut was independent except in name.” As to Rhode Island, it has been said by Bancroft: “This charter of government constituting, as it then seemed, a pure democracy, and establishing a political system which few beside the Rhode Islanders themselves believed to be practical, remained in existence till it became the oldest constitutional charter in the world.” Of both of them, the Tory historian Chalmers remarks: “There was established in Rhode Island and Connecticut a mere democracy or rule of the people. Every power, as well deliberative as active, was invested in the freemen of the corporation or their delegates; and the supreme executive magistrate of the Empire, by an inattention which does little honor to the statesmen of those days, was wholly excluded.”

And now, in order of time, the Duke of York appeared upon the stage. His entrance was by virtue of a patent, dated March 12th, 1664, made by Charles II unto his “dearest brother James, Duke of York, his heirs and assigns,” for that part of Maine, next to New Scotland or Novia Scotia, for Long Island, for the mainland between the Hudson and Connecticut rivers, and “all the land from the West side of Connecticut to the East side of Delaware Bay.” To explain his appearance, it will be necessary to go back in point of time. Following the discoveries between 1609 and 1631 of Hudson, Mey and DeVries, all in the employ of the Dutch East Company, Dutch Colonies were established on both shores of the Delaware river, at the mouth of the Hudson river, and as far North as Albany. In 1638 the Swedes established themselves upon the Delaware. In 1655, they were overthrown by the Dutch under Peter Stuyvesant operating from New Amster-

dam, or New Netherlands. Charles II, after his restoration, disputed the right of the Dutch to make any settlement in America, as the territory was unquestionably within the chartered limits of New England granted to the Council of Plymouth. In assertion of his rights, he made the grant to his brother. The Duke, in September 1664, in order to take possession, surprised the Dutch at New Amsterdam by the sudden appearance of an armament, and all the Dutch colonies fell to English arms, on the Delaware as well as upon the Hudson. Three years later, by the treaty of Breda, the English occupation was confirmed, and New Netherlands became New York. Upon the renewal of the war between England and Holland, New York was retaken by the Dutch, and a general act of confiscation was passed, including in its scope property of the King and of the Duke of York, but the treaty of Westminster in 1674, providing for a mutual restoration of conquests, re-established the English control. As the validity of the original grant to the Duke of York, while the Dutch were in peaceable possession of the country, was questionable, and as both grantor and grantee had been subsequently dispossessed, a second grant was made by Charles to the Duke on the 29th of June 1674.¹

Notwithstanding his defects of title, and even before he had taken actual possession, the Duke, in June 1664, by deed of lease and release to Lord Berkeley and Sir George Carteret, both of whom had been interested in the Carolinas, granted the territory named Nova

¹The authorities for the above chain of events are to be found in the following works: For both grants to the Duke of York see Thorpe's Colonial Charters Vol. 3, pp. 1637-1643; also MacDonald's Select Charters, pp. 137-139. Story on the Constitution, Vol. 1, Chap. X, pp. 98-100. For Dutch and Swedish settlements on the Delaware, see Sergeant's Land Law of Pennsylvania, Chapter 1; and in particular, for full details see Historical Notes by Benjamin M. Nead, in the Appendix B, pp. 413-464, to the Duke of York's Book of Laws, published by the State of Pennsylvania, Harrisburg, 1879.
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Caesarea or New Jersey. The new proprietors made concessions and agreements with present and future adventurers. The territory granted to Berkeley and Carteret had not been divided. In March 1674, Berkeley conveyed his undivided moiety to John Fenwick, a Quaker, in trust for Edward Byllynge. On July 29th, 1674, the Duke of York, under the second grant of the Crown of the same date, confirmed the original grant to Carteret, and made partition, assigning to Carteret the Eastern half. Shortly after the conveyance to Fenwick as trustee for Byllynge, a dispute arose between trustee and cestui que trust as to their respective interests. The controversy was referred to William Penn as arbitrator, who awarded one-tenth to Fenwick, and nine-tenths to Byllynge. Byllynge then failed, and his interest was assigned to Penn and two others as trustees for the benefit of creditors. Fenwick's share was leased for one thousand years to John Eldridge and Edmond Warner, who assigned to Penn and his associates to enable them to re-adjust the partition with Carteret, which had been objected to as inequitable. A Quintipartite deed, dated July 11, 1676, was executed, and confirmed by the Duke of York, in 1680. A protracted controversy arose, with which we are not concerned. It is interesting, however, to note that certain Concessions and agreements, entered into, in 1676–7, between the Proprietors, freeholders and inhabitants of the province of West New Jersey, were largely the work of William Penn, and constituted the basis, in his own mind, of the Concessions and Agreements made by him in his own Frame of Government, preceding the "Laws agreed upon in England."

You now have William Penn fairly introduced to

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1 Thorpe's Colonial Charters, Vol. 5, pp. 2533-2548.
MacDonald's Select Charters, pp. 139-147.

2 For the foregoing analysis of complicated transactions, I have followed MacDonald—Select Charters, pp. 171-72.
the scene. Aside from his interest in Colonial affairs due to his participation in the controversy over West New Jersey, he had a claim against the Crown for £16000 inherited from his father Admiral Penn for cash advances and services. Among the Proceedings of the Lords of the Committee of His Majesty’s most honorable Privy Council for the Affairs of Trade and the Plantations it appears that on the 14th of June, 1680, the Petition of William Penn was read, praying, in consideration of debts due to him or his father, from the Crown, to grant him Letters Patent for a Tract of Land in America, lying North of Maryland; on the East bounded with Delaware river, on the West limited as Maryland, and Northward to extend as far as plantable. Whereupon Mr. Penn was called in and asked what extent of land Northerly would satisfy him. He answered three degrees, and that he was willing for such a grant to remit his debt, or some part of it, and to stay for the remainder until his Majesty be in a better condition to satisfy it.¹

It was ordered that "copies of the petition be sent unto Sir John Werden, in behalf of His Royal Highness, and unto the agents of the Lord Baltimore, to the end they may report how far the Pretentions of Mr. Penn may consist with the Boundaries of Maryland, or the Duke’s Propriety of New York, and his Possessions in those Parts." At the next meeting of the Committee, June 25th, Mr. Penn was called in and told that it had been protested by Sir John that part of the territory he desired was already possessed by the Duke of York, and that he must apply himself to his Royal Highness. Lord Baltimore’s objections being stated, Penn agreed that Sasquehanna Fort should be regarded

as to boundary, and declared that he was ready to submit to any restraint their Lordships should propose as to the furnishing of arms and ammunition to the Indians.

Six subsequent meetings took place; a draft of Penn's patent was presented which was observed upon by the Attorney General, Sir Creswell Levinz. The Agents of the Duke and of Lord Baltimore were twice in attendance, and a voluminous correspondence ensued between the dates of June 14th and 16th of December. Lord Baltimore filed exceptions, and was finally summoned to appear by agent before the Lords who wished "to discourse" concerning them. In January, 1681, the boundaries were settled by Lord Chief Justice North. Later, the draft of the Patent being read, it was again committed to Lord North "to provide, by fit clauses that all acts of sovereignty, as to Peace and War, be reserved unto the King; that all acts of Parliament, concerning Trade and Navigation, and his Majesty's customs, be duly observed, and in general, that the Patent be so drawn that it may consist with the King's interest and service, and give sufficient encouragement to Planters to settle under it." A paper was also read, wherein the Lord Bishop of London desired that Mr. Penn be obliged by his Patent to admit a chaplain of his Lordship's appointment, upon the request of any number of planters. This letter was referred to the Lord Chief Justice, who allowed the claim. Later, the Attorney General reported that he had considered the petition of Mr. Penn, that he did not find that the boundaries as settled by the Lord Chief Justice intrenched on the province of Maryland; that the Patent of the Duke of York, being bounded Westward by the East side of Delaware Bay was sufficiently dis-

1 These were significant instructions, and led, as will be seen, to the insertion of restrictive provisions theretofore unknown.
tunguished from the grant desired by Mr. Penn, which
was bounded Eastwardly by Delaware Bay or river,
so that the tract desired by Penn seemed to be undis-
pensed of by the Crown, "except the imaginary lines of
New England patents which are bounded Westerly by
the main ocean, should give them a Recal, though im-
practicable to all those vast territories."

The Attorney General also called attention to the
existence of several Dutch and Swedish plantations
which were under the English government, lying scat-
tered on the Westward of the Delaware river, and some
of them perhaps within the bounds of Mr. Penn's pe-
tition, and have, for a long time, either acknowledged
the protection of his Royal Highness who took them
from the Dutch, upon the conquest of New York, or by
Lord Baltimore, near whose borders they were settled,
and how far Mr. Penn's grant may, in this consider-
atation, concern his neighbors, was most humbly sub-
mitted to their Lordships.

Finally, on the 24th of February, 1681, the Patent
was approved by the Privy Council, and a blank being
left for the name of the province, their Lordships
agreed to leave the nomination of it to the King.

The Patent passed the Privy Seal at the Palace of
Westminster the 28th day of February, and the Great
Seal on the 4th of March 1681 (N.S.). There are some
slight variations between the Patents in the Recor-
Office for Chancery Bills, but, as noted by the late Brin-
ton Coxe, Esq., President in 1878 of The Historical Society of Pennsylvania, they are purely clerical.

I now exhibit to you a certified Copy of The Charter as it remains in Bundle 388 of The Privy Seals and Signed Bills (Chancery) 33 Charles the Second, obtained 40 years ago by Mr. Coxe. It contains the following endorsement, which does not appear in the printed copies of the Charter.

"Charles the Second by the Grace of God King of England Scotland France and Ireland Defend' of the Faith etc. To our Right Trusty and Well-beloved Councillor Heneage Lord Finch our Chancellor of England Greeting: We will and Command you that under our Great Seal of England remaining in your custody you cause Letters to be forth Patents in form following."

I also show you a lithographic photographic copy of the engrossed Charter as delivered to Penn, the original of which is in the State Department at Harrisburg, Pa.

Before I present an analysis of the Charter, I must emphasize the important and interesting fact that taken in its entirety Penn's Charter marks the fourth phase of the Colonial policy of the Crown. The time and care expended upon its preparation were unusual. In response to the express wishes of the Privy Council, the Lord Chief Justice and the Attorney General were diligent in their efforts to restrain the excessive and imprudent liberality of former grants. The restraints which they imposed put Pennsylvania upon a basis totally different from that on which the other Charters

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1 Heneage Finch, the Lord Chancellor who attached the Great Seal to the Charter, subsequently became renowned as the Earl of Nottingham, "the Father of Equity." See an ample sketch of his career in A Biographical Dictionary of the Judges of England from the Conquest to the Present Time: 1066-1870—by Edward Foss: of the Inner Temple.
rested. They brought Pennsylvania into closer relations with the Crown, and inaugurated a policy subsequently developed as to all the previous Charters by William and Mary in 1696, which in time culminated in the American Revolution. The era of decentralization was over. The era of attempted centralization of royal authority over the colonies had begun. The pendulum was to swing from the early laxity of Charles towards what recent students have regarded as a rational control of Colonial affairs, which, had it been moderated, might have been successful and lasting, but which was carried to such a pitch by George III as to result in the final independence of the Colonies.

And now for an examination of the Charter itself.

Neither the engrossed original nor the certified copy from the Public Records of the Chancery in England disclose any subdivisions of the document. It is written throughout continuously, without paragraphs. Hence those printed copies which make a merit of exact conformity to the original are difficult to read, and rather repel than invite perusal. Benjamin Franklin, with his usual good sense, has subdivided it into twenty-three sections, and presented it in intelligible and attractive form in his official publication in 1752 of the Votes of The House of Representatives of the Province of Pennsylvania. Judicial opinions in their references since that time have generally followed this arrangement.

The document may be viewed under three aspects: first, as an absolute conveyance of the soil of Pennsylvania, with the parts usual to deeds in fee simple; second, as the creation of a feud or seignory, or, as some have put it, of a feudatory principality with the inferior regalities and subordinated powers of legislation which formerly belonged to the owners of counties palatine; and third, as a restricted sovereignty. These aspects will more clearly appear if we disregard the
disorderly arrangement of the Charter, and draw the correlated sections into groups.

I. THE CHARTER AS A CONVEYANCE:

Like an ordinary conveyance, it has proper parties—a grantor and a grantee—, contains recitals and expresses a consideration, has apt words of conveyance in fee, describes the land granted by metes and bounds, contains Habendum, Tenendum, and Reddendum clauses, with the additional gift of the power of sub-infeudation. Sections I, II, III, VI, in the latter part, XVII and XVIII relate to these features. Penn himself was insistent upon the distinction between his private ownership in the soil, and the powers and functions of government. With the former he would tolerate no interference.¹

The Charter opens, in what has been strikingly called the "Movent clause,"² with a statement of the reasons or consideration for the grant. Although the pecuniary debt of the Crown to Penn was prominent in the discussions before the Privy Council, the matter is tactfully avoided, thus guarding the royal dignity.

In Section I, stress is laid upon the "commendable desire" of the grantee "to enlarge our English Empire and promote such useful comodities as may be of Benefit to us to Our Dominion as also to reduce the savage Natives by gentle and just manners to the Love of Civil Societie and Christian Religion." Particular mention is made of "Regard to the Memorie and Merits of his late Father in divers Services and particularly to his Conduct, Courage and Discretion under our Dearest Brother James Duke of York, in that Signall Battell

²So termed by Mr. Shepherd in his History of the Proprietary Government in Pennsylvania. Introduction p. 7. Published under the auspices of Columbia University, N. Y. 1896.
and Victorie fought and obteyned against the Dutch Fleete, commanded by the Heer Van Opdam, in the Yeare One Thousand six hundred and sixty-five.”

In consideration thereof, and of “Our Speciale Grace certaine knowledge, and Meer Motion”, an expression found in all other Charters, there was granted to William Penn, his Heirs and assigns, the “Tracte or Parte of Land in America”, the boundaries of which had been settled by the Lord Chief Justice.

In Section II, there followed the specific grant, found in the New Hampshire, Maryland, Maine, and Carolina grants, of all and singular the Ports, Harbors, Bays, Waters, Rivers, Isles and Inlets leading to and from the country, and of all the soil, lands, fields, woods, underwoods, mountains, hills, isles, lakes, rivers, waters, rivulets, bays and inlets situate therein, with fishing of all sort of fish, whales, sturgeons and all royale and other fishes; and also of all veins, mines and quarries, discovered and undiscovered, of gold, silver, gems and precious stones, metals or of any other thing or matter found or to be found within the limits described.

Comparing this clause with similar ones in the grants to Mason of New Hampshire, to Gorges, and the Duke of York, of Maine, and of the Carolinas to Clarendon, we note the omission of references to hunting, hawking and fowling, of treasure trove, goods and chattels of felons, of felons themselves, of waifs, estrays, pirates’ goods, deodands, fines and amerciaments of individuals.

In Section III, the country and islands were created into a “Province and Seigniorie” called “Pensilvania.” William Penn his heirs and assigns were created and constituted the “true and absolute Proprietarie of the Countrey aforesaid.”

Section III also declares that the Grant is “to be holden of Us our Heirs and Successors, Kings of England, as of our Castle of Windsor, in our County of...
Berks in free and common soccage by Fealty only for all services, and not in capite, or by Knight Service, Yielding and Paying therefor to Us our Heirs and Successors, Two Beaver Skins, to be delivered at our Castle of Windsor on the First day of January in every year, and also the fifth part of all Gold and Silver Ore which shall from time to time happen to be found within the limits aforesaid, clear of all charges."

The tenure of free and common soccage, and not in capite or by Knight's service is to be found in every charter, without exception. The proportion of gold and silver ore is the same in all charters. In the first Charter of Virginia there is an additional reservation of 1/15th of copper ore; in the Mason grant of New Hampshire of 5 shillings, in the Gorges grant of Maine 1/5 of the pearl fisheries, in Rhode Island of 20 Marks; in Maryland of two Indian arrows; in the grants to the Duke of York of forty beaver skins. In Maryland and Pennsylvania alone was the holding as of the Castle of Windsor; in all the other charters, it was as of "Our Manor of East Greenwich in our County of Kent."

Closely related in substance to the first three sections, although separated from them in the arrangement of the Charter, are the latter part of Section VI, and Sections XVII and XVIII in their entirety. I shall consider them in this place to complete our view of the Charter as a conveyance of rights in the soil.

The latter part of Section VI reads as follows: "And Our further will and pleasure is that the Laws for regulating and governing of Property within the said Prov-

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1 The marks of excision, amendment, and piecing together of parts of various papers, resulting in some disorder of arrangement, are very apparent on a comparison of Penn's Charter with preceding ones to one accustomed to the preparation of a final agreement from several drafts; a conclusion verified by an inspection of the fragments of such papers as are now in the possession of the Historical Society of Pennsylvania, and in conformity with the history abstracted from the Proceedings before the Privy Council.
ince, as well as for the Descent and Enjoyment of Lands, as likewise for the Enjoyment and Succession of Goods and Chattels, and likewise as to Felonies, shall be and continue the same, as they shall be for the time being by the General Course of the Law in our Kingdom of England, until the said Laws shall be altered by the said William Penn, his Heirs or Assigns, and by the Freemen of the said Province, their Delegates or Deputies, or the greatest part of them."

Section XVII gave Penn, his heirs and assigns, full authority for all time at their own will and pleasure "to assign, alien, grant demise and enfeoff the premises so many and such parts and parcels as they thought fit, in fee simple or fee-tail, or for life, lives or years to be held of William Penn his heirs or assigns" as of the said seigniory of Windsor, by such services, customs or rents, as shall seem meet to the said William Penn, His heirs or assigns, and not immediately of Us, Our Heirs or Successors."

Section XVIII confirmed the foregoing power of sub-infeudation by granting to Penn's grantees the power

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1 It is true that the words just quoted may be regarded as a gift of sovereignty, but as English law as to the descent of landed property and the succession and enjoyment of goods and chattels was to continue until changed by the Proprietary and the Assembly and titles were thereby affected, the very learned late Judge John Cadwalader, who, before he went upon the bench of the United States District Court, had acted as counsel for the Penn family in this State, deemed it proper to include this part of Section VI in the Abstract he prepared of the General Title of the Penn Family to Pennsylvania. The power to change the law of England in important aspects, in abolishing primogeniture, in regulating the administration of personal property in cases of intestacy, in subjecting lands to the payment of debts, and, in many like instances, was exercised by the Proprietary.

It is unnecessary to give other examples, for the Law Academy was addressed, in 1872, by the Hon. T. Bradford Dwight on Modifications of English Law in Pennsylvania.

See also a paper, delivered in 1861, by William Henry Rawle, Esq., before the Law Department of the University of Pennsylvania on Some Contrasts between the Development of English and Pennsylvania Law.
to take “and hold to themselves their heirs and assigns in fee simple, or in fee-tail, or otherwise, as to them shall seem expedient: The Statute made in the Parliament of Edward, son of King Henry, late King of England, our Predecessor (commonly called the Statute Quia Emptores Terrarum) in any wise notwithstanding.”

A precisely similar clause is to be found in the Maryland and Carolina Charters, and in the grants to Mason and Gorges. Thus it is seen that the very generally prevalent impression among judges and lawyers, that the non obstante doctrine as to this statute was peculiar to Pennsylvania, has no foundation.¹

The nature of the title conferred by these sections will be considered under the next heading.

II. THE CHARTER AS THE CREATION OF A FEUD OR SEIGNORY.

Under this aspect, let me call your attention to a striking difference between the Charter under review and the other proprietary Charters. It is the result of an important omission.

In the Maryland Charter, Section IV, and in the grants to Gorges of Maine, Section II, there was an express and specific concession to the grantees of all patronages and advowsons, dispositions and donations of all churches and chapels within the province, with as ample rights, jurisdictions, functions and privileges, according to the ecclesiastical laws of the realm, as had been at any time theretofore exercised or enjoyed by any Bishop of Durham within the county Palatine of Durham. This was an astonishing liberality, for in the words of Coke (4th Inst. 205) “the power and authority

¹It is true that Sections XVII and XVIII, if read together, may wear a regal aspect, but as they affect titles, and are included in Judge Cadwalader’s Abstract of Title, as stated in note to the preceding page, I have thought proper to include them in their relations to the Charter considered as a conveyance.
of those that had counties palatine was Kinglike,” and
carried the right to pardon treasons, murders, felonies
and outlawries. There was something peculiarly royal
implied in the adjective palatinus, which was derived
a palatio, because the owners of the counties palatine,
the Earl of Chester, the Bishop of Durham, and the
Duke of Lancaster, had in those counties jura regalia
as fully as the King had in his palace.¹ The Charter
to the Earl of Clarendon of the Carolinas, Section III,
reduced the grant by omitting specific reference to the
Bishop of Durham, but allowed an ample grant of
rights as to patronage and advowsons, and churches,
chapels, and oratories to remain. Penn’s Charter con-
tains no such clause. The omission is all the more
significant as to the changed policy of the Crown, be-
cause Mr. Shepherd, who made a most diligent and
searching examination of all the Penn manuscripts
relating to the Charter in the possession of The His-
torical Society of Pennsylvania, states that “in one of
the rough drafts of the Charter of Pennsylvania was a
provision that Penn should be given the powers of a
Bishop of Durham as amply as they had been conferred
upon Baltimore, and should even be allowed to bestow
honors and titles.”²

Notwithstanding this omission there is sufficient in
Sections III, XVII, XVIII and XIX to justify the con-
elusion that Pennsylvania, until the Divesting Act of
28th of June, 1779, which sundered the sovereignty
from ownership in soil, and vested it in the Common-
wealth, was a feud and had so remained for nearly one
hundred years.³

¹ See Blackstone’s Comm. Lib. 1, Chap. 4, No. 117. Holdsworth’s His-
tory of English Law, Vol. 1, p. 50. Jacob’s Law Dictionary Edit. of
1762, Tit. County. Bouvier’s Law Dict. Rawle’s Third Revision, Tit.
County Palatine.
² Shepherd’s History of Proprietary Government in Pennsylvania.
Introduction, p. 10 in Note 2.
³ 1 Smith’s Laws, 431. Hubley v. Vanhome, 7 S. & R. 188.
We have already considered the first three sections above referred to and it is unnecessary to requote them. Section XIX authorized the Proprietary and his heirs and "all such persons to whom there should be granted by the Penns an estate of inheritance of land within the Province into Manors", and by and with the license first had and obtained under the Seal of Penn or his heirs in every Manor to have and to hold a Court-Baron, and to hold view of Frank-pledge for the conservation of the peace by the lords of the Manors or their stewards, subject to the restriction, however, that there could be no subinfeudation of Manors.¹ The most competent of the authorities concur that under the Charter Pennsylvania was a feud. The reasoning of Lord Hardwicke in the case of Penn v. Lord Baltimore² proceeds on that basis, and he declares that the grant was framed in this way in order that the lands granted might be most open to alienation. Judge Joel Jones declares: "By this Charter, the province of Pennsylvania was constituted a fief." Mr. Justice Gibson said, in Hubley v. Vanhome⁴, "The province was a fief held immediately of the crown." Judge Sharswood, who of all men, whose views have been printed, gave the most attentive consideration to the question, declared: "The lands in Pennsylvania have been derived by grant from the Crown, or from the State, as succeeding to the title of the Crown. And moreover the original grant from the Crown was expressly in feud. There is no title, original or derivative, resting on mere occupancy." After quoting the

¹ No Manors in the feudal sense were ever erected. What were termed proprietary Manors or tenths were only nominal Manors. As to their character and extent see Sergeant's Land Law of Penna., pp. 196-7.
² 1 Vezey, 444.
³ A Syllabus of the Law of Land Office Titles in Pennsylvania, p. 2. This book is interesting as being the result of a course of Lectures before the Law Academy prior to 1849.
⁴ 7 Serg. & Rawle 188.
sections now under review, he further said: "Thus by the express provisions of the Great Charter, if there be any meaning in the English language, the province was a feudal seignory, of which Penn and his heirs were the lords proprietary, with the power of subinfeudation in fee, which had been taken away in England, by the Statute 18 Edw.I, C. I., commonly called the statute of Quia emptores. The King was the lord paramount, the proprietary the mesne, and his grantees, tenants paravails":¹

III. THE CHARTER AS A RESTRICTED SOVEREIGNTY.

There is but one section,—and only one—in the entire Charter, touching sovereignty, which is free from qualification of every sort. Its peculiarities are not due to their novelty, for the provisions are identical in substance with the Maryland and Carolinas’ Charters. It strikes us as unique, so far as the Pennsylvania grant is concerned, because of its freedom from the shackles of provisos or saving clauses. It is Section X and reads as follows: "We do further for Us, Our Heirs and Successors, Give and Grant unto the said William Penn, his Heirs and Assigns, free and absolute Power, to divide the said Country and Islands into Towns, Hundreds and Counties, and to erect and incorporate Towns into Boroughs, and Boroughs into Cities, and to make and constitute Fairs and Markets therein with all other convenient Privileges and Immunities, according to the Merits of the Inhabitants, and the Fitness of the Places, and to do all and every other Thing and Things touching the Premisses, which to him or them shall seem meet and requisite; albeit they be such as of their own Nature might otherwise require a more

¹ This conclusion was reached after a fair and exhaustive consideration of all the conflicts in the books. If the reader desires to clear up any doubts of his own, I commend the study of Lecture VIII on the Feudal Law in Sharswood’s Law Lectures, pp. 202–232.
Genesis of the Charter of Pennsylvania.

special Commandment and Warrant than in these Premisses is expressed."

The entire county and municipal organization of the Commonwealth rests on this base. It is from this Section that the famous Charter of the City of Philadelphia, October 25, 1701, is directly derived.

All of the remaining Sections of the Charter are limited through the newly awakened caution of the law officers of the Crown, and amply sustain the thesis that the Charter of Penn, instead of containing, as has been generally and popularly supposed, grants of unusual liberality and gifts of extraordinary powers, was the first of all these documents to be restrained in scope and subject to the review of the King's Courts and to the King in Council.

Section IV is in the main unquestionably carved out of Section VII of the Maryland Charter. Section V of the Earl of Clarendon's Charter for the Carolinas has the same parentage. Line after line, and word after word they are almost identical. It would be tedious to dwell on purely verbal variations. After reciting the perfect confidence of the Crown in "the Fidelity, Wisdom, Justice and provident Circumspection of the said William Penn", full and absolute power is granted to him and his heirs and to his and their Deputies and lieutenants, "for the good and happy Government" of the said country "to ordain, make and enact, and under his and their Seals, to publish any Laws whatsoever, for the raising of Money for public Uses of the said Province, or for any other End, appertaining either unto the public State, Peace or Safety of the said Country, or unto the private Utility of particular Persons, according unto their best Discretion, by and with the Advice, Assent and Approbation of the Freemen of the said Country, or the greater Part of them, or of their Delegates or Deputies, whom for the Enacting of said Laws, when and as often as Need shall require, We will
that the said William Penn and his Heirs shall assemble in such Sort and Form, as to him and them shall seem best, and the same Laws duly to execute, unto and upon all People within the said Country and Limits thereof.’ That is the extent of the Section. It should be read however in connection with Section VI.

Section VI is similar to Section VIII of the Maryland Charter, to Section VI of the Maine Charter, and to Section VI of the Carolinas’ Charter. It recited the difficulty of applying remedies before the freeholders of the province or the delegates or deputies could be assembled to the making of laws, ‘‘nor would it be convenient that instantly, on every such emergent occasion, so great a multitude should be called together.’’ Therefore Penn and his heirs, by themselves or by their magistrates in that behalf to be duly ordained, were empowered to make and constitute ‘‘fit and wholesome Ordinances,’’ from time to time, to be kept and observed, as well for the preservation of the peace, as for the better government of the people; which Ordinances it was the royal will should be obeyed, under the pains therein to be expressed, ‘‘so as the Ordinances be consonant to Reason, and be not repugnant nor contrary but (so far as conveniently may be) agreeable with the Laws of Our Kingdom of England, and so as the said Ordinances be not extended in any Sort to bind, charge, or take away the Right or Interest of any Person or Persons, for or in their Life, Members, Freehold, Goods or Chattels.’’

A similar restriction was imposed in the Mason and Gorges patents. Penn himself, occasionally, and his Heir repeatedly, availed themselves of these ad-interim privileges, greatly in the latter instances to the popular discontent.

Section V. in language almost identical with that of Section VII of the Maryland Charter, and Section V of the Carolinas’ Charter, empowers William Penn, his
heirs, and their deputies "to appoint and establish any Judges, Justices, and Magistrates whatever for what Causes soever, (for the Probates of Wills and the Granting of Administrations) and in such Form" as to Penn or his heirs shall seem most convenient; "also to remit, release, pardon and abolish (whether before Judgment or after) all Crimes whatsoever committed within the Countrey against the Laws (Treason and wilful and malicious Murder only excepted, and in those Cases to grant Reprieves until Our Pleasure may be known) and to do all Things which to the complete Establishment of Justice unto Courts, Tribunals and Forms of Judicature and Manner of Proceedings do belong; and by Judges by them delegated to award Process, hold Pleas, and all Suits and Causes, as well Criminal as Civil, Personal, Real and Mixt." All subjects were commanded to observe and keep the same inviolable; Provided that the laws be consonant to reason, and not repugnant or contrary, but (as near as conveniently may be) agreeable to the laws, and statutes and right of England. Thus far every Charter previously granted had similar provisos—but the following words are peculiar to Penn's charter alone: "Saving and reserving to Us, Our Heirs and Successors, the receiving, hearing and determining of the Appeal and Appeals of all or any Person or Persons, of, in or belonging to the Territories aforesaid, or touching any Judgment to be there made or given." There is a faintly similar clause in the Mason patent but it is less explicit.

This is the first of a scattered group of provisions, five in number, intended to establish and maintain a supervision of colonial affairs by the Crown, unknown at that time in the other colonies.

Section VII is peculiar to Penn's Charter. It is the second of the clauses especially restrictive upon sovereignty. Control of the proprietary Courts upon ap-
peal had been secured by the latter part of Section V. Control of the Provincial Legislature was sought by the Section now under consideration. Its opening words contain a skillfully veiled arraignment of the conduct of the other colonies in the passage of Statutes not consonant to the Laws of England, or in derogation of allegiance. "And to the End that the said William Penn, or his Heirs, or other the Planters, Owners or Inhabitants of the said Province, may not at any time hereafter (by Misconstruction of the Power aforesaid) through Inadvertency or Design depart from that Faith and due Allegiance, which by the Laws of this Our Realm of England, they and all Our Subjects in Our Dominions and Territories always owe to Us * * * by Colour of any Extent or Largeness of Powers hereby given, or pretended to be given, or by Force or Colour of Any Laws hereafter to be made in said Province by Virtue of any such Powers" it was provided that a transcript or duplicate of all laws of the province should be transmitted to the Privy Council within five years of their passage. If within six months of their receipt the Privy Council adjudged them inconsistent with the royal prerogatives, or contrary to the faith and allegiance due to the Crown, they were to be declared void; otherwise they were to remain in force.

Sections VIII, IX, XI, XII and XIII, for the encouragement and increase of the Colony, were adaptations of Sections IX, X, XI of the Maryland Charter, and of similar provisions in the Clarendon Charter for the Carolinas. The subject matters in each were the freedom of transportation, the right to trade, the use of ports and harbors, the unloading of merchandise, and the enjoyment of customs and subsidies saving such as were due the Crown. The modifications in Penn’s case were the omission of the right to build
and fortify castles, forts and other places of strength; the insertion in Section XI of an obligation to observe the Acts of Navigation, and the insertion in Section XII of a proviso that Penn, and his heirs, and the Lieutenants and Governors for the time being should "admit and receive, in and about all such Harbors, Ports, Creeks and Keys, all Officers and their Deputies who shall from time to time be appointed for that Purpose by the Farmers or Commissioners of Our Customs for the time being." This was intended to secure the enforcement of the collection of such subsidies, customs and taxes as had been reserved for the Crown in the other Charters, but which had been left unguarded. The matter was clinched in the close of Section XIII by the words "saving unto Us, Our Heirs and Successors, such Impositions and Customs, as by Act of Parliament are and shall be appointed." These words do not occur in the other Charters. But the matter was not allowed to rest here. In its relation to trade, special emphasis must be laid upon the essential differences between Section XX in the Maryland Charter and the one bearing the same number in The Charter of Pennsylvania. A solemn covenant is made by the Crown in both Charters with the respective grantees, their heirs and assigns, "That We, Our Heirs and Successors shall at no time hereafter set or make, or cause to be set or made, any Imposition, Custom or other Rate or Contribution whatsoever, in and upon the Dwellers and Inhabitants of the aforesaid Province, for their Lands, Tenements, Goods or Chattels within the said Province, or in and upon any Goods and Merchandizes within the Province, or to be laden or unladen within the Ports or Harbors of the Province." Here the covenant with Lord Baltimore definitely closed, but in Penn's case the pregnant words were added: "Unless the same be with the Consent of the
It is manifest that this was the seed of a claim of right on the part of the Imperial Parliament to exercise concurrent jurisdiction with the Colonial Assembly in the levying of taxes in the Colony. This is the third of the restrictive clauses.

We now turn to two extraordinary provisions, penal in their nature and to be read together, found in Sections XIV and XV. Penn and his Heirs were required to constitute and appoint an Attorney or agent, to reside in London, who should make his place of dwelling known to the Clerks of the Privy Council, who "shall be ready to appear in any of Our Courts at Westminster, to answer for any Misdemeanor that shall be committed, or by any wilful Default or Neglect permitted by the said William Penn, his Heirs or Assigns, against the Laws of Trade and Navigation." Upon a judicial ascertainment of the damages sustained by such default or negligence, Penn and his heirs were to pay the same within a year after such finding and demand from such Attorney. In case of there being no such Attorney for the space of a year, or of non-payment by the Attorney, or of an answer to such other forfeitures and penalties as might be provided by Acts of Parliament, then "It shall be lawful for Us, Our Heirs and Successors, to seize and resume the Government of the said Province or Countrey, and the same to retain until Payment shall be made thereof." The ownership of lands or of goods of any of the inhabitants, planters or owners, other than the respective offenders, was not to be affected by the seizure or resumption of the Government, Provided that Penn and his heirs, or the other inhabitants should not have maintained a correspondence with any Prince or his subjects at War with the Crown, nor have committed acts of hostility against any Prince or his subjects who
were in amity with the Crown.¹ No such provisions occur in the other Charters.

The Province, however, was not left without the power of self defence. In the event of savage invasions, or of other enemies, pirates and robbers, Section XVI empowered Penn, his heirs and assigns in such cases, by their captains or other officers to levy, muster and train men in the Province "to make War and to pursue the Enemies and Robbers * * * as well by Sea as by Land, even without the Limits of said Province, and by God's Assistance to vanquish and take them, and being taken to put them to Death by the Law of War, or to save them at their Pleasure, and to do all and every other Thing * * * as fully and freely as any Captain General of an Army."

A precisely similar provision as to self defence is to be found in the other proprietary charters.

We note a few further differences.

In Section III the country and islands were created into a "Province and Seigniorie" called "Pensylvania." William Penn his heirs and assigns were created and constituted "the true and absolute Proprietarie of the Countrey aforesaid," saving to the Crown "the Faith and allegiance" of Penn his heirs and assigns, and of, "all other Proprietaries, Tenants and Inhabitants that are or shall be within the Territories and Precincts aforesaid," and saving also "unto Us Our Heirs and Successors the Sovereignty of the Country."

¹In point of fact, Penn who was charged with connection with plots to restore James II to the throne, was deprived of his government, and a commission was issued in October 1692 to Benjamin Fletcher, then Captain General and Governor-in-Chief of New York. He took possession in 1693. On the manifestation of Penn's innocence, his government was restored by William and Mary in 1694. See Day's Historical Collections—16. The Commonwealth of Pennsylvania by Thomas Kilby Smith, p. 30. Gordon's History of Penna., 56. Pennsylvania, Colonial and Federal, by Howard M. Jenkins, 326-29.
A similar use of the word "assigns" in connection with the proprietorship, and in the saving clause as to allegiance is not to be found in any shape in the Virginia or New England charters, which were not proprietary in character, but royal provinces or civil corporations; nor is it to be found in the private grants to Mason and Gorges. In the Maryland Charter the saving of allegiance is confined to Lord Baltimore and his heirs, and is not extended to the inhabitants, nor is it so extended in the Carolina Charters.

In Section XXII it is required "That if any of the Inhabitants of the said Province, to the Number of Twenty, shall at any time be desirous, and shall by any writing, or by any Person deputed by them, signify such their Desire to the Bishop of London for the Time being, That any Preacher or Preachers, to be approved of by the said Bishop, may be sent unto them for their Instruction; that then such Preacher or Preachers shall and may reside within the said Province, without any Denial or Molestation whatsoever."

This Provision, as we have seen from the Proceedings before the Privy Council while the framing of the Charter was in progress, was inserted at the request of the Bishop of London, and was allowed by the Lord Chief Justice. It was an express guarantee of the Bishops' jurisdiction in a dissenting Colony, due probably, as a recent writer has conjectured, to the refusal of the Puritans in Massachusetts to open their narrow franchise to persons of other persuasions. ¹

Section XXI admonishes all judges, officers and ministers, on pain of royal displeasure, not to presume at any time to attempt anything contrary to the premises, or to withstand the same, but at all times to aid and assist, as is fitting, William Penn, and his heirs, and

¹ The Relations of Pennsylvania with the British Government 1696-1765. By Winfred Trexler Root, p. 225.
the inhabitants and merchants "in the full Use and Fruition of the Benefit of this Our Charter."

The Charter closes, in Section XXIII, with a declaration common to all the other Charters, that all doubtful clauses or constructions should be resolved in the King's Courts in favor of the Grantee; but adds what is not found elsewhere, a Proviso strictly guarding allegiance.

But one other matter remains to be noted. I prefer to attribute it to carelessness or oversight in the final assembling of the parts, rather than to design. In all the other charters from first to last there is a declaration that the inhabitants of the Colonies shall enjoy the rights, privileges and immunities of Englishmen, as if abiding in England. In Penn's Charter there is no such declaration, nor any semblance of one.

The special features of Penn's Charter, which I hope now stand clearly revealed, are not to be explained upon any grounds of personal hostility or distrust. His relations to the Crown and his own exalted character forbid it. The reasons must be sought in a searching study of the times. The Charter must be read in the light of the times. The numerous savings of faith, allegiance and sovereignty are due to the political fears of a King who had seen his father dethroned and beheaded and the government for fourteen years in the iron grip of Cromwell. It was not lack of confidence in an individual such as Penn, but fear of the action of his people that caused the apprehensions of the Crown. New England particularly had been a source of anxiety and trouble. The acts of Trade and Navigation of the Restoration period, which Penn was specially enjoined to observe, were due to the expansion of colonial commerce, and the aggressive growth of New England, leading in time to *quo-warranto* proceedings against the Charters of Massachusetts, Connecticut and Rhode Island. Slowly but surely were the
statesmen of the Mother country brought to a thorough realization of the defects of the early Charters and to repeated efforts to change them. The Act of William and Mary of 1696, to which I have already alluded, was but an expression of a new and resolute Imperial policy. I cannot enter upon this field, inviting though it is.

The glory of Penn's government is due not to his Charter: not to the peculiar form of the gift of the Crown. It is due to his own personal character: to the spirit in which he interpreted his powers, and the manner in which he exercised them.¹ Let me close by quoting his own words, appearing in the Preface to his Frame of Government: "Any Government is free to the People under it (whatever the Frame), where the Laws rule, and the People are a Party to those Laws, and more than this is Tyranny, Oligarchy or Confusion.

* * * Governments, like Clocks, go from the motion Men give them, and as Governments are made and moved by Men, so by them they are ruined too. Wherefore Governments rather depend on Men, than Men upon Governments. Let Men be good, and the Government cannot be bad; if it be ill, they will cure it. But if Men be bad, let the Government be never so good, they will endeavour to warp and spoil it to their turn."

¹ In his Frame of Government, in The Laws Agreed upon in England, in his Code enacted at Chester, known as The Great Law, his motives, his thoughts and his acts shine resplendently against the black background of the tyrannies of the Stuarts.