

EARLY RELATIONS OF DELAWARE AND
PENNSYLVANIA

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Why is Delaware an independent State? Under what circumstances did our small expanse of land maintain its independence? Surrounded by envious neighbors eager to claim our soil as the gateway to the sea, what underlying facts and motives thwarted on the one hand the ambitions of Lord Baltimore to bring his Province of Maryland to the shores of the Delaware River and on the other the desires of Penn to extend his Province of Pennsylvania to the wide and open sea? More particularly one might inquire if our independence is the mere result of a queer and fantastic whim of Fate or, if not, who were the actors and what means did they employ to chart and steer the then nameless Ship of State between the Scylla of Maryland and Charybdis of Pennsylvania?

The territory now embraced in our little State was an anomaly among the English colonies. No Sovereign's charter gave us a name and with all the panoply and emblazonments of Royalty granted our land to settlers. As a matter of fact, although we had a distinct existence with a separate assembly from 1704, yet, with the exception of "The Territories of Pennsylvania" or the "Three Lower Counties on the Delaware" (neither of which name was authoritatively established), we never had a name until our first Constitution of 1776, adopted pursuant to the Resolution of the Continental Congress gave us our name as "The Delaware State." It is an interesting fact, strangely never mentioned by any Delaware historian, that at

one period a Charter was drawn for our "Three Lower Counties" giving us a name and providing for every detail of government. Its preparation was only completed December 10, 1688, the night before James II. fled from Whitehall. By such narrow margins may the course of history be completely changed. I shall later again briefly refer to this charter.

On March 12, 1664 (O.S.), King Charles II. of England granted to his brother, James, Duke of York, a patent for all the mainland from the River St. Croix to the east side of the Delaware Bay.¹ Now, of course, it is apparent to us that the Three Lower Counties on the Delaware being on the westerly side of the Delaware River could not be included in the grant just mentioned and yet this patent is of great importance in the history of Delaware because it was the only grant or patent, the only paper title, the Duke of York had at the time he made his deed to William Penn in 1682.

The territory granted by the King to the Duke of York had long been claimed by the British Crown, but was actually in the possession of the Dutch. In May, 1664,² a fleet was fitted out for the purpose of attacking the Dutch settlements at New Amsterdam and elsewhere in the Colonies. As soon as New Amsterdam was taken and the settlement re-named New York, Sir Robert Carr by express direction sailed for New Amstel. After a brave but futile defense Fort Casimer was surrendered by the Dutch with a loss of four men out of thirty in the Fort and the name of the settlement was changed from New Amstel to New Castle.³ From this time, with the exception of a few months when the Dutch repossessed the Colonies, until the time of the grant of the Duke of York to Penn in 1682,

¹ *Pennsylvania Archives*, Second Series, V. 494; Proud, *History of Pennsylvania*, I. 121.

² Proud, *History of Pennsylvania*, I. 123.

³ Houston, *Boundaries of Delaware*, p. 58.

the country was governed by the representatives of the Duke of York at New York. Attention is specifically directed to the activities of the Duke of York for in his action in treating the Delaware settlement at New Castle as a Dutch dependency on their main Colony at New Amsterdam and by his action in reducing it into possession and actual sovereignty and by the recognition of the English Crown of the possession of the Duke of York lies the explanation of his subsequent grant to Penn—the basis of Penn's successful litigation with Lord Baltimore—and the superstructure of the whole train of facts and circumstances under which Delaware rightfully claims the entire jurisdiction of the Delaware River within the twelve mile circle and to which its separate existence as a State can be traced.

Whether the Duke of York had a good title to the Three Counties on the Delaware, whether he had a defective title or whether he had no title at all, it is not my purpose in this short paper to discuss. It is sufficient that he was in possession and that possession was with the knowledge and consent of his royal brother Charles II.

On June 14, 1680,⁴ William Penn presented his petition to Charles II. for a grant of land in America in full or partial discharge of a large debt due from the British Crown. The Crown ever more ready to part with land in a foreign country than with hard coin, wisely granted the petition thereby starting into being a movement of colonization fraught with great results.

When the English Crown, through the Committee for Trade and Plantations, considered Penn's petition, it clearly and expressly recognized the jurisdiction of the Duke of York over the settlement at and around New Castle as a dependency upon the New York Colony and John Werden as representative of the Duke of York was consulted upon the development of every

⁴ *Votes of the Assembly of Pennsylvania*, VII.

step of Penn's desires. On November 20, 1680,⁵ Werden agreed that the southern boundary of Penn's land should be 20 or 30 miles north of New Castle. Penn immediately saw Werden and expressed the fear that with these boundaries established there would not remain enough of the Delaware River for the development of the Province. On November 23, 1680,⁶ Werden and Penn agreed that the boundary of Penn's Patent should be twelve miles north of New Castle and this boundary was fixed by Lord Chief Justice North in the Committee of Trade and Plantations of the Privy Council. Such was the origin of the Twelve Mile Circle, the northern boundary of Delaware. The absence or lack of authoritative maps may easily account for the ignorance of Penn as to the extent of the Delaware River and it may be better understood when we recall that as late as 1736, when the Penn-Baltimore boundary dispute reached its climax it was considered necessary to call some dozen witnesses to prove that the Three Lower Counties were in fact upon the western rather than on the eastern side of the Delaware.⁷

Penn having received his patent for Pennsylvania on March 4, 1681, immediately took active and energetic steps for the settlement of the Colony.⁸ He immediately on April 10, 1681, appointed his cousin, William Markham, to be Deputy Governor of the Province, who arrived at New York on June 21, 1681, and at the Delaware on July 1.

After Penn had completed his arrangements for Pennsylvania, he seems to have turned his attention to the Territories recognized as under the jurisdiction of James, Duke of York. Unfortunately the record of his efforts in this respect are meagre and unsatisfactory.

⁵ *Votes of the Assembly of Pennsylvania*, XI.

⁶ *Ibid.*, XII.

⁷ *Pennsylvania Archives*, Second Series, XVI. 588.

⁸ *Duke of York Laws*, p. 471.

Not being a Royal possession, no formal records were kept and negotiations were probably of a personal nature. We only know that in July, 1681, Sir John Werden wrote to Penn "that the Duke was not yet disposed to grant the lands about New Castle."⁹

On August 21, 1682, the negotiations of Penn with the Duke of York began to bear fruit. On this date the Duke of York executed to Penn a deed for the Province of Pennsylvania.¹⁰ It is generally considered that this deed was obtained out of an excess of caution and in no instance have I ever seen any claim to the Province of Pennsylvania on the part of the Duke of York. On the same day James, Duke of York, executed to William Penn a lease for the town of New Castle and for all land within the Twelve Mile Circle, such lease being for the term of ten thousand years. This lease, however, was not witnessed and was therefore not effective. This was the lease which was offered for sale in Philadelphia as an original deed by J. H. Rogers in May, 1895,¹¹ and the sale of which was temporarily enjoined by the Chancellor of the State of Delaware until its lack of authenticity was established.

On August 24, 1682, the negotiations of Penn with the Duke of York reached their full fruition and on that day there was executed a curious set of four legal documents for what is now the State of Delaware. On that date there was executed a valid and effective lease for ten thousand years¹² for all the land within the twelve mile circle and there was also an absolute deed or Deed of Feoffment for the same geographical area,¹³

⁹ Hazard, *Annals of Pennsylvania*, p. 521; *Pennsylvania Archives*, Second Series, V. 726.

¹⁰ *Votes of the Assembly of Pennsylvania*, XXXV.

¹¹ *Laws of Delaware*, XX. 212, 213, 278, 279; *Delaware House Journal* (1895), pp. 1098, 1199.

¹² Original in Public Archives, Dover, Delaware.

¹³ *Votes of Assembly of Pennsylvania*, XXXVI.; *Laws of Delaware*, I., Appendix. Original at Dover, Delaware.

there was also a lease for ten thousand years for all the land south of the twelve mile circle down to Cape Henlopen and also a separate Deed of Feoffment as to that land.¹⁴ The provisions of the leases and deeds were, curiously, not alike. All the interest of the Duke of York within the Twelve Mile Circle was apparently granted by the appropriate instruments reserving only a rental of five shillings to be paid at the Feast of St. Michael the Archangel when demanded. The instruments effective for the land south of the Twelve Mile Circle, on the other hand, reserved not only one rose to be paid on Michaelmas day when demanded, but also one-half of all the rents or profits received by Penn for any of the land with stringent provisions for distresses in case of default. Both of these Deeds of Feoffment constituted John Moll and Ephraim Herman, both of New Castle, as attorneys in fact for the Duke of York to give actual possession and seizure to Penn.

Armed with these indicia of ownership (notwithstanding the fact that the Duke of York had no paper title for any of the land), Penn set sail for America and arrived at New Castle on the 27th day of October 1682. Let John Moll, one of the then outstanding citizens of New Castle and one of the attorneys in fact for the Duke of York, tell of the happenings of the next two days:¹⁵

These are to certify all whom it may concern that William Penn Esqr Proprieter and Gov of the Provinces of Pennsylvania and the Territories thereunto belonging at his first arrival from England by the Town of New Castle upon Dellaware River in the Month of October anno 1682 did send then and there one messenger ashoar to give notice to the Commissioners of his desire to speak with them aboard (I being then left the first in Commission by Sr Edmund Andross, Governour Gen^l under his Royal Highness James Duke of York, and Albany &c of all his Territorys in America) did go aboard with some more of the Commissioners att which time Esqr Penn did show me two sundry

¹⁴ *Votes of Assembly of Pennsylvania*, XXXVII.; *Laws of Delaware*, I., Appendix. Original at Dover, Delaware.

¹⁵ New Castle County Deed G. I. 411; Hazard, *Annals of Pennsylvania*, p. 606.

Indentures or Deeds of Infeoffment from under the hand and seal of his Royal Highness granted unto him, both bearing date the 28th. day of August anno 1682 the one for the county of New Castle with twelve miles distance north and south thereunto belonging and the other beginning twelve miles below New Castle and extending South unto Cape Hen Lopen together with the mills and waters of the said River, Bay, Rivulets and the Islands thereunto belonging &c underneath both which sd Indentures of Deeds of Infeoffment were added His Royall Highness letters of attorney directed unto me and Ephraim Herman deceased with full power and authority for to give in his Royal highness name unto the sd William Penn Esqr quiet and peaceable possession of all what was inserted in the sd Indentures as above briefly is specified. But the sd Eph Herman happened to be gone from home so that he was not at that time aboard with me the Sd Ship I therefore did desire from Esqr Penn four and twenty hours consideration for to communicate with the sd Herman and the rest of the Commissioners about the premises, In which Compass of time we did unanimously agree to comply with his Royal Highnesses orders Whereupon by virtue of the Power given unto us by the above mentioned Letters of Attorney we did give and surrender in the name of his Royal Highness unto him the sd William Penn Esq actual and peaceable possession of the fort of New Castle by giveing him the key thereof to lock upon himself alone the door which being opened by him again, we did deliver allso unto him one turf with a twigg upon it a porringer with River water and soyle in part of all what was specified in the sd Indenture or deed of Infeoffment from his Royal Highness and according to the true intent and meaning thereof. And few days after that we went to the house of Capt Edmund Cantwell at the South side of Appoquinming Creek by computation above twelve miles distance from the Town of New Castle as being part of the two Lower Countys hereabove mentioned and specified in his Royal Highnesses other Indenture or Deed of Infeoffment and after we had shown unto the Commissioners of those Countys the power and orders given unto us as aforesaid we asked them if they could show us any cause why and wherefore we should not proceed to act and do there as we had done at New Castle, And finding no manner of obstruction we made then and there in his Royal Highnesses name the same manner and form of Delivery as we had done at New Castle, which acting of us was fully accepted and well approved of by Anthony Brockhold then Commander in Chief and his Councill att New York as appears by their Declaration bearing date the 21st of November A 1682 from which jurisdiction we had our dependence all along ever since the Conquest until we had made the above related delivery unto Governour William Penn by virtue of his Royal Highnesses orders and commands

Jno Moll

On October 28th, 1682, a certificate was duly signed
“that possession and seisin was accordingly given by
the sd attorneys to the sd William Penn according to

the usual form by delivery of the fort of the said Town and leaving the sd William Penn in quiet and peaceable possession thereof and also by the delivery of turf and twig and water and soyle of the River Delaware," which said certificate was signed by ten spectators.¹⁶

On this same 28th of October, another certificate was signed by twelve inhabitants of the town of New Castle who recite that they heard the indentures read and "having seen by the said Duke's appointed Attorneys John Moll and Ephraim Herman, both of New Castle, possession given and by our Governor William Penn Esq possession taken whereby we are made subjects under the King to the said William Penn Esq we do hereby in the presence of God solemnly promise to yield to him all just obedience and to live quietly and peaceable under his government."¹⁷

On October 28, 1682, Penn constituted by letter of attorney Captain William Markham as his attorney in fact to receive actual seisin and possession of that part of the grant of the Duke of York that lay South of the Twelve Mile Circle. This delivery was formally made on November 7, 1682, as indicated by Moll. A certificate was drawn and signed by thirteen residents of the Lower Counties reciting among other things "that we whose names are hereunder written on the day of the date hereof have been present and seen that they the said John Moll and Ephraim Herman in pursuance of His Royal Highness' Command and by virtue of the power given them . . . have given and delivered actual possession unto the sd Capt William

¹⁶ New Castle County Deed G. I. 410; signed by Thomas Holme, William Markham, Arnoldus de la Grange, George Forman, James Graham, Samuel Land, Richard Ingelo, Joseph Curtis, John Smith.

¹⁷ New Castle County Deed G. I. 410; signed by Arnoldus de la Grange, Johannes de Haes, Hendriak Van den Burgh, Will Sampill, Hendriak Lemmens, Joseph Moore, Jan Hermensen, Jonas Arskin, Gyles Barrett, Peter Clason, Samuel Land.

Markham to the sole use and behoof of the sd William Penn (of part in the name of the whole) of the land, soyle, and premises in the said Instrument of Indenture mentioned and according to the true intent and meaning of his Royal Highness mentioned in the same.''¹⁸

On March 22, 1683, Charles II. granted to his brother James, Duke of York, all the land both within the twelve mile circle as well as below it to Cape Henlopen which the Duke had previously granted to Penn.¹⁹ James Logan said on October 9, 1731, that he had often heard Penn say that he himself had paid for this last patent on the promise of its conveyance to him.²⁰

The two leases for ten thousand years each, the Deed of Feoffment for the twelve mile circle and the grant from Charles II. to James, Duke of York are now in the possession of the Public Archives Commission of this State and adequately protected. The Deed of Feoffment for the Lower Counties has curiously been lost or mislaid before it came into the possession of the State.

The foregoing statement of the legal aspects of Penn's grant and claim to the Delaware soil has been advisedly elaborated though, perhaps, uninterestingly told. In these legal aspects, in my opinion, lies the key to open and explain the subsequent difficulties of the Colonial regime and make clear the natural and logical development of an Independent State. Penn's connection with Delaware soil was never a happy one. There seems to have been no period of even a few years' duration where political peace and concord uniformly prevailed. Personal antagonisms, political and geograph-

¹⁸ New Castle County Deed G. I. 411; signed by Luke Wattson, William Clark, Francis Whitwell, John Hillyard, Norton Claypoole, John Vines, Alexander Molestyn, John Hill, Hermanus Wiltbank, Alexander Draper, Samuel Grey, Edmund Cantwell and John Avery.

¹⁹ Original in Public Archives Commission at Dover, Delaware.

²⁰ Penn Manuscripts in The Historical Society of Pennsylvania, *Official Correspondence*, II. 199.

ical jealousies and religious differences, were undoubtedly potent and moving causes for the separation of our Lower Counties from the Province of Pennsylvania, but, just as our own generation hesitates to place personal opposition on the low ground of religious difference or some other unworthy cause, so our shrewd and crafty ancestors placed their opposition to a continuance of the union with the Province of Pennsylvania upon the safe ground of the differences of legal status and the uncertainty of the Penn title. These were the given causes for the refusal to pay quit rents²¹ and after the separation, the slender thread of a common Governor was all that bound the Counties to the Province.

This acceptance on the part of the Lower Counties of the same Governor as appointed by Proprietor for the Province grew solely from the fact that the appointment was made with the approbation of the British Crown and not from the fact of the Proprietary appointment itself. James Logan says in speaking of the Lower Counties that "from their separation in 1704 they have always accounted themselves governed only by the King's authority couched in the approbation."²²

Upon Penn's arrival steps were almost immediately taken to set in motion the legislative branch of government. The first frame of government had been made and some forty laws agreed to in England on May 5, 1682.²³ By this Charter provisions were made for an election on the 20th day of 12th Month, 1682 (February 20, 1683), but the Charter and Laws were to be confirmed by the first Provincial Council. On November 8, 1682, Penn issued his first writ providing for the

²¹ Penn Manuscripts in The Historical Society of Pennsylvania, *Official Correspondence*, II. 199.

²² *Ibid.*, II. 199.

²³ *Duke of York Laws*, pp. 91, 103.

election of seven members from each county to meet on December 4th.²⁴ This first Assembly duly met at Chester upon the day appointed, but the names of all the members have not been preserved. The best single authority I have seen on the subject accounts for but fifteen out of a membership of forty-two.²⁵

This first election is particularly interesting to Delaware from two viewpoints. The writ of election was issued just one day after Penn had received final recognition in the Three Lower Counties. No Union existed at this time between the Counties of Delaware and the Province of Pennsylvania and Penn's charter and the "Laws agreed to in England" were effective only as to the Province, having been made prior to the grant to Penn from the Duke of York. No charter, agreement, law or provision of any kind had been made for any election in the Three Lower Counties.

At this first Assembly, on December 6th, the Act of Union of the Three Lower Counties and the Province of Pennsylvania was unanimously adopted and the charter and laws agreed to in England were confirmed, but, as we have seen, the Representatives of the Three Lower Counties had already been elected and constituted exactly one-half of the membership of the confirming assembly.

The petition for the Union of the Territories and Province is quite important as being the forerunner and the basis of the subsequent Union. Having never, to my knowledge, appeared in print, it may be interesting to give it in full:²⁶

To The Honorable Proprietor and Governor of Pennsylvania

The humble request of the freeholders of Ye Three Counties of New Castle, Jones and New Deale alias Whorekill

Humbly desyring that they may be favored with an Act of Union

²⁴ *Duke of York Laws*, p. 472.

²⁵ Benjamin M. Nead, *Historic Notes in Duke of York Laws*, p. 474.

²⁶ Penn Manuscripts in The Historical Society of Pennsylvania, *Papers Relating to the Three Lower Counties*, p. 71.

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by the Governor and Assembly for their incorporation in and with the Province of Pennsylvania in order to their enjoyment of all the rights and privileges of the aforesaid Province and that they might be forever after esteemed and accounted as freemen of the before named Province. This being our desires and humble request in the Assembly we have desired the President and two other members of the Upper County's part of the Province to present it to your Honor and if we are so happy as to obtain our request we will forever acknowledge it and in all faithfulness subscribe ourselves yours in all lawful obedience.

For New Deal
als Whorekill
William Clark
Luke Wattson
Nath. Walker
John Roades
Cornelius Verhoff
Edward Southrin
Alexander Draper
December 6, 1682

For St Jones
Francis Whitwell
John Hilliard
John Briggs
John Curtis
Thomas Hassold (?)
Daniel Jones

For New Castle Co
John Moll
John Cann
Casparus Herman
Richard Smith
John Darby
[William Sample]

Not only is the petition of interest for the reason above given but its phraseology "this being our desires and request in the Assembly" indicates that its signers were members of the Assembly. We know that eleven of them were²⁷ members and if they all were it would raise to twenty-seven the known members of the First Assembly of 1682. That the signers of the petition were all members of the Assembly is made doubly certain by a paper signed by William Penn on December 7, 1682, which recites "whereas the freemen of the said counties have, by their deputies, humbly besought the present proprietary and governor to annex the said counties to the Province of Pennsylvania."²⁸

No election having theretofore been held in the tract now constituting the State of Delaware, I can find no qualification that had ever been provided for exercising the right of suffrage. The writ for election as heretofore stated, was issued November 8th, 1682, the day after Penn had received the Livery of Seisin of

²⁷ Conrad, *History of Delaware*, I. 60.

²⁸ Act of Union; Hazard, *Annals of Pennsylvania*, pp. 612, 614.

the Lower Counties. This date of the issuance of the writ of election has been incorrectly given as November 18th, in most authorities. Certainly there is no evidence that the desire for union, expressed in the Act of Union, was a yearning emanating from the people of the territories or Lower Counties. No petition for the Act of Union was signed by any elector as such of the Lower Counties, or by any one other than an elected Representative, or appeared until after the Representatives themselves had been chosen and had been in attendance at the first Assembly at Chester for a period of two days. Inference is strong that the idea of Union sprang from the brain of Penn himself. The facts are these: On October 29, 1682, the day after Penn had received the delivery of the fort and country at New Castle, he was at Upland, now Chester, and determined to hold a General Court on the following Thursday, November 2nd, at New Castle. The Justices of Whorekill, or Deal, now Sussex County, were summoned, in the following language:²⁹

To William Clark, Luke Watson, John Roades, John Avery, Hermanus Wiltbank and Alexander Moleton

These are to desire you to meet me next Thursday, soe-called, at the town of New Castle, being the 2nd of November, where I intend to hold a General Court for the settling the jurisdiction of those and your parts in which you will oblige

Your loving friend

William Penn

Upland the 29th
8ber 1682

If there be any persons of note or others that desire to be present they may come freely with you and [you] are desired to communicate

W. P.

I presume that similar notices were sent to the other Counties. The notices were all sent by Penn to Ephraim Herman, with this note:³⁰

²⁹ Sussex Records in The Historical Society of Pennsylvania, p. 78.

³⁰ Hazard, *Annals of Pennsylvania*, p. 599. Original in Land Office at Harrisburg, Pennsylvania.

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With my love, this is to desire thee to dispatch away a messenger, upon receipt hereof, with the enclosed letters to the several persons and places they are directed to, that so they may be at New Castle, at the Court, the 2d of 9th month, in which thou wilt oblige thy loving and true friend.

William Penn

Upland, 29th of 8th Mo. 1682

Salute me to thy wife and kind neighbors

Direct the enclosed letters and seal them. I will pay the messenger

The General Court was held at New Castle on the day appointed and was attended by Penn, William Markham, four members of Council and five of the six Justices of New Castle who had been appointed on October 28th as one of Penn's first acts after taking possession of New Castle. No persons attended from the two Lower Counties. This may have been due to the extremely short notice of the meeting—only three days. In the then condition of the country, it would have been hardly possible for the members from Sussex County to have been present. At the Court,³¹ Penn advised the use of the Duke of York laws until other laws were passed,

Assuring the inhabitants of this and the other two Counties downwards, that they should have and enjoy, full and equal, the same privileges with those of the Province of Pennsylvania, and that for the future they should be governed by such laws and orders as they themselves, by their deputies and representatives, should consent to, and that he would call an assembly for the purpose as soon as conveniently may be

This is the first mention I have found in the Lower Counties of any Assembly. I repeat that the inference is strong that the idea of Union emanated from Penn and not from the people of the Lower Counties. Whether this idea was born at the time that Penn received the grant from the Duke of York in England in August, 1682, had its birth in those long days and nights as the *Welcome* ploughed its laborious way across the trackless sea, or whether it originated after

³¹ Hazard, *Annals of Pennsylvania*, p. 599. Original in Land Office at Harrisburg, Pennsylvania.

the General Court in New Castle, seems impossible now of definite determination.

Six days after the Court at New Castle, the Union was virtually assured by the issuance of the writ of election under which the Lower Counties elected exactly one-half of all of the Representatives of the First Assembly.

On December 29th, 1682, Penn said "I have annexed the Lower Counties (lately obtained) to the province,"⁸² and some years later James Logan said that Penn had "prevailed" upon the territories to accept the Union with the province and in no instance have I ever seen any intimation that Logan misrepresented Penn or pictured him in other than the most favorable light.

Little did Penn foresee how short lived and tempestuous would be the Union that he was about to form.

I confess I have no evidence to substantiate it, but it is possible that the manner of the creation of the Union, with its lack of spontaneity or express desire on the part of the people of the Lower Counties themselves may have been one of those tap roots which drew its strength and vigor from the underlying feeling of the people and flowered in the almost constant discord of the time.

The first election ever held in Delaware is interesting also in that it presents to us the first instance of electoral irregularity or political manipulation. A natural and well deserved admiration for the sterling qualities of our ancestors is quite apt to make us believe that they were immune from the political faults which have been present in certain elements of our society in these latter days. It is a fact, however, that in 1682, Abraham Mann was returned as a representative for New Castle County. At the meeting of the Assembly the Sheriff was called to account, witnesses heard and it

⁸² Proud, *History of Pennsylvania*, I. 209.

was unanimously resolved that "Abraham Mann and his party had made some illegal procedure the day of election at New Castle," and John Moll was unanimously seated in his stead.³³

The Union of the Province and Territories having been consummated the next election was held pursuant to the Charter. It was therein provided, as we have seen, for an election on February 20, 1683. The charter provided for a council of seventy-two members (twelve from each county), and an assembly of two hundred. It must have been readily apparent that in such a sparsely settled country such a number of representatives could not be chosen and each county selected twelve men and petitioned that three be allowed to act as Members of Council and nine as Members of Assembly.³⁴ The name of this originator of this change, has, so far as I can learn, been lost in the flux of time. The Frame of Government was almost immediately superseded by that of 1683. Time and space does not admit of a discussion of these Assemblies, but a passing consideration may be given to one feature.

It has been suggested that neither of the first two Frames of Government created a representative body. This was because in neither was there any power in the Assembly, properly speaking, to originate legislation. All bills were proposed to and acted upon by the Council before the Assembly met and copies distributed to insure public knowledge some twenty or thirty days before the convening of the Assembly which then approved, disapproved or amended them. It almost seems that some adaptation of this principle might be of value. If prospective bills could now be submitted to a more permanent body, fully considered in its proper form and coördinated with existing legislation it almost seems as if an answer could be found to the

³³ *Votes of the Assembly of Pennsylvania; Duke of York Laws*, p. 474.

³⁴ Hazard, *Annals of Pennsylvania*, p. 603; *Duke of York Laws*, p. 483.

question of the great mass of ill-considered and poorly digested legislation from which we suffer.

The next few years are crowded with instances indicative of the feeling of political and sectional unrest and presaging and foretelling the eventual separation of the Lower Counties. The facts surrounding almost every instance would make an interesting story but almost uniformly the events themselves represent acts which are not themselves causative of sectional differences, but rather appear as incidents resulting from pre-existing and deep rooted causes.

In 1683, Lord Baltimore began his contest for the possession of the Delaware soil which for the next sixty years left matters greatly unsettled. The first contest was ended November 13, 1685, at a meeting of the English Court, at which King James was present in person.³⁵ It was there ordered that the Delaware tract be divided into two equal tracts, one of which should belong to Baltimore and the other to the King. This King was the same person who, as Duke of York, in 1682, had made the Deeds of Feoffment to Penn for the Three Lower Counties. It was later contended that the possession or right of the King under the above order was intended for the use of Penn since Penn had been the party to the contest and the Duke of York under the grant of 1682 had agreed to make further assurances within seven years. In this contest Penn over his own signature acknowledged that it was not the love or need of the land which interested him, but the water,³⁶ a door, the gateway to the sea.

Preserving some semblance of chronological order our attention is next arrested, in 1688, by what, in my opinion, is the most amazing document in the History of Delaware. It seems the more remarkable because I have seen no reference to it in any history of the State.

³⁵ *Pennsylvania Archives*, Second Series, XII. 392, 406.

³⁶ *Ibid.*, XII. 397.

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In December, 1688, Sir William Williams, Solicitor General of England drew in his own handwriting, a charter to be signed by James II. granting to William Penn all the land of the Lower Counties south of the twelve mile circle.³⁷ It recites the lease for ten thousand years made, in 1682, between the same parties, but makes no reference to the Deeds of Feoffment. It is very lengthy and provides with meticulous care for all details of charter government and gives to the new colony the name of Lower Pennsylvania. The draft was finished and presented on December 10, 1688, the day that James II. received the unsatisfactory answer to his overtures to William of Orange and at three o'clock on the morning of the eleventh, James fled in a small boat to Gravesend and abdicated the throne of England.³⁸ Imagination can scarcely picture the changes so narrowly averted. A few days, a few hours, or even a moment taken by the Royal Fugitive to sign the charter, would have changed the whole course of our history. If the Lower Counties had been vested in Penn beyond doubt or question, if Penn had governed by Royal Charter instead of by his uncertain and questionable Deed of Feoffment, or if, on the other hand, the upper twenty-four miles of what is now the State of Delaware had been isolated as a separate entity and bounded on the north by the Province of Pennsylvania and on the south by the new Province of Lower Pennsylvania, then that cohesion and close regard which has ever bound the citizens of the Three Lower Counties would never have had its birth and the State of Delaware could not have been. Though neither signed nor sealed by King James, this is the charter to which Penn evidently referred when he

³⁷ Penn Manuscripts in The Historical Society of Pennsylvania: *Charters and Frames of Government*, pp. 11-19; *The Three Lower Counties*, p. 35.

³⁸ William Howell, *Historiae Anglicanae*, p. 513.

wrote on June 10, 1691, that the Duke of York after becoming James II. had given him a charter for the Lower Counties.³⁹

In the period from 1690 to 1692, the relations between the Province and the Lower Counties grew much worse and almost to the breaking point. So deep were these animosities that it has been shrewdly suggested that the records themselves were destroyed to hide the record of events from future generations.⁴⁰ There are no records of the Provincial Assembly for 1691, nor of the Provincial Council for 1691 or 1692.

For a long time the question of the Judiciary had been a cause of trouble between the two sections. On May 10, 1687, the Assembly ordered "for a good understanding one, at least, of the Provincial Judges should be chosen from the Lower Counties,"⁴¹ and it seems to have been the practice to draw two commissions for the Judges. The person first named in the commission acted as Chief Justice. In the commission operative in the Province a Pennsylvanian was named first, but in the one intended for the Lower Counties, a Lower County man was named first and became their Chief Justice.⁴² On September 5, 1690, the Council named certain Judges of whom the Delaware members did not approve. As a consequence, six members of the Lower Counties⁴³ met alone and without notice to the others and elected five new Judges of whom three were Lower County men,⁴⁴ and further resolved that no

³⁹ Gordon, *History of Pennsylvania*, p. 601; Shepherd, *History of the Proprietary Government in Pennsylvania*, p. 121.

⁴⁰ *Duke of York's Laws*, p. 532.

⁴¹ *Votes of the Assembly of Pennsylvania*, p. 40.

⁴² *Duke of York's Laws*, p. 533, Shepherd, *History of the Proprietary Government in Pennsylvania*, p. 328.

⁴³ *Duke of York's Laws*, p. 532; Proud, *History of Pennsylvania*, I. 352; *Minutes of the Provincial Council of Pennsylvania*, I. 344. John Cann and Johannes de Haes of New Castle County; John Brinckloe and Griffith Jones of Kent; William Clark and Luke Watson of Sussex.

⁴⁴ Edward Blake, Griffith Jones and William Clark.

officer be appointed for any county unless two members of council from that county be present and approve. This arbitrary and peculiar action was promptly repudiated by the Council on November 26th, whereupon certain proposals were made "for the ease and satisfaction of the Three Lower Counties . . . which may further show the views of the members for the said counties in this affair."⁴⁵ These proposals included the laying aside of both commissions and the election of Lower County Judges by Lower County Councilmen to serve in the Lower Counties alone and that all other officers of the Lower Counties be named by the nine Councilmen from the Lower Counties and that no other officers be imposed upon them.

The following year (1691) saw no cessation of the sectional controversy and marks the first actual secession from the Province. Penn had given the Council its choice of three methods of government during his absence (1) Government by the Council, (2) By five Commissioners or (3) by a Deputy Governor. The Province of Pennsylvania had chosen a Deputy Governor in the person of Thomas Lloyd. On April 1, 1691, seven members of Council from the Lower Counties drew a vigorous protest to the effect that they preferred the five Commissioner system; that their second choice was the Council system though it was less convenient because of the encroachments on their liberties made by the Council and that a Deputy Governor was most disagreeable of any because of the choice of officers being placed in one person and because of the charge for his support. They further stated they would consent to government by the Council provided no officers were appointed in the Lower Counties without the consent of the members of those Counties. They then stated they declined to have these things put to a vote because they had noticed that the Province

⁴⁵ Proud, *History of Pennsylvania*, I. 354.

would never consent to a vote unless they had ascertained that they could carry the vote.⁴⁶ The Delaware members having definitely withdrawn, a committee of four members followed them to New Castle to attempt to have them return, but in vain.⁴⁷ The seceding members evidently refused to further attend and the assemblymen absented themselves from the meeting of May 10, 1691; for on June 17, 1691, reference is made to the

Breach that the Representatives of the said annexed Counties have lately made in wilfully absenting themselves from their charteral attendance in the last legislative Council and Assembly and declining their other incumbent duties and services to the present constitution of this Province; as also in *opposing and tumultuously preventing the election of new members* to supply the neglect of the absenting representatives, withstanding all Provincial Acts of Government and denying the powers of the same.⁴⁸

The disorder in the Government of the Province of Pennsylvania is one of the given causes when William and Mary deprived Penn of any control of the Province and Territories and on October 20, 1692, appointed Colonel Benjamin Fletcher to be Governor.⁴⁹ The Colony was in effect a Royal Colony from October 20, 1692, until August 20, 1694, and during this time Governor Fletcher governed under the direct mandate of the English Crown with no connection with Penn and, under Fletcher, Markham acted as Lieutenant Governor. From the advent of Fletcher, in 1692, until the return of Penn, in 1699, to his faction-torn Province there is little to which reference must be made. This does not indicate that this period constituted an era of good feeling, but the Province itself was so torn with fac-

⁴⁶ Proud, *History of Pennsylvania*, I. 355; *Duke of York Laws*, p. 534. These seven members were John Cann and Richard Halliwell of New Castle, John Brinckloe and George Martin of Kent; and William Clark, John Hill and Albertus Jacobs of Sussex.

⁴⁷ Proud, *History of Pennsylvania*, I. 356. John Simcock, John Bristow, John Delavall and David Lloyd.

⁴⁸ Proud, *History of Pennsylvania*, I. 360.

⁴⁹ *Minutes of the Provincial Council of Pennsylvania*, I. 355.

tional jealousies—there was such contest and bitterness between the administrative and legislative branches—between the Governor and the Assembly that the sectional disputes between the Province and Territories seems to have been completely overshadowed.

The fact that Fletcher governed the Colony under the Crown and not under Penn had one important effect. It furnished the basis of that long argument to the effect that the Act of Union had been severed which preceded the actual separation and added fuel to the fire of sectional discord which was soon to break out in actual secession.

The Assembly which met at New Castle on October 14, 1700, was the most important one in the whole history of the Colony. It was the third time the Assembly had met in New Castle, it having met there in 1684⁵⁰ and in 1690.⁵¹ It was in session from October 14, 1700, to November 27th. During this time one hundred and four Acts⁵² were passed and later submitted to the British Crown—a far greater number than passed at any other session. One of the first subjects of discussion was that of a new (a fourth) Frame of Government and by a majority of votes it was determined that the Frame of Government should include the provision that the Assembly should meet once in three times “in the Territories.”⁵³ On the fourth day of November appears the first bald and explicit statement of what must have been uppermost in the minds of the Lower County Leaders for a number of years, *viz.*, the ultimate place the Three Lower Counties must occupy in its Union with the Province after the certain

⁵⁰ *Votes of the Assembly of Pennsylvania*, p. 24.

⁵¹ *Ibid.*, p. 56.

⁵² *Statutes at Large of Pennsylvania*, II.

⁵³ *Votes of the Assembly of Pennsylvania*, p. 140.

expansion of the Province. On the last mentioned date it was

proposed by the members of the Lower Counties that the Union shall be confirmed on condition, that at no time hereafter the Number of Representatives of the People in Legislation in the Province, shall exceed that of the annexed Counties; but if hereafter more counties be made in the Province, and thereby more Representatives be added, that then the Union shall cease.⁵⁴

These proposals were rejected by the members from the Province and the entire Assembly met in conference with Penn and his Provincial Council. Penn suggested the following compromise:

That in all matters & things whatsoever wherein the Territories are or shall be particularly concerned in interest or privilege distinct from the Province, then, and in that case, no Act, Law or Ordinance in any wise shall pass in any Assembly in this Province and Territories unless two parts in three of the members of the said Territories and the majority of the members of the Province concur therein & converso.⁵⁵

The compromise seems not to have been acted upon, for the next day it was resolved

Whereas debates have happened in this House upon the construction of the words EQUAL PRIVILEGES in the Act of Union the Lower County members being of the opinion that the Act is not in force according to its primitive institution, yet . . . to prevent obstruction of business [all] have agreed to proceed and leave the whole matter in debate to the next General Assembly.⁵⁶

While the major part of the activities of the Representatives were devoted to political or sectional differences there are fleeting glimpses of a passing attention to the aesthetic side of life and an extract of one law may be of interest. The Third section of the Fifty-Third law provided

that every owner or inhabitant of any and every house in Philadelphia, New Castle and Chester shall plant one or more trees, viz., pines, un-bearing mulberries, water poplars, limes or other shady and wholesome trees before the door of his, her or their house and houses not exceeding eight feet from the front of the house and preserve the same, to the end that the said Towns may be well shaded from the violence of the sun in the heat of summer and thereby be rendered more healthy.⁵⁷

⁵⁴ *Votes of the Assembly of Pennsylvania*, p. 130.

⁵⁵ *Ibid.*, p. 131.

⁵⁶ *Ibid.*

⁵⁷ Mitchell and Flanders, *Statutes of Pennsylvania*, II. 66.

The next regular meeting of the Assembly met in Philadelphia September 15, 1701. This was the last session in which the Province and Territories joined in legislation. Almost immediately the Assembly began the compilation of the address containing twenty-one requests of the Governor, six of them being particularly applicable to the Lower Counties. Number Twelve concerned the recording of his deeds and other papers establishing his right to the Lower Counties and Penn stated his Deeds of Feoffment were then in England. Number Fourteen concerned the grant of one thousand acres to the Town of New Castle as a Common which that Town still retains.⁵⁸

The real and final trouble started on October 10th, when a Bill was read for the confirmation of the one hundred and four Acts which had been passed at New Castle in November, 1700.⁵⁹ The confirmation was desired on the part of the Province because some question had been raised as to the legality of the laws, they having been passed at New Castle outside of the limits of the Province itself. This was the last straw, the severance of the last thread joining the Province to the Territories. The members from the Lower Counties at once saw that if laws passed at New Castle for the Province were illegal, then all laws passed in Philadelphia and applicable to the Lower Counties would suffer from the same taint; that no further meetings of the Assembly would be held outside the Province and that the Lower Counties would become but a cipher in the Legislative management of the Colony. Before the vote was taken nine members of the Lower Counties—four from New Castle, four from Kent and one from Sussex, arose and left the House.⁶⁰ These were

⁵⁸ *Votes of the Assembly of Pennsylvania*, pp. 145, 148, 153; *Minutes of the Provincial Council of Pennsylvania*, II. 37, 41, 44.

⁵⁹ *Votes of the Assembly of Pennsylvania*, p. 154.

⁶⁰ *Ibid.*, p. 154.

Jasper Yeates, John Donaldson, Richard Halliwell and Adam Peterson from New Castle, William Rodney, John Brinckloe, John Walker and William Morton from Kent, and Luke Watson, Jr., from Sussex. William Clark and Samuel Preston of Sussex did not leave the Assembly and Joseph Booth of Sussex was sick and did not attend. It is an interesting but fruitless theme of speculation as to what would have been the result if Clark and Preston had withdrawn with the other representatives. It is certain that the Assembly of 1701 would have broken up without further action, as the Territories had exactly one-half of the Representatives. Logan writing to Thomas Penn, in 1731, states that without the aid of these members the House could not have been maintained.⁶¹ It seems certain, however, that the separation was inevitable and that it would necessarily have taken place when the first additional county was added to the Province of Pennsylvania.

The absenting members of Assembly left, as we have seen, on October 10, 1701. They remained away until October 14th, when they, together with John Hill of Sussex, who had been for a number of years a Member of Council, called upon William Penn.⁶² The objections to the Bill for the Confirmation of Laws had been reduced to writing and submitted to the proprietor.⁶³

Penn called a conference of all the Assembly members an hour later where the matter was debated after which conference the entire Assembly met.⁶⁴ The two sections immediately disagreed as to what Penn had said. The Lower County members insisted that they were to declare the New Castle Laws binding on them

⁶¹ Penn Manuscripts in The Historical Society of Pennsylvania, *Official Correspondence*, II. 199-209.

⁶² Minutes of the Provincial Council of Pennsylvania, II. 49.

⁶³ *Ibid.*, II. 49.

⁶⁴ *Ibid.*, II. 50.

and the Province to declare them binding there and then unanimously declare the Act of Union void. The Upper County members declared that the New Castle Laws were to be first confirmed.⁶⁵

The following morning, October 15, the absenting members returned and declared they were willing to act with the others provided they could enter their dissent to the Bill of Confirmation of the laws and "that nothing would be carried over their heads by over voting them."⁶⁶ The Provincial members agreed to the entry of dissent but would not agree not to over-vote them and the Bill for Confirmation being called for a second reading the same members again withdrew. Later in the same day they returned, entered their dissent to the Bill for Confirmation, and "sat down, the Governor having assured the House that nothing further than what lay before them should be offered to the House from him nor received by him from them."⁶⁷ The remainder of the session seems to have passed quietly and without sectional discord. It was an irony of fate that the rock on which the Union of the Province and Territories split or at least the final and moving cause of the separation, *viz.*: The Act for Confirmation of the New Castle Laws proved in the end to have been an abortive and a useless thing. All of the Laws made in New Castle in 1700, as well as the Laws of 1701, including the Act of Confirmation were referred for approval to the Queen in Council. The English Attorney General ruled that the Act of Confirmation of the Laws of 1700 could not be approved if any of the Acts themselves were repealed and as many of these Acts were disapproved the confirming Act itself suffered a like rate.⁶⁸

⁶⁵ *Votes of the Assembly of Pennsylvania*, p. 156.

⁶⁶ *Ibid.*, p. 156.

⁶⁷ *Ibid.*, p. 157.

⁶⁸ Mitchell and Flander, *Statutes at Large of Pennsylvania*, II. 497.

The last business of the 1701 Assembly was the promulgation by Penn on October 28th of the Fourth Frame of Government. After the charter had been finished and dated Anthony Morris and William Rodney returned it to Penn,⁶⁹ insisting that some provisions be made for separate Assemblies in case of Disunion and such provision was added in the nature of a post-script.⁷⁰

Notwithstanding the provision for separate Assemblies, if desired, all the evidence tends to show that the charter was not approved or accepted by the Lower Counties. The charter provided for the election on October 1st annually of four representatives from each County. No election was held in the Lower Counties in October, 1702, and when the representatives of the Province met on October 14th they could not form a House.⁷¹ Writs were issued by Governor Andrew Hamilton for an election on November 2, 1702, for Representatives to meet on November 16th and the Pennsylvania Members adjourned to that time.⁷² These elections were held and the representatives attended but immediately it was objected that there could be no joining in legislation for the reason that the Provincial Representatives had been elected according to the Charter (which the Lower Counties had not accepted), and the Lower County members had been elected by writ. After four days of fruitless discussion the Representatives were dismissed without having acted as an Assembly.⁷³ On the afternoon of the day of dismissal the members from the Province petitioned the Governor that the number of Representatives be made eight from each county of the Province as the charter

⁶⁹ *Votes of the Assembly of Pennsylvania*, p. 163.

⁷⁰ Charter or Frames of Government of 1701.

⁷¹ *Minutes of the Provincial Council of Pennsylvania*, II. 75.

⁷² *Ibid.*, II. 75.

⁷³ *Ibid.*, II. 84.

provided in case of a separation of the Assemblies.⁷⁴ In October, 1703, each county of the Province elected eight representatives and the Council, Hamilton having died, questioned the right to elect that number.⁷⁵ After some delay the Assembly was adjourned to May 1.⁷⁶

I can find no record of any election of Representatives in the Lower Counties in 1703, and it is almost certain there was none for Hamilton would not be owned as Governor because he had been appointed by Penn alone and had not received the Royal approval. Hamilton having died, John Evans was appointed Lieutenant Governor and having received the Royal approbation arrived in Philadelphia February 2, 1704.⁷⁷

Evans on his arrival was surprised at the separation of the Province⁷⁸ and at once went to New Castle and had a conference with some of the principal inhabitants.⁷⁹ As a consequence of this meeting an election was called for March 21st, the Representatives to meet in Assembly on April 10th.⁸⁰ This election seems to have been bitterly contested in New Castle County between parties respectively headed by James Coutts and Richard Halliwell and over three hundred votes were cast resulting in a large majority for Coutts.⁸¹

When the Representatives met the Governor on April 10th, those from the Province insisted that they were a complete house by themselves and expressed surprise that those from the Lower Counties were there

⁷⁴ *Minutes of the Provincial Council of Pennsylvania*, II. 111.

⁷⁵ *Ibid.*, II. 105.

⁷⁶ *Ibid.*, II. 110.

⁷⁷ Proud, *History of Pennsylvania*, p. 457; *Minutes of the Provincial Council of Pennsylvania*, II. 115.

⁷⁸ *Minutes of the Provincial Council of Pennsylvania*, II. 126.

⁷⁹ *Minutes of the Provincial Council of Pennsylvania*, II. 120; *Votes of the Assembly of Pennsylvania*, Part 2, p. 3.

⁸⁰ *Minutes of the Provincial Council of Pennsylvania*, p. 120.

⁸¹ *Penn-Logan Correspondence*, II. 282.

and declined meeting with them.⁸² After an address by the Governor there was a conference.⁸³ On April 13th the Lower County members in writing signified that they were willing to accept the charter and join in legislation if the Province would agree to a representation of four from each county.⁸⁴ These proposals were on the same day declined by the Representatives of the Province.⁸⁵ On April 14th the Lower County members made a written representation to the Governor of their failure stating that they were willing that the Province might retain their larger representation of eight members for each county until the next election.⁸⁶ The Lower County members remained in Philadelphia until April 18th, when the Governor called on them at their meeting place (the Bull's Head Tavern),⁸⁷ and told them he would obtain legal advice as to whether they could form a separate Assembly at New Castle upon their present election. Roger Mompesson, Chief Justice of the Province, rendered his opinion that it would be inadvisable to proceed upon the existing elections⁸⁸ and writs were issued for a new election on May 12th to meet the Governor at New Castle as a distinct Assembly on May 22, 1704. I have found no evidence that these elections were held or that this assembly met. It seems to me that the first Delaware Assembly met in November, 1704. On November 22, 1704, James Logan, writing from New Castle says⁸⁹ "We are now come hither to hold a distinct Assembly . . . but each county being represented only by four members little will be done at this time."

⁸² *Minutes of the Provincial Council of Pennsylvania*, II. 124.

⁸³ *Ibid.* II. 129.

⁸⁴ *Votes of the Assembly of Pennsylvania*, Part 2, p. 4.

⁸⁵ *Minutes of the Provincial Council*, II. 128.

⁸⁶ *Ibid.*, II. 128.

⁸⁷ *Ibid.*, II. 134.

⁸⁸ *Ibid.*, II. 136.

⁸⁹ *Penn-Logan Correspondence*, II. 346.

On November 25th, Logan says "The Assembly as 'tis called here, have passed two Acts only and intend no more. The first is for the Confirmation of all the laws and the other for increasing the number of representatives from 4 to 6 for each County. The Governor is very earnest for an Act to establish the militia, but they are resolved not to touch with it until next meeting with advanced numbers."

I have not been able to find the membership of this first Delaware Assembly. Even the Speakership has been assigned to various persons. Caesar Rodney in his Will, mentions his grandfather, William Rodney, as "Speaker of the First General Assembly held in Delaware under the old Government after the separation from Pennsylvania."⁹⁰ Leach in his *Members of the Delaware Assembly* gives James Coutts as Speaker in 1704⁹¹ and Scharf gives Joseph England.⁹² It is possible that these claims may be reconciled or at least explained. William Rodney was certainly Speaker of Assembly, in 1706, and appears in the Codification of Laws of 1752 as the signer of the earliest laws in that volume. He died in 1708.

Leach gives as members of the 1704 Assembly⁹³ all those who were elected to meet the Governor in Philadelphia in April, 1704,⁹⁴ but these as we have seen were held by Judge Mompesson incapable of meeting in New Castle under their election writs.⁹⁵ James Logan gives Coutts as Speaker in October, 1708,⁹⁶ so it is possible

⁹⁰ Will at Dover, Delaware.

⁹¹ Publications of The Genealogical Society of Pennsylvania, V. 246.

⁹² Scharf, History of Delaware, I.

⁹³ Publication of The Genealogical Society of Pennsylvania, V. 246.

⁹⁴ James Coutts, John Healy, Roelof de Haes & Isaac Gooding of New Castle County; William Rodney, John Brinkloe, William Morten, Arthur Meston of Kent County; John Hill, William Bagwell, Robert Burton, Richard Painter of Sussex. *Minutes of the Provincial Council*, II. 129.

⁹⁵ *Minutes of the Provincial Council*, II. 136.

⁹⁶ *Penn-Logan Correspondence*, II. 325.

that Coutts succeeded Rodney. It seems certain that England was not Speaker until Gookin became Governor.⁹⁷

The statement that the first Delaware Assembly met in November, 1704, is somewhat borne out by the Minutes of the Council on May 1, 1705, when the following appears:⁹⁸

Whereas the Assembly of the Lower Counties meeting in November last was dissolved without doing anything and expected to be called again at the present month at farthest . . . [resolved] therefore that writs should be forthwith issued to the Three Lower Counties to elect six members each (according to their own late act) on the 15th instant to meet at New Castle the 24th.

This meeting seems to have been held but the only thing apparently done was to pass a militia Act. William Clark of Sussex was Speaker of this Assembly and died at New Castle "of a surfeit of Cherries" within two days of the adjournment of the session.⁹⁹

The next meeting of the Assembly, and the last to which I will refer, was held in October or November 1705.¹⁰⁰ By this time the Assembly seems to have gotten into the full swing of action as an independent entity and at this session eleven acts were passed including an Act for Regulating Courts and a tax act for the support of the Government.

This then seems a proper and logical place for me to pause. It is difficult to withstand the temptation to wander onward and treat of the Assembly of 1708, so full of political intrigue as they sought a complete separation from Penn or to ignore the period about 1715 when we barely escaped the substitution of the Earl of Sutherland for William Penn as Proprietor and Governor, or of 1725, when Keith seemed to govern for the Crown alone. But these matters, interesting in them-

⁹⁷ *Code of Delaware Laws*, 1752.

⁹⁸ *Minutes of the Provincial Council*, II. 125.

⁹⁹ *Penn-Logan Correspondence*, II. 35.

¹⁰⁰ *Ibid.*, II. 83.

selves and important in our history are apart and aside from my present inquiry. From the beginning of the Colony two ties bound us to the Province of Pennsylvania—the Legislative and Executive bands. I have attempted in this imperfect and inadequate manner to give some of the facts of the breach of Legislative Union. When this was severed nothing but a thin Executive or Proprietary ligament joined us to any outside power, and when the Declaration of Independence threw off this last connection and placed the Executive Power in the people themselves, then a long familiarity with legislative freedom established by almost eight decades of independent action (during which no laws were ever submitted for approval to the crown), allowed the Delaware State to smoothly glide into and through the Confederation of Colonies and emerge as the First State of the New Union.

All praise and glory do I give those strong men of the Colonial days who preserved our Independence. Many of them untutored, none overburdened with this world's goods and few of them graced with educational or classical attainments, a certain sterling strength of character seems their greatest asset as they struggled toward an ideal. I seem to see a shadowy quest for a clearer conception of the meaning of two words which to them were almost unknown—words that are and always will be the motto of the State of Delaware—words impressed upon the Seal of State, but far more ineradicably engraved upon the hearts and minds of Delaware's Sons and Daughters—LIBERTY AND INDEPENDENCE.