

## *The Missing Evidence*

### *Penn v. Baltimore*

**I**N past years, Maryland and Pennsylvania historians feuded over William Penn's acquisition of the three Lower Counties, now known as the state of Delaware. The literature of the controversy was spirited. An article by Dr. G. W. Archer, "The Dismemberment of Maryland," which was printed by the Maryland Historical Society in 1889, is a fair example. Warning that an examination of the arguments of those historians who championed William Penn would present human nature in an unflattering light, Dr. Archer exposed the views of Frederick D. Stone, Librarian of The Historical Society of Pennsylvania, and flatly pronounced them absurd.

"It seems to be the especial delight of the Historical Society of Pennsylvania," Dr. Archer summarized, "to secure the reading of papers defending Penn's course in the matter of his boundary dispute with the Calverts—papers which of course they never fail to publish at once." This latter statement seems to carry an implied criticism of the Maryland Historical Society for not publishing his own paper until the year after its reading. Branching into an interesting psychological discussion, Dr. Archer found that publications defending Penn's conduct took their rise from a guilt consciousness. "Hence the mass of such defensive literature in the archives of the Pennsylvania Historical Society is enormous. This, in itself, to anyone who looks beneath the surface, is a very suspicious circumstance; yet, like the continued advertising and puffing of specious drugs by those who very well know them to be far worse than worthless, is very effective."

Feelings have mellowed since Dr. Archer made his address. Few Marylanders, we fervently hope, wonder, as did Dr. Archer, how any Pennsylvanian could "look us square in the face without a burning blush of shame." It is now possible to publish evidence pertinent to

the Penn-Baltimore controversy without arousing suspicions of underhand motives or guilt-racked impulses.<sup>1</sup>

A few comments are necessary to sketch in the background of this evidence which was so important that until it was produced in 1685, the ownership of Delaware could not be determined. According to the charter granted by Charles I to Lord Baltimore in 1632, Delaware lay within Baltimore's territory, provided it had not been cultivated and occupied by people other than Indians. Penn rested his rights to Delaware on a title from the Duke of York, who claimed Delaware by right of conquest from the Dutch.

To William Penn, control of the Delaware River and its bay was vital; indeed, he referred to the river as his "Ewe Lamb." His very first act on landing in the New World was to produce the deeds to Delaware, given him by the Duke of York, and to order, "let all ships clear at New Castle, ye River now being mine." Warned that Baltimore would not accept this claim, Penn was militantly ready to defend it: "I come a man of peace yet fear not warr."<sup>2</sup>

Shortly after Penn's arrival in 1682, he met Lord Baltimore, and it was not long before the interests of the two great proprietors were at loggerheads. Baltimore refused to recognize the Duke of York's right to Delaware. The point at issue was whether or not Europeans had settled Delaware prior to the Baltimore charter of 1632. If such a settlement could be proved, it would go far to nullify Baltimore's claim and to support the Duke of York's contention that he had won Delaware by conquest from its original settlers, the Dutch, in 1664.

Visiting New York, where he had the sympathetic support of Governor Thomas Dongan, Penn ordered a search made of the records of the Dutch West India Company for evidence of early settlements. It was on this subject that Nicholas Bayard of New York later wrote to him: "I have made it my business to speak with several of the old standers in the country, but the most having been private persons and without public employ, can likewise give no account what right the Dutch formerly had in your parts of Delaware, only that they had possession and built forts there long before the year

<sup>1</sup> G. W. Archer, M.D., *The Dismemberment of Maryland* [Fund Publication 30, Maryland Historical Society] (Baltimore, 1890), 107-108, 130-131, 135.

<sup>2</sup> Penn to the Duke of York, Feb. 2, 1683/4, Friends House, London; William J. Buck, *William Penn in America* (Philadelphia, 1888), 77; Penn to Augustine Herman, Nov. 2, 1682, The Historical Society of Pennsylvania (HSP).

1638; of which I can procure several testimonies if you desire the same.”<sup>3</sup> Penn did desire the same, and these depositions, together with transcripts from the Dutch records, were gathered for him by his agent, Thomas Lloyd.

Lord Baltimore, painfully aware of Penn’s activities, realized he must return to England to defend himself. Writing to William Blathwayt, the able secretary of the Lords of Trade and Plantations, for a hearing on “my Right to Delaware,” Baltimore observed that “if my unkind Neighbour William Penn, or his Agents are able to make out, that there were Dutch seated at Delaware afore my Pattennt for Maryland was granted (wch will be some what hard to prove) I will then make it plainely appeare that such Dutch were usurpers and were utterly disowned by the States of Holland.”<sup>4</sup> In 1684 Baltimore sailed for England. Suspecting that the Maryland proprietor had stolen a march on him, Penn notified his patron, the Duke of York, “I am following him as fast as I can. . . . I add no more, but to pray, that a perfect stop be put to all his proceedings till I come.”<sup>5</sup>

The Quaker’s joy at finding his wife and family well on his return home after a forty-six-day voyage was sadly tempered by a frightful discovery. To Thomas Lloyd, Penn frantically scribbled: “comeing to search & sett to rights my papers, to my astonishment I finde not one of yr york ones, no affidavit before ye mayor about seating delaware River & Bay, the ground of my comeing & strength of all my cause the Council fixing the point there. The Duke has putt it off till december, & if I can gett it off till March, ’twill be all I can do. where fore instantly away to york, & gett affidavits of the 3 yt N. Byars<sup>6</sup> says can speak to yt matter, both before the Mayor & the Governour under the seal of town & province. the Governour to be sure, for yt will be most authentick. all depends on this. . . . Philip Lemain<sup>7</sup> can never while he lives repaire me this wrong by his supine neglect. so often did I speak to thee where are ye york papers, & to

<sup>3</sup> Buck, 138–139.

<sup>4</sup> *Proceedings of the Council of Maryland, 1667–1687/8*, Archives of Maryland (Baltimore, 1887), V, 402–403.

<sup>5</sup> Buck, 159.

<sup>6</sup> Nicholas Bayard.

<sup>7</sup> Philip Theodore Lehman was William Penn’s private secretary who mislaid the important papers. Buck, 169.

him, be sure I have ye york Papers yt T. Lloyd has putt up & he said they were & not a scrap of them to be seen. this is a trouble beyond measure to me."<sup>8</sup>

On the same day that he wrote to Lloyd, Penn also addressed a letter to his steward in Pennsylvania: "Phil Lemain has most carelessly left behind ye york papers yt T. Lloyd brought & should have come as the ground & very strength of my coming so yt I am now here with my finger in my mouth. he could not have done me a worse injury nor balti[more] a greater service, if he had had ye bribe of 10000 to do it. wherefore lett him be quickned to send them by the first ship, that comes out of Maryland or Virginia; and lett him goe express away with it & search the first ship, & endorse on ye letter *to me for his Royall highness service speed speed & care* & then lett Tho: Lloyd step to york & gett fresh affidavits of ye 3 men yt can swear the Dutch possession of River & bay before Baltimore's Patent, in ye Governrs presence & under the seal of ye Province."<sup>9</sup>

Before Penn's return to England, Lord Baltimore had attempted to bring the Delaware controversy before the Lords of Trade, but the Duke of York's attorney had succeeded in putting off the hearing because "the proofs in this case depend chiefly upon Mr. Pen's coming into England, where he was soon expected." Two months after Penn's return, the hearing was again postponed because Penn had left his evidence in America.<sup>10</sup>

It was not until September 2, 1685, that Baltimore and Penn appeared before the Lords of Trade in their council chamber at Whitehall. At long last Penn was able to produce "divers proofs to make out that the Country of Delaware was inhabited by the Swedes and Dutch before the date of the Lord Baltimore's Patent." After other hearings during which Lord Baltimore failed to bring forward strong enough counterarguments, the Lords of Trade ruled that Penn's evidence proved that Delaware "was inhabited, at & before the Date of the Lord Baltimore's Patent, as it hath been ever since." Triumphantlly, Penn informed his Provincial Council: "This are to lett you know, that after three full hearings with the Lord Baltimore, before the Committee of Lords for Trade & Plantations, on the 17th

<sup>8</sup> Penn to Lloyd, Oct. 7, 1684, Huntington Library.

<sup>9</sup> Penn to James Harrison, Oct. 7, 1684, Penn Papers, Domestic and Miscellaneous Letters, 8, HSP.

<sup>10</sup> Entry for Sept. 30, 1684, Board of Trade Journals, V, 11, and for Dec. 9, 1684, *ibid.*, 54, HSP.

[October, 1685] instant, in a full presence, he was cast, and the lands of Delaware, declared to be not within the Ld Baltimore's Patent."<sup>11</sup>

Other documents played their part in upholding Penn's claim to Delaware, but his correspondence makes it clear that the evidence he valued above all other was the testimony of the three old New Yorkers, for it was only their testimony which could prove the point on which his case depended. The recent discovery of the original documents recording their statements is consequently of real interest. Circumstances favored Penn, but these papers furnished the Lords of Trade with judicial ground for supporting him.

Of the original file, only one testimony remains; it indicates that the temporarily mislaid papers came at last into Penn's hands. The second file, procured for Penn by Thomas Lloyd early in 1685 is complete—the evidence of all three “old standers” is present, including, in a somewhat different version, the evidence previously given in the surviving deposition from the first file. Each document is numbered, no doubt for order of presentation to the Lords of Trade, and endorsed to show that it is the original copy.

The depositions relate to a Dutch venture in the Delaware in 1624 and to an ill-fated settlement at or near present-day Lewes (the Whorekill) some years later. What little has been known of this latter colonial enterprise is to be found in Delaware histories.<sup>12</sup> The record substantiates the fact that the Dutch West India Company approved the settlement, that it took place before Lord Baltimore's patent, and that its pioneers were all massacred by Indians.

In 1804, John R. Coates, agent for the Penn family, selected these papers and many others relating to Delaware from the Penn archives, and brought them to America. When Thomas Cadwalader was appointed agent in 1817, the papers came into his possession, and they remained in successive Cadwalader law offices until deposited by the Cadwalader family in The Historical Society of Pennsylvania in 1939.

Five years before the Cadwalader Collection came to the Historical Society, Walter A. Powell wrote an article entitled “Fight of a Century Between the Penns and Calverts,” which was published in

<sup>11</sup> *Ibid.*, 188; Pennsylvania Miscellaneous Papers, Penn & Baltimore (1653-1724), 18, HSP; Penn to Provincial Council, Oct. 21, 1685, Letters and Papers of William Penn, 14, Dreer Collection, HSP.

<sup>12</sup> Benjamin Ferris, *A History of the Original Settlements on the Delaware* (Wilmington, Del., 1846); James N. Barker, *Sketches of the Primitive Settlements on the River Delaware* (Philadelphia, 1827); Dudley Lunt, *The Bounds of Delaware* (Wilmington, Del., 1947).

the June, 1934, issue of the *Maryland Historical Magazine*. In this article Mr. Powell makes the following assumption: "In 1685, there were no living witnesses to tell of ancient settlements or of the murdered colony of a half century before in the primeval forest of an unknown country inhabited only by Indians. The evidence produced by Penn at the hearing before the Lords of Trade and Plantations was traditionary and nebulous with no living witness to tell the facts." Mr. Powell then went on to say that because Penn did not know about the Dutch settlement, that settlement played no part in eliminating Delaware from the Maryland grant.

The following documents prove that Penn did know of the early settlement, the vital key to his claim, and that at the time he collected depositions there were living witnesses to attest to the murdered colony and to provide him incontrovertible evidence to win his case at Whitehall.

NICHOLAS B. WAINWRIGHT

*Original No. 2*

New York February the 14th 1684/5

The Deposition of Catolina Trico aged fourscore years or thereabouts taken before the Right Honorable Coll: Thomas Dongan, Lieutenant, & Governor, under his Royall Highss, James Duke of York, & Albany & of New York & its dependencies in America, who saith, & declares in the presence of god, as followith.

that, she came to this province either in the year one thousand six hundred & twenty three, or twenty four to the best of her remembrance, &, that, four women came along with her in the same shipp; in wch shipp the Governor Hiran Jorison<sup>13</sup> came allso over, which four women were married at sea; & that they & their husbands stayd about three weeks at this place; & then they with eight Seamen got[?] with in a Vessell by order of the Dutch Governor to Delaware river, & there settled, this I certifie under my hand, & the seale of this province.

Tho: Dongan

<sup>13</sup> "The Governor Hiran Jorison" needs interpretation to make sense. The governor appears to be a reference to Gov. Cornelis Jacobsz May, who did come on the ship. Hiran Jorison is evidently a reference to his second in command on the vessel, Adriaen Joris. Catolina and the other women were Walloons. J. Thomas Scharf and Thompson Westcott, *History of Philadelphia, 1609-1884* (Philadelphia, 1884), I, 57.

[This document bears the Great Seal of New York, and is endorsed with William Penn's initials and by various other hands. In Thomas Lloyd's writing are the words "The deposition of Cattolena Tico," and in another hand "of ye Dutch Settlement on Delaware 1623 or 1624."]

*Original No. 4*

Pieter Lourenson Van Ysvestryn about sixty eight years deposeth and Saith; That in the Yeare of Lord God one thousand six hundred and thirty, this deponant made his first voyage from New Yorke, then called New Amsterdam, to Dellowarre Baay, and att this deponants arrivall there, the Dutch West India Companie had already seated sd: Dellowarre, in two severrall places, that is to say in the hoorekill on the West side of Dellowarre bay, where the sd West India Companie then had a Commander whose name was Gillis, together with 17 or 18 men more, and had built there a great dwelling house of Yellow hollande brick, together with a kooke howse alsoo of brick; and the other settlement was made on the Eastside of Dellowarre, at a place called the Arwamus, where they had erected a fort called Nassau, and in it about 13 or 14 men, in which condition this deponant left the sd places, and departed again for New Yorke in the begining of the sd yeare a<sup>o</sup> 1623. But not long after in the same yeare, this deponant being in the Service or employ of the West India Companie, made his second voyage towarde sd Hoorekill, in order to bring there for the sd Companie, five men and two horses, but being at Sea, another sloop of the West India Companie met the sloop where this deponant was in; and forewarned them not to go to sd Hoorekill, by reason al the Christians where cut of there, by the Indians, whereuppon they did not proceed, but returned bake againe for New Yorke, and further saith not.

The marke of  
Peter X Lourensen  
Van Yselfteyn

Jurat XXIIIJ die February  
1682<sup>14</sup>

Wm Beekman  
Deputy Mayr

<sup>14</sup> Date intended was 1682/3. An early copy of this deposition is in the Penn Manuscripts, Papers Relating to the Three Lower Counties (1629-1774), 19, HSP.

[Here follows a deposition by Edward Antill, dated November 7, 1684, that the above signature of William Beekman is authentic. On the reverse are several endorsements, including in Thomas Lloyd's hand, "The Deposition of Peter Lawrenison before Beekman Deputy Mayor," and in another writing, "To prove that ye hoorkill in Delaware Bay was settled by the Dutch before ye year 1630. 24 feb. 82."]

*Original No. 5*

Peter Lowrensen aged 67 yeares being deposed Saith that he came into this Province a Servant to the West India Company in the yeare 1628, and in the yeare 1630 by Order of the West India Company hee with 7 more were Sent in a Sloop with hoy Sayle to Delloware where the Company had a Trading house with 10 or 12 Servants belonging to it which the Deponant himselfe did see there Setled and he further Saith that at his Returne from Delloware River the said vessell Stopt at the hoorekill where the deponant did also See a Settlement of a Brikhouse belonging to the West India Company; and the deponant further Saith that uppon an Island neare the falls of that River and neare the west side thereof the said Company some 3 or 4 yeares afore had a Trading house where there were 3 or 4 families of Waalloons, the Place of there Settlement he saw, and that they had been Seated there, he was Informed by Some of the Said Waalloons themselves when they were returned from thence; and Further this deponant Saith not.

This deposition was Taken uppon oath before mee, which I do Certify under the Seale of the Province this 24th of March A<sup>o</sup> 1684/5 In N: Yorke.<sup>15</sup>

Tho: Dongan

[This document bears the Great Seal of New York, and is endorsed by William Penn's initials and by various other hands. In Thomas Lloyd's writing are the words, "The deposition of Peter Lawrensen before Govrr Dongan." Another hand sets forth the words, "proving ye Dutch Settlemt upon Delaware 1628 & 1630."]

<sup>15</sup> This document is quoted in part in Scharf and Westcott, I, 58.



*Original No. 6*

The deposition of Arirn Dirksen Horn, aged about sixty five years, being deposed saith;

That he came in this Country of New Yorke formerly called the New Netherlands in the yeare one thousand six hunderd & thirty—the 24th of May, with the Shipp Unity, John Brown Commander; and hath eversince continued here in this Country; And saith further that at the said time of his arrivall here, this depon. heard and was informed by persons then arriving here from dellowarre River, that the sd. River was settled by the dutch West India Company, who had sent a parcel of men there in order to whale fishing; and this deponant saith further that some short time after, to his best remembrance it was about one yeare, or one yeare & a halfe after, news came here at New Yorke from dellowarre; that all the sd people in dellowarre where cut of by the Indians; And further this deponant saith nott.

Deposed by the said Aron Dirkson Horn before me ye 16th March 1684/5

Tho: Dongan

[This document bears the Great Seal of New York, and is endorsed with William Penn's initials and by various other hands. In Thomas Lloyd's writing are the words, "Affidavit from N. york agst Ld Balt. pretentions." In another hand are the words, "proving ye Dutch Settlemt on Delaware river befor 1630."]