The Yorke-Camden Opinion
and American Land Speculators

The part that land speculation has played in American history has been recognized by historians, but the extremes to which some individuals resorted in acquiring lands have, at times, demonstrated more than ordinary ingenuity and imagination, so much so that historians have remained mystified when attempting to unravel their activities. A case in point is the famous Yorke-Camden opinion whose origin had nothing to do with the lands of the North American aborigines.

In 1757, the Attorney General and Solicitor General of Great Britain, Charles Pratt and Charles Yorke (later Lords Camden and Morden), delivered a commentary on the rights of the East India Company for the guidance of the Privy Council in replying to a petition of the corporation. As has been observed by one investigator, from the circumstances in which the opinion was delivered, it represented a specific answer to a question raised by the Company regarding lands in India. The opinion of 1757 reads as follows:

As to the latter part of the prayer of the petition relative to the holding or retaining Fortresses or Districts already-acquired or to be acquired by Treaty, Grant or Conquest, We beg leave to point out some distinctions upon it. In respect to such Places as have been or shall be acquired by treaty or Grant from the Mogul or any of the Indian Princes or Governments Your Majesty's Letters Patent are not necessary, the property of the soil vesting in the Company by Indian Grants subject only to your Majesty's Right of Sovereignity [sic] over the Settlements as English Settlements & over the Inhabitants as English Subjects who carry with them your Majesty's Laws wherever they form Colonies & receive your Majesty's protection by virtue of your Royal Charters. In respect to such places as have lately been acquired or shall hereafter be acquired by Conquest the property as well as the Dominion vests in your Majesty by virtue of your

known Prerogative & consequently the Company can only derive a right to them through your Majestys Grant.2

This opinion drew a distinction between those areas in India which had been conquered and those which were regulated by the Company as a corporation under its charter rights, title to which had been obtained from the sovereign and independent Indian princes by treaty or grant to the Company.

Just when this opinion was obtained by American land speculators, and under what circumstances, is still an open question in spite of attempts by various writers to provide some solution. What is known is that as early as May, 1773, a garbled version of the opinion was in the possession of William Murray, an agent for Michael and Barnard Gratz, Philadelphia merchants engaged in the Indian trade in the Illinois country. The statement in Murray’s possession carried a heading denoting it as the opinion of the late Lord Chancellor Camden3 and Lord Chancellor Yorke4 on “Titles derived by the King’s Subjects from the Indians or Natives,” and bore the further notation that the document was “a true Copy compared in London the 1st April 1772.” The opinion reads as follows:

In respect to such places as have been or shall be acquired by Treaty or Grant from any of the Indian Princes or Governments; Your Majesty’s Letters Patents are not necessary, the property of the soil vesting in the Grantees by the Indian Grants; Subject only to your Majesty’s Right of Sovereignty over the Settlements as English Settlements and over the Inhabitants as English Subjects who carry with them your Majesty’s Laws wherever they form Colonys and receive your Majesty’s Protection by Virtue of your Royal Charters.5

The opinion was now so edited and altered as to eliminate reference to India and the East India Company. Further, it failed to draw the distinction between lands ceded to the British Crown by foreign

2 The opinion as quoted above was discovered in the records of the East India Company in London by Prof. Wayne E. Stevens and is printed in Shaw Livermore, Early American Land Companies: Their Influence in Corporate Development (New York, 1939), 106 (note 69).
3 Camden was still alive at this time, but he was no longer Lord Chancellor.
4 Yorke, then deceased, had been created Baron Morden on being appointed Lord Chancellor to succeed Camden.
5 Public Record Office (PRO), Colonial Office (C.O.) 5/1352: 155, London, transcript in Library of Congress. This copy was given by William Murray to Lord Dunmore, governor of Virginia. Dunmore had been enlisted by the speculators to plead their case and transmitted the copy to the Colonial Secretary, the Earl of Dartmouth, on May 16, 1774.
powers and lands which were acknowledged to be reserved for the use of the American aborigines. It also failed to include the vital reference to the royal charter by which the East India Company exercised quasi-governmental powers.

It should be noted that for reasons of expediency the British government could not refuse to acknowledge native ownership in the soil to the North American aborigines, but as far as British subjects and foreign powers were concerned, the British Crown, of course, enjoyed the dominion as well as the property of the lands by virtue of the Treaty of Paris of 1763. To acknowledge the implication of the edited Yorke-Camden opinion would be to deny that by the Treaty of Paris the British monarch had obtained even a first option to purchase lands of the sovereign American Indian tribes, even if they could be considered as sovereign. It is further relevant that by the Proclamation of 1763 the lands in the interior were reserved under the King's dominion for the use of the Indians.

On the basis of this questionable opinion, a land speculating group, the Illinois Company, was formed. The members included Murray; his employers, Michael and Barnard Gratz; David and Moses Franks, also Philadelphia merchants engaged in the Indian trade; and several Pennsylvania traders, among them Joseph Simon, Levy Andrew Levy, and Robert Callender. There was some duplication between this group and the "suffering traders" of Pennsylvania whom Samuel Wharton and William Trent then represented in England in an attempt to obtain royal confirmation of an Indian grant made to the traders by the Six Nations at the Treaty of Fort Stanwix in 1768. With the Illinois Company partially organized, Murray, in the spring of 1773, set out for the Illinois country, stopping en route at Pittsburgh where he saw George Croghan, long-time Indian trader and agent. From Pittsburgh, Murray wrote his employers that Croghan "assures me That Lords Camden and Yorke Personally Confirmed to him the Opinion respecting Indian Titles,


7 Rather than carry through with the petition for confirmation by the Crown, Wharton proceeded to help organize the Walpole Company, merging the interests of the traders with several prominent commercial and political figures in England, and petitioned for an expanded area as a new interior colony, Vandalia, along the left bank of the upper Ohio.
when Croghan was last in England. . . ."8 Croghan had been in England in 1764, seeking, among other things, confirmation of a private grant made him by the Six Nations some years earlier. Camden (then Charles Pratt) was Lord Chief Justice of the Court of Common Pleas. In what connection Croghan might have consulted him on titles for Indian grants is not known. The whole story is suspect, since Croghan failed to receive confirmation of his title to the lands granted him by the Indians. He was now allied with Wharton and Trent to have his grant confirmed along with that of the "suffering traders." Whatever the case, it would seem from the particular phrasing of Murray's letter that, up to this time, he had been uncertain of the validity of the source of the opinion in his possession.

By June 11, Murray was in the Illinois country where he presented the document to Captain Hugh Lord, commandant of the British detachment at Fort Gage at Kaskaskia. Lord, in his report of the incident to General Thomas Gage, commander in chief in America, described the document as "The opinion of my Lord Camden and the late Lord Morden, that His Majesty's subjects were at liberty to purchase whatever quantity of lands they chose of Indians. . . ." Murray then entered into negotiations with various tribes for lands between the Wabash and the Illinois rivers, although Lord had warned him that he would not allow any settlement as this was expressly contrary to royal orders. The commandant promptly wrote to Gage in New York for instructions,9 while Murray signed a deed for lands with the tribes.10 By this time, Gage had left New York for England, and General Frederick Haldimand, his temporary successor, notified both the commander in chief and the Colonial Secretary, the Earl of Dartmouth, of the incident in the Illinois country. Lord was having his difficulties, for two of the French inhabitants in that area, following the example set by Murray, had also purchased lands from one of the minor Illinois tribes. Lord had refused to regis-

8 Murray to Michael and Barnard Gratz, May 15, 1773, Ohio Company Papers, I, 102, HSP.
10 A copy of the deed sent by Murray to Dunmore and transmitted by him to Dartmouth on May 16, 1774, is in the PRO, C.O. 5/1352:60.
ter the deed since he regarded these lands as the property of the British monarch "ceded to him on the peace by the French King..."

These actions, properly considered by Lord as illegal, evoked a prompt response from officials in London. Dartmouth himself wrote Haldimand, authorizing a public declaration of "the King's disallowance" of these "unwarrantable proceedings" which were based only on "pretended Titles" to lands where all settlement had been forbidden by the Proclamation of 1763. Gage threw some light on the situation when he wrote to Haldimand about the opinion "said to be Lord Camden's..." In response to Dartmouth's desire to see a copy of the opinion, Gage promised to obtain one from Haldimand, "which you may do," he informed his replacement, "by Application to Colonel [James] Robertson," barracks master general of British forces in America, "for he shewed it to me some time before I left America, in writing." Haldimand was requested to transmit the opinion in his private correspondence. Gage felt confident that "Pains will be taken to undeceive" those persons who might believe that "such an Opinion was given by so able and respectable a Person as Lord Camden..."; no one in England, Gage confided, "will believe that his Lordship ever gave such an opinion." The Ministry certainly did not believe so, else it would have approached Camden directly for a copy.

Contemporaries and later historians have presented conflicting views as to the circumstances by which the edited and abbreviated Yorke-Camden opinion came into the hands of colonial land speculators. Alvord, for example, conjectured that the opinion became common property among speculators in America about 1770-1771, although it was not used by William Murray in the Illinois country until 1773. This hardly seems to have been the case. There is no evidence that the opinion was circulated before it was used by Murray, or that it was in the possession of anyone in America other

12 Dartmouth to Haldimand, Dec. 1, 1773, ibid. 21695, f. 53.
13 Gage to Haldimand, Feb. 2, 1774, ibid. 21665, f. 215. The copy which Haldimand obtained from Robertson and transmitted to England is in ibid. 21697, f. 73. Robertson was also interested in lands, but had received in 1766 a tract in East Florida legally by act of the Privy Council. See W. L. Grant and James Munro, eds., Acts of the Privy Council, Colonial Series (London, 1908-1912), IV, 814; V, 590.
14 Clarence W. Alvord, The Mississippi Valley in British Politics (Cleveland, Ohio, 1917), II, 201 (note).
than Murray and Robertson before the spring of 1773. The Gratz-Murray group passed the opinion on to Lord Dunmore after July, 1773, and it was then shown to Patrick Henry by the Virginia governor. In the fall of 1774, Henry, in turn, brought the matter to the attention of Thomas Wharton in Philadelphia, who then mentioned the opinion in a letter to his brother Samuel Wharton in London. There is no indication, nor has anyone demonstrated, that Samuel Wharton was aware of the original Yorke-Camden opinion before this time.

There is a copy of the edited opinion written on the first flyleaf of George Washington's diary for 1773, which would seem to indicate that he obtained the document during or after that year, probably from Dunmore. Richard Henderson, the North Carolina land speculator, also knew of the opinion in Dunmore's possession and obtained a copy. Henderson's source was his agent, James Hogg, who obtained the document from the Gratz-Murray group in Philadelphia. Hogg had been informed while in Philadelphia that the "suffering traders" had petitioned the Crown for confirmation of the grant made them by the Six Nations at the Treaty of Fort Stanwix in 1768. The King had laid their petition before Lord Chancellor Camden and Charles Yorke, then the Attorney General. They, in turn, issued the second Yorke-Camden opinion. This explanation does not conform to certain ascertainable facts. Camden served as Lord Chancellor

15 Dunnmore to Dartmouth, May 16, 1774, PRO, C.O. 5/1352:141.
16 Thomas Wharton to Samuel Wharton, Sept. 23, 1774, Wharton Letter Book, 1773-1784, HSP.
19 Kentucky Manuscript, Henderson Papers, Draper Collection, 1-36CC1-1, Wisconsin Historical Society.
from July 30, 1766, to January 17, 1770. During this period, Charles Yorke was Attorney General only to August 1, 1766. Secondly, Samuel Wharton and William Trent, agents for the “suffering traders,” did not arrive in England until 1769, and never petitioned the Crown for confirmation of the grant made to them by the Six Nations at Fort Stanwix.  

Another variation of this explanation was given by the successors to the Murray-Gratz group, the United Illinois and Wabash Land Company, which stated in a memorial presented to the Congress of the United States in 1816 that the opinion was given officially to the King-in-Council by Camden, Yorke, and John Dunning, “who were then the Crown Lawyers . . . .” Being consulted by the King-in-Council in 1772 as to the legal status of Indian grants and royal patents, they gave the abridged Yorke-Camden opinion that same year.  

This explanation is completely unsatisfactory. These three individuals were not the Crown lawyers at that time; Lord Bathurst, Edward Thurlow, and Alexander Wedderburn were Lord Chancellor, Attorney General, and Solicitor General respectively. If the Crown had desired an opinion, it would have consulted these three; Camden and Dunning were in opposition, and Yorke had died. Of all the contemporaries known to have had some knowledge of the opinion, only Samuel Wharton acknowledged that it had been given in 1757 with respect to the East India Company; but this was in a pamphlet written after the opinion had been used by Murray in the Illinois country and after Wharton had been informed by his brother that such an opinion was in Dunmore’s possession. Since Wharton was then in London and associated with Camden in the Vandalia project, it is possible that Camden informed him of the original 1757 opinion regarding lands in India.

Recent historians have fared little better in explaining the circumstances by which the opinion originally came into the possession of

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21 See below, page 45.
23 [Samuel Wharton], Plain Facts: Being an examination into the Rights of the Indian Nations of America, to their respective countries: and a Vindication of the Grant, from the Six Nations of Indians: to the Proprietors of Indiana, against the Decision of the Legislature of Virginia, together with Authentic Documents proving that the Territory Westward of the Allegheny Mountains never belonged to Virginia (Philadelphia, 1781), 9.
colonial land speculators. The initial statement of 1757, uncovered by Professor Wayne E. Stevens in the records of the East India Company in London, has been printed by Shaw Livermore in his study on American land companies. Livermore noted the discrepancies between the opinion of 1757 and that used in 1773 by William Murray, but made no attempt to demonstrate the circumstances behind the editing of the opinion.24

Professor Alvord did not attempt to differentiate between the opinion of 1757 and that later used by Murray. He assumed that a private opinion was given to Trent and Wharton by both Camden and Yorke in 1769 after the two speculators arrived in England and before the death of Yorke in January, 1770. To support his explanation, Alvord referred to an account given by Trent to the "suffering traders" at a meeting in Pittsburgh in 1775 after his return from England. Seeking to explain his failure to obtain confirmation of the traders' grant from the Six Nations, Trent told the group that he had not submitted the grant to the Crown since it was the opinion of Lord Camden that such confirmation was not necessary.25 It should be noted that although Samuel Wharton, in his correspondence with Croghan in 1775, claimed that Camden held that Indian titles were valid,26 there is no reason to assume, as did Alvord, that Camden and Yorke gave the opinion to Croghan and Wharton. Trent's story to the traders at Pittsburgh was not entirely accurate, moreover, for he and Wharton did not seek confirmation from the Crown because they already had Camden's opinion, but because they feared that if they did apply, they would meet with a flat refusal.27 On the advice of a solicitor, Henry Dagge, they had not made application because they did not have verbatim copies of the correspondence between the then Colonial Secretary, the Earl of Hillsborough, and Sir William Johnson, superintendent of Indian affairs, who had negotiated the Stanwix cession. Hillsborough, opposing the affair, had termed the negotiation at the treaty a "piece of Management."28 As a result of these developments, Wharton had set about

24 Livermore, 106 (note 69).
25 Cf. Alvord, II, 210 (note), and Ohio Company Papers, II, 37, HSP.
26 Wharton to Croghan, Apr. 17, 1775, Croghan Papers, Cadwalader Collection, HSP.
27 Wharton to Croghan, Sept. 4, 1770, ibid.
28 Wharton to Croghan, May 27, 1769, ibid.
organizing the Walpole Company,\textsuperscript{29} which eventually petitioned for the projected interior colony of Vandalia as a proprietary venture.

By the spring of 1775, expectations for even this venture had collapsed, and Trent left England for America in an attempt to lobby with the Continental Congress. He carried with him a letter to Croghan from Wharton. Wharton had drawn up a "\textit{Case}" with respect to Indian grants and had taken the opinions of two English counselors, John Glynn and Henry Dagge, on the subject. Camden, he reported, "entirely agrees" with them as to the lawfulness and sufficiency of Indian grants.\textsuperscript{30} In further support of such grants, Wharton engaged with Dr. Edward Bancroft, Franklin’s friend, and later a double agent in the Revolution, to write a pamphlet entitled \textit{View of the Title to Indiana}.\textsuperscript{31} The Yorke-Camden opinion is not mentioned in this tract.

Trent left England in April, 1775, carrying with him the opinions by Glynn and Dagge as to the sufficiency of titles based on Indian grants. Evidently, he did not bring back the Yorke-Camden opinion, for this opinion is not among those collected by him in support of the contention that Indian titles were valid and entered in a volume which is now among his papers in the Historical Society of Pennsylvania. All that Trent had with him on his return to America was a statement by Dagge, given in London on March 20, 1775, as to the validity of an Indian title based on the doctrine of natural law: the Indians held the property of the land from "preoccupancy" and had the right, as "natural owners," to alienate their property. There was a concurring opinion by Glynn, given on April 13, 1775, stating that the "supreme power" over the interior country resided with the Six Nations, and that they had an "absolute power" to alienate their holdings: there was no law restraining British subjects from purchasing lands in "Foreign dominions."

\textsuperscript{29} Wharton to Croghan, Sept. 4, 1770, and Trent to Croghan, Dec. 6, 1769, \textit{ibid.}
\textsuperscript{30} Wharton to Croghan, Apr. 17, 1775, \textit{ibid.}
\textsuperscript{31} See Bancroft to Benjamin Franklin, Aug. 7, 1775, \textit{PMHB, XXVII} (1903), 158; and [Samuel Wharton and/or Edward Bancroft], \textit{View of the Title to Indiana, a Tract of Country on the River Ohio: Containing Indian Conferences at Johnson Hall in May, 1765 . . . the Deed of the Indians, settling the boundary line between the English and Indian lands—and the Opinion of the Council on the Title of the Proprietors of Indiana} (Philadelphia, 1776). "Indiana" was the original traders' grant on the left bank of the Ohio. It had no relation to the present state by that name.
On arriving in America, Trent collected two brief concurring statements from Benjamin Franklin and Patrick Henry. It should be noted that if the implication of these opinions was admitted, then the Treaty of Paris of 1763 was worthless, signifying nothing. Such a position could hardly have been tenable in England. In addition, the omission of any statement from Camden is damaging to the contention that Camden agreed to the theory. If the speculators sought to build up as impressive a legal case as possible, certainly a positive statement by as eminent a legal authority as Camden, a former Lord Chancellor, would have been worth more than the statements of Dagge and Glynn.

The most complex explanation for the edited Yorke-Camden opinion given by a historian is that of Professor Thomas Abernethy, who unfortunately did not have all the sources available at the time he wrote. In his *Western Lands and the American Revolution*, Abernethy held that the original opinion was edited by Trent in 1772, and the following year was sent to Croghan in America with a letter signed by Samuel Wharton, Camden, and others, instructing Croghan to use the opinion in purchasing from the Indians a tract of land west of the Ohio. A shipment of goods to pay for the purchase, ostensibly for compensation to the tribes of the upper Ohio for the Vandalia grant, was to be brought over by Trent later. According to Abernethy, these instructions and the edited opinion were entrusted by Thomas Wharton in Philadelphia to Murray for delivery to Croghan in Pittsburgh. Murray supposedly read them and secretly copied the edited Yorke-Camden opinion. He then engaged with the Gratz brothers, the Franks’s firm, and others in organizing the Illinois Company before proceeding to Pittsburgh and the Illinois country where he made a land purchase from the Indians, using the Yorke-Camden opinion.  

This interpretation breaks down at a number of points. In the first place, the Croghan-Wharton correspondence (not available to Abernethy) shows that the proposal to purchase a tract west of the

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32 “Opinions Regarding the Grant to Wm Trent 1775,” manuscript volume, HSP. These opinions are printed in *Memorial of the United Illinois and Wabash Land Companies* . . . , 45-48, and also in [Samuel Wharton and/or Edward Bancroft], *View of the Title to Indiana* . . . , 40-44, 44-46.

Ohio was made by Samuel Wharton to Croghan in a sealed letter, kept secret from Thomas Wharton, of July 21, 1771,\textsuperscript{34} not in 1773 as Abernethy thought. The project was reopened by Wharton in May, 1774,\textsuperscript{35} only in order to complete the transaction before purchase of lands from the Indians was prohibited by the government of Quebec which was to be given jurisdiction over the area. It was not until January, 1775, that Wharton misinformed his brother Thomas (and apparently misled Professor Abernethy) by informing him erroneously that Croghan had already taken preparatory steps in behalf of a secret land speculating group in London.\textsuperscript{36} It was in that month, also, that the Indian goods originally intended for the tribes of the upper Ohio as compensation for the Vandalia tract, a project now abandoned in view of the opposition of the British government, were diverted to the purchase of lands west of the Ohio.\textsuperscript{37} The correspondence of Croghan and Wharton thus invalidates the timetable set up by Abernethy, as well as his rationalization of the Yorke-Camden opinion in the operations of these two speculators.\textsuperscript{38} Croghan did not need such an opinion in order to purchase land secretly from the Indians. The opinion was apparently designed by speculators to be shown to some responsible official to obviate any objections to a

\textsuperscript{34} Croghan Papers, Cadwalader Collection, HSP.

\textsuperscript{35} Wharton to Croghan, May 2, 1774, \textit{ibid}.

\textsuperscript{36} Samuel Wharton to Thomas Wharton, Jan. 31, 1775, Wharton Collection, HSP.

\textsuperscript{37} Professor Abernethy was right, however, in stating that Croghan was misrepresenting the facts to Trent in 1775 by denying that he had ever heard of the trans-Ohio purchase after it was originally proposed. But the important point is that the proposal was originally made in July, 1771, and reopened in May, 1774, not in 1773, and that it apparently had nothing to do with the Yorke-Camden opinion.

\textsuperscript{38} According to Abernethy’s deduction, Murray obtained the edited Yorke-Camden opinion by secretly reading Croghan’s mail and copying the opinion. If this is correct, one cannot help but admire Murray’s audacity, for after pilfering Croghan’s mail, he then had the effrontery to discuss its contents with him. A further question arises as to whether or not Camden was involved in transmitting the opinion to America. He may have given the original, or the abridged version, to speculators, but it is doubtful if he admitted this after 1773 when Murray’s activities in the Illinois country became known in London. If Dartmouth was anxious to see the opinion used by Murray, why was it necessary for Gage to write to Haldimand in New York for the copy in the possession of Col. James Robertson, when Camden, one of the purported authors, was then in England? Furthermore, Gage wrote Haldimand that no one in England could believe that Camden could have given such an opinion. On the other hand, Gage had conjectured previously that if Camden did render the document, he could not have been fully informed as to the circumstances in America. See Gage to Haldimand, Nov. 28, 1773, and Feb. 4, 1774, Add. MSS 21665, ff. 198, 215, PAC transcripts.
purchase of lands in an area closed by the Proclamation of 1763. This is exactly what Murray did with the opinion in the Illinois country in 1773. Unfortunately for him, neither Captain Hugh Lord at Kaskaskia nor the ministers in London would have any part of it, for the Colonial Secretary, in the name of the King, ordered Murray's actions disallowed.

Unless new evidence is discovered, it is doubtful if it can ever be determined exactly how the Yorke-Camden opinion was altered and transmitted to America. But it seems certain that the improbable construction obtained by editing the original opinion of 1757 was simply a farfetched rationalization on the part of speculators to legalize their activities. This suspicion is further strengthened by an examination of the explanations given in 1775 by the Murray-Gratz group and in 1816 by their successors, the United Illinois and Wabash Land Company, as to the means by which they obtained the altered opinion—improbable explanations which do not conform to easily ascertainable facts.39

39 See James Hogg to [Richard Henderson], n.d., Force, IV, 545; Samuel Wharton to George Croghan, Sept. 4, 1770, Croghan Papers, Cadwalader Collection, HSP; and the Memorial of the United Illinois and Wabash Land Companies . . . , 23–24.

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