THE LAND POLICY AND SYSTEM OF THE PENN FAMILY IN EARLY PENNSYLVANIA.

Admiral Sir William Penn, renowned in English history by his martial valor as an officer of the British Navy, left to his son a claim against the Government for sixteen thousand pounds, consisting to a great extent of money advanced by him in the sea service, and of arrearages in his pay. In 1680, William Penn, his son, petitioned Charles II to grant him in lieu of this sum, "letters patent for a tract of land in America,—lying north of Maryland, on the east bounded with Delaware River, on the west limited as Maryland, and northward to extend as far as plantable." (1) This petition was referred to the "Committee of the Privy Council for the Affairs of Trade and Plantations." (2)

After sundry conferences and discussions concerning the boundary lines and other matters of minor importance, the Committee finally sent in a favorable report, and presented the draft of a charter, constituting William Penn, Esq., absolute Proprietary of a tract of land in America, therein mentioned, to the King for his approbation, and leaving to him also the naming of the Province. The King affixed his signature March 4, 1681, (3) and ordered, much against Penn's inclinations, the new Province to be called "Pennsylvania" in honor of the illustrious services of his father. (4)

After signing the charter the King issued a declaration informing the inhabitants and planters of the Province, that William Penn their absolute Proprietary, was clothed with all the powers necessary for the government of the Province. (5)

Penn owned forty-seven million acres of land by this grant. He was the largest private land owner in the world. Of this vast domain the Indians had never cultivated more than a small portion, using the remainder as a hunting ground. The animals, which were the chief source of Indian subsistence, were of little value compared with the perpetual riches that might be drawn from the earth by diligent and intelligent toil. (6) From his own personal observa-
tion of the land in 1683 he wrote, "The country itself, its soil, its air, water, seasons, and produce, both natural and artificial, is not to be despised. God in his wisdom having ordered that the advantages of the country are equally divided." (7)

Penn in reality paid nothing for his Province, except the payment he made to the Indians. (8) In this connection it is worth nothing that Penn took no land from the Indians without making treaties in which he gave articles of value to the Indians, (9) and no part of the payment was ever made in rum or strong drink. (10) Penn could dispose of the lands on any terms he pleased. No one could purchase a single acre from the Indians, for this was strictly forbidden. This prohibition was imposed (1) to preserve peace with the Indians, and (2) for self interest. In spite of these rigid restrictions large purchases of land were made from the Indians, though sales by the Indians were made with reluctance.

Walking was the only method of measurement in dealing with the Indians, and the trained English pedestrians had much the same advantage over the Indians, that the Carthagenians obtained by means of the famous ox-hide. (12) One of the most iniquitous of these purchases was that made by the unscrupulous speculator Allen, who was a friend of the Penns. His "walking purchase" by which he acquired title to 10,000 acres of land, has rightly been called the most villainous transaction in the provincial history of Pennsylvania. (13) After this transaction the Indians complained to Penn that "the white brother made too big a walk." (14) The mode of purchasing land by riding around it was also used in several instances. "As much as a man could travel in two days on a horse," was a common expression at this time. (15)

The charter from Charles II granted to William Penn and his heirs and assigns the land at the annual rent of "two Beaver skins" and one fifth of the gold and silver ore. That is it was to be held as a feudal fief at a nominal rent. (16)

"Purchasers of the soil held immediately of Penn, not of the King, and that by socage tenure." (17) Penn did not believe himself authorized to make grants upon alodial
principles. The estate therefore possessed by the grantee, in Pennsylvania, became according to Penn's idea a holding in the nature of a tenement. As such it was subject to quitrents, and to forfeiture for lack of heirs, or because of corruption of blood. (18) Pennsylvania as a proprietary colony then, may be viewed as a seigniory, divested it is true of the heaviest burdens imposed by feudal law, but endowed with such powers of territorial control as the great distance from England, the place of residence of the lord paramount, required. (19)

To carry out his plans and desires for the colony when he was absent, Penn appointed governors, and deputy governors to rule under his authority. Thus Pennsylvania started as a feudal proprietary province under the treble control of deputy governors, proprietors, and king. (20)

Immediately after obtaining the charter, Penn and his sons divided the land into three parts. The first comprised the millions of acres called the common land, which generally, though not always, sold at uniform rates. The second division included the proprietor's tenths or manors, reserved and held by the proprietors jointly, consisting usually of one-tenth of the choicest lands in a given tract. The third division was the private estate of the individual proprietors, either purchased by one of them from the others, or from persons in the province who had previously bought the property in question. (21)

In order to obtain the greatest benefit from his land, Penn adopted a plan for drawing thrifty settlers from the old world. As soon, therefore, as he had secured the charter of his Province, he offered land for sale in proprieties of five thousand acres each, free of Indian incumbrances, for one hundred pounds. (22) Each share sold was to be called a propriety. Smaller estates of two hundred acres would also be granted, subject to the payment of a quitrent of one shilling for every one hundred acres. (23) People could rent land as well as purchase it, but very few of the people entered upon land as renters, as they desired to become absolute owners of the soil in the new country. To those who desired to rent, it would be let in estates not exceeding two hundred acres each, at a quitrent of one penny
Masters should receive fifty acres for each servant they brought over, and fifty acres was to be provided for each servant when his term of service expired. (25) "While yet in England Penn sold large tracts of land in Pennsylvania to persons who were later technically known 'as first purchasers.' These 'first purchasers' formed a company called 'The Free Society of Traders in Pennsylvania.' This company purchased five hundred fifty-six thousand acres in trust for the company. They published articles of trade, and entered into divers branches thereof themselves, which were soon improved upon by others. They offered land at forty shillings per hundred acres, and one shilling per annum forever (this was the original institution of the quitrent in the province) and good conditions of settlement to such as choose to be adventurers in the new country." (26) "To regulate these purchases, and to arrange for distributing land to those purchasers in the colony who could not afford to buy, Penn issued on July 11, 1681, his body of 'Conditions and Concessions' (27) These 'Conditions and Concessions' related exclusively to the first purchasers, (28) but when the lands, particularly those in the city were allotted, extraordinary claims based on real and supposed grants from Penn were set up, and continued to be urged with considerable vigor throughout the entire history of the province." (29) The "first purchasers" were those who took up land under these and other conditions which were issued before Penn left England on his first visit to the province.

If Penn's land system had been carried out on its original lines, it would have resulted in a landed gentry. He proposed a town and a province. Any purchaser of five thousand acres in the province was entitled to one hundred acres in the town; a purchaser of ten thousand acres in the province to two hundred acres in the town, and etc. The province was practically without limit in acreage, but the town was limited to one hundred shares of one hundred acres each. This arrangement would have caused the elevation of one hundred families or less, to the status of a land-holding aristocracy, separate and distinct from the mass of the
people in privileges, which could not have failed to produce a caste system, in fact, if not in name." (30) But when reflecting on these conditions, we must take into consideration that Penn was under capricious influences, and peculiar conditions in acquiring his grant at all; and also that his charter was a product of the reactionary period of the seventeenth century. (31)

In 1760 the method used in granting land in Pennsylvania was, "Upon application being made to the Proprietors a warrant is directed to the Surveyor General to survey the lands that have been applied for. That survey when made is returned into the Secretary's office, and upon the entire payment of the purchase price a Patent is made out. A bill was proposed that a new office should be elected for the registration of the warrants and surveys, as there was no office in the Province which by law was bound to record them, as they were then kept only in the Office of the Proprietaries, at their discretion, under an officer of their appointment only, receiving a salary for their Bounty and liable to be removed at their displeasure. This bill also stated that a warrant and survey are in law a complete title to an estate of inheritance in lands, for it declared that estates are claimed and held under Warrants, and Surveys, and other writings. By these other writings it obviously meant conveyance of an estate by Patent. It seldom happened that upon the issuing of a Warrant and Survey the whole of the purchase money is paid down. The remainder, according to the circumstances of the case, to be completed at some other, and often at a very distant period. This enabled the purchasers to retain money to expend in the cultivation of their lands." (32)

Thus titles to land were commenced by either of the following ways:

(1) By purchase from William Penn in England. These were accompanied by deeds to a tract of land, varying from three to ten thousand acres, though they did not designate any particular spot.

(2) By what were called "special grants". These were made to individuals, not according to general regula-
tion of the Land Office, but for particular service. These were laid out in more than one place.

(3) By warrants, upon application by parties for certain tracts of land in Pennsylvania. Copies of these warrants were left with the Secretary of the Land Office. (33)

The original settlers in Western Pennsylvania based their titles to farms on the "tomahawk right." Having selected a desirable spot, they encircled it with a line marked by blazing trees with an ax. There was no attention to angles, degrees and chains, the object being to designate the boundaries of the tract without reference to the number of acres. Lines thus indicated were held sacred and to this day are legal. This accounts for many ill-shaped farms, and where there were small tracts not included, they were left vacant, and in some cases these can be obtained to this day by anyone who will take legal means to obtain a title from the state. (34)

In many cases the division lines between those whose lands adjoined were generally marked by tops of ridges and water courses.

Penn, though a man of liberal education, did not require the Land Office to keep very strict account of the disposition of the land, for when we examine the documents of the Land Office, or such of them as are now in existence, all appears uncertainty and confusion. (35) Grants for the most part were made in a loose way and this caused many later disputes, and caused the commission of great frauds against the proprietor and his sons. Many claims acquired either by settlement or by warrants were sold. These rights were considered personal property, and their transfer caused no little difficulty and litigation. If Penn, or his agents dealt too harshly with the purchasers dissatisfaction was sure to follow. For many years no pains were made to keep a record of any kind of the various grants. When Penn came over in 1732, for the second time, an effort was made to banish confusion from the Land Office, but this improvement was made slowly, due to the long prevalence of irregularity and carelessness. (36) The land committee was appointed by Penn from among his intimate friends in the province. The special agents of the Proprietors were located in Philadelphia. These officials
consisted of a secretary and a surveyor general, and from three to five commissioners of property. These men had authority to grant lands and guarantee titles. (37)

The "old rights" (38) of the first purchasers were granted by deeds or lease and re-lease. At the time of the grant, the lands were not located or surveyed. Surveys were all very rough and were done incorrectly. Since the deeds were not all recorded, and afterwards purchases were made for speculative purposes by persons who never visited the province, titles were frequently defective from the outset.

In the first century, although there was a particular price at which lands in each particular district of the country were sold, yet prices varied every month, week, and day. During the life of Penn there never was a certain fixed price. The land office sold to such persons and at such prices as pleased the proprietary. Difference in price always occurred, due to different quality and value, depending on the quality of the soil. Penn was always careful to assert his right to dispose of the land of his province on such terms as he choose to make with would-be settlers, and this led to many changes in the terms of the grants. These changes were occasioned not only by differences of location and soil, but by the wishes of both parties to the contracts. (39)

"It is to be regretted that some general, accurate system for the location of lands had not been adopted at the beginning of the settlement of the province, and undeviatingly continued, thereby avoiding that intricacy in Pennsylvania titles which has been detrimental to the increase of her population. Unfortunately no system whatever can be traced in the records of the land office." (40)

Between 1718 and 1726 no titles were issued because of the boundary dispute between the heirs of Penn and Lord Baltimore. In 1732, articles of agreement in relation to the disputed land were entered into, and the land office fixed the price of land at ten pounds ten shillings currency per one hundred acres, and one-half penny sterling quit-rent per acre. This regulation continued in effect till 1762 with many exceptions to favorites who obtained grants upon much easier terms. In 1762 the rates were reduced to nine
pounds per one hundred acres and one penny quitrent per acre. In 1765 the price was further reduced to five pound per acre and one penny quitrent per acre. (The difference in the quitrent was intended to equalize the price.) There was a difference of thirty-one pounds ten shillings in the prices of one hundred acres, due to the changing of the prices. At these last mentioned rates many of the most valuable lands east of the mountains were granted away between the year 1762 and the time when the land office of the Proprietor was finally closed by the war of the Revolution.

Although William Penn had no developed plan of survey, he does deserve commendation because of his large vision of the province as a whole, and also because of his desire to have the land taken up in a series of townships rather than in the haphazard fashion of individual location. (42) County justices were enjoined to "endeavor to seat the lands by way of townships, as three thousand acres among ten families; if single persons ten thousand acres among ten of them." (43) The proprietor, on his own part, from every one hundred thousand acres reserved ten thousand acres for himself on the condition that in each instance they should be compactly together. (44) His surveyors were also instructed to locate for him five hundred acres in every township in addition to the proprietary tenths of all lands laid out. But the method of township surveys was soon lost sight of, and promiscuous surveys, according to the will of the purchaser soon became the rule. Penn also declared that "within three years after the land had been surveyed every one must appropriate and settle it, or on complaint to the proprietor that the rules of settlement had not been obeyed, newcomers might be given possession. In this case when the complaintant had paid the purchase money, interest, and fees for surveying, the proprietor should make him actual grant of the lands not rightfully settled." (45)

The controversy with Lord Baltimore became a subject of great anxiety to Penn, who resisted the high-handed and aggressive measures of the former with gentle and courteous firmness. The importance of settling this boundary dispute
finally demanded Penn's presence in England, where he could secure the aid of his friend King James in the possession of these lands. (46) The controversies with Maryland and Virginia, though adding no new element to the population, were also quite serious. The dispute with Maryland lasted seventy years, and several times resulted in bloodshed. If the Lords Baltimore had been successful in maintaining their claims, the Maryland line would have passed just north of Philadelphia and that city would no longer have belonged to Pennsylvania. If the Virginia claim had been successful, the western boundary of our state would have been east of Pittsburgh. (47)

On the death of William Penn, John, Thomas and Richard Penn acted as the Proprietorship, but in 1741 the governor, George Thomas was empowered to grant lands. After various duties were attended to in connection with the granting of the land under warrants and patents, a deed was issued under the great seal describing its bounds, and giving the complete legal title, but reserving, of course, the usual quitrent. These rents were to compensate the Proprietor for the administration of the government, and for his maintenance, if he failed to receive public support. They were collected from the common and manorial lands, and from lots in Philadelphia. Payable annually they ranged from a peppercorn, a red rose, an Indian arrow, a buck's foot, a beaver skin, or a bushel of wheat to several shillings per hundred acres, according to the period of time, the quality of the land, and the person to whom the grant was made. At any rate they formed a constituent part of the conditions of sale, and were expressly mentioned in the patents. From the very beginning difficulty arose in the collection of the quitrents. The collectors were laughed at, were refused payment and even personally maltreated. (48)

In his Charter of Privileges, October 28, 1701, Penn declares: "That seven years quiet possession shall give an unquestionable right except in cases of infants, lunatics, married women, or persons belonging to the sea." In clearing the ground the provision was "To one acre of trees for every five acres cleared." (49) This was the beginning of forestry in Pennsylvania. In case of dispute over title, in
which one claimant held under warrant of survey, and the other by previous settlement and improvement, the latter title was usually judged superior. (50)

In 1708 William Penn for sixty-six hundred pounds mortgaged Pennsylvania to Henry Gouldey, Joshua Gee and seven other individuals in England. In 1712 he negotiated with Queen Anne for the transfer of his territory to the Crown for twelve thousand pounds because “of debts contracted for settling and improving said colonies.” (51) When in 1718, Penn died, the mortgage to the above men had not been entirely paid off. In his will he devised the government of the province and territories to the Earls of Oxford, Mortimer and Piolelt, as heirs in trust to dispose thereof to the Queen or any other person as advantage should dictate. To his widow and eleven others, part resident in England and part in America he devised all his lands, rents and other profits in Pennsylvania, the territories or elsewhere on the Continent in trust with instructions to sell or otherwise dispose of enough to pay his debts. Of that which remained all except thirty thousand acres he bestowed by the trustees on the three sons of the founder by his second wife—John, Thomas and Richard Penn. All the personal estate and arrears of rent he gave to his wife for the equal benefit of herself and her children, and he made her sole executrix. (52)

In 1730 when squatters settled on the land, the Proprietors who were in destitute circumstances decided that they could have the land at the price then in vogue at the time of settlement with interest from that time; those who could not do this were obliged to pay a quitrent proportional to the purchase money. The “Law of Improvement” designated to provide future revenue for the land, declared that any one who built, cleared or resided on land not sold or appropriated by the Proprietors could acquire a title. These “improvements” were bought, sold and rented. (53) In the middle of the eighteenth century, warrants of survey were issued for lands already settled and improved on payment of two-thirds of the purchase money, the remaining dues were paid at the completion of the survey, and then the full title was granted. (54) This was done in a multitude of cases. (55)
On November 27, 1779 the Assembly passed an act vesting the rights of the Proprietary in the commonwealth and abolishing the quitrent. The safety of the people justified this measure, at least so far as the act went to divest the heirs of William Penn of their rights. This law did not, as was commonly thought confiscate the property of the descendents of William Penn, or consider them as enemies in any shape whatever, but they simply applied the words of the preamble that "The safety and the happiness of the people is the fundamental law of society."  (56)

In 1784 the legislature threw the lands open to settlement under the old arrangement of selling warrants of survey to be located anywhere the applicant choose.  (57) In 1785 the military tract was laid out into lots ranging from two hundred acres to five hundred acres.  (58)

In 1792 the legislature passed "An Act for the Sale of Vacant Lands Within the Commonwealth." This measure introduced an entirely new feature into the legislation pertaining to the disposition of public land in its provision that the land should be sold only to such persons as would cultivate, improve, or settle the land, or cause the same to be cultivated, improved, or settled. Under this law the Surveyor General was authorized to divide the territory into districts, and to appoint deputy surveyors who were to execute warrants, limited to four hundred acres each, at seven pounds ten shillings per acre. A loophole in this law that permitted wide speculation in land by unscrupulous persons was that "If the enemies of the United States (the Indians) hostilely interfered with the settler and he was driven therefrom, and persisted in his efforts to make settlement, then he and his heirs was entitled to have and to hold the said lands as if the actual settlement had been made."  (59) This was quite different from the primitive method of "taking up" lands by building a cabin and raising a crop of grain, however small, of any kind, which entitled the occupant to four hundred acres of land, and a pre-emption right to one thousand acres more adjoining, which was in effect just fifty years before.

There was an advantage to the people by the retention of control by the Proprietors, however, because owing to
The lack of sympathetic assistance from the colonists in cases where land jobbing enterprises were attempted, the people were often incapable of enforcing even their legal rights. A Pennsylvanian might succeed in establishing a monopoly, while an Englishman three thousand miles away was not greatly to be feared. This resulted in the State being the gainer by the Proprietary policy.

"In remembrance of the enterprising spirit of the founder, and of the expectation and dependence of his descendants," (60) the Commonwealth gave to the Proprietary one hundred and thirty thousand pounds. Thus we have traced the land policy and the system of the Penn family in disposing of their lands in early Pennsylvania. How can we but say it is a land which the Lord has blessed; and that it needed only a wise people to render it like ancient Canaan, "The glory of the earth."

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FOOT NOTE REFERENCE

3. Ibid., p. 45 ff.
8. Swank, op. cit. 23 ff.
12. Lodge, A Short History of the English Colonies in America, p. 212.
15. Ibid., p. 101 ff.
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22. Pennsylvania Archives, (Series I) IV, 283.
27. Hazard, Register of Pennsylvania, IV, 516-520.
29. Pennsylvania Archives, (Series 1) X, 398.
30. Buell, William Penn As The Founder of Two Commonwealths, p. 115.
33. Hazard, Register of Pennsylvania, IV, p. 121.
34. Van Voorhis, The Old and New Monongahelia, p. 132.
35. Houston, Original Titles to Land in the Province and State Of Pennsylvania, p. 298.
36. Ibid., p. 30.
38. Houston, op. cit. p. 300.
41. Ibid., p. 97.
42. Houston, op. cit. pp. 50-62.
44. Hazard, Register of Pennsylvania, p. 97.
45. Bulletin of the University of Wisconsin, History Series, II, 149.
46. Egle, op. cit. p. 52.
47. Fisher, Pennsylvania Colony and Commonwealth, p. 3.
49. Pennypacker, op. cit. p. 45.
52. Osgood, op. cit. pp. 18-19.
53. Pennsylvania Archives, (Series 1) II, 681.
55. Pennsylvania Archives, (Series 3) I, pp. 31-49.
57. Pennsylvania Statutes at Large, X, 452.
58. Pennsylvania Archives, (Series 1) X, 452.
60. Pennsylvania Archives, (Series 3) IV, 251.

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