TITLE DIFFICULTIES OF THE HOLLAND LAND COMPANY IN NORTHWESTERN PENNSYLVANIA

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At the time of the discovery of America a principle obtained among European nations that a new country belonged to the nation whose people discovered it and was then granted to certain subjects to be by them subdued by force of arms.

On March 4, 1681, Charles II of England signed a charter granting to William Penn a province in the New World which was given the name of Pennsylvania. By force of this royal charter William Penn and his successors were the undoubted lords of the soil. It was stipulated, however, that the aboriginal rights of the natives be extinguished. Although clothed by his charter with powers as full and comprehensive as those possessed by other adventurers, whether of England, Spain, or Portugal, Penn was influenced by a purer morality and a sounder doctrine. His religious principles would not permit him to wrest the soil from the Indians and to establish his title in blood, "but under the shade of the lofty trees of the forest, his right was fixed by treaties with the natives, and sanctified, as it were, by incense smoking from the calumet of peace."

In addition to the rights established by treaty, Penn and his successors, and later the commonwealth of Pennsylvania, actually purchased the land itself from the Indians, receiving deeds of conveyance from

1 Read at a meeting of the Crawford County Historical Society at Meadville on February 6, 1936. In addition to sources cited in the course of the discussion, the author has made extensive use of Paul D. Evans' comprehensive and painstaking work on The Holland Land Company (Buffalo Historical Society, Publications, vol. 28—Buffalo, 1924).

2 Pennsylvania, Laws, 1700-1810 (Smith's Laws), 2:105. Beginning on this page is a 156-page note which traces, not only the history of the Indian treaties, giving their texts in many cases, but also the history of the land office, giving in detail many of the facts recited in this article.
them. The first of these deeds was made in 1682 for lands in the extreme southeastern corner of the province. Many other deeds followed in the course of the next hundred years, and in 1784 came the final large purchase, that of the north and northwestern part of the state, including parts of what are now Bradford, Lycoming, Clinton, Clearfield, Indiana, Armstrong, Allegheny, and Beaver counties, all of Tioga, Potter, Cameron, McKean, Elk, Jefferson, Clarion, Forest, Warren, Butler, Lawrence, Mercer, Venango, and Crawford counties, and all of Erie County except the Erie Triangle.

By a treaty executed on January 9, 1789, the Indians acknowledged the "right of soil, and jurisdiction to, and over that tract of country bounded on the south by the north line of the State of Pennsylvania, on the east, by the west boundary of the State of New York, agreeable to the cession of that State and Massachusetts to the United States, and on the north by the margin of lake Erie, including Presque Isle; and all the bays and harbours along the margin of said lake Erie, from the west boundary of Pennsylvania, to where the west boundary of the State of New York may cross or intersect the south margin of the said lake Erie, to be vested in the said State of Pennsylvania, agreeable to an act of congress dated the 6th of June last, (1788.)" This was the Erie Triangle.

By an act of April 13, 1791, the governor was authorized to complete the purchase from the United States, which was done in March, 1792, for a consideration of $151,460.25, the land purchased comprising 202,187 acres.

The proprietaries, the province, and the commonwealth successively had the unquestioned right to dispose of all these Pennsylvania lands acquired from the Indians in any manner they thought proper. But without settlement a grant of any territory would have been useless. It was therefore necessary to colonize the land, to encourage immigration and cultivation, and to do this a land office was established and a method of sale and improvement developed. No uniform plan of settling the country and conveying the land was used, and the assembly in 1755 declared, in an address to Governor Morris "that the state and manage-

ment of the land office, is pretty much of a mystery." A plan for disposing of lands by lottery had been worked out in great detail in 1735, but the lottery was never filled, and therefore no drawing was had.

A great deal of trouble arose over the stipulation of the Indian treaties that no settlements should be made on any land until the land had been purchased from the Indians. When the Indians complained of settlers invading their lands the government attempted to eject them forcibly or promised them priority rights as soon as the Indian titles were actually deeded to the government. These promises were in most instances kept. The courts recognized and enforced such engagements on the part of the commissioner of the land office.

A number of acts were passed by the assembly throwing open portions of the state lands for settlement and sale, and after the purchase of 1784 the northwestern section was opened by the act of April 3, 1792.4

Section 2 of this act opened all lands lying north and west of the Ohio and Allegheny rivers and Conewango Creek, except such parts as had been or thereafter should be appropriated to public or charitable use, for sale "to persons who will cultivate, improve and settle the same, or cause the same to be cultivated, improved and settled, at and for the price of seven pounds ten shillings for every hundred acres thereof, with an allowance of six per centum for roads and highways, to be located, surveyed and secured to such purchasers, in the manner herein after mentioned."

Section 3 provides:

That upon the application of any person who may have settled and improved, or is desirous to settle and improve, a plantation within the limits aforesaid, to the Secretary of the Land-Office, which application shall contain a particular description of the lands applied for, there shall be granted to him a warrant for any quantity of land within the said limits, not exceeding four hundred acres, requiring the Surveyor-General to cause the same to be surveyed for the use of the grantee, his heirs and assigns for ever, and make return thereof to the Surveyor-General's office, within the term of six months next following, the grantee paying the purchase money, and all the usual fees of the Land-Office.

Sections 4, 5, 6, 7, and 8 provide for the appointment of the deputy surveyors, the keeping of their offices, their duties, the manner in which they were to make surveys, and how and when to make their returns and surveys for settlers and warrant holders.

Section 9 is as follows:

That no warrant or survey, to be issued or made in pursuance of this act, for lands lying north and west of the rivers Ohio and Allegheny, and Cone-wango creek, shall vest any title in or to the lands therein mentioned, unless the grantee has, prior to the date of such warrant, made, or caused to be made, or shall, within the space of two years next after the date of the same, make, or cause to be made, an actual settlement thereon, by clearing, fencing and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or causing a family to reside thereon, for the space of five years next following his first settling of the same, if he or she shall so long live; and that in default of such actual settlement and residence, it shall and may be lawful to and for this commonwealth to issue new warrants to other actual settlers for the said lands, or any part thereof, reciting the original warrants, and that actual settlements and residence have not been made in pursuance thereof, and so as often as defaults shall be made, for the time and in the manner aforesaid, which new grants shall be under and subject to all and every the regulations contained in this act: Provided always nevertheless, That if any such actual settler, or any grantee in any such original or succeeding warrant, shall by force of arms of the enemies of the United States, be prevented from making such actual settlement, or be driven therefrom, and shall persist in his endeavours to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the said lands, in the same manner as if the actual settlement had been made and continued.

In 1781 the legislature had passed an act making paper bills of credit given to soldiers and others receivable at the same rate as gold or silver in arrearages of purchase money due for land or lots sold or to be sold or conveyed by the state. This act made it possible to use these depreciated certificates at their face value to purchase land under the various settlement acts, including the act of 1792. In 1784 it passed another act prohibiting the receipt of such certificates for such purposes from any who were not citizens of the state at the time of the issuance of the certificate.

Shortly after John Adams arrived in Holland in 1780 to negotiate

for Dutch recognition of his government and to secure financial assistance for the revolution, Dutch interest in American affairs was awakened and many Dutch bankers made extensive investments in America. In 1789 four Dutch firms, or houses of bankers, namely, Pieter Stadnitski & Son, Nicholas & Jacob Van Staphorst, P. and C. Van Eeghen, and Ten Cate & Vollenhoven sent Theophilus Cazenove to America to represent them as agent for such purpose, giving him almost unlimited authority to act for them. He soon invested huge sums in depreciated currency and other forms of speculative investments.

Prominent promoters of internal improvements were soon calling on him and he made large investments in a number of canal companies and manufacturing schemes, most of which did not prove to be profitable, but these projects took up little of his time, as he had been caught up in the whirlwind of speculation in wild lands, which overwhelmed so many of the rich men of that time. In 1791 he wrote his principals and recommended embarking on land speculation on a large scale, which the Dutch bankers agreed to do, as they had made money in previous investments here. The Van Staphorsts withdrew, however, thus leaving the field to the three other houses, which were later joined by three others.

Although the purchases of the Holland Company in New York state greatly exceeded those in Pennsylvania, this account is not concerned with the company's experience there, and accordingly no reference will be made to the New York lands or to purchases in Pennsylvania other than in the northwestern part of this state.

Early in 1792 the Pennsylvania Population Company was formed by a group of capitalists for the purpose of purchasing large tracts of wild lands in Pennsylvania and reselling the same to settlers. The original subscribers were General William Irvine, Daniel Leet, George Mead, General Walter Stuart, John Hoge, Theophilus Cazenove, Tench Francis, John Nicholson, G. Gau, A. Ashton, Aaron Burr, Captain E. Denny, Robert Bowen, J. Kitland, T. Kitland, Robert Morris, Judge James Wilson, A. Gibson, N. Van Staphorst, J. H. Vollenhoven, P. Stadnitski and P. C. Van Eeghen. Using depreciated certificates and bills of credit, they purchased for their company 1,150 tracts of 424
acres each, or a total of 483,630 acres in the territory north and west of the Ohio and Allegheny rivers and Conewango Creek. Warrants were issued for these tracts and surveys were made in 1792 and 1793.

When Cazenove was authorized by his principals in Holland to purchase wild lands in America, he knew that the way to secure them at low prices would be to buy up depreciation certificates and use them in payment, but he also knew that he could not do so directly because neither he nor his principals were citizens of the state. Accordingly he had the purchase of certificates made in the name of Judge Wilson, who then turned over to the Holland Company, as the Dutch investors were called, warrants for 499,660 acres in this northwestern territory between the two rivers and Conewango Creek, the acreage being divided into 1,162 tracts of 400 acres with an allowance of six per cent for roads and highways.

The act of 1792 was a compromise between representatives of the poor and democratic West and the rich and conservative capitalists of the East. The first group hoped to reserve the land in this region for the benefit of the men who would actually settle it. The other group, representing the speculative element, saw the advantage that would accrue to the state from a rapid settlement, which would result in an increased representation in Congress and in economy in defending the frontier from the Indians if it should be settled by a numerous and hardy population. This they thought could be accomplished without closing the country to speculation. This group had no warm sympathy for the pioneer; they wanted to make large profits for themselves and insisted that unlimited sales be made to all applicants. At this time the treasury of the state was empty, its debts were huge, its taxing powers were exhausted, and something had to be done to secure funds. Therefore, arguing that sales of large numbers of tracts to a few would fill the treasury faster, the speculators succeeded in some degree.

The act as passed enabled both classes to obtain land, and two methods were provided. By one, a settler could take possession of a vacant tract, build a dwelling, clear and cultivate two per cent of his holding, reside there five years, and at any time within ten years of his settlement he could apply for a warrant of survey and pay for his tract at the rate
of twenty cents an acre. By the other method, one could go to the land office with a description of the land desired, procure a warrant, have a survey made, and within two years make or cause to be made a settlement thereon, having the dwelling erected, clearing made, cultivation carried on and causing a five years residence.

These two methods were bound to cause much disorder and confusion. To be sure the law prohibited the location of warrants on tracts containing any improvements, and settlements on tracts, warrants for which had been entered for survey. But in a country as wild as this and with such huge districts for each deputy surveyor these restrictions could not be well enforced. The act also provided for forfeiture for noncompliance with the terms of the act or for abandonment, which added another cause for confusion.

Another condition operated to increase the unrest and grievances of the class of people who wanted the act of 1792 to apply only for the benefit of the individual settler of small or no means. Under prior laws 700,000 acres in this section had been surveyed and set apart as Donation Lands and given to soldiers of the Pennsylvania Line in the Revolutionary War in lieu of pay; 12,000 acres had been set aside, 3,000 each for the laying out of the towns of Venango (Franklin), Waterford, Warren, and Erie; and 1,400,000 acres had been surveyed and warrants issued for the Population Company and the Holland Company. Thus a total of 2,112,000 acres, in addition to the lands taken by settlers before the act of 1792, were excluded from land available to pioneers who desired to take up land from the state. Also, this excluded land included the pick of all the tracts, and there remained, on the whole, only land of poorer quality for those arriving later.

It was Section 9 of the act that gave the opponents of the companies their opportunity, and it was the proviso of this section upon which the companies depended for their success. This section, it will be recalled, stated that no title was to pass unless the grantee, prior to the date of the issuing of the warrant, or within two years thereafter, should make or cause to be made a settlement upon the lands, to be followed by five years residence thereon, either in person or by some one for him. This settlement was to consist of the clearing, fencing, and cultivating of
at least two acres out of each one hundred acres included in the warrant, and the building of a house thereon suitable for habitation.

Inasmuch as at the time this act was passed there was an Indian war in progress, some means had to be provided for staying the forfeiture prescribed for failure to comply with the settlement and residence requirements. Hence the proviso of Section 9, which provided that should any settler or grantee "by force of arms of the enemies of the United States, be prevented from making such actual settlement, or be driven therefrom, and shall persist in his endeavours to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the said lands, in the same manner as if the actual settlement had been made and continued."

What would cause prevention? What was the meaning and effect of persistence? If prevented for two years would settlers, by mere persistence, without further effort or residence after two years, be entitled to hold their lands, or must they then settle and reside there for five years immediately after the prevention ceased? These questions caused a train of evils to embarrass and discourage the warrantees for many years, and they were only settled after long and expensive litigation.

At the time of the purchase Cazenove evidently paid little attention to the settlement provisions of Section 9, for he could not help but know the manifest impossibility of placing an actual settler on each of 1,162 tracts within two years. He must have been assured that this provision would be ignored by the land office, or that the law could easily be changed. So confident was he that in the year before his purchase of these tracts for his company, he had purchased for them a large proportion of the shares of the Population Company, which had warrants for 450,000 acres in the same section, and later, upon Aaron Burr's default, he took over Burr's interest of 100 shares for them, giving his principals 1,000 of the 2,500 shares in that company.

The warrantees were given some relief by the continuance of the Indian war, which threatened the settlers west of the Allegheny River, several having been killed and nearly all driven away by fear of the enemy, so that except in the vicinity of forts Franklin and LeBoeuf the country appeared to be abandoned. Although General Wayne defeated
the Indians at Fallen Timbers in 1794 and made peace with them the following year, 1795 was practically over before it was thought safe to venture into the new country.

The state board of property ruled that the two years time within which to make actual settlements began to run from the cessation of hostilities, thus making it necessary to have the settlements completed by the end of 1797. The companies petitioned the legislature for relief, asking first for an extension of time within which to make settlement, or upon refusal of this request, that no one should be permitted to settle on these lands until a forfeiture had been declared after due legal process in a manner to be provided for by the legislature. The senate was agreeable to this proposal, but the members of the lower house, many of them from other like sections, became incensed at the language of the petition, which stated that unless the relief prayed for was granted “disorderly and licentious characters of desperate fortunes” would turn the country into a “scene of bloodshed and confusion,” and refused to pass the bill.

Prior to this time, during the Indian war, settlers would come in and stay only long enough to select their lands and throw up a hut, and then hurry back to the protection of the guns. Cazenove really tried to effect settlements during this period and had appointed Major Roger Alden as agent at Meadville, but he was not acquainted with life in the backwoods, was pompous, tactless, and timid, and his efforts brought little success. After the refusal of the legislature to grant an extension of time in the settling term of the act, Cazenove redoubled his efforts to procure settlements. He offered a gratuity of 100 acres out of each 400-acre tract to settlers who would agree to fulfil the conditions, with the privilege of purchasing a second 100 acres at from $1.40 to $2.65 per acre, depending upon location and quality. As a further inducement he brought in a large stock of provisions and farming equipment that he sold on credit. He also opened roads and assisted in the erection of mills and in the clearing of Cussewago Creek. He advertised extensively in eastern papers and sent agents into the populous sections of Pennsylvania and adjoining states.

While this brought some results it did not serve to settle enough of
the tracts. He contracted with various people who agreed to bring in settlers, but with little success. A Major Howe, who had contracted to bring in 250 settlers, gathered at Sunbury a party of about 100, but while he was away getting means of transportation, a rumor of musty flour and spoiled meat scattered them, and when the major returned he found but a corporal's guard left to bring in. Many of the groups brought on only wanted an opportunity to look the country over at someone else's expense and upon arrival refused to comply with their agreement, going on elsewhere or taking up land for themselves on tracts already warranted but not settled. S. B. and A. W. Foster agreed to locate settlers on 200 tracts by June 1, 1797, but by the middle of 1800, at great expense to the Holland Company, they had succeeded only to the extent of disposing of about 124 or 189 tracts, the first number conceded by the company and the latter claimed by them.

The company was greatly concerned by the claims of individual improvers who squatted on warranted tracts, and its fears were aroused when it learned that the improvers were being organized by influential men with capital who could stir up trouble in the land office and in the legislature and would support individuals in the courts, thus making ejectment suits many and costly. All this would tend to prevent the colonization of the land.

Moreover, the company was now beset by another danger. An organization headed by the McNair brothers of Pittsburgh claimed a large number of tracts warranted to the Population Company, and another, led by David Watts of Carlisle and Alexander Scott of Lancaster, claimed 162 tracts surveyed for the Holland Company as well as a number warranted to the Population Company. After long consideration these claims were compromised by giving the claimants a half interest in them, and large loans were made them to carry on their colonizing. Watts and Scott were reputed to have great political influence, which did not prove to be true, so the loans to them were not productive.

The settlers secured for the Holland Company were not the most desirable because the more energetic, vigorous, and self-reliant had been willing to brave the hardsips of frontier life and had not waited until they were offered inducements in the way of provisions and tools, but had
been on the ground early and made their own choices. They had taken up whole tracts for themselves, and whether or not they had settled on lands warranted to others they were prepared to defend their right. Many of those brought in by the company failed to improve their holdings, were indolent and ne'er-do-well, and later attempted to take up for themselves tracts warranted to the company.

Had the company been compelled to show evidence of compliance with the terms of the act it would have been able to hold only about half of this land. Although in 1797 Alden reported one settler on each of 385 tracts and the next year he claimed 530, in 1804 it was estimated there were not over 400 tracts occupied and many of them had been cleared and fenced as required.

From the time when they failed to secure help from the legislature in 1796 the warrantees concentrated their efforts on the state board of property, and in December, 1797, the board announced the terms upon which it would issue patents, namely, upon receipt of certificates, signed by the deputy surveyor and attested before a judge or two justices of the peace in the district where the land was, to the effect that the provisions relating to settlement and residence had been complied with, or that the grantee had been prevented from so doing by force of arms of the enemies of the United States and that he had persisted in his endeavors to make his settlement. The company proceeded at once to secure such certificates; in 1799 patents were secured for 822 tracts and by 1800 the Holland Company had received patents for a total of 876 tracts.

However, in 1800 the situation changed completely. The Democrats had overthrown the Federalists and had taken over control in Pennsylvania. Tench Coxe, the new secretary of the land office, reversed the ruling of his predecessors and refused to issue patents unless actual settlement and residence were certified. Moreover he threatened to open the question as to the validity of the patents already issued on certificates of prevention and to have them declared forfeited.

The news soon reached the frontier that the land office favored the improvers against the warrantees, and that the titles of the Holland Company and Population Company were not good. At once the com-
panies found themselves confronted with counter claimants, not only for the unpatented tracts, but also for those for which patents had recently been issued. These improvers, called intruders by the company, entered upon tracts already settled and partly cleared. A home left vacant by the owners for a few days or hours might be found occupied on their return by an intruder, who claimed not only the 100 acres gratuity of the settler but the entire tract. The companies had their backs to the wall and unless they could overcome this decision of Coxe, they stood to lose all they had invested in this section. They therefore appealed to the courts from the decision of the land office, going to the supreme court of Pennsylvania with a petition for a writ of mandamus to compel Coxe to deliver patents for tracts not yet settled but for which certificates had been secured in accordance with the ruling of the board in 1797.

The company engaged the best counsel available, not only because of the importance of the case to them but also to prevent their opponents from securing the services of the most noted lawyers. Great public interest was aroused, both because on the outcome of the dispute depended the whole future of the northwestern portion of the state and because it would be a trial of strength between the Federalists and Democrats. The former had lost control of the executive and of the lower house the preceding year, and this case, it was thought, would determine the party strength in the judiciary.

This case is reported under the title of Commonwealth v. Tench Coxe, Esq. The attorney general of the state, who was the son of Governor McKean, represented Coxe. The case came up for argument in September, 1800, was postponed on motion of McKean until December, and after other postponements was finally heard and a decision filed in September, 1801.

The supreme court in its opinion reviewed the history of this part of Pennsylvania and the salient portions of the act of 1792, particularly the proviso of Section 9. The court recognized that prior to the latter part of 1795 the unsettled conditions arising from the Indian war resulted in the prevention of maintaining a residence and in many cases even pre-
vented a settlement. The opinion then calls attention to the qualifying part of the proviso, to the effect that if a settler or warrantee is prevented by force of arms from making such settlement, but shall persist in his endeavors, he shall be entitled to hold the same as if actual settlement had been made, and it reviews in some detail the perseverance of the Holland Company in time, labor, and money. On this point the opinion reads as follows:

From the day of issuing the warrants, until the present day, the endeavor of the company and their agents, to occupy, improve and settle the lands, has been incessant. Thus, as soon after the dates of the warrants, as the deputy-surveyors could be prevailed upon to attempt to execute the surveys, in the years 1794 and 1795, a general agent was appointed to superintend the business of the company, a large store was built at Cassewago, or Meadeville, and a sum exceeding $5000 was actually disbursed. In the year 1796, companies of settlers were invited, encouraged and engaged; ample supplies of provisions, implements, utensils, &c., were sent into the country; the expenses of transporting families were liberally advanced; a bounty of one hundred acres was given for improving and settling each tract; and a further sum of about $22,000 was actually disbursed.

In the year 1797, a sum of about $60,000 was further expended, in promoting the same objects, including payments on contracts for settlement, and quieting adverse claims. In the year 1798, mills were erected, roads were opened, and other exertions were made, at a charge of not less than $30,000. In the year 1799, the sum of $40,000 and upwards was expended in improvements and settlements; in the salaries and wages of agents and workmen; in opening and repairing roads; and in patenting 876 tracts of land. And in 1800, the operations and advances of the company will, at least, be equal to those of any preceding year. In short, at the close of the present year, near $400,000 will be expended, according to the following view of the subject.

The amount of the purchase of the late James Wilson, Esq., including the purchase-money paid to the state, at the period of obtaining the warrants, was .................................................. 222,071 10

The amount of disbursements for making improvements, settlements, &c., was .................................................. 157,000 00

The amount of taxes and expenditures, for the year 1800, will be .................................................. 18,000 00

$397,071 10

And regarding the operations of the company, in another aspect, we find, that the gross amount of the expenditures, upon the quantity of land which
remained for them to improve and settle, will furnish an average at the rate of $230 for each and every tract. For instance:

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Then, it is seen, that the gross amount of the expenditure to the present period, of $178,000, being equally apportioned to 776 tracts, furnishes, as has been stated, an average disbursement of about $230, for improving each tract; a sum which, in ordinary times, would certainly have been competent to accomplish every improvement designated in the act of the 3d of April 1792.

But leaving these details, for a moment, to contemplate the general effect of the capital, industry and enterprise, which the Holland Company have thus employed and displayed; and it is found, that by a conduct the most upright and conciliatory, they have avoided or adjusted every conflicting claim to any part of their purchase; so that there does not now exist a single caveat on the files of the land-office, against the issuing of any patent they demand. The benefit of their exertions has extended, too, far beyond the limits of their own property; nor are they merely their neighbors who are accommodated and enriched; but the opulence, population and security of the whole range of western frontier have been augmented beyond all calculation. Nay, the influence of the example has been diffused throughout the state, and is felt in every quarter of the Union.

The court then reviewed the proceedings of the land office, its first interpretation of the act and, after the change of officers, the new ruling and the refusal to issue patents on warrants unless actual settlement was made within two years from the cessation of the Indian war and residence continued for a period of five years thereafter:

But not withstanding the hostile state of the country, the Holland Company commenced and prosecuted their attempts to settle and improve the land, during the whole period of the war, in a manner equally meritorious
and beneficial. It is true, perhaps, that an attempt was not made to settle each particular tract; but the general effort to settle the whole, was all that could be reasonably expected, under such circumstances... During the war, the disbursements for purchase money, and charges of improvement, amounted to near $230,000; and since the war, besides the allowance to settlers, the disbursements of cash have exceeded $178,000... Rumors, raised and circulated by artful and interested men, and countenanced by the obscure and equivocal language of the law, were heard to insinuate, that the warrantees had incurred a forfeiture of their lands, by the lapse of two years from the dates of the warrants, notwithstanding the terms of the proviso. Some of those persons who had engaged to settle for the company, began to assert a right of settlement for themselves. Hordes of intruders were pressing eagerly into the possession of the best tracts; and in short, such was the doubt and solicitude universally excited upon this question of forfeiture, that the warrantees could hardly obtain assistance, in the business of settlement and improvement, upon the most liberal terms of participation in the land, or payment of expenses. Although these occurrences will sufficiently show the impracticability of settling each particular tract, even since the peace; and although they increased the difficulties to be surmounted, in the general effort to settle the whole; yet, the integrity, enterprise and perseverance of the company to effectuate the settlements, were uniformly displayed, and have, on every occasion, been candidly applauded. Upon motives of interest, as well as upon the principles of their contract, they "persisted in their endeavors"... They have been, and are, employed (anxiously, laboriously and expensively employed) in completing the settlement and improvement of every tract which they have purchased.

Whatever, then, is the law, it must prevail: but it will not be denied, that a claim to a liberal and equitable construction of an ambiguous law, never was better founded. Prevented from accomplishing the settlements designated in the act, by a public enemy; opposed in the prosecution of those settlements by intruders, who derived, indeed, some color for their pretensions, from an imperfect expression of the legislative meaning; and thrown off their guard, by the deliberate decisions of the board of property, and the authoritative proceedings of the public officers, under the seal of the commonwealth; can it be conscientious, can it be just, can it be honorable, that the Holland Company, after a labor of eight years, and an expenditure of $400,000, should be condemned to a forfeiture of the lands, for which they have paid the full consideration, in favor of the state, who has received that consideration; who, if there has been error or mistake, the error or mistake lies in the persons of her officers; and who, if the doctrine of forfeiture prevails, will not only retain the consideration-money, but resume the soil, in absolute ownership, with all its ameliorations and improvements? Strange as it would appear, to exact a forfeiture, under such circumstances, for the bene-
fit of the state, the occurrence would be still more extraordinary, if it had only the effect to take the land from a meritorious warrantee, and to give it to a lawless intruder. Until the forfeiture is regularly established, until the government has determined to take advantage of it, and until a second warrant has issued, reciting the default of the first warrantee, any attempt of an individual to seize and retain the possession of the land, merits, not reward, but punishment....

To avert the danger of such a scene, as well as to obtain a safe and certain guide for their conduct, the Holland Company have anxiously sought the opinion of this court; and they trust, that exceptions to form will not be permitted to defeat the present opportunity, to place the subject on a permanent foundation, just to the public, beneficial to settlers, and useful to warrantees. Unless, indeed, a judicial construction of the law can now be obtained, exertions and success will be in an inverse ratio: exertions will be greater, but settlements will be fewer, in each succeeding year; until despair takes the place of enterprise; and the whole business of settlement and improvement shall be abandoned to occupants, whose only title is force, without patent, without warrant and without purchase.

In construing the proviso of Section 9, the court considered four different interpretations, as follows: (1) That unless the terms of improvement, settlement, and residence had been strictly performed, within the stipulated periods of two and five years, a forfeiture resulted, though a war had been waged throughout and beyond those periods; (2) That although there was a qualified suspension of the condition during the war, nevertheless, unless the warrantee persisted in his endeavors during the war, no title could be acquired until the performance of such terms of improvement, settlement, and residence after the war ended; (3) That if a warrantee had been prevented by force of arms from accomplishing the improvement, settlement, and residence, but had persisted in his endeavors to accomplish them, the title became absolute; (4) That if a warrantee had been prevented by force of arms but persisted in his endeavors for a reasonable period, even if his endeavors were ineffectual, his title was then good.

The court dismissed the first two contentions and did not, in so many words, accept either of the other two, but leaned strongly to the third proposition, stating:

Upon the whole, then, let the proviso operate as a release of the condition precedent, or let it be taken as qualifying the condition, and requiring a reasonable perseverance during or after a war, the claim of the Holland Com-
pany must be established. They persisted, in spite of every danger, while hostilities raged; and more than five years have elapsed since the Indian treaty, during which they have also persisted.

In spite of the language used above, the court was of the opinion that each tract was a distinct grant and that the company must make settlement on each separate tract and persist in its efforts in order to entitle it to a patent, and the court did not find that this had been done.

Even though the court appeared to be in sympathy with the companies and felt that they should be favored, if possible, it refused to issue the mandamus for the reason that the board of property was a body having some judicial powers, and a writ of mandamus can only be issued to compel the performance of a duty by an administrative official. True, the office of the secretary of the land office is administrative, but only to administer his duty under the board of property, and therefore the court had no jurisdiction.

It followed from this opinion that the claims of the intruders, when based on vacating warrants issued by the land office, gave them no legal rights as against the claims of the companies. But if the law made settlement and residence prerequisite to a good title, what was to become of the patents already issued for tracts not actually settled, and how could the company obtain title to those for which patents were not issued? The officers of the company had no hope of relief from the legislature, packed as it was by representatives elected and dominated by intruders and their sympathisers. Nor could they hope for relief from the executive officers of the state, as the attorney general had declared that in his judgment patents issued for tracts not actually settled were void and it was rumored that his father was of the same opinion. Neither father nor son was inclined to take action backing up his opinion so the matter was left in the hands of Tench Coxe. What he might have done we do not know, for at this time he was appointed United States revenue collector for Philadelphia and Andrew Ellicott, a brother of the Holland Company's agent in the Genesee, was appointed to succeed him. Ellicott was loyal to the opinion of the supreme court, but he had no inclination to condemn the patents already issued, although demand was made by the intruders that this be done and that the whole terri-
tory be thrown open for those who had the energy to settle them. It was at this time that the intruders took possession of any houses left vacant or empty for a few hours and claimed the tracts for themselves.

An amusing incident in this connection may be apropos, especially as the descendants of the participants are well known in Meadville. William Gill, who had been one of the early settlers here, took up a tract of land immediately north of the Lord tract, built his cabin on it, cleared some ground, and during the summer raised some corn and potatoes. In the fall he closed his cabin and went to Fort Pitt for supplies and to bring members of his family who were there waiting for him. An early winter delayed him and he did not return until spring. Upon his arrival he found the cabin occupied and cultivation being carried on by Jennet Finney, who, asserting that he had abandoned his claim and forfeited his rights, drove him away with her gun. He surrendered and she afterwards perfected her claim and procured a patent for this land from the state. After the death of his first wife, David Mead, the founder of Meadville, married Miss Finney, and their daughter and only child in turn married William Gill II, son of the man who had first settled the tract and had been driven away by Jennet, and this tract, or most of it, is still owned by their descendants.

It was also at this time that promoters made it their business to acquire possession of tracts by placing settlers upon them and then claiming them as against the warrantees. Many of these were bought off by the companies. One of them was A. W. Foster; another was a certain James Lowrey who claimed to have sixty settlers under him; and a third was a certain John Brown who had taken possession of a number of tracts. It was also about this time that the Holland Company ordered Alden to bring ejectment suits against intruders. At the county court in Meadville, early in July, 1801, two ejectment suits were tried, in both of which the jury and the court decided in favor of the warrantees.

The legislature had hardly convened in 1801 before petitions began coming in asking for changes in the law; most of these pleas were entered on behalf of intruders, who claimed that the companies had neglected the requirements of the law and had received patents before completing the necessary settlement and residence, which patents were
therefore void. The petitions asked that the supreme court be directed to try the titles of the warrant holders according to some plan to be prescribed and also that it provide for the board of property the form of certificate to be presented to entitle warrantees to patents. Such a bill was passed in 1801 providing for a special session of the supreme court at Sunbury to settle certain questions in dispute between actual settlers and warrantees. As the companies refused to appear at the trial, it was held without their presence, and disregarding the charge of the court, the jury brought in a verdict in favor of the attorney general, who had represented the intruders.

During this time the intruders built up a political machine by holding assemblies in each town for the purpose of selecting representatives to the general assembly and to procure funds. One such assembly met in Meadville and lasted for four days; only those were admitted who had taken oath to keep secret its proceedings.

The increased activities of the intruders and the hostility of the legislature after the decision in the mandamus case made the predicament of the two companies precarious. Many ejectment suits were necessary, which were expensive, both in time and money. The companies feared their plans would be doomed to ultimate failure unless the matter could be settled once and for all. After careful consideration they decided to obtain, if possible, a final decision from the Supreme Court of the United States, which should end the controversy one way or the other. Alden had placed a settler on a certain tract in 1799, and two years later, one Douglass entered upon it as an intruder and claimed the title. This case was selected and an ejectment suit was commenced under the name of Huidekoper's Lessee v. Douglass, in the Circuit Court of the United States. This was tried before Judges Bushrod Washington and Peters, who took opposite views and there was no decision. The case was then appealed to the United States Supreme Court and the resulting decision and opinion was delivered by Chief Justice Marshall on February 27, 1805. The opinion reviewed the entire history of the controversy and interpreted the ninth section of the act of 1792 precisely as the Holland Company had contended. The opinion is long, and as it recites facts

Huidekoper's Lessee v. Douglass, 3 United States Reports, 1–71.
and arguments already gone over, only a portion of the certification of the opinion is here quoted:

1st. That it is the opinion of this court, that under the act of the legislature of Pennsylvania, passed the 3d day of April, A.D. 1792, entitled “an act for the sale of the vacant lands within this commonwealth,” the grantee, by a warrant of a tract of land lying north and west of the rivers Ohio and Allegheny and Conewango creek, who, by force of arms of the enemies of the United States, was prevented from settling and improving the said land, and from residing thereon from the 10th of April 1793, the date of the said warrant, until the 1st of January 1796; but who, during the said period persisted in his endeavors to make such settlement and residence, is excused from making such actual settlement as the enacting clause of the 9th section of the said law prescribes to vest a title in the said grantee.

2d. That it is the opinion of this court, that a warrant of a tract of land ... to a person, who, by force of arms of the enemies of the United States, was prevented from settling and improving the said land, and from residing thereon from the date of the said warrant until the 1st of January 1796, but who, during the said period, persisted in his endeavors to make such settlement and residence, vests in such grantee a fee-simple in the said land, although, after the said prevention ceased, he did not commence, and, within the space of two years thereafter, clear, fence and cultivate at least two acres for every hundred acres contained in his survey for the said land, and erect thereon a messuage for the habitation of man, and reside, or cause a family to reside thereon, for the space of five years next following his first settling of the same, the said grantee being yet in full life.

Thus the highest judicial authority decided in favor of the companies, declaring that in their opinion the patents already issued were valid, and that the companies were entitled to patents for the remaining tracts.

This decision was followed by a retrial of the case in the circuit court before Judge Washington, who in his charge to the jury reviewed the first trial of the ejectment case and the decision of the Supreme Court, which charge was favorable to the plaintiff and the verdict of the jury was in favor of the plaintiff. The validity of the titles of the Holland Land Company was thus established. The intruders, the state courts, and the legislature were all incensed at the alleged usurpation of authority on the part of the federal courts, and until the War of 1812 brought more important matters to consider, every year saw bills introduced in the legislature which attempted to upset this decision, but those efforts were ineffectual. The companies had won their fight, their land titles were secure, and the selfish greed of the intruders was defeated.