HAZARD'S REGISTER OF PENNSYLVANIA.

DEVOTED TO THE PRESERVATION of EVERT KIITD OF USEFUL INFORMATION RESPECTING THE STATE.

EDITED BY SAMUEL HAZARD.

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PROPRIETARY CLAIMS.

In GENERAL ASSEMBLY OF PENNSYLVANIA,

Monday, April 5th, 1779.

THE answers of the Chief Justice to the questions propounded to him on the 27th of March last, were read the second time, and thereupon Ordered, That they be printed in the German and English Newspapers, together with the said questions, and the report of the Committee on the claims of the late Proprietaries. Extract from the Minutes, JOHN MORRIS, Junior, Clerk of the General Assembly. The report of the Committee is as follows: THE Committee appointed to examine into the claims of the late Proprietaries of Pennsylvania, and report wherein they are incompatible with the happiness, liberty and safety of the good people of this state, and prepare and offer to the House for consideration suitable resolutions for remedying the evils arising from the said claims, in manner, form, and substance most conformable to, and consistent with, equity and justice, having met in pursuance of the said directions, and after a considerable time spent in debate on these sub jects, have unanimously agreed to the following resolutions, which they beg leave to recommend to the House.

1. Resolved, That it plainly appears from the Charter granted to William Penn, dated the 4th of March, 1689, by King Charles the Second, that the said grant being made as well for the enlargement of the English empire, the promotion of trade, the advancement of civil society, and the propagation of the Gospel, as for the particular benefit of the said William Penn and his heirs, it was and ought to be considered as containing a public trust, for the benefit of those who should settle in the state of Pennsylvania, coupled with a particular interest accruing to the said William Penn and his heirs, but in its very nature and essence subject and subordinate to the great and general purposes of society mentioned in the said grant.

2. Resolved, That by the conditions and concessions made by the said William Penn, to and with the settlers and planters in the then province of Pennsylvania, it clearly appears that the general rights of the settlers, and the particular interests of the said William Penn and his heirs, were defined and ascertained; the latter consisting in a grant of quit-rents arising from lands allotted to servants at the end of their servitude, and a right to reserve by lot in one place ten thousand acres of land, for the benefit of himself and heirs, in every one hundred thousand acres in the province, which have been since known and called by the name of the Proprietary Tenths or Manors, the remainder being considered as a trust in him for the benefit of the settlers.

3. Resolved, That the said Proprietaries, by receiving quit-rents and imposing terms for the payment of money by the settlers upon land (other than their own tenths or manors) have violated the original charter and concessions on which the good people of Pennsylvania were induced to become settlers, have usurped a power inconsistent with their own original conditions, Vol. X. 15 and for a course of many years have defrauded the settlers of large sums of money, to which injustice and good conscience they were not entitled.

4. Resolved, That the re-establishment of the powers and claims of the heirs of the said William Penn, as they have been exercised both in property and government until the present happy revolution, would be utterly subversive of the rights, safety, and happiness of the good people of this state, and dangerous to civil liberty in general, as evidently tending to revive and confirm an unwarrantable aristocratical power and influence within this state, inconsistent with its true interest, and therefore not to-be admitted in a government founded upon equal liberty and the authority of the people.

5. Whereas the safety and happiness of the people is the fundamental law of society, and it has been the practice and usage of the states most celebrated for their freedom and police, to control or abolish all claims of power and interest inconsistent with their safety and welfare, that might have been exercised within the same by any of their subjects. And whereas it is the right and duty of their Representatives to assume the direction and management of such interest and property as belongs to the community, or was designed for their advantage. Upon this warrantable and precedented ground,

Resolved, That all the estate heretofore deemed or taken to be a part of the grant made by Charles the Second to William Penn or his heirs, or to which they or any of them were entitled, or whereof they were seized or possessed as Proprietaries of Pennsylvania on the 4th of July, 1776, by virtue of any grant, descent, devise, or purchase, of what nature, kind, or quality so ever, (other than the quit-rents arising from lands allot ted to servants at the end of their servitude, and the re served lands known by the names of Proprietaries, Tenths or Manors, and such purchases as may have been made by them or either of them in their private right or capacity) shall be forever hereafter vested in the commonwealth of Pennsylvania, for the use and benefit of the inhabitants thereof, to be disposed of, regulated, and conducted as this or any future Assembly of this state shall hereafter direct.

6. For the well ordering the said interest, and doing justice to the citizens of this state, who may have right depending and not fully complicated, to lands within this state;

Resolved, That Commissioners be appointed, who shall hold a Board, to be called the Board of Properly, which shall be vested with full power to demand, receive, and collect all papers, books, records, maps, draughts, surveys, and other papers, now in the possession of the said Proprietaries, or any persons hereto fore holding offices under them, touching, or in any wise respecting, the administration or management of the lands within this state; And also to be vested with power to grant patents, confirm suspended titles, under a Seal of Office to be by them devised, to appoint Deputy Surveyors in each county, (the Surveyor General and Receiver General being appointed by Council) and such other officers as may be necessary, and to receive such moneys as may hereafter arise from the sale of the lands within this state that are not yet surveyed or located.

7. Resolved, That all quit-rents heretofore reserved by the Proprietaries of Pennsylvania, other than the quit-rents before-mentioned, being badges of slavery, and reserved without any just authority, shall be abolished, and be no longer demanded of the free citizens of this state. The questions proposed to the Chief Justice were the following: Had Charles the Second, King of England, authority to convey the lands described in the Charter of Pennsylvania? Was the grant to William Penn an absolute one; or is he and his Representatives to be considered as trustees, and in what manner Is the operation of the concessions to be confined to the original purchasers, who were parties to it, or is it to be taken as a general and binding agreement on William Penn and his heirs, of which all subsequent purchasers were to claim benefit? If the latter — then whether by the said concessions the said William Penn had a right to the tenth of the land as well as purchase money and quit-rents from the first purchasers; and whether the said concessions re strained him from reserving a tenth, as purchases were made from the Indians, and from selling the rest on such terms as the purchasers and he should agree on Are the quit-rents to be considered as a provision for the support of government; or are they to be

considered as reservations resulting from the nature of the estate which William Penn had in the soil, and were they legally reserved? Had the heirs of William Penn the right of pre-emption of all the lands within the boundaries of the state, and yet unpurchased from the Indians; or did he lose that with the right of government?

The answer of the Chief Justice is as follows:

It is with the utmost reluctance I undertake to answer the questions propounded to me by the Honorable the House of Assembly, on account of my being a Member of the General Assembly of the Delaware State, where some of the like nature will probably be soon agitated; also, because I cannot have the benefit j of consulting my brother Judges, but more particularly on account of the vast magnitude of the subject, the short time allowed to me, and my great diffidence in my own abilities; however, as it is the request of the House, I shall waive every other consideration, and give the best answers in my power.

**Answer to the first question.** It seems to have been the law of nations, that whatever vacant, waste, or uncultivated country is discovered, shall belong to that Prince who had been at the charge of the discovery. Henry the Seventh, on the 5th of March, in the eleventh year of his reign, had commissioned John Cabot, and his three sons, to sail in quest of unknown lands, and to annex them to the Crown of England; with this clause, which before this time, have been unknown to all Christians. This John Cabot, with his son, Sebastian, in their second voyage in the year 1497, are said first to have discovered that part of America, which lies on the North East of the Continent, from the south of Labrador, as far as Cape Florida. Henry Hudson, an Englishman, in the year 1608 under a commission from King James the First, discovered more particularly Long Island, New York, and the river which still bears his name, and also Delaware Bay, and afterwards sold his right to the Dutch, who settled on each side of Delaware, and in the year 1623 erected a fort on the east side, called Nassau. The Swedes appear to have taken possession of the south side of Delaware in 1638, and to have held it under Peter Minuit, Governor under the Queen of Sweden, until 1651, when the Dutch built Fort Casimir, now Newcastle. Risingh, the then Governor under Christina, Queen of Sweden, afterwards retook Casimir; but his successor, Suen Scutz, surrendered it and the country to Stuyvesant, the Dutch Governor of New York, &c. the 16th September, 1655, on articles of capitulation. From this time the south side of Delaware was held by the Dutch until the 1st October, 1664, when it was surrendered to Sir Robert Carr for his Royal Highness James Duke of York, &c. on articles of capitulation. A war broke out with the States General in 1672, and the latter retook the whole country in August, 1673; but there was a treaty of peace at Westminster on the 9th of February, 1674, by the sixth article of which the whole was again restored to the English. The Duke of York, to remove all controversy respecting his property, obtained a new patent from King Charles the Second, dated the 29th of June, 1674, for all the lands contained in his first grant of the 12th March, 1664. The Dutch had, during the time they governed the country, purchased large tracts of land from the Indian proprietors; and their Directors and Deputy Directors, as well as Governors, Deputy Governors, and the County Courts, under the Duke of York, had granted considerable quantities of land to the inhabitants on the south side of Delaware, as far up the river as Upland, now called Chester, and above it, reserving a quit-rent of a bushel of wheat for every hundred acres, before the date of the Royal Charter for Pennsylvania to William Penn, Esquire. At the time of the grant of Pennsylvania, to wit, the 4th of March, 1681 (new stile) the lands therein comprised do not appear to have been claimed by or under any power in Europe, except the King of England. These facts seem necessarily to be stated previous to a direct answer to the question. Under these circumstances then, I think, Charles the Second had (“*jure coronae*” [means a right or prerogative which belongs exclusively to the Crown; a royal right, such as in regards to taxation, treaties and war, land or pardons]) authority to convey the lands described in the Charter of Pennsylvania; excepting such parts as he had before granted to the Duke of York, or were held under him, or by or under the Indian proprietors; these exceptions must be allowed, unless the absurd doctrine, that the Pagans or Heathen had no right to any lands, is admitted; but the words of the Charter, in the preamble, " not yet cultivated or planted," omitting by any Christians, imply a contrary opinion, both in the grantor and grantee.

**Answer to the second question.** It rather appears to me, that the grant to William Penn is an absolute one; in favor of which opinion the 17th section of the Charter (to mention no other) seems to be very strong and pointed. The interest of the grantee, and his heirs, seems to have been so connected with the settlement of the province and the enlarging the English empire, raising useful commodities, &c. that the first could not be much promoted without the latter; and all grants of this kind, which have come to my knowledge, particularly that to Lord John Berkley and Sir George Carteret for Nova Caesarea, or New Jersey, and that to Lord Baltimore for Maryland, appear to have been absolute, and intended for the bene fit and to advance the fortunes of the grantees and their heirs.

**Answer to the third question.** The clearest construction I can form of the conditions or concessions, dated 11th July, 1681, is, that they were confined to the adventurers and purchasers at that time. This construction is founded not only on the title of the conditions, &c. which are said to be agreed upon by the Proprietary and Governor, "and those who are the adventurers, &c." in the present tense, but from the natural import of several of the articles thereof.

**Answer to the fourth question.** Though more than one Assembly have insinuated or asserted, that the quit-rents were intended for the support of government, yet as this is not evidenced by any law or instrument in writing or act whatsoever assented to by William Penn, Esquire, the first Proprietor, or by any of his heirs; as nothing of the sort is mentioned in any of the deeds or patents, wherein the same are reserved; as they have ever been applied to that use for near a century, but always received and considered as private property; and as all the other Proprietaries in America, under Charters of the like kind, have reserved, received, and appropriated the quit-rents to their own private uses, I am of opinion, that these quit-rents are to be considered at this day as reservations resulting from the nature of the estate, which William Penn had in the soil, and that as Lord Mesne he could legally reserve them.

**Answer to the last question.** Many historians and writers on this subject, have been of opinion, that a Charter or grant, like that for Pennsylvania, gave a right or pre-emption to the grantee, and was good against all persons but the Indian or native proprietors and occupiers. Indeed, it seems to have been necessary for the public weal that this right should be vested in the person or persons, who had the government of the country, the holding treaties with independent Princes or nations for any purpose whatsoever being an act of sovereignty, and the greatest danger of an Indian war being to be apprehended from the frauds and injustice which private persons might be tempted to commit, were they permitted to purchase as they pleased. Besides, to prevent their frequent selling the same lands, and many other causes of controversy, it is expedient that the bargain with Indians should be made with the rulers of the state, and that it should be attended with considerable solemnity. For these or such reasons this right might be supposed to be granted to William Penn, Esquire, by the Charter, as he was vested with the whole of the Executive and a moiety of the Legislative Power over all English subjects within the limits of the then province. Be that as it may, an exclusive right of purchasing land from the natives was granted to him by act of Assembly in 1705. But upon the whole, as every power of government in the heirs of William Penn ceased by the late revolution, I rather think that they have no right of pre-emption, or of purchasing at all from the Indian nations, in future, any lands lying within the boundaries of Pennsylvania, but that the same, for the reasons above, belongs to the state. This opinion is to be considered by the Honorable House in a legal and not a political light: And it is hoped they will receive it with candor, and excuse any inaccuracies, when they are pleased to reflect that I have had but one day to digest and write it.

THO. M'KEAN.