CHAPTER XXXIV.

TENURES IN THE AMERICAN COLONIES.

FORM OF GOVERNMENT AND LAND TENURES IN THE AMERICAN COLONIES, WITH EXAMPLES OF WARRANTS, MANNER OF LOCATION, AND METHODS OF SURVEYS.

At the period of the Revolutionary War, although the thirteen colonies were under the sovereignty of Great Britain, many of their institutions and customs were of their own selection and adoption. Distance from the home government, and difference in charters or grants and forms, aided independence.

There were three forms of colonial government: The provincial, the proprietary, and the charter.

The provincial government had no fixed constitution, but was governed by commissions created at pleasure by the King. A governor and council were appointed, who were invested with general executive powers. They were authorized to call a general assembly consisting of two houses (the assembly being the lower and the council the upper house) of the representatives of the freeholders and planters of the province.

The governor had an absolute veto, and could prorogue and dissolve them.

The general assembly had power to make all local laws and ordinances for the government of the colony and its people not inconsistent with the laws of England.

At the beginning of 1776, New Hampshire, New York, Virginia, North Carolina, South Carolina, and Georgia were provinces as above defined.

The proprietary governments were grants by patents for special territory to one or more persons, from the Crown, giving them rights as proprietary or proprietaries over the soil, with general powers of government, in the nature of feudatory principalities or dependent royalties; subject, however, to control of the King.

The governors were appointed by the proprietary or proprietaries, and the legislatures were organized and called at his or their pleasure. Executive authority was performed by him or them or by the governor for the time being.

Pennsylvania and Delaware, with William Penn as proprietary, and Maryland, with Lord Baltimore as proprietary, were the three colonies with this form of government at the beginning of 1776.

Charter governments were corporations (political) created by letters patent, which gave to the grantees and their associates the soil within their territorial limits and powers of legislative government. Their charters provided a fundamental constitution for them, dividing the powers of government into three functions or heads, viz, legislative, executive, and judicial, and providing for the mode of exercising these powers, vesting them in proper officials.

Massachusetts, Rhode Island and Providence Plantation, and Connecticut, were the colonies possessing this form of government at the breaking out of the Revolutionary War of 1776.

All the colonies enjoyed generally the same rights and privileges.*

* See Story on the Constitution.

RETROSPECT OF LAWS OF THE COLONIES AS TO LANDS.

The colonial legislatures, with the restrictions necessarily arising from their dependency on Great Britain, were sovereign within the limits of their respective territories. But there was this difference among them: that in Maryland, Connecticut, and Rhode Island the laws were not required to be sent to the King for his approval, whereas in all the other colonies the King possessed the power of abrogating them, and they were not final until they had passed under his review. In respect to the mode of enacting laws there were some differences in the organization of the colonial governments. In Connecticut and Rhode Island the governor had no negative upon the laws; in Pennsylvania the council had no negative, but was merely advisory to the executive; in Massachusetts the council was chosen by the legislature, and not by the Crown, but the governor had a negative on the choice.

In all the colonies the lands within their limits were, by the very terms of their original grants and charters, to be holden of the Crown in free and common socage, and not *in capite*, or by knight's service. They were all holden either as of the manor of East Greenwich, in Kent, or of the castle of Windsor, in Berkshire. All the slavish and military part of the ancient feudal tenures was thus effectually prevented from taking root in the American soil, and the colonists escaped from the oppressive burdens which for a long time affected the parent country and were not abolished until after the restoration of Charles II. Our tenures thus acquired a universal simplicity, and it is believed that none but freehold tenures in socage were ever in use among us. No traces are to be found of copyhold or gavelkind or burgage tenures. In short, for most purposes our lands may be deemed to be perfectly allodial, or held of no superior at all, though many of the distinctions of the feudal law have necessarily insinuated themselves into the modes of acquiring, transferring, and transmitting real estates.

One of the most remarkable circumstances in our colonial history is the almost total absence of leasehold estates. The erection of manors, with all their attendant privileges, was indeed provided for in some of the charters. But it was so little congenial with the feelings, the wants, or the interests of the people, that after their erection they gradually fell into desuetude, and the few remaining in our day are but shadows of the past, the relics of faded grandeur in the last steps of decay, enjoying no privileges and conferring no power.

In fact, partly from the cheapness of land and partly from an innate love of independence, few agricultural estates in the whole country have at any time been held on lease for a stipulated rent. The tenants and occupiers are almost universally the proprietors of the soil in fee simple.

The estates of a more limited duration are principally those arising from the acts of the law, such as estates in dower and in courtesy. Strictly speaking, therefore, there has never been in this country a dependent peasantry. The yeomanry are absolute owners of the soil on which they tread, and their character has, from this circumstance, been marked by a more jealous watchfulness of their rights, and by a more steady spirit of resistance against every encroachment, than can be found among any other people whose habits and pursuits are less homogeneous and independent, less influenced by personal choice and more controlled by political circumstances.

Connected with this state of things, and, indeed, as a natural consequence flowing from it, is the simplicity of the system of conveyances by which the titles to estates are passed and the notoriety of the transfers made.

From a very early period of their settlement the colonists adopted an almost uniform mode of conveyance of land at once simple and practical and safe. The differences are so slight that they become almost evanescent. All lands were conveyed by a deed commonly in the form of a feoffment or a bargain and sale, or a lease and release, attested by one or more witnesses, acknowledged or proved before some court or magistrate, and then registered in some public registry. When so executed, acknowledged, and recorded, it has full effect to convey the estate without any livery of seizin, or any other act or ceremony whatsoever. This mode of conveyance prevailed, if not in all, in nearly all the colonies from a very early period, and it has now become absolutely universal. It is hardly possible to measure the beneficial influences upon our titles arising from this source, in point of security, facility of transfer, and marketable value.—(Story on the Constitution, volume 1.)

SURVEYS, PRICE OF LANDS, AND GRANTS IN THE COLONIES.

The land systems of the several colonies were the germs and basis of the land system of the United States. The Congresses of the early period of the Confederation and Union were composed of members from the various colonies or States who were familiar with the systems therein. From their varied experiences the most practical method was reached for the disposition of the public domain.