

THE
LAND-HOLDER'S ASSISTANT, &c.

BOOK THE FIRST.

HISTORY AND ANCIENT PRACTICE OF THE LAND-OFFICE

CHAPTER I.

BRIEF ACCOUNT OF THE SETTLEMENT OF MARYLAND

THE Right of the Crown of Great Britain to the territory of North America was derived from the discovery of that Continent by Sebastian Cabot, who, in the year 1498, explored a great part of the Coast, under a Commission from King Henry the seventh, and, in the name of that Monarch, took formal possession of the Country, by the name, since restricted to a particular Island, of Newfoundland.

The original discovery of the New World is, indeed, with justice attributed to Christopher Columbus, who under the auspices of the Court of Spain, in his celebrated voyage, undertaken in the year 1492, for the purpose of arriving at the East Indies by sailing westward, discovered the Islands bordering on the Coast of South America, and in a subsequent voyage found the Continent itself. The discoveries, however, of Columbus are no farther connected with the origin of the English Settlements in America than as having excited that spirit of enterprize and research which gave rise to the Commission granted to the (a) Cabots in 1496, and resulted in the successful voyage of Sebastian Cabot already mentioned.

But, although the assumed right of colonization took its date from the discoveries of Cabot, and though the English availed themselves of this claim so far as concerned the objects of fishing on the Coasts and of traffic with the natives,

(a) John Cabot, a Venetian who had settled in England, and Lewis, Sebastian, and Sanctius his sons.

and unsettled, which titles were secured to them by the agreement of 1732: but, that not having been able, since, to acquire legal titles, their lands had been sold as aforesaid. Without dwelling on all the provisions of the act which was passed in consequence of this petition, I shall only say that the relief prayed for was granted, the chancellor being authorised upon the proof of equitable titles, obtained prior to the fifteenth day of May 1724, by virtue of, or under, "any grant, warrant, lease, patent, licence, or agreement" from or with any former proprietor or proprietors of Pennsylvania or their agents, to direct patents to issue for the lands so claimed, upon the payment of fifteen pounds for every hundred acres thereof, the fees of office, and the cost incurred by the state in the making and returning surveys of the said lands, as well as the costs of suit incurred on the bonds of the parties, so far as they had not already been remitted by resolves or acts of assembly; and all difficulty in deriving these equitable titles from the first acquirers down to the actual claimants was very liberally obviated; those claimants having only to prove the original grant, lease, &c. and to shew their own immediate acquisition by descent or purchase, without any notice of other intermediate titles. By a supplement to this act, (1789 ch. 14) all persons similarly circumstanced with the purchasers aforesaid were to have the same relief.

There are various other provisions respecting confiscated property which it would be proper to notice if the design was to treat of this subject otherwise than as a branch of the business of the land office, but as all that remains has relation rather to the subject of finance than to that of land affairs, which perhaps may be said of some matters that have been noticed, I shall pursue this enquiry no further, but pass to another class of laws and regulations having in like manner a partial, but a somewhat closer connection with the operations of the land office.

CHAPTER V.

OF GRANTS OF LAND FOR MILITARY SERVICE, AND PREEMPTION TO SETTLERS, WESTWARD OF FORT CUMBERLAND.

IT has been already intimated that, in the course of the revolutionary war, certain bounties of land had been promised, for the encouragement of the recruiting service. If other, and more general, bounties had not been expressly promised

by any act or resolution of the general assembly, (for the laws heretofore referred to reached no *officers* but such as had enlisted a certain number of recruits,) a more equal and liberal arrangement was certainly in contemplation, though apparently deferred until the resources of the state in the article of land should be better ascertained. Accordingly, an ample provision was made by the act of 1781, opening the land office, for fulfilling the engagements, or the intentions, of the state of Maryland towards its officers and soldiers, by the first enacting section of that law, which has been already given at large, and which, in substance, appropriated all the lands westward of Fort Cumberland, *reserved* or otherwise, except so far as they were fairly covered by warrants and locations in right of American citizens, and actually paid for, to the purpose of discharging the aforesaid engagements.

Under this general appropriation the lands remained until the session of April 1787, when a resolution was passed authorising the governor and council to appoint and employ some skilful person to lay out the manors, and such parts of the reserves and vacant lands, belonging to the state, lying to the westward of Fort Cumberland, as he might think fit, and capable of being improved, in lots of fifty acres each. In virtue of this resolution Mr. Francis Deakins was appointed for the purpose therein mentioned, who, before the fall session of 1788, had finished the survey, and had returned a general plot of the country westward of Fort Cumberland, on which four thousand one hundred and sixty-five lots of fifty acres each were laid off, besides sundry tracts which had been patented, with a distinction, on the plot, of the lands which had been settled and improved, from those that remained uncultivated; and had also returned in two books, *certificates* of all the lots beforementioned.

The legislature, being now possessed of the necessary information, passed an act (November 1788 ch. 44) “to dispose of the reserved lands westward of Fort Cumberland, in Washington county, and to fulfil the engagements made by this state to the officers and soldiers of the Maryland line in the service of the United States,” in which, after reciting the acts by which bounties of land had been promised for military service, the appropriation of 1781, the appointment of Mr. Deakins, and all the facts above stated; and adding that it appeared there were three hundred and twenty three families settled on six hundred and thirty six of the aforesaid lots, which those people had improved and cultivated, they ordained as follows, viz. that whereas, according to the most accurate account that could then be rendered by the auditor general, it appeared that there had been about the number of two thousand four hundred and seventy-five soldiers entitled

under the several acts of the legislature to the bounty of lands, and that there ought to be about one hundred lots set apart to fulfil the engagements of lands to recruiting officers,—the quantity of two thousand five hundred and seventy-five of the aforesaid lots, (lying in the most fertile part of the county, and contained in the following limits, to wit, *beginning at the mouth of Savage river, and running with the north branch of Patowmack river to the head thereof, then north with the (“ present”) supposed boundary line of Maryland until the intersection of an east line, to be drawn from the said boundary line with a north course from the mouth of Savage river, would include the number of lots aforesaid,*) should be distributed by lot among the said soldiers and recruiting officers, and their legal representatives, by a commissioner or commissioners, not exceeding three, to be appointed by the governor and council for that and other purposes presently to be noticed.

This provision went to the fulfillment of all the engagements acknowledged and recited by the act: but the legislature thought proper to go further, and proceeded to direct that, *part of* the remaining lots should be distributed, by lottery, among the officers, and the representatives of the officers of the Maryland line who served to the end of the war, who were deranged by any of the reforms of the army, who were killed, or died of their wounds received in battle, those who were disabled from further service by wounds received, and in consequence thereof retired, and those who died a natural death while in the service with the army; each officer, or his representative, to have four lots: that the lots so granted should be adjacent to those directed to be distributed among the soldiers, and should be contained within the following limits, *viz.* by extending the aforesaid north course from the mouth of Savage river until its intersection with an east line to be drawn from the aforesaid supposed boundary of Maryland would include the requisite number, allowing to each officer four lots as aforesaid; and that the said lots should be distributed, by lot, among the said officers, and their representatives, by the aforesaid commissioners, each ticket to contain four lots, contiguous to each other, or as nearly so as might be.

The act directed further that the auditor-general should furnish the said commissioners with a list of the officers and soldiers entitled as aforesaid, and that no draught should be made for any officer or soldier whose name was not on that list; that after the draught (or lottery) the name of each officer and soldier should be endorsed on the ticket containing the number or numbers (written at length) which had been drawn by or for such officer or soldier, who (or his represen-

tative) should thereupon have an estate in fee simple in the lot or lots so drawn and endorsed, without any patent, deed, or grant, to be issued for that purpose.

In order to shew in one view all the provisions of this act relative to the military claims, (in virtue of which provisions it is proper here to observe that the distribution of lands, as directed, shortly after took place) I have postponed noticing those which regard the families reported by Mr. Deakins to be settled on a part of the lots laid off as aforesaid, as well as some important general directions which will presently be brought into view. By the first enacting clauses following the *recital* which has been mentioned, it was directed that a preference should be given to those *settlers* to purchase the six hundred and thirty six lots by them respectively settled, not exceeding the quantities registered and noted by the surveyor in the books aforesaid, and at not less than five nor more than twenty shillings per acre, to be discharged in three equal payments, on the first of September in the years 1789, 1790, and 1791 : in default of any of which payments the land in respect to which such default occurred should be liable to *proclamation*, in the usual manner, by any citizen of the state of Maryland, and that for the ease and convenience of the people, a proper person or persons, not exceeding three, should be appointed by the governor and council, who should go into the neighborhood, and have power to decide all disputes which might arise concerning preemption, and should value the said lands, those of the best quality at not more than twenty shillings per acre, those of the worst at not less than five shillings, and those of an intermediate kind according to their quality, having regard to the extreme prices aforesaid :—by other sections it was provided that, on payment of the valuation by any person admitted by the commissioners to be entitled to a preemption, patent should issue to such settler, or his representatives, he or they paying the usual fees of office ; that, after satisfying the claims aforesaid, as well of settlers as of officers and soldiers, the remainder of the said lots westward of Fort Cumberland should be sold for any kind of specie certificates of the state, and that the purchasers, after payment of the purchase money, should be entitled to patents from the register of the land office, on paying the usual fees ; that the aforesaid general plot and books of certificates should be lodged in the land office, and that the said books of certificates of the four thousand one hundred and sixty five lots aforesaid should be considered to all intents and purposes as record books of the land office ; and it was further directed that the commissioner or commissioners before mentioned should make a record of all valuations by

them made, and of all the lots distributed among the officers and soldiers aforesaid, and of all lots sold by them in virtue of this act, and return the same to the register of the land office, to be by him safely kept. These, which as well as the plot and books of Mr. Deakins were returned agreeable to this direction, are also considered and used, in some sort as record books of the office. But they have not been so denominated by law.

It was further provided that the privilege of roads and waters through all the aforesaid lands should be reserved to the public, and the act contained two remarkable suspending clauses, by one of which were noticed certain lands "patented" or taken up within the manors and the reserves aforesaid" in respect to which the general assembly declined to "give orders for any disposition thereof," but directed or recommended that the cases of each kind should be stated by the governor and council, and the attorney general's opinion taken, so that the claim of the state might be prosecuted or relinquished, as law and justice might require. The other had reference to the line by which Mr. Deakins had bounded his aforesaid general survey, which was declared to be, in the opinion of the general assembly, for within that line to which the state of Maryland might rightfully claim as its western boundary, with a further declaration that, *at a time of more leisure, the consideration of the legislature ought to be drawn to the western boundaries of the state, as objects of very great importance.*

The only further provisions of this act which require to be noticed are those by which all remaining reserves were taken off, and all the vacant land in the state made liable to be taken up in the usual manner by warrant, at the rate of three shillings and nine pence instead of the former price of seven shillings and six pence per acre, which as they must be spoken of in another place, I shall not here dwell upon, but shall proceed with what further concerns the settlers westward of Fort Cumberland.

By an act of 1789, ch. 48, upon a representation that the times fixed for the payments of those settlers were inconvenient in respect to the season of the year, the first day of May in 1790, and the two following years, was substituted for the first of September 1789, &c. but saving any rights acquired by proclamation warrants since the said first of September, and requiring that those who had affected or might thereafter affect those lots by proclamation should pay such composition money as the original settlers were to pay for the same. By an act of 1791, ch. 85, the treasurer was empowered to receive from the settlers, at any time thereafter, the whole or any part of the money due on their several contracts, and there

was to be no forfeiture of any payment already made ; but still, with a saving of the rights of any persons who had already proclaimed, or might after the first day of September 1792 proclaim, any of the said lots. An act of 1792, ch. 8, again extended the time allowed for payment, viz. to the first of May in the three succeeding years : By the act of 1793, ch. 62, upon a suggestion that many of the lots had been proclaimed for the benefit of the settlers, by other persons, who had assigned over to them the proclamation warrants, and that these settlers were precluded by the predicament in which their lands stood from availing themselves of the last mentioned terms of payment, it was provided that, wherever such an assignment appeared by endorsement on the warrant, the treasurer might receive from the parties who had taken the warrants one half of the money remaining due, on or before the first of May then ensuing, and the other half by the first of May 1795, and patents were, on compliance with these terms, to be issued as if the whole money had been paid within a year from the date of the warrant. By an act of 1794, ch. 30, after the recital of a misapprehension of the settlers whereby the payments of the one half by the first of May in that year had been neglected, but the money tendered between that day and the expiration of the proclamation warrants, when the treasurer would not receive it, whereby they were obliged again to proclaim their lots,—directed that, wherever proclamation warrants had issued for lands of this description, the treasurer should receive the balances due for the same at any time while the warrants remained in force, provided it should appear by endorsement that they were assigned as aforesaid. The treasurer was further directed to receive from those settlers whose lands were not proclaimed the balances due therefor at any time before they should be in that predicament, and the register of the land office was instructed to issue patent to any of the said settlers who should comply with the provisions of this act, as if the money had been paid under the proclamation warrants, any former law notwithstanding.

The acts of 1791 and 1793, just mentioned, contained other provisions which have not been noticed. By the first it was ordained, in respect to those settlers who had yet made no payment whatever, that if any such settler should not, by the first of May then following, pay at least one third of the valuation, the land awarded to him should be sold, within the county where it lied, by a person to be appointed by the governor and council, at public or private sale as might be deemed most advantageous to the state, at not less than five shillings per acre ; the person so appointed to take bonds, payable in three equal parts by the first of September in the three

following years ; that, whereas there were settlers on other lots than those which had been disposed of, the (a) person so to be appointed should sell all such lots at not less than three shillings and nine pence per acre, giving a preference to the occupants, and taking bonds as aforesaid : he was further authorised to sell all the surplus lots theretofore appropriated, at not less than one shilling and eight pence per acre, payable as aforesaid. The register of the land office was directed to issue patents to any of the settlers before mentioned who should have complied with their contracts, including all such lots as were contiguous to each other in one patent : the bonds taken were to be a lien on the lands of the obligors from their dates, and it is by this act that vacant land in Allegany county was set at a lower price than in other parts of the state, it being directed by the 8th section "that all vacant lands in the said county may hereafter be taken up "by common or special warrant, or warrant of resurvey, in "the usual manner, at two shillings and six pence current "money per acre, one half to be paid at the time of obtaining "the warrant, and the other half on the return of the certificate ;"—composition under warrants already issued to be paid at the former rate.

By the act of 1793, three persons therein named were appointed commissioners, for the purpose of settling and adjusting the boundaries of the lots of the aforesaid settlers, as the means of preventing litigation among them.—Upon application to the said commissioners by any owner of such lots desirous to establish his boundaries, they were to appoint a time for that purpose, and to give, by advertisement affixed at the door of the court house, and other public places, a previous notice of thirty days, or, if any of the parties interested resided out of the county a notice of forty days, of the intended proceeding. They had power to summon witnesses, swear chain carriers, &c. and were authorised to mark and bound the lots according to their adjudication and adjustment of the original location thereof, of which they were to return certificates to the clerk of Allegany county to be recorded, and if no suit or action was brought within seven years after the recording such return, to call in question the adjudication of the commissioners, it should be taken as conclusive evidence of the original location, or, if the adjudication should be confirmed by verdict of a jury in any suit brought as aforesaid, it should be conclusive in the point confirmed by the jury, and between the same parties and those claiming under them, with a proviso that every infant, married woman, insane person, or person in prison or

(a) A commissioner was, in consequence appointed, of whose sales, &c. a return remains in the land office.

beyond sea, should have five years after the disability was removed to commence an action. The power of these commissioners was limited to the first of January 1796, and it was then suffered to expire, but by an act of 1804 ch. 67, the same number of commissioners has been again appointed, with these and other more extensive powers, being authorised on the application of any possessor of a lot or lots westward of Fort Cumberland, suggesting *manifest* errors in the certificates or patents of such lots, or in any line thereof, to correct and adjust the same in their judgments according to the original location thereof; a certificate of which location under the hands and seals of the acting commissioners, is to be returned to the clerk of the county court, and being recorded by him is to have the same effect as an adjudication made by the former commissioners, "any expression in said certificate of survey or patent, to the contrary, notwithstanding." This law is to continue in force until the year 1810, and has a peculiar bearing upon the records of the land office, but in speaking of so recent an act of the legislature I do not permit myself to make any further observations.

By an act of 1797, ch. 31, the register of the western shore land office was authorised and directed to make sundry corrections in the returns of the commissioners appointed as before mentioned, for the distribution of lots to officers and soldiers, and the adjusting the preemption of settlers, by erasing *numbers* erroneously assigned to particular persons and inserting opposite to their names other numbers specified in the act, which insertion was to be evidence of title equally with the original entries of the allotments made by the said commissioners. By subsequent acts the register was directed to correct and alter the location of certain lots in the particulars therein specified, the said alterations to be made by him in the certificates, the patents, and the records thereof, but no existing rights to be affected by those proceedings. These acts were passed after the expiration of the first commission just spoken of, and before the late renewal and extension of the authorities thereto attached.

At the session before mentioned of 1804 an act was passed reciting, in substance, that large bodies of land in Allegany county had theretofore been surveyed and were then lying on certificate, liable to warrants of proclamation, but that from the great quantities of bad land included they were not likely to be taken in the whole for purposes of cultivation; that by the rules of the land office these surveys could not be taken in part, and that it would be of public and private benefit, by vacating the certificates, to put those lands in a situation to be taken up in parts as vacant land. It was therefore ordained by this act that all certificates of the before mentioned des-

cription which should not be compounded on, or secured by proclamation, before the first day of August then ensuing should on and after that day be deemed vacated, null, and void; placed upon the same footing as other vacant land in Allegany county, liable to be affected in the same manner, and in any quantity, without regard to the former surveys; provided that such lands should not be liable to be affected by any warrant issued or to be issued before the first day of August aforesaid.

And, by another act of the same session, ch. 105, all the land laid off and returned in lots as before mentioned which remained unapplied and undisposed of, and continued to be the property of the state, were liberated from the provisional dispositions under which they had lain, and were made liable to be taken up and secured like other vacant land in Allegany county.

These are the principal, and I believe all the material, provisions of the acts of assembly relative to military, and settlers, lands westward of Fort Cumberland. Some other matters have been directed by resolutions of the two houses which, so far as they may require notice, will receive it in another place; but besides that these and other resolutions are generally for the benefit of particular persons, and are oftener exceptions from, than evidences of, an established practice, I do not suppose them to be, in any point of view, precisely upon a footing with laws, and have not thought it expedient hitherto to notice them. So far, however, as they declare the sense of the legislature upon points of general concern, I shall not omit to give them proper attention.

CHAPTER VI.

OF INDIAN LANDS.

IN declining, in the former book, to give an historical account of the disputes, treaties, and other transactions between the proprietary government and the indian natives of the country, I promised nevertheless to notice what might concern the lands held by particular tribes, under the guaranty and protection, not only of that, but also, of the present government. In order, however, to make one work of it I have reserved this subject for the present book, and perceiving it to have but little connection with the practice of the land office, I shall not dwell very minutely upon it. As to the events