

THE NORTHWESTERN LANDS OF PENNSYLVANIA, 1790-1812¹

THE land policy of Pennsylvania as established under the Proprietaries and carried on by the Commonwealth tended to favor the small farmer rather than the wealthy speculator. Prices were moderate, credits generous, and squatters' preëmption rights were accorded early recognition. This liberality arose from a realization on the part of the Proprietaries of the services of the poorer settlers in extending the frontier westward, enhancing the value to the province of the unoccupied lands about them and providing a bulwark against the Indians for the settlements immediately east of them which in turn became more heavily populated and thus increased the aggregate prosperity. To encourage settlement further, the regulations of June 17, 1765, for the conduct of the Land Office restricted the amount of vacant land to be granted to an individual to 300 acres,² but the large landholders managed to evade this restriction by means of a legal fiction. Lands in excess of 300 acres were applied for by the same person under a number of fictitious names, and surveys of the same made and payment rendered at his instance. Suits brought against such surveys as illegal in that they were not made at the instance of the warrantee were lost by the courts ruling that the nominal warrantee was acting merely as trustee for the person active in the affair.³ The difficulty of transfer from the fictitious to the actual owner was negotiated by a deed poll.⁴

The policy of the Proprietaries was continued in its essentials by the Commonwealth. By the act of April 1, 1784, individual sales were restricted to 400 acres, and improvement and settlement rights were recognized.⁵ By the act of December 21, 1784,⁶ lands lying north

¹ Part of a dissertation entitled "Some Aspects of Sectionalism in Pennsylvania, 1790-1812" presented to the Faculty of Bryn Mawr College in partial fulfilment of the requirements for the degree of Doctor of Philosophy, on file in the Bryn Mawr College Library.

² Thomas Sergeant, *View of the Land Laws of Pennsylvania*, 57, 61.

³ Joel Jones, *A Syllabus of the Law of Land Office Titles in Pennsylvania*, 77.

⁴ Jones, *op cit.*, 78.

⁵ *Statutes at Large*, Ch. 1094.

⁶ *Ibid.*, Ch. 1122.

and west of the Ohio and Allegheny rivers and Conewango creek, which formed a part of the last land purchase, were closed to settlement temporarily in view of the threatening Indian situation.

This attempt to ensure actual settlement along the frontier or improvement which would presumably lead to settlement was contended for by the western members of Assembly and opposed by the members from Philadelphia and the eastern counties, representing the potential large holders under fictitious names against whom these clauses were directed. Indeed it was only through a political deal by which the western members agreed to withdraw their opposition to the chartering of the Bank of North America in return for eastern support that these provisions were suffered to remain in the bill.⁷ Nor did this victory entirely protect the settlers, since for the establishment of settlement or improvement rights comparatively little labor was required. Girdling trees, planting peach and cherry seeds or apple cores, or sowing grain without thereafter caring for it were held sufficient evidence of an improvement by public opinion, and usually by the courts.⁸ In similar manner the building of a cabin, the making a clearing, the ploughing of land were all held evidence of an intention of settlement.⁹ It was therefore a simple matter for the large holder to hire one or two agents to perform these services and thereby ensure his title. The act of December 30, 1786,¹⁰ defined the terms in such a manner as to require for a settlement title continuous residence unless interrupted by Indians or by service in the army, and for an improvement title, extensive improvement undertaken with a view to settlement in the near future.

During the years covered by this paper the conflicting interests of settler and speculator occupied a large share of the attention of the state legislature and played no inconsiderable part in party politics. Of the two parties of the period, Federalists and Anti-Federalists or Republicans, the former were identified in state as in national politics with the mercantile and financial interests of the seaboard cities and the long settled eastern counties which depended on them for a market, the latter with the agricultural economy of the more sparsely

⁷ Charles Huston, *An Essay on the History and Nature of Original Titles to Land in the Province and State of Pennsylvania*, 119, quoting a statement by Judge Brackenridge.

⁸ Jones, *op. cit.*, 144-45.

⁹ Jones, *op. cit.*, 108.

¹⁰ *Statutes at Large*, Ch. 1259.

settled frontier.¹¹ During the first nine years of this period, 1790-1799, the Federalist party in Pennsylvania had a varying and usually small majority in the Assembly and full control of the administration; from 1799 to 1812 the Republicans were in complete control of all branches of government. It is not surprising, therefore, that the period 1790-1799 should be distinguished by heated struggles in the Assembly between the representatives of settlers and large landholders and that the actual legislation passed during the period should have been in the nature of a compromise, nor that the administration should have favored the large landholders in the enforcement of this legislation. Similarly, from 1799-1812 both legislature and administration favored the cause of the settlers and were restrained from overthrowing the claims of the large landholders only by the federal courts.

In 1790 the boom in western lands had already commenced. Prominent Philadelphians had already invested or were about to invest in lands in the Northwest Territory and in their own state. As the fever for speculation increased, conflict with the frontiersmen became inevitable. On January 21, 1791, it was moved by Thomas Ryerson, seconded by Matthew Ritchie, both of Washington county, that a committee be appointed to bring in a bill "to revise, amend or alter the present established modes of disposing of the vacant lands of this commonwealth, and to digest a general system for that purpose, upon principles more adopted to the convenience of the poor and actual settlers, than those contained in the present laws relative to the land office."¹² In due time a committee reported "An act to open the Land-Office, for granting lands in the western parts of this State, and for regulating certain proceedings relating to the same," which provided for throwing open the northwestern section of the state to settlement. It was not until the second session, on September 12, that the bill reached a second reading. On this date, after an inconclusive debate, it was ignominiously buried by reference to a committee.

At the session of 1791-92, however, there was passed what is probably the most famous of the state land laws, not excluding those dealing with Wyoming. Early in the session, on December 17, 1791,

¹¹ An analysis of legislative divisions county by county reveals markedly sectional tendencies in Pennsylvania during this period.

¹² House Journal, 1790-91.

Gallatin, the young and astoundingly capable member from Fayette who acted as one of the leaders of the western party, moved that a committee be appointed to "enquire into the propriety of lowering the price of vacant lands throughout the state, and of opening the Land-Office for all the lands within the state that are not yet disposed of," points both of them calculated to appeal alike to speculator and to settler. On the 22nd a committee was appointed which on January 6, 1792, reported favorably on both points, endorsed the 400-acre limitation and settlement regulations, and proposed that the state should be enabled to revoke grants in case of continued non-payment or neglect to fulfill the conditions of actual settlement. On the following day a committee was appointed to bring in a bill in accordance with their report.¹³

On February 7th, 8th, 10th, 17th, 18th, 28th, and 29th, the House discussed this bill in committee of the whole. On the very first day animosity was roused between the two sections by the suggestion of Cadwallader Evans of Montgomery that the price of vacant lands should be reduced but not that of lands held by unpatented settlement titles. "He was unwilling to lower the price of such lands as had been occupied by settlers from 10 to 15 years, without title, and in defiance of the laws of the land: settlers who never benefitted the revenue one farthing: he was unwilling that such delinquents should receive a benefit from their delinquency."¹⁴ Gallatin indignantly came to the rescue of the aspersed frontiersmen who served as a firmer defence against the Indians to the whole state than any army could, and who were delinquent only because of the poorness of their lands and because owing to constant alarms they were unable to cultivate them assiduously. Evans admitted that perhaps some of those on the actual frontier were paying in excess of their means, but favored the amendment because majority were well able to repay the state. Many farmers in Bucks and Montgomery counties allowed their lands to remain unpatented at low interest while investing their savings at a higher rate.

Samuel Maclay of Northumberland opposed the opening of the lands beyond the Allegheny to settlement until the sparsely settled northern section between that river and the Susquehanna should be-

¹³ House Journal, 1791-2.

¹⁴ *The General Advertiser and Political, Commercial and Literary Journal*, Feb. 8, 1792.

come more thickly populated. He believed that if these lands should be thrown open, the state would be obliged to maintain a standing army for the defence of the settlers.¹⁵ Scott of Washington advocated opening the entire tract, but considered that if only a portion were to be opened that portion should be the western section, where the settlers would at least receive protection from the fortified and garrisoned military posts.¹⁶

Towards the end of the day's debate Evans made a general statement of his objections to the bill. In the first place, he was opposed to the restriction of the northwestern lands to 400-acre tracts and to actual settlers. He advocated instead the sale of large tracts to land companies or wealthy individuals whose ability to pay was unquestionable. These large proprietors could be depended on to procure settlements on their lands after an orderly scheme, whereas if the territory were opened to individual settlers they would scatter in search of the choicest lands, would make too thin a line to defend the frontier, and would instead require state forces to defend them. Furthermore, the first wave of frontier immigration, when unrestricted, consisted of undisciplined and lawless "banditti" who would not have the patience to perform the stringent conditions of settlement prescribed by the Act.

Gallatin met the arguments for directed and compact settlement with the reminder that in Europe distress was greatest where the population was most congested, and the Jeffersonian assertion that the true happiness of a state depended "on the poorer class of people having it in their power to become freeholders at a small expense, and being able to live comfortably, and dependent only on their industry and exertions." He further pointed out that if such a liberal policy were not adopted, the enterprising small farmer could and would secure lands to his liking in western New York or Virginia or even further afield, while Pennsylvania not only would gain nothing, but would lose valuable citizens. He concluded with an impassioned defence of the character of the frontiersmen.¹⁷

On February 8th the second section of the bill was completed. The question of opening any or all the lands included in the Fort

¹⁵ *General Advertiser*, Feb. 8, 1792.

¹⁶ *Ibid.*, Feb. 9, 1792.

¹⁷ *Ibid.*

Stanwix purchase of 1784 was first determined. William Bingham of Philadelphia, who was anxious to invest in lands in that section, was the strongest advocate of opening the entire territory, urging the increased representation in the federal House of Representatives that a large frontier population would bring about, and discounting the expense of frontier defence by the ingenious suggestion that it should be left to the United States!¹⁸ After further debate the House adopted this principle.¹⁹ The other feature of the day's debate was a reiteration of the struggle between the large and small holders. Scott of Washington earnestly advocated the retention of the actual settlement requirements, pointing out that by this means the increased value given to the vicinity of settlement would benefit the whole community, and painting a clear picture of the social disadvantages of allowing speculators to hold unseated lands for years, only to sell them at exorbitant prices when no others were available. Fisher of Philadelphia supported his argument and offered an amendment in the nature of a compromise, whereby the lands northwest of the Allegheny and Ohio should be sold either to those who would themselves perform the conditions of actual settlement, or to those who would cause them to be settled by others.²⁰ This clause, which seems to have aroused no comment at the moment, and which was accepted by the House without demur, proved in connection with the ambiguous provisions of section 9 to be the stronghold of the large landholders. It is doubtless because some of them foresaw this that it was adopted with so little opposition.

No further account of the debates has been discovered. It is evident, however, from the length of time spent in committee of the whole that the remainder of the bill was warmly contested, although section 9, later the chief bone of contention, seems to have encountered no serious opposition. On March 5th the bill passed its second reading without amendment, and on March 8th, by a division of 43-12, its third. The twelve dissenting votes were scattered among the southeastern counties and Lancaster.²¹ The Senate passed the bill with expedition, inserting some customary clauses which the House had

¹⁸ Rufus Barrett Stone, *McKean, the Governor's County*, 22.

¹⁹ *General Advertiser*, Feb. 10, 1792.

²⁰ *Ibid.*

²¹ House Journal, 1791-92.

forgotten, lowering the price of northwest lands from £10 to £5 per hundred acres, and making a number of verbal amendments.²² A compromise of £7 10s. was effected on the price; the other amendments were concurred in by the House.²³

The Act as approved April 3, 1792,²⁴ reduced the price of vacant lands in the Fort Stanwix purchase of 1768 and earlier purchases to 50s. per hundred acres and established the price of lands in the Fort Stanwix purchase of 1784 east of the Allegheny river and Conewango creek at £5, of lands west of them at £7 10s. per hundred acres. The land was to be divided into convenient districts and a deputy surveyor was to be appointed to each district who was to make annual reports to the surveyor-general of the Commonwealth. Lands north and west of the Allegheny and Ohio rivers and Conewango creek were to be sold only "to persons who will cultivate, improve and settle the same, or cause the same to be cultivated, improved and settled." These lands might be acquired to the extent of 400 acres by persons already settled or intending to settle or cause settlement to be made on them by applying to the Land Office for a warrant which should describe the tract in detail, in return for which the purchase money was paid in full. A survey was then made and on its return a patent issued. Land already settled on was to be surveyed only for the settler. Those who had already made actual settlement might alternatively apply directly to the district surveyor for a survey to the extent of 400 acres, paying merely the surveying fee. Unless, however, such settlers died or were hindered by the enemies of the United States, they must apply for a warrant, paying the purchase money in full, within ten years of the passing of this act, or the Commonwealth might grant the same tracts to other applicants, "by warrants reciting such defaults."²⁵ Section 9 defined the conditions of settlement and residence specifically in an endeavor to make evasion impossible; in a proviso which temporarily excused such settlement in case of Indian warfare, however, the inclusion in this exemption besides actual settlers of those who had intended to settle but had been prevented by the outbreak

²² Senate Journal, 1791-92.

²³ House Journal, 1791-92.

²⁴ *Statutes at Large*, Ch. 1624.

²⁵ Otherwise known as "vacating warrants."

of hostilities was so loosely stated as largely to defeat the intention of the sponsors of the bill. The text of this section reads as follows:

No warrant or survey to be issued or made in pursuance of this act, for land lying north and west of the rivers Ohio and Allegheny, and Conewango 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 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 endeavors to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the same lands, in the same manner as if the actual settlement had been made and continued.

The loophole afforded by this proviso to large landholders who had no intention of settling their lands immediately apparently failed to attract the attention of the western members at the time of passage, although after its effects became manifest a tradition grew up that the eastern members had amended the wording in their interest and then combined with the western members to pass what purported to be a bill for the small settler.²⁶ Who was responsible for the exact wording and at precisely what point in the debate it was agreed on, has not been discovered. In view of the then threatening Indian hostilities, common sense should have assured anyone that he might pay the price of his lands, have them surveyed, and so secure a patent, without being under the necessity of settling them for some years to come. This in itself would go far to lessen eastern opposition to the bill, since the more settlements were made by others, the easier their settlements would become. That certain astute members fore-

²⁶ I have been unable to discover traces of this charge in any of the source material which I have covered as late as 1812, but more recent county and state histories make frequent mention of it.

saw the eventual interpretation of the proviso—that those prevented from commencing a settlement were automatically excused from ever starting one—is possible; but that there existed a general understanding to this effect among the eastern members is doubtful in the extreme.

Even before the passage of the Act of April 2, 1792, had opened the district to settlement, a few hardy frontiersmen had penetrated the northwestern wilderness beyond the Allegheny river. Their position was merely regularized by the Act. The Act itself stimulated further settlement to a limited degree only until the spring of 1796 because of the warfare between the United States and the western Indian tribes which lasted until Wayne's victory at Fallen Timbers in 1794 and on a diminishing scale until the Treaty of Fort Greenville of 1795. No campaigns were fought on the soil of Pennsylvania, but isolated families and individuals were massacred, advanced portions of the frontier "broke," rangers, militiamen and voluntary emergency forces were frequently under arms, and the entire territory west of the Alleghenies was thrown into a state of alarm.

Although continuous residence and an exact fulfilment of the other conditions of settlement were impracticable, both pioneers and speculators set about making minor improvements on lands in the new territory which might serve to establish their claim if war broke out. That prevention alone was not in 1792 generally regarded in Philadelphia as sufficient to establish a title is proved by the arrangements made for improving warranted lands.

The individuals who took out warrants under fictitious names to lands in this district in the largest quantities were probably Robert Morris and James Wilson, both Philadelphians. Shortly after the passage of the bill the Pennsylvania Population Company was organized for the express purpose of taking up lands beyond the Allegheny River. In 1793 Theophile Cazenove, agent in the United States for a number of Dutch firms interested in American investments, purchased 500,000 acres west of the Allegheny River from James Wilson on behalf of his employers.²⁷ In the previous year he had bought the same amount from Wilson and others in the newly opened territory east of the Allegheny, and in addition he was buying even larger tracts in western New York. In 1793, impressed with the pos-

²⁷ Paul Demund Evans, *The Holland Land Company*, 33.

sibilities of land speculation, the firms in question increased their available capital by forming a land company and offering shares to the general public. These were eagerly bought up.²⁸ In 1795 the company was formally organized and took the name which is loosely used in speaking of its earlier transactions, the Holland Land Company.²⁹ Although the bulk of its holdings were in New York, this company took the leading part in the struggle in Pennsylvania between settler and speculator that commenced immediately after the cessation of Indian hostilities.

Discouraged by their defeat at Fallen Timbers, the Indians were at length ready to consider overtures for peace. By the Treaty of Fort Greenville, August 3, 1795, peace was signed between the Indian chieftains and General Wayne. This treaty received the ratification of the Senate on December 22, 1795. During the autumn of 1795 many inhabitants of the more settled transmontane sections moved across the Allegheny and Ohio and commenced erecting cabins and girdling timber preparatory to establishing a settlement claim. Since the surveys required of warrant holders had in many cases not been made because of the Indian danger, it frequently happened that these settlers established themselves on tracts which had been bought and paid for but never surveyed by the land companies or by large individual holders. Such squatting, inevitable under the circumstances, amounted to intrusion, for which private actions could be brought. In his address of December, 1795, Governor Mifflin commented on the intrusions which were commencing in the west as a source, if unchecked, of future litigation, and suggested a supplement to the Act of 1792 by which in future all lands beyond the Allegheny and Ohio should become private property only by warrant and patent instead of by warrant or settlement and patent. Claims to patent by prior settlement, he held, were of no service to the state but were a distinct menace through their threat of disputes as to titles.³⁰ Throughout the session petitions poured in from large landholders for amendment in this manner and from the frontier for inaction. On January 16, 1796, the grand committee appointed by the House on this subject reported

²⁸ *Ibid.*, 28-29.

²⁹ *Ibid.*, 34.

³⁰ House Journal, 1795-96.

against amending, since in their opinion the provision for title by settlement "was calculated for the real benefit of the state."⁸¹ When the House was about to consider the second reading of this report, a motion was made by Benjamin R. Morgan of the city, seconded by Robert Waln of Philadelphia county, to postpone consideration in order to introduce a resolution to appoint a committee to bring in a bill repealing all clauses of the Act of 1792 which required an actual settlement to be completed before ———. ⁸² If this motion had been successful the blank would presumably have been filled with a date so far distant as to excuse large landholders from any attempt at settlement before selling their lands. The motion, however, was defeated by a vote of 27-40. Those supporting the measure included the total membership for the city and for Bucks, the members present for Chester and Montgomery, two of the three members from Northampton, and one member each from Philadelphia, Lancaster, and Delaware counties. Five votes from districts beyond the Susquehanna, one each from Cumberland, Westmoreland and Mifflin, and two from the combined counties of Northumberland and Lycoming were cast in favor of the motion. Opposed to the motion were the remainder of the trans-Susquehanna members present, five votes from Philadelphia county, two from Lancaster, one each from Delaware and Luzerne, three from Berks, and three from Dauphin. The sectional character of the vote is immediately apparent. A second proposal, that title by warrant and patent might be completed by an additional payment to the state instead of by settlement was defeated 24-43 and the committee report was then adopted.

Before the end of February reports of the defeat of the speculators had reached the western country, where they at once stimulated renewed immigration beyond the Allegheny. Popular enthusiasm quickly magnified the victory. It was generally held that only titles by settlement would be legal, and the new emigrants squatted deliberately on such as yet unsettled tracts of warrantees as suited them.⁸³ From this the radicals went on to advance the claim that settlement was sufficient title in itself, and that no payment would be necessary.

⁸¹ House Journal, 1795-96.

⁸² *Ibid.*, Feb. 5, 1796.

⁸³ *General Advertiser*, Mar. 5, 1796.

A letter from Pittsburgh of February 25 which appeared in the *General Advertiser* for March 12 gives a vivid picture of the state of the public mind:

We have now something before us similar to Tom the Tinker's day—it is generally believed that near half the men in this country have crossed the river to take possession of whatever land they can get. This town is almost empty. Some large parties are gone with intent to clear all before them where the land is good. A report prevails that a large body of people have, or are about making laws and regulations of their own, and to be amenable on that side of the river to no other power or State. They think it not just that the Assembly should charge the people for these wild lands in the Indian country: it is sufficient if they keep the Indians from the other parts of the State. The cry is, damn the warrants and debts, the Assembly have condemned & thrown them out of the question—they can hold no lands—we withstood the brunt of the war, the land is ours—if we hold out we keep the lands, the Assembly is in our favor, no money ever will be demanded of us—so is the cry.

Five days later the same paper printed from another letter the news that a company was being formed in Pittsburgh to support the settlers, apparently by force, in return for half the lands.³⁴ In April "An actual settler" wrote to the editors of *The Western Telegraph, and Washington Advertiser* at Greensburgh, Westmoreland county, rejoicing at the vote of the Assembly, breathing hatred of speculators, and urging a combination of settlers to oppose them.³⁵

The scramble for lands was mainly confined to the portion of the present Allegheny county northwest of the Ohio and the Allegheny and to that part of Allegheny county which was subsequently erected into the counties of Beaver, Butler, and Armstrong, the districts nearest the settled territory. In the autumn of 1795, however, the Holland Land Company undertook improvements in the northern section, building a store at what is now Meadville, the county seat of Crawford county, erecting mills, laying out roads, etc. In all \$5000

³⁴ *Ibid.*, Mar. 17, 1796. Such smaller land companies, operating upon regularly warranted lands as a speculation, appear to have been a common feature in the northwestern land controversy during the next decade. In a controversial pamphlet, *Thoughts on the Situation of the Actual Settlers, &c. in the North Western Counties of Pennsylvania, respectfully addressed To the Members of the Legislature*. By Honestus. (Phila., 1810), p. 10, despositions taken in Erie county are quoted which state that three such companies were formed in the years 1796 and 1797: McNair and Company, Watt, Scott and Company, and Lowery and Company. In 1797 the claims of McNair and Company were compromised by the Pennsylvania Population Company and those of Watt, Scott and Company by the Holland Land Company; Evans, *op. cit.*, 119.

³⁵ April 19, 1796.

were expended on improving the region throughout the autumn and winter.³⁶ In 1796 the company invited settlers, offering 100 acres of each 400-acre tract outright in return for establishing the necessary settlement; the remaining 300 acres were offered at a moderate price and on long credits. Provisions and farm implements might also be obtained on credit from the company store. Improvements were continued, and the company assisted in the clearing of Cussawago Creek.³⁷ A similar policy was followed by the Pennsylvania Population Company.

Despite their efforts, however, the great land companies could never have established their titles by settlement within two years of the ratification of the treaty—the time limit at first conceded them by a ruling of the Board of Property.³⁸ On December 21, 1797, however, the date on which their title to tracts unsettled would have expired, the Board on the advice of Attorney General Ingersoll³⁹ ruled that patents might be granted without settlement having been made for lands for which warrants had been taken out in 1792 or 1793 on the production of a certificate⁴⁰ signed by the deputy surveyor of the district and attested before two justices of the peace. This decision was based on the interpretation of section 9 already mentioned: that having once been prevented from commencing a settlement by Indian warfare, a prevention which all could plead, the warrantees were automatically excused from further attempts at settlement. The fact that the Holland Land Company commenced preparations for sending out settlers immediately after the war ended, that the warrantees as a body petitioned the legislature during the winter of 1795-96 to extend the time for making improvements, and that representatives acting in their interest made motions to amend the Act of April 3, 1792, so that they might be excused from making settlements upon the payment of an additional sum, seems to indicate clearly that the wording of section 9 which made possible this construction was a matter of accident rather than design.

This decision served to rouse the hatred of the frontiersman for the landjobber to a higher pitch, and squatting on the lands of warrantees

³⁶ *History of Crawford County, Pennsylvania*, Warner Beers & Co., publishers, p. 232.

³⁷ Evans, *op. cit.*, p. 113.

³⁸ *Ibid.*, p. 111.

³⁹ Sergeant, *op. cit.*, p. 99.

⁴⁰ Generally called a "prevention certificate."

continued. Eviction suits were brought by companies and individuals, only to meet with biased decisions before the local juries. In May, 1799, the case of *Morris vs. Neighman*, which had been appealed, was heard before the state Supreme Court. The court ruled that a warrantee prevented by hostilities from fulfilling the conditions of settlement must commence settlement within two years of December 22, 1795, thus overthrowing the Board of Property's interpretation. On the other hand, it ruled that the state must formally resume ownership of the lands before a settler could legally commence a settlement claim.⁴¹ This interpretation of the prevention clause was based, says Jones, upon a mistaken interpretation of the English chancery doctrine of *cy pres*, but by the time this fact was recognized by the Supreme Court of the state the precedent had become so thoroughly established as to have the force of law in Pennsylvania.⁴² Thus the period of Federalist control closed with a legal decision which weakened the cause of the large landholders.

One of the leading policies of the Republican administration which came into office in the state in December, 1799, was the reversal of the Federalist land policy in the northwest. The newly appointed Board of Property refused to grant patents for land north and west of the Ohio, Allegheny, and Conewango Creek to warrantees applying for them under the prevention certificates sanctioned by their predecessors, and Tench Coxe, the Secretary of the Land Office, threatened to revoke patents granted on the basis of these certificates as invalid.⁴³ The change in policy soon gave rise to a fresh influx of settlers upon the lands of the warrantees, all claiming that these were forfeit to the state and consequently open to settlement. Some of these settlers applied to the Land Office for warrants for their lands, and by Coxe's orders received vacating warrants which revoked former warrants and patents without the formality of proving forfeiture before the courts.⁴⁴

Alarmed as to their titles, the Holland Land Company and the Pennsylvania Population Company appealed from the Board of Property's interpretation of section 9 to the state Supreme Court, to which

⁴¹ 4 Yeates 450.

⁴² Jones, *op. cit.*, 198, quoting the opinion of Chief Justice Gibson in *Ross vs. Barker*, tried in the Supreme Court in 1836; 5 Watts 397.

⁴³ Evans, *op. cit.*, 123.

⁴⁴ *Ibid.*, 129.

in September, 1800, they made joint application for a rule to show cause why a writ of mandamus should not issue ordering Tench Coxe to deliver patents for certain tracts of which they were the warrantees and for which they had secured prevention certificates. After several postponements, the case was finally heard and judgment given on September 15, 1801. Chief Justice Shippen upheld the plea of the companies that prevention excused all further attempts at settlement. Judge Brackenridge, who had formerly acted as counsel for the Holland Land Company, declined on that account to give an opinion. Judge Yeates delivered on behalf of Judge Smith and himself the majority opinion, that prevention excused the fulfilment of the conditions of settlement for a period only, and that since no attempt had been made by the companies to fulfill these conditions there was no reason why a mandamus should issue.⁴⁵ In their interpretations of the intention of the legislature in framing the Act of 1792, Shippen stressed the desire for revenue, Yeates the desire for settlement. Although this decision added nothing to the court's ruling in the case of *Morris vs. Neighman* and other cases in which the main issue was the exact nature of a settlement, it is important as the first case primarily concerned with the interpretation of section 9 itself.⁴⁶ At the same time, since one of the judges was not voting and the remaining three were divided in their opinion, it did not represent as clear a verdict for the settlers as could have been desired.

During the session of 1800-01, while this case was pending, petitions were addressed to the Assembly by the actual settlers upon warrantees' lands, urging a confirmation of their titles as against patents obtained under prevention certificates. On February 27, 1801, the House Committee to which these petitions had been referred made a strongly worded report in favor of the settlers, concluding, however, with the advice to await the outcome of the mandamus trial.⁴⁷ When shortly after this verdict some ejection suits brought by the war-

⁴⁵ 4 Dallas 170; *Opinions of the Judges on the Claim of the Holland Company* (Lancaster, 1802).

⁴⁶ Daniel Agnew, *A History of the region of Pennsylvania North of the Ohio and West of the Allegheny, of the Indian purchases, and of the running of the southern, northern, and western state boundaries. Also, an account of the division of the territory for public purposes, and of the lands, laws, titles, settlements, controversies, and litigation within this region*, 135.

⁴⁷ House Journal, 1800-01.

rantees against settlers upon their lands and appealed to the Supreme Court were decided in favor of the warrantees, it became evident that the victory of the settlers was less sweeping than had been at first supposed. In consequence renewed petitions were addressed to the legislature for assistance against the warrantees, and on January 13-16 there was held at Meadville, Crawford county, a convention of delegates elected by the townships of the eight northwestern counties to take concerted action against the warrantees.⁴⁸ This meeting passed resolutions assailing the validity of the prevention certificates and for the first time advanced the claim, reiterated later, "that no proof exists of one single Family, being prevented by the Public Enemies of the U. S. from making settlements, since the year '92." If this claim could be substantiated, it would void all warrants taken out for northwestern lands, since in no case could the warrantees have proved compliance with the terms of settlement before 1796 and all land available had been warranted by 1794. The Meadville meeting then appointed a committee to draw up a petition to the legislature and arranged that copies should be sent to each township for signatures, should be returned to Meadville by February 1, and should then be despatched to the legislature. James Lowry⁴⁹ and John Greer were appointed delegates to present these petitions together with documents which upheld the meeting's claim of no prevention. It was next resolved that if the delegates and the acting committee should deem it advisable, subscriptions should be opened throughout the western country to employ lawyers to defend "the common cause" and that "the Counsel so employed shall be entrusted to take care of

⁴⁸ *Intelligencer and Weekly Advertiser*, Feb. 24, 1802.

⁴⁹ The same as the James Lowery of Lowery and Company, the only one of the earlier companies founded in opposition to the warrantees remaining in existence. Evans informs us that by this time two new companies, headed by A. W. Foster and John Brown had settlers placed on tracts belonging to the Holland Land Company and the Pennsylvania Population Company (p. 31). The promoters of these companies had no claim whatever to the land in question and were deliberately establishing settlers on warranted lands in the hope that the great landholders would give up their better claims in despair of ever making them good upon the spot. Although their conduct was in itself so unethical, the promoters were of great assistance to the small settlers by furnishing capital to support them in ejection suits instituted by the warrantees, by organizing township meetings and providing for concerted action, as at the Meadville meetings by diffusing legal information among the settlers, and by supporting the measures instituted in the settlers' favor by the legislature. Practically nothing is known of the detailed actions of these companies, but from casual references in contemporary literature it is evident that in cases of settlers' resistance they were often the force in the background.

All Actual Settlers Causes without personal application, in every Court of Judicature where they may be attached." After ordering these resolves printed in the *Tree of Liberty*, the Republican organ at Pittsburgh which enjoyed the widest circulation in the western country, and in the *Lancaster Intelligencer*, the Republican organ at the capital, the meeting adjourned.⁵⁰

On March 13, 1802; the senate committee to whom the settlers' petitions had been referred and of which William Findley, at all times the westerners' champion, was chairman, reported "An act to settle the controversies arising from contending claims to lands within that part of the territory of this Commonwealth north and west of Ohio and Allegheny and Conewango Creek."⁵¹ A long preamble, after setting forth the claims of settlers and warrantees and the fact that an impartial trial was an impossibility in the vicinity, declared it the duty of the legislature to provide for a fair trial to decide on the validity of titles based on prevention certificates. The Act proper enjoined the judges of the Supreme Court to arrange for a test case to determine whether in the first place warrants issued under the Act of April 2, 1792, could prevent the state regranteeing the same lands under vacating warrants in cases where the warrantees had not complied with the settlement requirements either before or within two years after the warrant issued; in the second place, whether warrants or patents issued on prevention certificates were valid without further proof of prevention. This test case was to be tried at Sunbury in Northumberland county before a jury summoned from Northumberland or Lycoming who were "to decide upon the law and upon the facts, and if they think fit, to bring in a general verdict thereon." Any party to the controversy might offer evidence as to the circumstances of issuing prevention certificates and the condition of the country at the time they were issued. Meanwhile, to avoid further complication, the secretary of the land office was enjoined not to grant vacating warrants upon warranted land but to file all applications for such warrants until the decision was rendered. If a verdict was given in favor of the Commonwealth, he was then to grant such warrants in the order of priority of application.⁵²

⁵⁰ *Intelligencer and Weekly Advertiser*, Feb. 24, 1802.

⁵¹ *Senate Journal*, 1801-02.

⁵² April 2, 1802. Ch. 2288.

The Holland Land Company petitioned both houses to be allowed to represent to them by counsel why the bill should not be passed, but this request was refused.⁵³ Legislative sentiment strongly favored the settlers, and the bill passed without difficulty. This measure was unusual in that it appointed a special court to try a special issue and that under it the jury were to determine not only the facts but the law. On May 12 a second meeting at Meadville appointed a standing committee of seven to take evidence of the state of the northwest at the date at which prevention was alleged to have existed, and on May 15 this committee appointed local sub-committees and ordered an address to the actual settlers on the importance of bringing forward evidence to be published in the *Tree of Liberty* and the *Farmers Register*, both Republican papers.⁵⁴ On June 21 counsel for the warrantees addressed a letter to the judges of the Supreme Court in which they stated that the warrantees would not be represented at the forthcoming trial, giving as their reasons the fact that the preamble to the bill appointing trial redefined the meaning of the Act of April 3, 1792, that the questions to be determined did not cover all controversies arising under the Act, and that the warrantees' consent to the Act should have been asked.⁵⁵ At the trial Attorney General McKean, assisted by William Tilghman and Thomas Cooper, argued the case on behalf of the Commonwealth and, in the absence of counsel for the defendants, Judge Yeates then delivered a charge to the jury which represented also the opinion of Smith and Brackenridge. Chief Justice Shippen was absent. On the question of the validity of warrants granted under the Act of 1792 Yeates held that prevention merely postponed the date of forfeiture if conditions of settlement were not complied with. On the question of prevention certificates, he held that patents granted on the basis of these certificates gave no title but that other evidence must be brought to establish prevention. Each case must therefore be decided on its merits. The jury brought in a verdict to the same effect, save for the omission of the proviso for individual cases.⁵⁶ Although this decision followed the course of re-

⁵³ Senate Journal, 1801-02, Mar. 17, 19, 1802; House Journal, 1801-02, Mar. 5, 26, 1802.

⁵⁴ *Farmers Register*, June 19, 1802. This paper was published at Greensburgh, the county seat of Westmoreland county.

⁵⁵ Agnew, *op. cit.*, 138.

⁵⁶ 4 Dallas 237; The Attorney General *vs.* The Grantees under the act of April, 1792, popularly known as "the feigned issue" or "the Sunbury trial."

cent Supreme Court decisions it was important in that the main issue now as at the mandamus trial was the interpretation of section 9 and that this time a clear majority had been secured. It was also important in that, without accepting the contention that there had been no prevention, it ignored the arbitrary date, December 22, 1795, at which the Federalist Board of Property had originally declared prevention to have ceased, and allowed the settlers in individual cases to offer proof to set this date further back.

The rejoicing of the settlers, who had thought their troubles ended by the Sunbury decision, was soon cut short. The Holland Land Company as an alien at once brought ejection suits against several actual settlers before the federal courts, and the Pennsylvania Population Company, acting in concert with it, transferred six of its tracts to Harm Jan Huidekoper, an alien connected with the Holland Land Company, for the same purpose.⁵⁷ On February 17, 1803, the Senate committee on western lands of which Findley was again chairman reported a bill whose preamble declared the jurisdiction conferred by the Constitution upon the federal courts in cases between foreigners and citizens or between citizens of different states "was not meant and ought not to be construed so as to interfere with the local regulations, internal policy and mode of settling and disposing of the territory exclusively belonging to each state respectively"; that local judges, acquainted with local conditions, were more competent to adjudge such cases than the justices of the federal courts; and finally that an acknowledgment of the right of the federal courts to pass on Pennsylvania's internal policies would entail an abandonment of the state's sovereignty. The bill proper forbade all citizens of Pennsylvania, actual settlers on lands north and west of the Allegheny, Ohio, and Conewango, to answer suits of ejection brought against them in the federal courts. In the Senate, where Findley's influence was strong, this bill encountered little opposition. A division on the second reading, which took place on March 2, 1803, resulted in a vote of 18-4 in favor of the bill, the four objectors being the Federalist remnant which during this same session voted Alexander Addison not guilty at his impeachment.⁵⁸ On March 3 the bill passed its third reading in the Senate. In the House, where the Federalist party was

⁵⁷ Evans, *op. cit.*, 145.

⁵⁸ Senate Journal, 1802-03.

stronger and the divergence between the moderate and radical Republicans was already beginning to be felt, the companies' lobbyists were more successful. On March 24 the committee to which had been referred a memorial from the Holland Land Company asking that their counsel might be allowed to argue at the bar of the House reasons why the bill should not be passed reported that disputes between warrantees and settlers should be settled in court and therefore moved that it was inexpedient for the legislature either to proceed with the bill or to hear the company's counsel.⁵⁹ On March 30 the first of these resolutions was defeated by a vote of 24-48 and the second was agreed to. On April 2, however, a motion to take up the consideration of the Senate bill was defeated by a vote of 33-36, and the bill was in consequence postponed until the following session. Since the principle of legislative interference with the judiciary was at stake on each occasion, it seems probable that the lateness of the session was responsible for the falling off in votes in favor of the bill. Although the Republicans were strongest in the west, the vote of March 30 shows them as represented to some extent in every county whose representatives were present except Luzerne, Adams, Delaware, and Somerset. The vote on April 2 was more sectional in character, the counties immediately concerned and their neighbors favoring the rushing through of the bill and the counties less directly concerned being willing to discuss it in more detail at the following session. After discounting differences due to changes in attendance, an analysis of the votes shows that of those who voted against the recommendations of committee on March 30, one member from the city, three from Chester, two from Berks, one from Lancaster, one from York, two from Montgomery and one from Mifflin on April 2 voted against taking up the Senate bill. On the other hand one member from Fayette and one from Luzerne, counties interested because of propinquity in the one case and a similar land problem in the other, changed their votes in favor of taking up the bill.

As finally adopted by the legislature at its next session, this bill was altered out of recognition. The paragraphs dealing with the federal courts were omitted, and instead the governor was authorized to retain counsel to attend the interests of the state in all suits concerning northwestern lands brought before the United States Circuit Court.

⁵⁹ House Journal, 1802-03.

An appropriation of \$1000 was made for this purpose.⁶⁰ In this way the sovereignty of Pennsylvania might be guarded. At the same time the petition of the actual settlers that the state would pay the costs of suit⁶¹ was granted. Another difficulty for which the settlers had petitioned at the last session was also cleared away.⁶² Although the state Supreme Court held that the warrantees must commence fulfilling the conditions of settlement within two years of the date prevention ceased, it also held that their lands could only be forfeited for the non-fulfilment of these conditions by the issue of a vacating warrant by the state. This interpretation clashed with that popular among the settlers themselves, that the lands were automatically forfeit and therefore open to settlement like the vacant lands of the Commonwealth. Since many of these actual settlers had not the money to purchase the lands outright and so secure vacating warrants which would give them a clear title, they were technically intruders upon the as yet unforfeited lands of the warrantees and could be removed as such by actions of ejectment. By the first section of the Act of April 3, 1804, it was therefore provided that applications made during the next two years for the survey of lands north and west of the Ohio, Allegheny, and Conewango should entitle the applicant who performed the conditions of settlement laid down by the Acts of April 3, 1792, and September 22, 1794, to the same rights as either an original or a vacating warrant would entitle him.⁶³ The Pennsylvania Population Company petitioned that this Act should not be passed until the suits of ejection it had commenced were determined,⁶⁴ but its petition was ignored and the bill passed without opposition.

In April, 1804, twenty-four ejectment suits against actual settlers, some of which had been pending for some time and had been postponed, came before the federal circuit court at Philadelphia. The cause of the settlers, now identified with that of the state, was represented by the attorney-general and the two counsel employed under the Act of April 3, 1804. In all these cases the interpretation of the law of 1792 and particularly of the prevention clause was an important issue; and on that issue the two justices who held the court were not

⁶⁰ Apr. 3, 1804, Ch. 2521, section 2.

⁶¹ House Journal, Feb. 23, 1804.

⁶² Senate Journal, Feb. 24, 1803.

⁶³ Ch. 2521, section 1.

⁶⁴ House Journal, 1803-04, Mar. 14, 1804.

agreed. Justice Washington held with the Pennsylvania Supreme Court that settlement must be continued after prevention ceased, and with the legislature's interpretation under the act of 1804 that if the warrantees did not comply with the conditions of settlement it was lawful for anyone to settle as on vacant lands. Judge Peters upheld the warrantees on both points. Despite this disagreement as to the general principle, a number of the suits were decided in favor of the warrantees on the special circumstances of each case. In October, however, the case of Huidekoper's lessee *vs.* Douglas, in which the only issue was the interpretation of the Act of 1792, came up for trial. Both justices held to their former opinion, and in consequence the case went to the Supreme Court for decision.⁶⁵

On February 1, 1805, an Act authorizing the governor to appoint counsel to attend this trial and appropriating \$600 for the purpose became a law.⁶⁶ On the 27th the unanimous opinion of the Supreme Court, Washington having in the interval changed his mind, was delivered by Chief Justice Marshall in favor of the warrantees. Marshall's opinion was based not upon the entire Act of April 9, 1792, but upon section 9 which contained the proviso in cases of prevention. After a sarcastic and entirely merited criticism of the syntax of this section, Marshall proceeded to interpret its meaning in a literal manner, parsing each sentence and giving as close a rendering as would make sense. By this method he reached the conclusion that an attempt at settlement within two years of taking out a warrant automatically excused the warrantee prevented from succeeding in that attempt from completing his settlement and performing his five years' residence. In conclusion he dismissed the argument of the Pennsylvania counsel that the intention of the legislature in enacting the bill had been to promote settlement and that the prevention clause should be interpreted in that sense, with the characteristic comment that the Act specified the terms of contract on which the state would sell its lands. If through carelessness these terms were not what the legislature had intended, it must nevertheless abide by its contract.⁶⁷

Had this interpretation of the law been accepted by the courts of Pennsylvania, the northwestern portion of the state would have re-

⁶⁵ Senate Journal, 1804-05, pp. 106-7, report of counsel.

⁶⁶ Ch. 2534.

⁶⁷ 4 Dallas, 392.

mained unsettled for years and western immigration would have passed by it into Ohio. The rulings of the United States Supreme Court, however, were not at that time regarded as binding upon the courts of a state, and the state courts continued in the interpretation of the Act of 1792 made by the state Supreme Court at Sunbury. The expense of contesting title to every tract of land by individual suits before the federal courts precluded such procedure on the part of the warrantees although occasional suits were thus brought and decided in their favor. By employing the best counsel where the settlers could afford indifferent counsel, the warrantees continued to win the majority of ejection suits they brought before the state courts on various technicalities but they never succeeded in changing the court's ruling where general principles were involved. Other cases they won by default. In this manner they hoped eventually to discourage the actual settlers to the point of compromise on terms favorable to themselves, and in the meantime they continued to oppose the settlers' bills which came before the legislature.

Although the Supreme Court decision in the case of *Huidekoper's lessee vs. Douglas* occurred too late in the session for the legislature to take action, legislative opinion was clearly evinced by the celerity and unanimity with which both houses adopted resolutions approving the resolutions of the legislature of Kentucky for an amendment to the Federal Constitution which should forbid the transfer of suits for lands from the state to the federal jurisdiction.⁶⁸ At the succeeding session⁶⁹ the legislature was beset with petitions from the northwest asking that the state would bring suit in the United States Supreme Court to settle the question of whether the warrantees had persisted in their endeavor to make settlements in the face of Indian prevention. Nothing came of these petitions, but on March 15, 1806, the Senate committee on northwestern lands reported "An act for directing the manner of deciding the rights and titles to certain lands within this State, situate north and west of the rivers Ohio and Allegheny, and Conewango Creek, and in the triangle in all cases in which the State has been or legally may be considered or acknowledged as a party." This bill declared all lands in the territory mentioned on which the required settlements had not been made automatically for-

⁶⁸ House Journal, 1804-05, Mar. 20, 1805; Senate Journal, 1804-05, Mar. 30, 1805.

⁶⁹ House and Senate Journals, 1805-06.

feit to the state, forbade actual settlers to answer actions of ejection brought in the federal courts, and ordered the warrantees to bring suit in the state courts instead.⁷⁰ Debate on the bill was strenuous and the conduct of the state's case in the United States Supreme Court much criticised.⁷¹ After several divisions and the insertion of an amendment for the removal of cases to disinterested counties if a fair trial seemed unlikely in the vicinity,⁷² the bill finally passed the Senate by a vote of 14-10.⁷³ Two days later the House negatived this bill in committee of the whole and afterward supported its decision by a vote of 47-27, the opposition consisting of the total membership from Allegheny, Beaver and Butler, Washington, Dauphin, Huntingdon, Mifflin, Greene, Center and Erie, all but one lying west of the Susquehanna; of three of Northumberland's four votes and two each of Cumberland's and Franklin's three; and of one-third the total vote of Philadelphia, Westmoreland, Armstrong, Indiana, Jefferson, and Fayette.⁷⁴

At the same session the legislature extended for a year the Act of 1804 giving the force of vacating warrants to settlers' applications.⁷⁵ The liberal interpretation given this Act in the local courts as excusing all settlers from ejection suits by the mere act of application was shattered by the decision of the case of Shippen's lessee *vs.* Aughenburgh which was tried before Judge Yeates at the circuit court at Beaver in September term of 1806. In this case Yeates ruled that such applications had the force of vacating warrants only when taken out before the action of ejection was commenced, and also declared, on the general principle that no one may receive legal benefit from an unjust Act, that the establishment of an actual settler upon a warrantee's land within two years after prevention had ceased not only gave the settler no prior claim but was both an intrusion and in itself an act of prevention which excused the fulfilment of the terms of settlement by the warrantee for a longer period.⁷⁶ A verdict was returned in accordance with this opinion, but with the consent of both

⁷⁰ Evans, *op. cit.*, 155.

⁷¹ *Aurora*, Mar. 29, 1806.

⁷² Senate Journal, 1805-06, Mar. 25, 1806.

⁷³ *Ibid.*, Mar. 26, 1806.

⁷⁴ House Journal, 1805-06.

⁷⁵ Mar. 28, 1806, Ch. 2716.

⁷⁶ 4 Yeates 328.

parties the case was appealed to the Supreme Court.⁷⁷ This appeal was later dropped, but in 1808 the Supreme Court upheld the principles laid down in this case in the similar case of Jones' lessee *vs.* Anderson.

In 1807 the problem of the federal courts was again agitated. Two petitions from the northwestern settlers to Congress which were read in the House on March 3 urged an amendment to the Federal Constitution similar to that proposed by Kentucky. In support of their petition they urged the doctrine of state sovereignty, the fact that local courts were best calculated to deal with local interests, and in their own case the distance to the federal circuit court in Philadelphia.⁷⁸ Meanwhile in the state legislature the House committee on western lands reported a resolution stating that whereas the Constitution of the United States forbade bringing before the federal courts suits to which a state was a party without that state's consent, and whereas Pennsylvania was a party to suits connected with the Act of April 3, 1792, inasmuch as a portion of the purchase price for these lands was to be paid in the form of settlement, and thus the sovereignty of the state was menaced by the federal courts' taking cognizance of such cases, therefore the federal courts had no right to take such action and their decisions should remain null and void.⁷⁹ On March 4 these resolutions were read for the second time and adopted by a vote of 48-32. The members present from the city of Philadelphia and the counties of Chester, Lancaster, Northampton and Wayne, Bucks, Delaware, Luzerne, Bedford and Adams voted against these resolutions, and all those present from the counties of Philadelphia, Somerset and Cambria, Northumberland, Washington, Montgomery, Cumberland, Fayette, Franklin, Dauphin, Allegheny, Beaver and Butler, Huntingdon, Mifflin, Greene, Center, Erie and Lycoming voted in favor of them. The vote of York, Berks, Westmoreland, Armstrong, Indiana and Jefferson was divided. On the 10th the Senate approved these resolutions without amendment.⁸⁰ On March 31 Governor McKean, who had consistently withstood the attacks of successive legislatures on the powers of the state judiciary, vetoed the resolutions as contrary to the Constitution of Pennsylvania in that the

⁷⁷ 4 Yeates 569.

⁷⁸ *American State Papers, Miscellaneous*, I. 479-81.

⁷⁹ House Journal, 1806-07.

⁸⁰ Senate Journal, 1806-07.

legislature was assuming judicial powers and hence upsetting the divisions of executive, legislative, and judicial powers on which that constitution was based, as hurtful to the Union in its practical application, and as contrary to the United States Constitution in that it sought to interfere with powers granted by that constitution to the federal courts.⁸¹ An attempt to override this veto in the House failed the same day by a vote of 44-37.

There is plenty of evidence to show that on various occasions settlers and warrantees' tenants claiming the same tract had come to blows and the stronger had remained in temporary possession, but the first serious bloodshed of the struggle took place on September 23, 1807, when the deputy marshal, riding with a small posse to dispossess William Faulk, an actual settler of Beaver county who had lost an ejection suit in the federal circuit court, was fired on from ambush by several men, and James Hamilton, one of the posse, was instantly killed.⁸² As an actual settler who had compromised his claims with the Pennsylvania Population Company, Hamilton was naturally unpopular among the settlers, but it was conjectured by some that the shot which killed him had been intended for Ennion Williams, the company's agent, who was also a member of the posse.⁸³ Although the governor immediately issued a proclamation offering a reward for the apprehension of the assassins, none of them apparently was ever detected. No doubt the local feeling against the warrantees and federal courts was such as to condone the act and make the tracing of the murderer impracticable. Commenting upon this outrage in his message to the legislature of December 3, 1807, Governor McKean declared that it had been represented to him "that combinations are formed, in that quarter, to oppose by violence the authority and operation of the law, under the judgments of the federal courts," and urged the passage of a strict intrusion law.⁸⁴ Although both houses two days later appointed committees on this subject,⁸⁵ no further notice of his recommendation was taken.

Although petitions on behalf of the settlers were presented at every session and legislative committees consistently reported in

⁸¹ House Journal, 1806-07.

⁸² *Pa. Arch.*, 4th ser., IV. 610-11.

⁸³ "Dedication of the New Court House, Beaver, Pennsylvania, May 1, 1877," p. 16; Judge Agnew's address.

⁸⁴ House Journal, 1807-08.

⁸⁵ House and Senate Journals, 1807-08.

their favor, no further bills on the subject of northwestern lands were passed until 1811, when the legislature, still holding the titles of warrantees forfeit in theory, at length agreed to sanction compromises as a practical necessity. As already mentioned, the warrantees had for some years adopted a policy of compromising with the settlers whenever favorable terms could be obtained, while at the same time prosecuting other claims before the courts with the intention of proving to the settlers as a body that if they would not accept these terms they might lose all interest in the lands they had cultivated. The companies had also continued their efforts to place settlers of their own upon their lands with indifferent success. Cheap land was so abundant in the west that few emigrants and those of the less hardy type could be persuaded to accept the position of tenants when they might almost as readily acquire land of their own. Moreover, the generally confused state of land titles in western Pennsylvania made many hesitate to settle even upon liberal terms lest their lands should be later claimed by actual settlers.⁸⁶ The hostility generally felt throughout the west towards the warrantees or landjobbers made compromise a difficult matter at best, and the companies' efforts were further hampered by the fact that there was nothing to prevent an actual settler who had compromised with them from breaking his contract and claiming as his own by right of settlement the entire tract of 400 acres of which the company had granted him a part. Even the companies' own tenants had frequently urged their own titles in this manner.⁸⁷

In a memorial presented to the legislature during the session of 1809-10 the Holland Land Company recited these difficulties and asked that a law might be passed to insure the validity of both their own and the settlers' titles in cases where a compromise had been effected.⁸⁸ The settlers on their part asked protection against the warrantees who under threat of ejection were forcing them into such unfair compromises that eventually they must lose the little land left them through default in payment. They were, in truth, "in a situation but little better than the Israelites under their Egyptian taskmasters".⁸⁹ To satisfy both parties, the legislature passed "An act providing for the settlement of certain disputed titles to lands north

⁸⁶ Evans, *op. cit.*, 162-63.

⁸⁷ Evans, *op. cit.*, 130.

⁸⁸ *Democratic Press*, Feb. 1, 1811.

⁸⁹ *Ibid.*, Jan. 9, 1811.

and west of the rivers Ohio and Allegheny, and Conewango creek" which became a law March 20, 1811.⁹⁰ The preamble of this Act reiterated the legislative contention that the lands of warrantees not fulfilling settlement conditions after prevention ceased were forfeit, declared that actual settlers with valid titles to the same lands had lost ejection suits by default, and declared that for the sake of settling the territory in question the legislature was willing to waive its legal claim to lands forfeit to it and to confirm the title of either warrantee or settler in cases where one had bought out the claims of the other, or to confirm the titles of both to the lands in cases where a compromise had been reached or should be reached by which the actual settler on a 400-acre tract already warranted or patented received from the warrantee 150 acres including his improvements. Every conceivable case under which such a compromise could be reached was carefully enumerated, and it was specifically provided that actual settlers dispossessed by eviction suits should be entitled to the same benefits as settlers still resident upon warranted lands.⁹¹ In cases where no settlement had been made by June 1, 1813, the date to which the state concurrence in these compromises extended, an additional year was allowed the warrantees to find settlers on the same condition of releasing 150 acres before the state should resume their lands.⁹² By a series of supplements, the provisions of this Act were continued until 1825.⁹³

As originally reported, the bill provided a special court for the trial of title in cases where a compromise was not reached within the appointed time. This was opposed by the warrantees as a partial tribunal.⁹⁴ Friends of the bill declared these clauses necessary in order to secure a fair settlement, which the warrantees would never make save on compulsion⁹⁵ and declared the warrantees' opposition a proof of their realization of a lack of title.⁹⁶ The objectionable clause was finally eliminated. It was also objected by the warrantees that the conditions of compromise were too exacting; instead of dictating the terms of compromise, the state they held should merely confirm what-

⁹⁰ John Bioren, ed., *Laws of the Commonwealth of Pennsylvania*, V. 207ff., Ch. 3322.

⁹¹ Section 5.

⁹² Section 6.

⁹³ Agnew, *op. cit.*, 153.

⁹⁴ *Aurora*, Jan. 11, 1811.

⁹⁵ *Democratic Press*, Jan. 9, 1811.

⁹⁶ *Ibid.*, Feb. 1, 1811.

ever terms they agreed to make.⁹⁷ This argument was accompanied by a threat if it were not acceded to of taking all claims before the federal courts, but the legislature was not to be intimidated. The bill passed the House without opposition. It met some slight opposition in the Senate, but even that was confined to individual clauses and did not apply to the bill as a whole.

The legislature continued to favor actual settlers rather than warrantees and to resist all petitions of the latter for an abandonment of the conditions of settlement until at length the Act of April 3, 1833, permitted patents to issue without settlement, with the proviso that claims to the same tracts by settlement should not be voided.⁹⁸ Various Acts prolonged the period allowed actual settlers before they must make full payment to the state, and a number of attempts were made to compel warrantees evicting settlers to pay for their improvements. The war of 1812, however, had brought new interests to the Commonwealth, and the legislature had neither the time nor the burning interest to devote to the subject of northwestern lands which had so exercised it before the war. The sale of provisions to the army and navy during the war and the immense stimulus given at that period to the port of Erie, the general advance of internal improvements and particularly the opening of the Erie Canal all served to bring prosperity to the northwestern counties and so to lessen their antagonism to the eastern capitalist. Both warrantees and settlers became more willing to compromise as time went on, and although land litigation continued active throughout the '30s and early '40s, the volume of cases steadily diminished.

Had the legislature and courts of Pennsylvania allowed the Federalist interpretation of the prevention clause of the Act of 1792 to stand, the land companies and other large warrantees would have been in no haste to bring in settlers and the development of northwestern Pennsylvania must have been delayed until the land of the old Northwest Territory had been so far developed that the emigrant would find it cheaper to buy lands from the warrantees at appreciated prices than to go farther west. The uncertainty of title which so long prevailed in western Pennsylvania, however, seriously delayed the full and natural development of that region since the intelligent and most

⁹⁷ *Aurora*, Jan. 11, 1811; *Democratic Press*, Feb. 8, 1811.

⁹⁸ Agnew, *op. cit.*, 165.

desirable type of settler passed by it to Ohio and northwestern New York where his title would be good, and both settlers in their own right and those sent out by warrantees, feeling their possession doubtful, did not push their improvements to the best of their ability lest an ejection suit in federal or state court should deprive them of their labors. For the long years of litigation and the unnecessary slowness of development in the northwest the narrow and literal interpretation of the Act of 1792 by Marshall is responsible.⁹⁹

⁹⁹ Agnew, *op. cit.*, pp. 141ff.