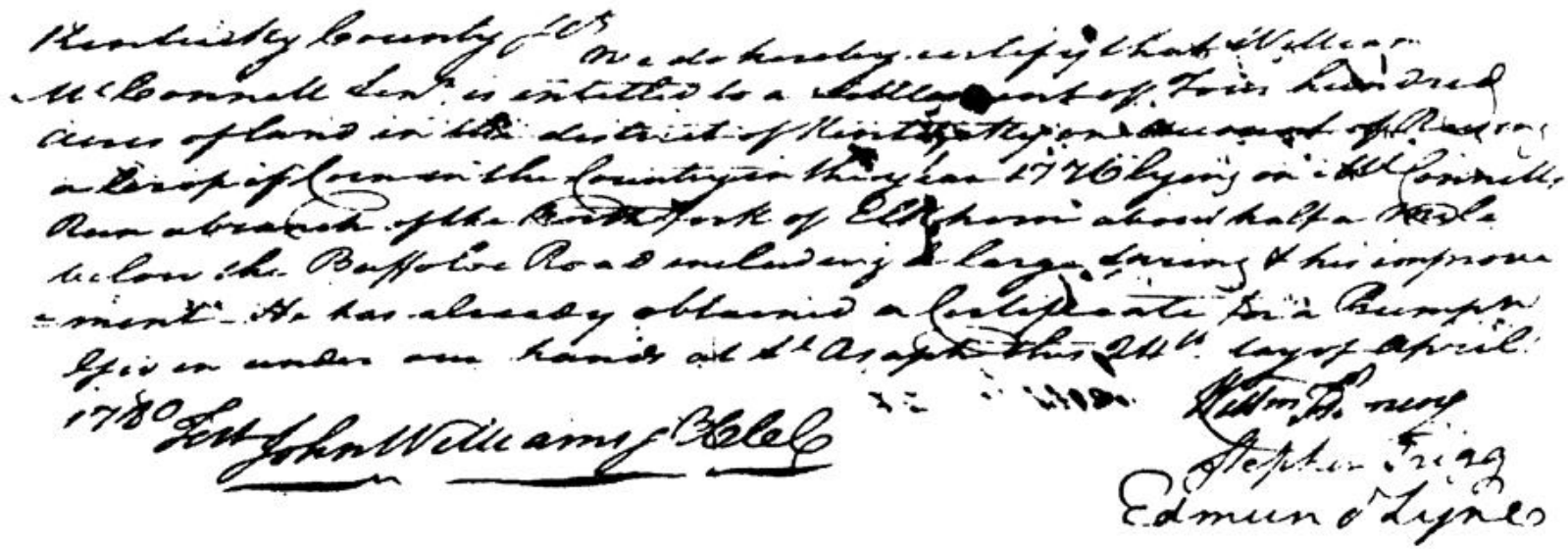

FAC SIMILE of an original Settlement Certificate, issued at St. Asaph's, April 24, 1780. The body of the Certificate is entirely in the handwriting of John Williams, Junior, Clerk of the "Court of Commissioners," by whom it is attested, and it also bears the autograph signatures of the three acting members of the Court.

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THE

First Land Court of Kentucky

1779-1780

An Address

DELIVERED BY

SAMUEL M. WILSON

BEFORE THE

KENTUCKY STATE BAR ASSOCIATION

AT

Covington, Kentucky

July 6 1923

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Lexington, Kentucky

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The First Land Court of Kentucky.

Without disparagement to the other departments of our State government, it may with truth be said that the courts, composing the Judicial Department, are by far the most important. It is to the courts that the citizen must look for the protection and enforcement of his rights of life, liberty and property and for the effectual promotion of his happiness; it is to the courts that the Executive and Legislative Departments must turn for the delimitation of their spheres of action and the adjustment of their prerogatives both as between themselves and as between these co-ordinate depositories of the sovereign power and the people for whom and upon whom they operate. Under our system of government, unless the courts are open and actively engaged in the discharge of their duty to dispense justice between litigants, without sale, denial or delay, there can be neither freedom nor felicity in the daily life of the citizens of the commonwealth.

Not a little has been written by competent hands concerning the judicial history of the Commonwealth of Kentucky, and the beginnings of that history have, from time to time, been traced with varying degrees of skill and fulness; but nowhere, within the range of my reading, have I ever found what professed to be or proved to be an adequate account of that unique tribunal, which may with propriety be called "The First Land Court of Kentucky." Except for the fact that a County Court and, possibly, a Court of Quarter Sessions, for the County of Kentucky had preceded it, by the space of two years, and

except for the fact that its jurisdiction was strictly limited to the determination of causes affecting real estate, it might not improperly be termed Kentucky's *first* court of record, having jurisdiction at all comparable to that of the established courts of general jurisdiction throughout the Commonwealth of Virginia. While its legal competence was restricted and the entire period of its existence comprised less than a single year, yet within the statutory scope of its powers and from the day it first convened until it ceased to function, it exercised an authority of the highest order and was well-nigh absolute and supreme. Dealing, as it did, with inchoate titles to the land, the highest form of property known to our law, and touching most intimately the subject which was then of chief concern to the first inhabitants and first adventurers of Kentucky, the significance of its place and proceedings in the pioneer era of the Commonwealth cannot easily be overstated. Moreover, it is a pleasure, at the very outset, to declare that, within the bounds of its prescribed authority, it was a not unworthy forerunner of its successors, the "Supreme Court for the District of Kentucky," the "Court of Appeals," and the District and Circuit Courts, which, in the order mentioned, later came to exercise the jurisdiction with which this First Land Court was originally invested.

By way of further introduction to what follows, let it be said that, most fortunately for us of this generation, the records of this court, by which we are enabled to form an estimate of its character and activities, have been preserved practically unimpaired, and, in this respect, it differs, greatly to its advantage, both from the County and Quarter Sessions Courts, which preceded it, and from the District Supreme Court, the County and Quar-

terly Courts, and even the Court of Appeals, which presently took its place.

A brief preliminary glance will suffice to put us in possession of the leading facts necessary to a proper understanding of its origin and environment. For four years, from 1772 to 1776, the territory which, since 1792, has been known as the State of Kentucky, was embraced within the extensive, though indefinite, limits of the County of Fincastle, Virginia. Fincastle was itself created out of Botetourt, which, in 1770, had been severed from the wide-spreading domain of the ancient County of Augusta. For four years, again, from December 31, 1776, to November 1, 1780, Kentucky County, which was carved out of Fincastle, not only included all of the present State, bearing the same name, but its area practically coincided with that of the territory which has ever since been known, both officially and unofficially, as Kentucky The County of Kentucky underwent division and subdivision, but, save for the short space of about two years, from November, 1780, until August, 1782, the name was never discarded, and, first, as a District of Virginia, and, later, as an independent Commonwealth, Kentucky retained the identity and unity which had originally been defined in the Act of October, 1776, by which the County and Parish of Kentucky were simultaneously created.

Except in the extreme northern end of the State, in what are now Lawrence and Greenup Counties, where a few grants to John Fry (said to have been acting in the interest of Colonel George Washington), were made in 1772, upon surveys theretofore located, the first surveys of consequence in Kentucky were made while it was still comprised within the limits of Fincastle County; and all official surveys thereafter, down to the end of 1780, were made while the territory constituting the present

State of Kentucky was known as the County of Kentucky. Leaving out of consideration the exceptional case of the Transylvania Company, whose ambitious project left little or no lasting impress on land titles in Kentucky, it may be said that, during the greater portion of the period from 1772 to 1780, surveys, whether in Fincastle County or in Kentucky County, were made either under the Royal authority or in accordance with Colonial laws. The surveys made at the Falls of the Ohio and elsewhere, in 1773, by the party headed by Captain Thomas Bullitt, of Fauquier County, were made in pursuance of Military Warrants granted by Lord Dunmore, the Royal Governor of Virginia, and upon these surveys at the Falls, Dunmore issued patents to Doctor John Connolly, then in command at Fort Pitt as the representative of the government of Virginia, but inasmuch as Captain Bullitt had attempted to proceed under a commission from William and Mary College alone and because he had never been regularly deputized by Colonel William Preston, the Chief Surveyor of Fincastle County, Colonel Preston refused to recognize the validity of the Bullitt surveys and the following year (1774) caused these same lands to be re-surveyed by his own duly authorized deputies and then, and not until then, would he approve the surveys upon which the Connolly grants had issued. These grants were dated December 10 or 16, 1773, Lord Dunmore having executed patents for the land to his friend and partisan, John Connolly, and to one Charles Warrenstaff (or Warrensdorff), without waiting for Colonel Preston's formal approval of the surveys. (See Calendar of Virginia State Papers, Vol. I, pp. 307-310.)

In addition to locations, entries, or surveys under corporate charters, or founded upon importation rights, upon treasury rights for money paid the receiver general,

regularly made "on the western waters" before the 26th day of October, 1763, or upon any warrant from the governor for the time being for military service, in virtue of any proclamation either from the King of Great Britain or any former Governor of Virginia, a preferred right to certain quantities of land was secured to actual settlers, who had become such prior to January 1, 1778, and to those who might theretofore or thereafter have *made a crop of corn* or *have resided* "in the country upon the western waters" for at least one year since the time of their settlement, there was likewise secured a right of pre-emption to not exceeding four hundred acres per person, and, if before January 1, 1778, they had "marked out or chosen for themselves any waste or unappropriated lands and built any house or hut, or made other improvements thereon," such persons were declared entitled to a pre-emption of any quantity of land, to include such improvements, not exceeding one thousand acres, but in no event to a pre-emption for more than one such improvement; and a right of pre-emption to four hundred acres, called a village right, was given to such families as might have settled themselves in villages or townships "under some agreement between the inhabitants of laying off the same into town lots, to be divided among them, and have, from present necessity, cultivated a piece of ground adjoining thereto in common." All of these rights were subject to certain specified conditions, which had to be complied with within a certain time, generally fixed at twelve months at the latest, under pain of forfeiture of all such rights. It was provided that "all locations made by officers and soldiers upon the lands of actual settlers shall be void, but the said officers, soldiers, or their assignees, may obtain warrants on producing the Commissioners' Certificate of their several rights, and

locate their claims on other waste and unappropriated lands." Certificates for settlements were expressly given a preference over warrants for pre-emption.

Without attempting to give a complete synopsis or digest *of the celebrated Act of May, 1779,* by which the Commonwealth of Virginia sought to provide "for adjusting and settling the titles of claimers to unpatented lands under the present and former government" (10 Hening's Stats., pp. 35-50), Chap. XII), and without attempting to summarize the Act, adopted at the same session, "for *establishing a Land Office,* and ascertaining the terms and manner of granting waste and unappropriated lands" (10 Hening's Stats., pp. 50-65, Chap. XIII), it will sufficiently serve our present purposes to mention the following more important features of this epoch-making legislation.

The first of these two acts, commonly known as the "Land Law," declares that "great numbers of people have settled in the country upon the western waters, upon waste and unappropriated lands, for which they have been hitherto prevented from suing out patents or obtaining legal titles by the King of Great Britain's proclamations or instructions to his governors, or by the late change of government, and the present war having delayed until now the opening of a Land Office, and the establishment of any certain terms for granting lands, and it is just that those settling under such circumstances should have some reasonable allowance for the charge and risk they have incurred, and that the property so acquired should be secured to them," and, in view of the conflicting claims likely to arise out of the diverse circumstances and conditions relied upon to support such claims, numerous disputes may be occasioned, "the determination of which, depending upon evidence which

cannot, without great charge and trouble, be collected but in the neighborhood of such lands, and will be most speedily and properly made by commissioners in the respective counties;" therefore it is enacted: "That the counties on the western waters shall be allotted into districts, to wit: (1) The counties of Monongalia, Yohogania, and Ohio, into one district; (2) the counties of Augusta, Botetourt, and Greenbrier, into one district; (3) the counties of Washington and Montgomery, into one other district; and (4) the county of Kentucky shall be another district; for each of which districts, the governor, with the advice of the council, shall appoint four commissioners, under the seal of the Commonwealth, *not being inhabitants of such district* (any three of whom may act), to continue in office eight months from the end of this present session of Assembly, for the purpose of collecting, adjusting, and determining such claims, and four months thereafter for the purpose of adjusting the claims of settlers on lands surveyed for the aforesaid companies."

The oath required to be taken by each Commissioner before entering upon the duties of his office contained, among other obligations thereby solemnly assumed, the following: "I do swear that I will well and truly serve this Commonwealth in the office of a Commissioner for the District of (Kentucky); * * * and that I will do equal right to all manner of people, without respect of persons; I will not take, by myself nor by any other person, any gift, fee, or reward for any matter done or to be done by virtue of my office, except such fees or salary as the law shall allow me; and finally, in all things belonging to my said office, I will faithfully, justly, and truly, according to the best of my skill and judgment, do equal

and impartial justice, without fraud, favor, affection, or partiality. So help me God."

It was further provided that "the said Commissioners shall have power to hear and determine *all titles claimed in consideration of settlements, to lands,* to which no person hath any other legal title, and the *rights of all persons claiming pre-emption to any lands* within their respective districts, as also the rights of all persons claiming any *unpatented lands, surveyed by order of council for sundry companies, by having settled thereon* under the faith of the terms of sale publickly offered by such companies or their agents, and shall, immediately upon receipt of their commissions, give at leaśt twenty days previous notice by advertisements at the forts, churches, meeting-houses, and other publick places in their district, of the time and place at which they intend to meet, for the purpose of collecting, hearing, and determining the said claims and titles, requiring all persons interested therein to attend and put in their claims, and may adjourn from place to place, and time to time, as their business may require."

"They shall appoint and administer an oath of office to their clerk; be attended by the sheriff, or one of the under sheriffs of the county; be empowered to administer oaths to witnesses or others, necessary for the discharge of their office; to punish contempts; enforce good behaviour in their presence; and award costs, in the same manner with the county courts; they shall have free access to the county surveyor's books, and may order the same to be laid before them at any time or place of their sitting."

Reinforcing the principle of priority, of "first come, first served," it was distinctly provided that "in all cases of disputes upon claims for settlement, the person who

made the first actual settlement, his or her heirs or assigns, shall have the preference; (and) in all disputes for the right of pre-emptions, for improvements made on the land, the persons, their heirs or assigns respectively, who made the first improvement," shall likewise take precedence.

"The Clerk," says the Act, "shall keep exact minutes of all the proceedings of the Commissioners, and enter the names of all the persons to whom either lands for settlement or the right of pre-emption, as the case is, shall be adjudged, with their respective quantities and locations, and also the names of all such persons to whom titles shall be adjudged for lands within the surveys made by order of council for any company, with the quantity of acres adjudged, and in what survey," and the "name or style of the company."

In case of conflicting claims to the same land or any portions thereof, the Clerk was empowered to issue a summons, "stating the nature of the plaintiff's claim and calling on the party opposing the same to appear at a time and place certain therein to be named, and shew cause why a grant of the said lands may not issue, or a title be made to the said plaintiff." "The clerk shall also have power," as the Act recites, "at the request of either party, to issue subpoenas for witnesses to appear at the time and place of trial, *which shall be had in a summary way without pleadings in writing, and the court* (note the language), in conducting the said trial, in all matters of evidence relative thereto, and in giving judgment, shall govern themselves by such rules and principles of law or equity as are applicable to the case, or would be the rule of evidence or of decision, were the same before the ordinary courts of law or equity, save only as far as this act shall otherwise have specially directed. *Judgment*

when rendered shall be final, except as hereinafter excepted, and shall give to the party, in whose favour it is, a title against all others who were parties to the trial."

To every person to whom they might adjudge lands for settlement or the right of pre-emption to lands, the Commissioners were directed to deliver a certificate thereof under their hands, attested by the clerk; which certificates, when produced to the surveyor of the county or to the register of the Land Office, with proper receipts for the payments due on pre-emptions, entitled the holders to an entry and survey, in the one case, or a warrant for the described quantity of lands, in the other. Similar certificates were to be delivered to every person to whom might be adjudged a title to any unpatented land, surveyed for any company by order of council.

"And, to prevent frauds or mistakes," says the Act, "the said Commissioners immediately upon having completed the business in their district, shall transmit to the register of the land office, under their hands, and attested by their clerk, an exact list or schedule, in alphabetical order, of all such certificates by them granted (for settlements or pre-emptions), and a duplicate so signed and attested to the county surveyor, for their information." Of the certificates issued for lands within the bounds of any unpatented lands, surveyed for any company by order of council, a similar list or schedule, in alphabetical order, "containing exact copies of all such certificates by them granted," was ordered to be "transmitted to the clerk of the General Court," to remain in said clerk's office "for the information of the said companies, and *as evidence and proof* of the respective titles."

By the Act it was provided that nothing therein contained should "extend to officers, soldiers, or their assignees, claiming lands for military service." Caveats

pending and undetermined "at the time of the late change of government," that is, at the outbreak of the Revolution, were to be heard and determined in the General Court, unaffected and unprejudiced by anything contained in the Act. Controversies over land claims "upon surveys under any order of council or entry in the council books" were required to be litigated, in a summary way, "without pleadings in writing, upon such evidence as in the opinion of the court the nature of the case may require," before the Court of Appeals. And, with respect to the proceedings before the District Commissioners, it was further provided: "But as by this summary mode of proceeding, some persons at a great distance may not have timely notice, and may be unable to appear in support of their claims, for remedy whereof, *Be it enacted,* That no grant shall issue upon any of the claims determined by the said Commissioners until the first day of December, 1780, and, in the meantime, any such person injured by their determination, his or her heirs or assigns, *may enter a caveat against* a grant thereupon, until the matter shall be *heard before the General Court,* and may petition the said General Court to have his or her claim considered; and, upon its being proved to the court that he or she labored under such disability at the time of the meeting of the commissioners, thereupon the court shall grant him or her a hearing in a summary way, and if it shall appear upon trial that the petitioner's claim is just, such court may reverse the former determination, and order a grant to issue for such land or any part thereof, on the terms hereinbefore mentioned, to the person to whom they shall adjudge the same."

Due provision was made for the compensation of the members of the Commission, of its clerk, the sheriff, and the county surveyor, and the payment of witness fees, the

customary office fees, and "the ancient composition money or the new purchase money" due the commonwealth.

In the Act establishing the Commonwealth's Land Office (10 Hening's Stats., Chap. XIII), it was expressly provided that: "*No entry or location of land shall be admitted* within the country and limits of the Cherokee Indians, *or on the northwest side of the Ohio river,* or on the lands reserved by act of assembly for any particular nation or tribe of Indians, or on the lands granted by law to Richard Henderson and Company (9 Hening's Stats., p. 571, Chap. XXXIII, October, 1778); a tract containing about 200,000 acres, on the Ohio at the mouth of Green River, or in that tract of country reserved by resolution of the General Assembly (of 19th December, 1778), for the benefit of the troops serving in the present war, and bounded by the Green river and a South-East course from the head thereof to the Cumberland mountains, with the said mountains to the Carolina line, with the Carolina line to the Cherokee or Tennessee river, with the said river to the Ohio river, and with the Ohio to the said Green River, until the further order of the General Assembly."

It will be recalled that by an Act of October, 1778 (9 Hening's Stats., pp. 552-555, Chap. XXI), on the strength of "a successful expedition carried on by the Virginia militia" against several of the British posts, on the western side of the Ohio river, within the territory of Virginia, and in the country adjacent to the river Mississippi, all of the territory west or northwest of the Ohio, so claimed by the Commonwealth of Virginia, was erected into the County of Illinois, and, by commission dated December 12, 1778, John Todd was appointed County Lieutenant or Commandant-in-Chief of that county.

For certain purposes, not of importance here, it may be mentioned, in passing, that the new county of Illinois was joined to the county of Kentucky to form what was known as the "Kentucky District." By the terms of the Act of May, 1779, creating the Court of Land Commissioners, however, *Kentucky County alone* constituted a separate district to itself; and in addition to the provision of this Act forbidding the location or entry of land "on the northwest side of the Ohio river," settlements in that territory were further reprobated and prohibited by an Act of October, 1779 (10 Hening's Stats., Chap. XXI, at page 161).

Enough has been presented from the acts under consideration to show that the Commissioners provided for in the celebrated Land Law of May, 1779, were clothed with judicial power, and that the Board or Commission, which they were designed to form, possessed all the essential attributes of a court; and it is not at all surprising to find in the official record of their proceedings that their sessions are invariably spoken of as the sessions of a court. Having ascertained the general nature and distinguishing characteristics of this unique tribunal, the next thing in order is to inquire how it was actually organized and how its business was conducted.

Before proceeding with this inquiry, however, it may help to restore the atmosphere of the times to indulge in a sweeping glance at some of the more significant events which had transpired between the years 1772 and 1780. A few facts of major importance have already been noticed, but to these a series of events of scarcely less importance may here be added.

One subject belonging to an earlier decade, but which had a direct and noteworthy bearing upon the period in question deserves particular mention. In 1763, the

very year of the British treaty which terminated the old French and Indian War, Colonel George Washington, a distinguished soldier of that war, organized the "Mississippi Company," and the Articles of Association, in his own handwriting, signed by Francis Lightfoot Lee, John Augustine Washington, Richard Henry Lee, Thomas Bullitt, the "founder" of Louisville, and others, including Washington himself, are still preserved in the Congressional Library. An agent was despatched to London to secure a grant of Western land, but he met with no success, owing to the governmental policy which took form in the King's Proclamation of October 7, 1763, prohibiting Western settlements. Curiously enough, this very proclamation provided for the issuing of warrants for bounty lands to the officers and soldiers who had served in the "late war," and even to the king of Great Britain himself it must have been apparent that if these "proclamation warrants" were ever to be satisfied, it must be by locating them on lands drained by the "western waters." While the avowed purpose of the proclamation was to protect the Indians from molestation or disturbance "in the possession of such parts of our (royal) dominions and territories as, not having been ceded to, or purchased by us, are reserved to them," its language was sufficiently ambiguous to afford loopholes for those who might be bent on evading its restraints. The prohibition against granting warrants of survey or passing patents "for any lands beyond the heads or sources of any of the rivers, which fall into the Atlantic ocean from the west and northwest, which, not having been ceded or purchased, as aforesaid, are reserved to the said Indians," was qualified by the words, "for the present, and until our future pleasure be known," and the privilege of purchasing, occupying, or

settling the reserved lands was under no circumstances to be exercised "without our special leave and license for that purpose first obtained." To the headstrong pioneers, no less than to the avaricious land companies, this all sounded like specious pretense or an empty fulmination.

With clear perception of what was written between the lines of the royal proclamation, Washington himself not only realized that no mere proclamation could stay the rising tide of immigration but that its guarded language must inevitably be construed in the light of current events. As early as 1767, we find this pioneer explorer and ardent friend of the West instructing his old comrade of surveying expeditions and military campaigns, William Crawford, to pick him out some good tracts of land near Fort Pitt. As to the king's proclamation, he wrote confidentially :

> "I can never look upon that * * * in any other light (but I say this between ourselves), than as a temporary expedient to quiet the minds of the Indians. * * * Any person, therefore, who neglects the present opportunity of hunting out good lands, and in some measure marking and distinguishing them for his own, in order to keep others from settling them, will never regain it."

It is a disputed question whether the treaty of Fort Stanwix (near Rome), New York, in November, 1768, effectually extinguished the shadowy Indian title to all of Kentucky, but, upon the basic assumption that it did, it is manifest that the prohibitions and restraints of the royal proclamation of 1763 were thereby finally and forever removed. Lord Dunmore and his representative, Captain Bullitt, in 1773, and Colonel William

Preston and his deputies, John Floyd, James Douglas, and Hancock Taylor, in 1774, acted upon the belief that the Fort Stanwix compact had wiped out all pretense of any Indian claim to Kentucky, whether north or south of Kentucky River, and it is probable that this conclusion would never have been contested, had it not been for the complications brought about by the purchase from the Cherokees by Henderson and his associates at Watauga in March, 1775, pursuant to an understanding reached in the previous autumn. The transaction between Henderson & Company and the Cherokees was promptly denounced as unauthorized and illegal in public proclamations promulgated by the governors of Virginia and North Carolina almost simultaneously with the conclusion of the Watauga treaty, and, in conformity with the twenty-first article or section of the Constitution of Virginia, adopted June 29, 1776 (9 Hening's Stats., Chap. II, p. 119), which declared: "No purchase of lands shall be made of the Indian natives, but on behalf of the publick, by authority of the General Assembly," the General Assembly of Virginia, at its October session, in the year 1778, formally reaffirmed the invalidity of the Watauga purchase in an act to vest certain lands on the Ohio and Green Rivers, in fee simple, in Richard Henderson & Company, and their heirs, as "compensation for their trouble and expense," for that the commonwealth "is likely to receive great advantage therefrom, by increasing its inhabitants and establishing a barrier against the Indians." (9 Hening's Stats., p. 574, Chap. XXXIII.) All doubt as to Virginia's attitude with respect to private land deals with the Indians was once for all dissipated by an act of May, 1779 (10 Hening's Stats., p. 97, Chap. XXV), by which such "sales and deeds" were pronounced "utterly void and of no effect."

The infiltration of immigrants into the Kentucky country began in earnest in the year 1774. In that year, as well as the two years following, considerable surveying was done by legally authorized deputies, acting under their chief, Colonel William Preston, the surveyor of Fincastle County. Numerous bands of hunters, explorers, and adventurers of divers descriptions traversed the entrancing domain long sacredly reserved by the Indians as an inviolable hunting ground. Here and there a few solitary cabins were erected, so-called "improvements" of a rather flimsy character were made, claims were staked or marked out, and at one place, Harrodsburg, an enterprising party, under the leadership of Captain James Harrod, laid off a town site into lots, and began the erection of cabins. These activities were rudely interrupted by a warning of impending Indian hostilities, long fomented by Dr. John Connolly (then commanding at Fort Pitt), at the instigation of Lord Dunmore, as was believed, and in obedience to the message delivered by Daniel Boone and Michael Stoner, both surveyors and settlers hurriedly quit the country. Most of these hardy frontiersmen took part in the battle of Point Pleasant, fought at the mouth of the Great Kanawha, on October 10, 1774, and, as Daniel Trabue informs us in his valuable and fascinating Journal, "*On the Point Pleasant campaign, Kentucky was a subject as exciting as the war itself.*"

The "Kentucky Path" or Wilderness Road, which passed from the Holston and Watauga settlements through Cumberland Gap, and thence to the Kentucky River, at the mouth of Otter Creek, was blazed by Daniel Boone and his companions, between March 10, and March 25, 1775. Boonesborough was begun and the cornerstone of the Transylvania colony was laid April 1,

1775. Less than three weeks later, on April 19-20, 1775, the battles of Lexington and Concord, in Massachusetts, were fought, and the prolonged revolutionary struggle between the thirteen colonies and the mother country was ushered in.

The so-called "Transylvania Legislature" met at Boonesborough, on May 23, 1775, and was attended by delegates from the four principal settlements on the south side of the Kentucky River, namely, Harrodsburg, Boiling Spring, St. Asaph's, and Boonesborough. Boiling Spring or Harrod's Station, like Harrodsburg, had been started in the summer of 1774, and, with the subsidence of the Indian menace, its settlers had returned, along with the Harrodsburg pioneers, in the spring of 1775. St. Asaph's or Logan's Fort had been founded at the same time that Boonesborough was built. The site of Lexington was visited by hunters from Harrodsburg on or about June 4, 1775, and their temporary camp was patriotically christened "Lexington," after the first battlefield of the Revolution. But outside of McClelland's Station, at the Royal Spring, on North Elkhorn (the site of the future Georgetown), no settlement of consequence was effected north of the Kentucky River during the year 1775. For a while things went smoothly for the Transylvania proprietors, in spite of the outspoken opposition of the colonial governments of North Carolina and Virginia, but for one cause or another, discontent and disaffection were not long in gathering head. A petition addressed to the Convention of Virginia was prepared in the winter of 1775-76, and was signed by eighty-four of those who had previously acquiesced or seemed to acquiesce in the Transylvania claim. This documentary protest reached the Virginia Convention in

March, 1776. Concluding their enumeration of grievances, the petitioners joined in this prayer:

> "As we are anxious to concur in every respect with our brethren of the United Colonies for our just rights and privileges, so far as our infant settlement and situation will admit of, we humbly expect and implore to be taken under the protection of the honorable convention of the colony of Virginia, of which we cannot help thinking ourselves a part." (Collins, Hist. of Ky., Vol. II, p. 510.)

In spite of the fact that the popular John Floyd, a deputy as we have seen, under the Fincastle surveyor, Colonel William Preston, had accepted the office of Surveyor-General of the Transylvania Company, and in spite of the further fact that by the first of January, 1776, nearly nine hundred claims under that company had been entered and thousands of acres surveyed, yet the utmost efforts of the diligent agents and representatives of the Transylvania proprietors did not suffice to allay agitation or to quiet opposition. In the spring of 1776, George Rogers Clark, who had been at Harrodsburg the year before and, from the very first, was wholly out of sympathy with the Transylvania project, returned to Harrodsburg, and, at his suggestion, an election lasting eight days—"by the inhabitants on the western waters of Fincastle (on Kentucke)"—was called to be held at Harrodsburg, on June 6, 1776, to select delegates to present their remonstrance and plead their cause before the Virginia Convention. The two delegates chosen were Captain George Rogers Clark and Captain John Gabriel Jones, and they bore with them to Williamsburg a petition, prepared by a "Committee of West Fincastle of the Colony of Virginia, being on the north and south sides

of the River Kentucke (or Louisa)," dated "Harrodsburg, June 20, 1776." This committee consisted of fourteen of the best known and most respectable citizens then residing in Kentucky. Its vigorous petition, among other things, declared:

> "We further conceive that as the Proclamation of His Majesty for not settling on the Western Waters of this Colony is not founded upon Law, it can have no force."

After intimating, in unmistakable terms, that a new county, embracing "West Fincastle" or "Kentucke" would be consonant with their wishes, the committee closed their address with these words:

> "And as it's the request of the inhabitants that we should point out a number of men capable and most acquainted with the laws of this colony to act as magistrates, a list of the same we have inclosed, and for other matters relative to this country we conceive that Captain Jones and Captain Clark our delegates will be able to inform the Honorable, the Convention, not doubting but they will listen to our petition and take us under their jurisdiction."

Clark and Jones arrived at Williamsburg too late to present their credentials, for the Convention had adjourned, not to meet again until October. Nevertheless, at the General Assembly held *in October, 1776,* the first of the new Commonwealth, Jones and Clark handed in their Harrodsburg Petition. They were not admitted to a seat in the Assembly, but their efforts were not in vain, for, at this session, an act was passed for dividing the County of Fincastle and creating the County of Kentucky. (9 Hening's Stats., 257-261.) The new county was to come into existence "from and after the last day

of December," 1776; a County Court for the same was directed to be held "on the first Tuesday in every month, in such manner as is by law provided for other counties," and the "justices to be named in the commissions of the Peace, * * * shall meet for the said county of Kentucky at Harrodsburg, in the said county, on the first Tuesday in April next," *i. e.* in April, 1777. *This act sounded the death knell of the Transylvania enterprise.* Its plausible purchase from the Cherokees was flatly repudiated and none of its land grants was ever recognized or ratified or commuted in any way by Virginia.

On April 19, 1777, an election for the purpose was held, and John Todd and Richard Callaway were duly chosen to represent the County of Kentucky in the Virginia Assembly. Owing to the fact that the commission appointing Benjamin Logan, sheriff of Kentucky County did not arrive in time to authorize his holding an election of delegates on the day appointed by law, he was compelled to hold the election at a later date, and this irregularity called for a special act confirming and validating the election, which was promptly passed (9 Hening's Stats., p. 316, Chap. XIX.)

The other principal officers of the new County of Kentucky, besides Benjamin Logan, the high sheriff, included David Robinson, county lieutenant, John Bowman, colonel, George Rogers Clark, major; and Daniel Boone, James Harrod, John Todd, and Benjamin Logan as captains of the militia. George May was county surveyor. In addition, there were ten magistrates or justices of the peace distributed throughout the various stations and settlements. Before Colonel Bowman's arrival in July or August, 1777, George Rogers Clark, as major, was personally in command at Harrodsburg; Colonel Callaway and Captain Boone were in control of things at Boones-

borough; and Captain Ben Logan was commandant at St. Asaph's.

The County Court of Kentucky County (whose records are not known to have survived) was doubtless held each month, with a measurable degree of regularity, beginning with the month of April, 1777. Only one or two of its orders (so far as the present writer is informed), have come down to us. One of these orders, that of April 7, 1779, embodied recommendations to the inhabitants respecting their mode of life during the critical period through which the western country was then passing They were urged to "keep themselves as united and compact as possible, one other year settling themselves in towns and forts"; to "choose three or more of the most judicious of their body as Trustees," with authority to lay off such town, prescribe the terms of residence and building therein," to determine all disputes among the citizens in consequence thereof, and return to the County Court, to be recorded, "a fair plan of their town," with their proceedings thereon. New adventurers were cautioned to "make on their new claims only some moderate improvements, registering such place with the surveyor of the county or in the court thereof," and they were also admonished to "be cautious of encroaching upon the right and property of the old settlers, who have in an exemplary manner defended that property during a bloody and inveterate war." Old settlers, on the other hand, were advised to "give advice and assistance to the new adventurers in exploring the country and discovering unappropriated lands."

At Harrodsburg, on the 2d day of September, 1777, assembled the first Court of Quarter Sessions ever convened in Kentucky. It corresponded roughly to our

Quarterly Court of the present day, and was composed of five judges, viz., John Todd, John Floyd, Benjamin Logan, John Bowman, and Richard Callaway. It has been said, not without truth, that a record of their lives would furnish an accurate epitome of the early history of Kentucky. Levi Todd, the Clerk of the County Court, was also clerk of this Quarter Sessions Court.

In this same month of September, 1777, an enumeration of the inhabitants at Harrodsburg showed a total population for that station of 198 souls. A complete census of the county would probably have revealed an aggregate population of, at least, three times this number, which did not greatly vary, although the personnel was constantly shifting and undergoing change. Individuals and companies were daily arriving and departing. Each invasion was followed by an exodus.

In December, 1777, and January, 1778, George Rogers Clark, ever alert and restless, was at Williamsburg, in conference with Governor Patrick Henry, Thomas Jefferson, George Mason, and Chancellor Wythe, and, with their aid and advice, he matured his plans for the invasion and conquest of the Illinois country, then under the domination of the British. With the force of less than two hundred men, which he had with the greatest difficulty assembled, George Rogers Clark camped on Corn Island, at the Falls of the Ohio, on May 27, 1778, and, before his departure on his celebrated campaign in the Illinois, which began on June 24, 1778, a block house was erected on Corn Island.

The stockade on Corn Island was removed to the mainland and Fort Nelson erected in October, 1778. This later grew into the settlement first known as the "Falls of Ohio," and afterwards as the town of Louisville.

Lexington was permanently settled, a fort begun, and a town laid off by Colonel Robert Patterson and others, in the month of April, 1779; and Bryan's or Bryant's Station on North Elkhorn (at which a group of settlers had maintained temporary quarters during the winter of 1775-76) was re-established at about the same time, i e., in the spring of 1779.

The court, mentioned by Daniel Trabue in his journal, as "the first court to be held in Kentucky County," was held at St. Asaph's or Logan's Fort, "some time in July" (1779). Trabue says "Col. John Bowman, Capt. (Isaac) Ruddle, Colonel Richard Callaway, and Captain Ben Logan were the magistrates of the Court of Kentucky. They chose Capt. Levi Todd for their clerk. Col. John Todd was their lawyer.." This is not entirely accurate, for at the date mentioned Colonel John Todd is known to have been at Kaskaskia, engaged in the performance of his duties as county lieutenant of Illinois County. He arrived at his post of duty there in the month of May, 1779 and remained until the following November. It was at Logan's Fort, in 1778, that the court-martial trial of Daniel Boone was held on charges preferred by Colonel Richard Callaway, who seems not to have clearly understood the sterling integrity of the sturdy and imperturbable old pioneer.

Boonesborough was established as a town by the Virginia Assembly, in October, 1779. (10 Hening's Stats., p. 134, Chap. IV.) At this same session (October, 1779), the first ferry in Kentucky was established by Virginia at Boonesborough, to be kept by Richard Callaway, "his heirs or assigns." (10 Hening's Stats., p. 196, Chap. XXXV.) This step is significant as indicating the growing trend of population and settlement to the north side of the Kentucky River.

In 1779, urged by the necessities of the western settlements, the States of Virginia and North Carolina appointed a joint commission to extend the line westward between their respective territories. The commissioners on the part of North Carolina were Colonel Richard Henderson and William Bailey Smith; and on the part of Virginia, Dr. Thomas Walker and Daniel Smith. The commissioners met early in September, 1779, but failed to find the point on Steep Rock Creek, 329 miles from the coast, where Fry and Jefferson, and Weldon and Churton, ended their line in 1749. Starting from an agreed point, supposed to be in latitude, 36 degrees and 30 minutes north, they ran a line, intended to be due west, about forty-five miles, to Carter's Valley, when a disagreement occurred, and the two commissions separated. Each commission then ran a line independent of the other as far west as the Cumberland Mountain, the two lines being parallel with each other, and about two miles apart. The line run by the North Carolina commissioners, generally known as Henderson's line, was north of that run by the Virginia commissioners, which has ever since been known as Walker's line. At the Cumberland Mountain, the North Carolina commissioners abandoned their work, after sending in a protest against Walker's line. The Virginia Commissioners continued with their line to the Tennessee River, leaving, however, an unsurveyed gap from Deer Park to the east crossing of Cumberland River, a distance estimated by them to be one hundred and nine miles. Although not authorized to do so, the commissioners marked the termination of this line on the Mississippi River, but did not survey the intervening distance. The total length of the line thus far surveyed was as follows: Byrd's line (of 1728), 241 miles; Fry and Jefferson's line (of 1749), 88 miles; Walk-

er's line—from Steep Rock Creek to Deer Fork—123¾ miles, unsurveyed line (estimated) 109 miles; from the east to the west crossing of the Cumberland, 131 miles; and from the Cumberland to the Tennessee River, 9¼ miles; total distance from the Atlantic Ocean to the Tennessee River, 702 miles. The Commissioners were at Deer Fork November 22, 1779; at the east crossing of the Cumberland, February 25, 1780; and at the Tennessee River, March 23, 1780.

In passing, it is interesting to note that, in the spring of 1779, Isaac Shelby was elected a member of the Virginia Assembly for Washington County, in that State, and, in the late summer or early fall of 1779, was commissioned by Governor Jefferson a major in the escort of guards to the Commissioners for extending the boundary line between Virginia and North Carolina. This fact will explain why he was not able to be present in person to prove his claim before the Land Court, at their first session in October, 1779, but had this done for him by his friend, Captain John Logan. The extension of the line made Shelby a resident of North Carolina, and Governor Caswell, of that Commonwealth, at once appointed him Colonel of Militia in the new county of Sullivan.

Considerable disorder followed the running of the two lines, one by Walker, and the other by Henderson, since, in the "No Man's Land" between them, the authority of neither State was established. The validity of process from neither State was acknowledged; entries for lands between the lines were made in both States; and both States issued grants for said lands. After long and ineffectual negotiations, North Carolina finally acceded to the overtures of Virginia, and, on the 7th of December, 1791, the General Assembly of Virginia passed an act declaring: "That the line commonly called

and known by the name of Walker's Line shall be, and the same is hereby declared to be, the boundary line of this State."

In certain representations concerning the disputed boundary addressed to North Carolina, under date of July 6, 1780, the General Assembly of Virginia, by resolution, declared:

> "That there were under the regal government several modes of gaining a title to lands, none of which became complete, except by the obtaining a patent written on parchment and signed by the governor for the time being; and that a claim to unappropriated land was only supportable between the time of entry and the time of obtaining such patent, after which the title of the patentee became indefeasible, unless by another patent of prior date.
>
> "That no title by settlement was recognized under the said former (Colonial) government, such title being first established by a resolution of Convention, of the 24th of May, 1776, which declared 'that all persons settled on any unlocated or unappropriated lands, to which there was none other just claim, should have the pre-emption or preference in the grant of such lands,' but that this resolution could never have retrospect so as to defeat prior patentees, and thus prove so injurious to fair purchasers, neither can lands before patented come within the description of 'unlocated or unappropriated.'" (10 Hening's Stats., pp. 541-543.)

The right of actual *bona fide* settlers "on waste and ungranted lands situate on the western waters," who had so settled on or before the 24th day of June, 1776, to an allowance of four hundred acres "for every family so settled, to include such settlement," was further recognized and reaffirmed by Section V of an Act of October,

1777, entitled "An Act for raising a supply of money for publick exigencies." (9 Henning's Stats., Chap. II, pp. 349, 355-356.)

In further representations, made a year later, under date of June 13, 1781, the General Assembly of Virginia complain that North Carolina refuses to heed "their request, so consonant to the principles of the Confederation, the bonds of good neighborhood, and the rights of mankind." Arguing the justice of their demand for the protection of landholders, claiming under Virginia but found to be within the territorial limits of North Carolina, the remonstrance proceeds:

> "How is it that the State of North Carolina have claimed their territory by charter from the King of England and yet deny efficacy to patents derived from the same source?
>
> "If these charters are valid to define the limits of States, are not patents which possess the same foundation valid to prescribe the bounds of private ownership? If the legislature of North Carolina should explode the authority of these patents, they may draw themselves into a disagreeable predicament with respect to the United States, which needs only to be hinted at to be understood. But if the Indian title is the only good one, then doth Virginia positively claim the lands in dispute, by virtue of a purchase from the Cherokees in the year 1770 by the express permission of the crown; the bounds of which purchase, and not the late extended line, must be the mark of territory between the two States. Indeed, Virginia built Fort Patrick Henry for the express defense of this land, so purchased of the Cherokees."

The Cumberland Settlement at the French Lick (now Nashville) was made by James Robertson and

others from the parent settlement on the Watauga, in the winter of 1779-80. This was the "hard winter," and the Cumberland River was frozen over sufficiently solid to permit Robertson's party to cross upon the ice. Colonel John Donelson (or Donaldson) led a separate party, destined for the same point. He kept a journal of his trip and, under date of Friday, March 31, 1780, notes: "Set out this day, and after running some distance, met with Col. Richard Henderson, who *was* running the line between Virginia and North Carolina. At this meeting we were much rejoiced." The word "was," in this record, ought properly to be changed to "had been," for, a short time previously, in the month of March, 1780, Richard Henderson spent some little time at Boonesborough, trying to collect provisions for his proposed settlement on the land given him by North Carolina, as a composition for the loss of the North Carolina tract he and his company had purchased from the Cherokees. This land grant to the Henderson Company overlapped the Cumberland settlement at the French Lick.

It should be noted with respect to the military lands reserved by the Acts of May, 1779 (10 Hening's Stats., pp. 50, 55), that the survey of the boundary line, made by Dr. Thomas Walker, in the fall and winter of 1779-80, threw into the State of North Carolina, now Tennessee, a considerable portion of the territory south of Green River, which was previously supposed to be a part of Virginia; and, as a substitute for the land so lost and in order to make up the deficit, it was provided by an Act of Virginia, of the November session, 1781 (10 Hening's Stats., p. 465), that there should be reserved for the benefit of the officers and soldiers, "All that tract of land included within the rivers Mississippi, Ohio and Tennessee and the Carolina boundary."

To grasp the situation as it existed in the inchoate Commonwealth, in the fall and winter of 1779-80, and the ensuing spring, it may help our powers of imagination to recall that this epoch antedated the entry of Kentucky into the Federal Union by the space of more than twelve years. A settlement at the Falls of the Ohio, projected by Captain Bullitt, in July and August, 1773, did not materialize until the months of May-June, 1778, or in October following, and was not formally established by legislative enactment until May-June, 1780; Harrodsburg, the vicinity of which had been visited by the McAfees in the summer of 1773, was first laid off as a town site and had cabins erected upon it in June, 1774, though it was not formally incorporated until 1785; the site of Frankfort, surveyed by Robert McAfee in 1773, did not come into existence as a town until 1786; Boonesborough dates its birth from April 1, 1775; the Boiling Spring Settlement (otherwise known as Harrod's Station), conceived in 1774, was first reduced to concrete fact, in the spring of 1775; St. Asaph's or Logan's Fort was founded simultaneously with Boonesborough, in the spring of 1775; the site of Lexington was visited and named, for future urban uses and honors, on or about June 4, 1775; although it was not permanently settled until the month of April, 1779, and was not incorporated until the month of May, 1782; McClelland's Station, at the Royal Spring, on North Elkhorn, was first given a definite place on the map in the summer or fall of 1775; Bryan's Station, also on North Elkhorn, first located in the winter of 1775-76, was not permanently settled until the spring of 1779, simultaneously with the establishment of Lexington, and like Boonesborough, after a precarious existence of a few years, entirely disappeared; Boonesborough, for which trustees were appointed and a

form of local government provided in October, 1779, was the first of all the Kentucky settlements to be formally recognized as a town by Virginia, and it was the only one so honored prior to the organization of Louisville upon the same footing, in the month of May, 1780.

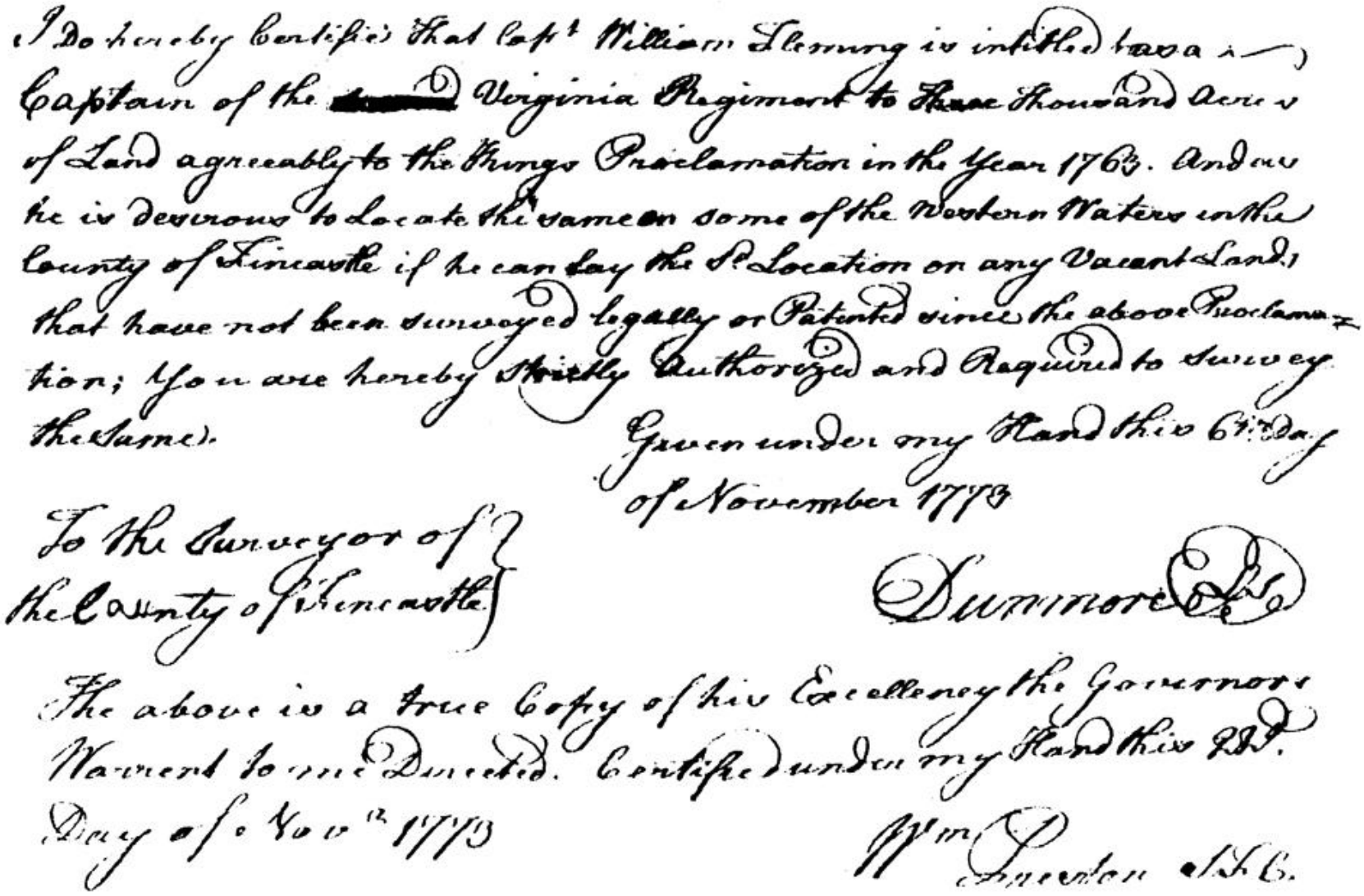
The First Land Court of Kentucky was created, as we have seen, at the May-June session of the Virginia Assembly, in the year 1779. The four commissioners, who were to constitute this court, were duly commissioned on the 26th day of June, 1779, and, by the terms of the act under which they were appointed, they were authorized to serve for eight months and no more. By an amendatory act, however, which was passed at the October session of the Assembly, in 1779 (10 Hening's Stats., Chap. XXVII., pp. 177, 178), their powers were extended two months longer, that is until and including April 26, 1780. (See Bryan v. Wallace, Hughes, p. 389.)

At the time the commissioners of this unique tribunal assembled for business in the "District" of Kentucky, the settlements at Harrodsburg and Boiling Spring were about five years old, the settlements at Boonesborough and St. Asaph's were about four years old, the settlement at the Falls of the Ohio (sometimes also called Fort Nelson), was a little over a year old, and the twin settlements at Lexington and Bryan's Station were barely six months old. Of course, temporary settlements had been made at other points, like McClelland's, Todd's, Bowman's, Clark's, Floyd's, Grant's, Brashears', Wilson's, Crow's, Kenton's and so forth, but no settlement, blockhouse, fort, or station, of any consequence, existed anywhere within the vast confines of the Kentucky country, outside of the seven already named. And of these seven outstanding centers of settlement, only five were destined to enjoy the distinction of witnessing a session

of the august and all-powerful Land Court in their midst. Boiling Spring and Lexington, to say nothing of sister settlements of lesser degree, were hopeless aspirants for the honor.

Those named by Thomas Jefferson, Governor of Virginia, as members of the Land Court for the Kentucky District were William Fleming James Barbour, Edmund Lyne, and James Steptoe. They were each and all of them men of unimpeachable character and the highest standing. This may be better understood and appreciated from a close scrutiny of their lives.

Sailor, soldier, surgeon, scholar, statesman, jurist, the Chief Justice of Kentucky's First Land Court, *Colonel William Fleming,* was born of noble lineage at Jedburgh, Scotland, the 18th of February, 1729. He attended a school in Dumfries, studied surgery at the University of Edinburgh, and served in the British navy as a surgeon's mate until taken prisoner by Spaniards. Upon his release, his health was so impaired that he resolved to remove to Virginia, where he arrived in August, 1755. The same month he joined Washington's regiment and acted as assistant surgeon for the Virginia troops, with the rank of ensign. He was made a lieutenant in 1760, and a captain in 1762, being at that time attached to Colonel Stephen's regiment. He married Anne Christian, a sister of Colonel William Christian, whose wife was a sister of Patrick Henry, and settled on lands, to which he had secured patents, in a part of Augusta County, which, on the formation of Botetourt County, in 1770, fell into that county, still later into Fincastle, then into Montgomery, and, finally into Roanoke. His countryseat was known as "Bellmont." Besides attending to his farming interests, he devoted himself to the practice of medicine. He was a member of the vestry of Augusta Parish from No-



I Do hereby Certifie that Capt William Fleming is intitled to as a Captain of the [redacted] Virginia Regiment to three thousand Acres of Land agreeable to the Kings Proclamation in the Year 1763. And as he is desirous to Locate the same on some of the Western Waters in the County of Lincastle if he can lay the Sd Location on any Vacant Lands that have not been surveyed legally or Patented since the above Proclamation; You are hereby Strictly Authorized and Required to survey the same.

Given under my Hand this 6th Day of November 1773

To the Surveyor of the County of Lincastle

Dunmore

The above is a true Copy of his Excellency the Governors Warrant to me Directed. Certified under my Hand this 28th Day of Novr 1773

Wm Preston S.L.C.

FAC SIMILE of a certified copy of a Military Land Certificate or Warrant, granted by Lord Danmore, November 6, 1773, in favor of William Fleming, for services as a Captain of the Virginia Regiment, in the French and Indian War.

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vember 24, 1764, to June 27, 1769. He became one of the justices of the first County Court of Botetourt County, which was organized on February 13, 1770. He was in command of the troops raised in Botetourt for Dunmore's War, and participated in the battle of Point Pleasant, on October 10, 1774, where he received a severe wound in the breast, which disabled him from active military service during the Revolution and ultimately hastened his death. In the month of July, 1775, he was appointed by the First Virginia Convention to be a member of the commission that was created "to settle the accounts of the militia lately drawn out into actual service, and for making provision to pay the same, as well as the expense of raising and providing for the forces and minute men directed to be embodied for the defense of this colony." (9 Hening's Stats., p. 61). In 1776 he was made lieutenant of his county by the Committee of Safety, and at the time he received his appointment as a member of the Kentucky Land Court of 1779-80, he was a senator for the Botetourt District, which included the four counties of Botetourt, Washington, Montgomery, and Kentucky. He was largely concerned with the frontier defense during the Revolutionary War, and served as a member of the Executive Council of Virginia in 1780-81, and for two weeks, while he was the only acting member of the Council on duty (Jefferson having resigned or abdicated as governor), he exercised, in the month of June, 1781, the executive functions properly belonging to the Chief Magistrate of the Commonwealth. For this extraordinary exertion of power, he was duly exonerated and indemnified by a concurrent resolution of the Virginia Assembly, adopted June 23, 1781. (10 Hening's Stats., p. 567.) He retained his seat in the Council of State till the 28th of September, 1781, on which date he resigned

(Cal. Va. State Papers, Vol. 2, p. 502). Besides his service as a Commissioner of the Land Court, he served in 1782-83 as a Commissioner to settle the accounts of public officers, both civil and military, in the "western country," who had been concerned in the disbursement of public monies. In this business, which was mainly conducted at Louisville, his associates were Samuel McDowell, Caleb Wallace, and Thomas Marshall. John McDowell was their clerk. Colonel Fleming kept a journal of the work done by this Commission, which is still in existence and is of much interest and value. He was president of the First Kentucky Convention, held at Danville on December 27, 1784, composed of delegates from each of the militia companies in the district, and of which Thomas Todd, afterwards a justice of the Supreme Court of the United States, was clerk. Together with Stephen Trigg, one of his associate judges on the Land Court, he was one of the thirteen trustees in whom, by an act of May, 1780, was vested certain escheated lands "within the County of Kentucky, formerly belonging to British subjects," to be devoted to "the purpose of a public school or seminary of learning, to be erected within the said county." (10 Hening's Stats., p. 287, Chap. XXI.) This was the original donation toward the founding of the institution, which later came to be known as Transylvania Seminary, and out of which, in time, grew the Transylvania University. Of the proposed seminary, he was named one of the original twenty-five trustees, by an act of May, 1783. (11 Hening's Stats., p. 282, Chap. XXXVI.) His interest in education is further evidenced by the fact that, in October, 1785, he was named a trustee of the Botetourt Seminary, established at the town of Fincastle, in Virginia (12 Hening's Stats., p. 202.) He headed the board of ten commissioners, created

by an act of October, 1783, for locating, surveying, and apportioning the lands granted by Virginia to Colonel George Rogers Clark, and the officers and soldiers of the Illinois regiments, who assisted in the reduction of the British posts in the Illinois, and by the same act, was named one of the trustees of the new town of Clarksville (in what is now Clark County, Indiana) to be established within the said grant of bounty land. (11 Hening's Stats., Chap. XXI., pp. 335, 336.) It is not shown, however, that he ever actually served in either of the capacities mentioned. The list of books composing his library, published in the William and Mary College Quarterly, for January, 1898, shows that he was a man of extensive reading and undoubted scholarship. He was a member of the Virginia Convention of 1788, which ratified the Federal Constitution. The records of the State Land Office, at Frankfort, show that, at various times, Colonel Fleming secured as many as sixteen separate grants of land in Kentucky, which aggregated about 29,000 acres, some of it being in Jefferson, some in Fayette, and some in Lincoln County. His death, which was attributed to the effect of incurable wounds received at Point Pleasant, occurred on August 24, 1795. Stronger proof of his capacity and of the confidence reposed in him by the government of Virginia and by the people of Kentucky could hardly be afforded than is furnished by the brief summary of his career here set down.

Colonel James Barbour, member of a distinguished Virginia family, served in the House of Burgesses as the representative from Culpeper County, in 1764. He was County Lieutenant of Culpeper County, in 1775, and served for three years as a Lieutenant in the Virginia Continental Line, for which there was granted, on June 25, 1783, to Mordecai Barbour, his eldest son and heir-at-

law, 2,666⅔ acres of bounty land in Kentucky. His wife was Frances Throckmorton, of Gloucester County, and their son, James, who was Sheriff of Culpeper in 1784 (13 Hening's Stats., pp. 142-144), married, in 1787, Mary Taylor, daughter of James Taylor and Ann Pendleton, of Orange County, Virginia, removed to Kentucky and became the ancestor of the large family of Barbours of Jefferson and Oldham counties.

Colonel Edmund Lyne was the fourth son of William Lyne, the first known of the family in Virginia. He was a man of good sense and high character. He seems to have remained in Kentucky, after coming out to serve on the Land Court, and settled on a farm of four hundred acres, for which he had secured a patent, on Cane Ridge, in Bourbon County. He died, unmarried, in the latter end of November, 1791. In 1786 he was appointed a Commissioner with Isaac Shelby and Richard Taylor to adjust claims arising out of the expedition of General George Rogers Clark and Colonel Benjamin Logan against the Shawnee and Wabash Indians. In October, of the same year, he was appointed a Commissioner, with Isaac Shelby, Ben. Logan, Green Clay, John Marshall, Jr., Joseph Crockett, James Garrard, John Jouett, Gabriel Madison, Isaac Cox, George Adams, and others, to receive subscriptions to open and establish a road from the Falls of the Great Kanawha to the town of Lexington, in Fayette County (12 Hening's Stats., p. 282); and, again, in the same month and year, with Edward Waller, Henry Lee, Miles W. Conway, Arthur Fox, Daniel Boone, and others, he was appointed a Trustee to organize and establish the town of Washington, in what was then Bourbon, but now Mason, County (12 Hening's Stats., p. 361), and, in November, 1790, he was reappointed to the same trust (13 Hening's Stats., p. 183). Under date of April

20, 1792, Harry Innes, then in Kentucky as Judge of the United States District Court, wrote a letter to William Lyne, an older brother of Edmund Lyne, residing in Virginia, advising him of the death of Colonel Lyne, *whom Innes calls "the best of men,"* and, among other things, said:

> "The overruling hand of Providence hath bereft me of the best of friends and deprived you of the most affectionate of brothers. (He) hath left me his only executor. To this office I have qualified, and do now inclose you a copy of his will, together with a copy of Colonel Nicholas's opinion, which I took to justify my own. The only distress your brother labored under in mind was his anxiety to liberate his slaves, and to enable them to procure some subsistence for a future maintenance."

A copy of Colonel Lyne's will, dated November 26, 1791, will be found in the case of Harry Innes, Executor of Edmund Lyne, v. Edmund Lyne's Devisees, Sneed, 299.

James Steptoe (or "Jemmy" Steptoe, as he was familiarly called) was Clerk of the County and District Courts of Bedford County, Virginia, for forty years, having received his commission as such on January 17, 1772. He was born in 1750 in Westmoreland County, Virginia, and was a grandson of Philip Steptoe, of "Teddington Hall." He attended the College of William and Mary and there formed the acquaintance of Thomas Jefferson, with whom he maintained an intimate and life-long friendship. The home of James Steptoe in Bedford County, "Federal Hill," was close to "Poplar Forest," Thomas Jefferson's home, and it is said that it was Mr. Jefferson's influence which induced Mr. Steptoe to leave his ancestral home in Westmoreland County and take up his residence in Bedford County as its Clerk. Jefferson was

a frequent visitor at his home. He died in 1826, the same year in which the author of the Declaration of Independence himself passed away, and is buried at New London, in Bedford County, Va. James Steptoe was a most faithful and efficient clerk and an exemplary citizen, and he was much esteemed for his amiable and generous disposition. Being loath to leave his home, he declined the appointment on the Kentucky Land Court, tendered by his friend, Governor Jefferson, and Stephen Trigg was subsequently appointed to fill this vacancy. An interesting sketch and likeness of James Steptoe are published in Frederick Johnston's "Memorials of Old Virginia Clerks."

Colonel Stephen Trigg, the youngest son of Abraham Trigg, an immigrant from Cornwall, is said to have come to Augusta County, Virginia, about the year 1768 or 1769. He there married Mary Christian, a sister of Col. Wm. Christian, and also of the wife of Colonel Wm. Fleming. He helped to organize Botetourt County, in the month of February, 1770, as one of the original Justices of the Peace for that county. Later he was sent as a delegate from Fincastle County to the Virginia Convention, which was held at Richmond, commencing on the 17th day of July, 1775. The other delegate from Fincastle was his brother-in-law, Colonel William Christian. In the records of the Land Court, while sitting at Harrodsburg, under date of October 28, 1779, there appears this entry:

> "Stephen Trigg, Gent., this day produced a Commission Appointing him a Commissioner in the room of James Steptoe, for the purpose of Executing, in Conjunction with Wm. Fleming, Edmund Lyne & James Barbour, in Kentucky District, the act for adjusting disputed Titles or Claims to Land & was qualified Accordingly, and took his seat."

At the third and last term of the Land Court at Harrodsburg, and on the 2d day of February, 1780, it appears that—

> "Stephen Trigg this day claimed a preemption of 1000 Acres of Land at the State Price in the district of Kentucky, on Account of Marking & improving the same in the year 1775, lying on the head of the North branch of the Bear-grass, about 2 or 3 Miles from Colo. Wm. Fleming's land, near a North-East course; Satisfactory Proof being made to the Court, they are of Opinion that the sd. Trigg has a right to a preempt. of 1000 Acres of Land, to include the above location, & that a Cert. issue accordingly."

The Certificate was issued but the location was afterwards changed. This entry indicates that Colonel Trigg had visited Kentucky, prospecting for land, as early as 1775.

At the conclusion of his labors on the Land Court, Colonel Trigg evidently decided to make his residence permanently in Kentucky. He accordingly fixed his home at what came to be known as Trigg's Station (otherwise sometimes called "Viney Grove," from the luxuriant growth of wild grape vines in that locality), about four miles northeast of Harrodsburg, on Cane Run, and about four miles from the mouth of that stream, which empties into Dix River. After Colonel Trigg's death, this station was commonly called "Haggin's Station," after John Haggin, an early pioneer, who settled at that place.

In the Spring of 1780, shortly after the adjournment of the Land Court, Stephen Trigg was elected, together with Colonel John Todd, to represent the County of Kentucky in the Virginia Assembly. These two delegates presented the petition of sundry inhabitants of the settlement at the Falls of the Ohio, bearing date May 1,

1780, praying for the establishment of a town at that point, and at this session of the Assembly an Act was passed, in response to the aforesaid petition, establishing a town, by the name of Louisville, at the Falls (10 Hening's Stats., p. 293, Chap. XXVI). The Trustees named in this Act were: John Todd, Junior, *Stephen Trigg,* George Slaughter, John Floyd, William Pope, George Meriwether, Andrew Hines, James Sullivan, and Marshem Brashiers. It was in the same year, 1780, that Stephen Trigg acquired ownership of the lands upon which a large part of the city of Covington was afterwards built. He made a survey of two hundred acres at the mouth of Licking, all of which is now included within the heart of the city (Collins, Hist. of Ky., Vol. I, p. 427). At the first County Court for Lincoln County, held on January 16, 1781, at Harrodsburg, Stephen Trigg, acting under a commission from the Governor of Virginia, appeared, with twelve other gentlemen, as a Justice of the Peace and *ex officio* as a member of the court and also of any Court of Oyer and Terminer that might be held for the trial of slaves. At the same time he produced a Commission from the Governor of Virginia, appointing him Colonel of the Militia of the new county. Benjamin Logan, who had previously held the same rank, succeeded John Bowman as County Lieutenant of Lincoln, in the month of July, 1781. The four delegates from Kentucky to the Virginia Assembly, of May, 1782, under date of July 2, 1782, united in a recommendation of Col. Trigg for appointment as one of the Assistant Judges of the new Supreme Court for the District of Kentucky, created at the same session of the Assembly (Cal. Va. State Papers, Vol. 3, p. 204). But further judicial service by Stephen Trigg was not to be, for he lost his life in the Battle of the Blue Licks, on August 19,

1782. In this fatal encounter, Colonel Trigg, as head of the militia from Lincoln, was second in command to Colonel John Todd, the County Lieutenant of Fayette, and both of these heroic souls paid the forfeit of their valor with their lives. The Indians were especially malignant in their treatment of the body of the fallen soldier, for in his report of the battle to the Governor of Virginia, Colonel Ben. Logan states that "Trigg was quartered" (Cal. Va. State Papers, Vol. 3, p. 281). The administration of his estate, under his last will, was a subject of adjudication by our Court of Appeals in the case of Trigg's Administrator v. Daniel, &c., 2 Bibb, 301. Kentucky honored his memory by naming one of her counties for him, and his name and fame have ever been held in the highest estimation.

Nearly four months after their appointment and on the 13th day of October, 1779, three of the four Commissioners provided for in the Act creating the Land Court for the Kentucky District met at St. Asaph's or Logan's Fort, and proceeded to organize for business, as appears from the following entry:

> "James Barbour, Esq., this day Administered the Oath of a Commissioner to William Fleming, & he, the said William Fleming, Esquire, to Edmond Lyne & James Barbour, Esquires, according to Law. After which they made choice of John Williams, Junior, Clerk, who was sworn accordingly. *The Court,* being attended by the Sheriff of (Kentucky County), do Adjourn until to Morrow 10 o'clock."

This first order, it will be noted, describes the Commission as a "Court," and thus always. It was signed by William Fleming alone and, from the fact that, whenever he was present, the final orders of the day were signed by him, it is apparent that he was the senior and

presiding officer of the Court. John Williams, Junior, the careful and efficient scribe by whom the transactions of the Court were daily recorded, served throughout the entire period of the Court's existence. While his name does not appear in this initial order of the Court, it is certain that Benjamin Logan was the Sheriff of Kentucky County, who is mentioned as being in attendance at the opening session.

John Williams, Jr., was a son of William Williams and Lucy Clayton, of Frederick County, Virginia. He was a Revolutionary soldier; enlisted August, 1777, and (with the exception of the time he was engaged as Clerk of the Kentucky Land Court) remained in the military service of his country until February, 1781. He attained the rank of Major in the State militia, March 3, 1785. He was the second Clerk of the County Court of Shenandoah (originally Dunmore) County, Virginia, serving as such from 1784 to 1789. In 1770 he married Eleanor Hite, third daughter of Isaac Hite, of Long Meadows, Frederick County, Va., and this connection established a close and sympathetic relation between John Williams, Jr., and the early pioneer settlers of Kentucky. Three children, born of this marriage, survived Major Williams, namely, Isaac Hite Williams, who became a brilliant lawyer, John C. Williams, and Eleanor Eltinge Williams, who became the wife of Captain Reuben Long, of Culpeper County, Va., himself also a soldier in the Revolutionary War. (Shenandoah Valley Pioneers and Their Descendants, page 501, by T. K. Cartmell, Winchester, Virginia, 1908; Comrs.' Certs. Bk., p. 313; and Deed Book "A," p. 477, and D. B. "B," p. 195, of Supreme Court for the District of Kentucky, in Clerk's Office of Court of Appeals, at Frankfort, Ky.)

From the fact that Colonel Trigg did not appear and take his seat until October 28, 1779, and Colonel Barbour

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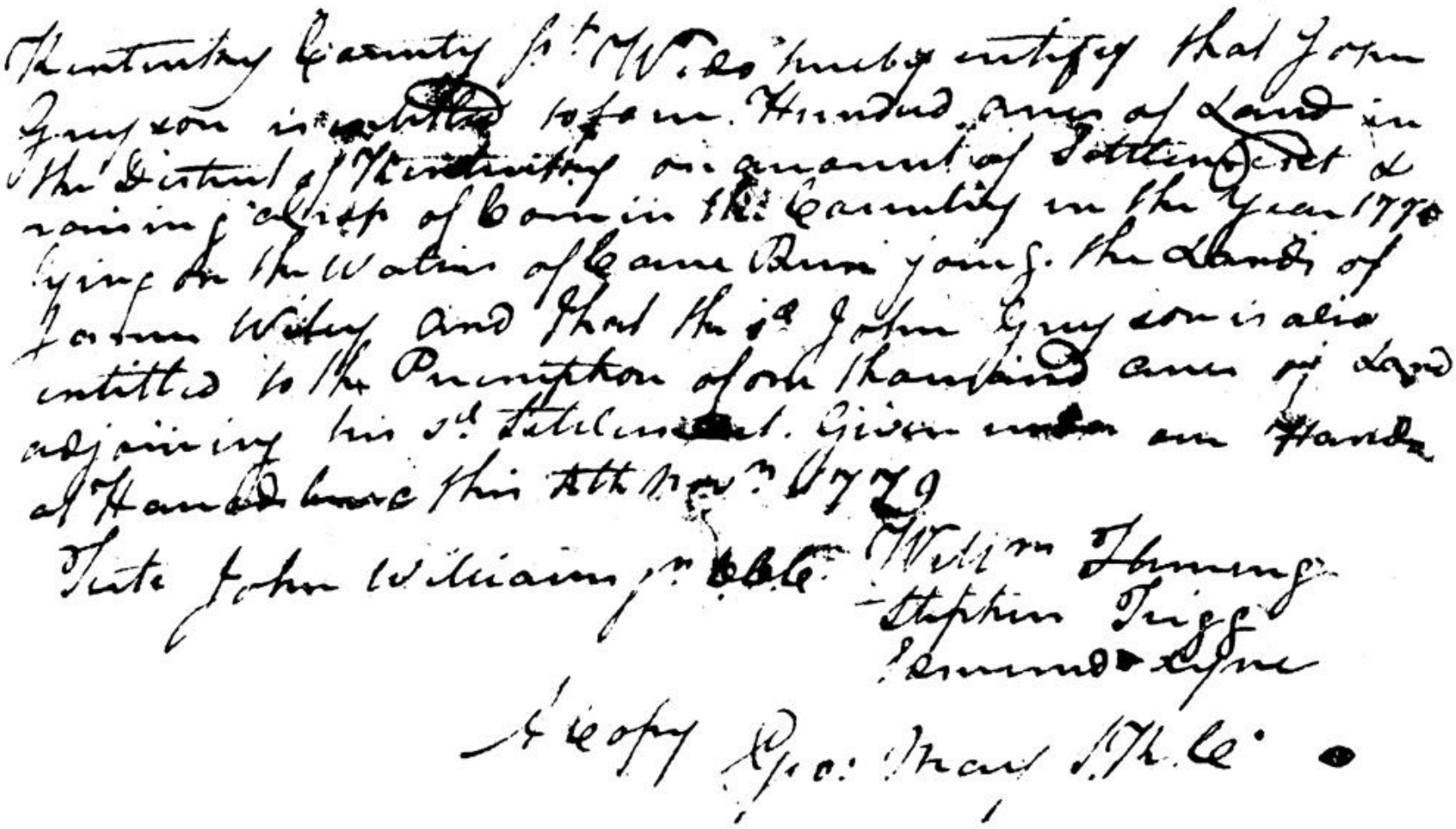

Kentucky County ss. I do hereby certify that John Grayson is entitled to one Hundred acres of Land in the District of Kentucky on account of Settlement & raising a Crop of Corn in this County in the Year 1776 lying on the Waters of Cane Run joining the Lands of Isaac Wilkey and that the said John Grayson is also entitled to the Preemption of one Hundred acres of Land adjoining his said Settlement. Given under our Hands at Harrodsburg this 4th Nov.r 1779

Test John Williams jr. C.C.C.

Wm Harrod
Stephen Trigg
Edmund Lyne

A Copy Geo: May S.K.C.

FAC SIMILE of an attested copy of a Settlement and Pre-emption Certificate, issued at Harrodsburg, November 4, 1779. It is entirely in the handwriting of George May, Surveyor of Kentucky County.

left to return to Virginia on December 6, 1779, less than two months after the Court first convened, it is plain that the major part of the business transacted by the Court fell to the lot of three only of the Commissioners, namely, Messrs. Fleming, Lyne, and Trigg.

The Court, which began its sessions on October 13, 1779, did not finally adjourn until April 26, 1780. During this period of approximately six months, the Court held eight terms in all, being actually in session a total of seventy-nine days. Altogether it passed upon a grand total of over fourteen hundred claims, of which 1,328 were allowed, embracing 1,334,050 acres. Claims were adjudicated at the average rate of about 17 per day. As summarized by Colonel Fleming, the 1,328 certificates granted were distributed as follows: 351 on claims for pre-emptions of 400 acres each, on account of actual settlement made since January 1, 1778; 423 on claims for pre-emptions of 1,000 acres each, on account of improvements made before January 1, 1778; and 554 on claims for both a settlement and pre-emption of 1,400 acres each, on account of actual settlement previous to January 1, 1778. His final recapitulation of the status of land claims was as follows:

Certificates granted by the Commissioners in Kentucky (equivalent to 2,084 square miles)	1,334,050 acres
Surveyed in Kentucky before 1779 by Military Warrants	206,050 "
(Treasury) Warrants of the 15th October, taken in 1779	1,122,992 "
Do to Apr. 1st, 1780, taken in by the Survey(or)	802,804 "
Grand Total (equivalent to 5,415 square miles, or over ⅛ of entire area of State)	3,465,896 acres

The index to the official records of the Court, styled the "Commissioners' Certificates Book," embraces a catalogue of more than fourteen hundred names, and the contents of this record, in connection with these names, constitute a priceless source of information concerning the history of pioneer Kentucky.

Of the eight terms of the Court, three were held at Harrodsburg, which, at that time, according to the estimate of Colonel Fleming, had a population of approximately 400, and was much the most important Station in Kentucky; two terms (the first and the last) were held at St. Asaph's or Logan's Fort, and one each at the Falls of Ohio, Boonesboro, and Bryant's Station. Bryan's or Bryan*t*'s Station (as it is uniformly called in the records of the Court), was the only place north of the Kentucky River where any session of the Court was ever held. The Court sat thirty-six days or nearly half of its juridical time at Harrodsburg, and much the largest number of claims were adjudicated at that point. Colonel James Barbour attended the session of December 3, 1779, at Harrodsburg, but, for some cause unknown, perhaps infirm or failing health, he started back to Virginia December 6, 1779, and took no further part in the proceedings. The eight terms of the Court were held in the following order, viz., (1) At St. Asaph's, from October 13th to October 20, 1779; (2) at Harrodsburg, from October 26th to November 6th; (3) at Falls of Ohio, from November 16th to November 23d; (4) at Harrodsburg, December 2d and 3d; (5) at Boonsborough, from December 18th to December 29th; (6) at Bryan*t*'s Station on Elkhorn, from January 3d to January 18, 1780; (7) at Harrodsburg, from January 28th to February 26th; and, finally, (8) at St. Asaph's, from April 18th to April 26, 1780. Apparently there were no sessions of the Court

between February 27, 1780, and April 18, 1780. This hiatus is partly explained by the fact that, by the terms of the original Act under which they were commissioned, the authority of the Commissioners expired on February 26th, and the Act of October, 1779, extending their powers for two months longer, or until April 26, 1780, did not reach the hands or knowledge of the Court until near the end of the month of March, 1780. It may be noted, in passing, that the year 1780 was a "Leap Year."

The arduousness of the task committed to this First Land Court of Kentucky was intensified by the extreme severity of the season during which they were called upon to act. The terrible winter of 1779-80 was known to the pioneers and has ever since been known in our history as the "Hard Winter" *par excellence.* In the excellent Journal composed in his later life by Daniel Trabue, who was in Kentucky during the entire time and, in addition to other useful qualities, was a "mighty hunter," it is stated:

> "This hard winter began about the first of November, 1779, and broke up the last of February, 1780. The turkeys were almost all dead, the buffaloes had gotten poor, people's cattle mostly died, there was no corn or but little in the country. The people were in great distress, & many in the wilderness were frost-bitten. Some died and some ate of the dead cattle and horses. When the winter broke, the men went and killed the buffaloes and brought them home to eat, but they were so poor, a number of people were taken sick, and actually died for the want of solid food. Most of the people had to go to the Falls of Ohio for corn to plant, which was brought down the Ohio." (Colonial Men and Times, p. 56.)

The Journal of Colonel Fleming, to which more extended reference will presently be made, also bears ample

testimony to the prevailing cold and the intense suffering which it caused.

James Trabue, elder brother of Daniel, was Commissary of Supplies for the garrisons at the various Kentucky forts, and Daniel Trabue was his deputy at Logan's Fort. With respect to this, Daniel Trabue, in his Journal, says:

> "We soon got our books and accounts in good order. People had moved to this country this Fall (1779) more than ever. The Commissioners that were appointed by the Virginia Legislature to grant pre-emptions also had come out. There were so many people, the conclusion was to discontinue keeping up the soldiery at the Forts. So they were all discharged about the last of this year, 1779. The public stores and Magazines were locked up Jan. 7, 1780." (Colonial Men & Times, p. 50.)

Just ten days before the first sitting of the Land Court at St. Asaph's, and on October 3, 1779, had occurred one of the most disastrous blows ever inflicted by the Indians upon the people of the Western Waters. This was the ambuscade and massacre of Colonel David Rogers and his party of nearly a hundred men, on their way from New Orleans to Pittsburg, at a point in the Ohio about three miles below the mouth of the Little Miami River, and only a short distance above the site of the present city of Cincinnati. Of this sanguinary engagement, Butler, in his History of Kentucky, says: "The annals of Indian or border warfare contain not a bloodier page." Sixty members of the party, including Colonel Rogers, were killed, and nearly the whole of the remainder were wounded and carried away captive, perhaps to a fate even worse than death.

This shocking tragedy, which seems to have slaked the blood-thirst of the murderous savages, coupled with the extremely cold weather, which set in early and continued without abatement for nearly four months, conduced to the safety of the interior settlements of Kentucky, which were measurably free from Indian alarms during the time the Land Court was engaged in the performance of its mission. One of the direct results of this disaster was an order of the Virginia Council, in June, 1780, for the erection of one of three forts on the Ohio at the mouth of the Licking, to be garrisoned with fifty Kentuckians and Colonel Joseph Crockett's regiment of Virginians, making 150 men in all; but, unfortunately for the exposed frontier, this order, though well intended, was never carried out.

The official record of the Land Court, of which a copy is preserved in the Clerk's office of the Fayette County Court, and which is now being published in instalments in the Register of the Kentucky State Historical Society, is interestingly supplemented by a Journal which was kept by the methodical and indefatigable Colonel William Fleming, the original of which constitutes a treasured item of the Draper Collection in the library of the State Historical Society of Wisconsin. From a printed copy of this Journal the following extracts are taken. The first entry in the Fleming Journal is dated November 10, 1779, nearly a month after the arrival of the members of the Court in Kentucky, and it is apparent that the first part of the manuscript has been lost. At the date of this first entry, as we learn from the official records, the Commissioners were on their way from Harrodsburg "to the Falls of Ohio," where they reconvened on the 16th of November, 1779. He gives a minute and illuminating description of conditions at the Falls. Under date

of November 25, 1779, he says: "Left the Falls and came to Brashier's Station on our way back to Harrodsburg." Arriving at Harrodsburg on December 2d, the Court tarried there for only a short session. The Journal reads:

"*Dec. 3rd and 4th.* Did a little business and adjourned to Elkhorn (i. e. to Bryan's Station). It continued excessive cold. Col. Barbour prepaired to leave us. *The 5th* a storm of snow fell and the Kentucky rose, which made us alter our Appointment from Elkhorn to Boonesborough. *The 6th* continued cold with snow. The inhabitants averred they never knew so severe weather at that season, the winter generally setting in about Christmas and continuing about 6 weeks. Col. Barbour set out. *The 7th* the Storm abating and Kentucky still impassible, we set out from Harrodsburg. * * * *The 11th* came to St. Asaph's. * * * We killed numbers of Deer, Buffalo, Raccoons and turkeys on our way from Falls and saw bears. * * * *16th* left St. Asaph's for Boonesborough. * * * We had no tent with us, it rained in the morning and froze as it fell. Our journey took us about 20 miles through large quantities of Good Land. * * * *17th* * * * got to Boonesburg in the evening, 20 miles from our encampment. The weather very severe; it snowed a little in the Night. *18th* the weather severely cold and cloudy; did a little business. *Dec. 19th.* Clear, frosty and very cold— *20th* went on with business. The Frost continues severe. * * * (*21st*) The rivers had rose considerably from Snow, Rain and transient thaws towards their head; the Kentucky had been full of ice for two days but was closed up this Evening and frozen over. *The 23 and 24* went on with business.

"*Dec. 25.* Rested the 25th, being Christmas day. The Frost still continuing, I crossed the Kentucky on the Ice and found it one hundred yards over opposite to the Fort. * * * Sam. Henderson arrived

with some of the Commissioners from Carolina, having quitted running the boundary line on some disagreement with the Virginia Commissioners, who continued to go on with the line.—People hourly arrived with accounts of the distresses of Families on the road. * * * *28th, 29th,* and *30th* did business. *The 29th* it seemed to relent and thaw but continued very cold and in the night snowed. We put our horses over the Kentucky on the Ice and *the 31st* left Boonesburg for Elkhorn."

The observant traveler gives a brief description of Boonesborough, concerning which he made this blunt criticism: "The Fort is a dirty place in winter like every other Station." Bryan's Station and the neighboring lands evidently made a favorable impression on him, for he says: "Bryant's Station, as it is called, formerly the property of Col. Preston and exchanged by him for the horse shoe on New River, is an exceeding fine tract of land and a happy situation. There is at present about 50 families. All but four came here this last summer and fall—there is plenty of small cane as we came from Boonesburg and about this place." He pauses to give an epicurean's estimate of the choicest morsels of the buffalo, and then proceeds:

"There was numbers of Paroquitos flying about Boonsburg. We heard this day that the people moving out to this Country had lost 500 cattle and, as was my horse, by the rising of the waters, and that in general they were in the utmost distress, numbers of families not being able to get in, were building huts on the road to winter in.

"*1780, Jan. 1.* The Frost continued but a clear sun shine day. Did no business, the Clerk making out list of claims on Elkhorn and Licking necessary before we can proceed.

"*Jan. 2.* A Snow fell last night; continued Snowing this morning.

"*Jan. 3* and all day the snow 12 inches deep, Cold and piercing. Did business. *The 4th, 5th and 6th* the cold continued intense. *7th* Do. *The 8th* Col. Line taken suddenly ill was bled.

"*Jan. 9.* The Weather continued in the day Clear and Freezing in the night. Is severely cold as ever I felt it in America. The People at this place all sickly from colds, the hardships they endured in the Journey and the Change of Air, the most of the Settlers moving from S. Carolina. Two young men died yesterday. The frost had penetrated fourteen Inches into the ground as we found by the opening of the graves.

"*Jan. 10.* In the night it snowed and continued snowing in the morning of the 10th so that it was five inches deep on the old snow; continued to snow busily all day." * * *

After a week of incessant labor in the midst of this bitter cold weather, his entries read:

"*Jan. 19.* Set out for Harrodsburg and reached Lexington, 6 miles from Bryant's, so excessive cold we were afraid of being frost bit; the night violently cold; my horse was turned out by Robt. Paterson, who neglected to unstop the bell, and could not be found when the other horses were brought up. The other Gentlemen went on to Mr. Tod's, where they were to wait till I got up to them. * * * The Frost still continues; my horse not yet found—the *22d* I had a strong fever, occasioned by lying verry cold, and was something better this day (*the 23d?*), the most disordered is my head; having got my horse which cost me 73 Dollars to recover again, having been put out of the way for the hopes of a reward, I set out and reached Capt. Levi Tod's in 6 miles; passed through some fine land."

Two days after his departure from Lexington, the "Citizens' Compact" entered into by forty-seven of the villagers and dated January 25, 1780, was signed, and it may be that during his enforced sojourn of four or five days at Lexington, Colonel Fleming lent a helping hand to the preparation of this historic document.

Taking leave of Todd's Station, the members of the Court reached Harrodsburg on January 24th, "this day so exceeding cold," says the diarist, "I had one of my toes bit with the frost and some of my fingers frozen." The Court did no business the 26th or 27th of January, 1780, but the 28th and 29th it "proceeded on Business." Under date of February 2d, the Journal of Colonel Fleming reads:

> "I was seized with the most violent pain in my back which continued, *the 4th* I was bled for it and took a dose of Laxative pills with Quicksilver, being the only purgative I had, but did not intermit the business, *the 4th* the pain was easier tho I was still obliged to have my back bolstered up when I was in Court, the pills not working me properly, for want in proper convenience in working it off, the pain returned, the *4th and 5th* but went on with the business when Col. Lyne could attend, he being frequently indisposed. * * *
>
> "*Feb. 6.* The Frost still continuing, the Kentucky was frozen near two feet thick of Ice. * * *
>
> "*the 11th, 12th and 13th* the thaw continued gentle and pain shifted a little lower in my back to the Joint of the thigh, and down my thigh at times verry violent so that I continued to have my back supported and bound when doing business; my toe that was frost bit frequently pained me, the blisters broke and the new skin tender—we found the business far from being over—contrary to our expectations, we having settled Certificates since we came here for 250 Claims. * * *

"*the 27th* the Court having finished the business rose at nine O'clock in the Evening. * * *

"*Feb. 27.* (Should be 28th.) Imployed in getting the Certificates finished and the Lists for the Surveyor and Auditors. *The 29th* the same; signed the Certificates for the Surveyor."

Under date of March 12th, he notes that on March 9, 1780, Colonel Callaway and Pemberton Rawlings were killed at "Boonesburg" and two Negroes taken. Next appears the following entry:

"*March 13.* Finished examining the books and rectified several mistakes; we found two claims entirely omitted in the list, made out for the survey(or) and three in the list sent to the Register, with some mistakes in the names and some in the quantities of Land. Joseph Lindsay's Claim is likewise not taken notice of because not located."

At the time *the "Court of Kentucky"* (as Colonel Fleming, in one place in his Journal, calls it) adjourned on February 26th, it was thought by the Honorable Judges that this was to be an adjournment "without day," but, to the surprise and grief of Colonel Fleming, it soon turned out that they were to be disillusioned instead of dissolved. This is made plain by the following Journal entry, under date of March 20, 1780:

"Yesterday I had a copy of the Act passed last session of Assembly continuing the powers of the Commissioners for two months longer; as we had finished all the business of the people in the country, I had great reluctance to be detained longer here, but considering that a great number of people that were expected down the River Ohio from Pittsburg being detained by the frost, and that there must be a number of claimers in near 3,000 persons that designed

> to come into this country from that quarter, as asserted to the Commissioners in a letter from one Briscoe, I determined to wait till we could take in those claims or at least till Mr. Trigg should return from the Falls, whither he had gone after finishing the business before us at Harrodsburg."

The regular sittings of the court were resumed at St. Asaph's on April the 18th, and continued, without intermission except on Sunday, the 24th, until April 26th, the day of final adjournment. Under that date, Colonel Fleming laconically notes: "Finished the business." The official record of the same date concludes with this entry:

> "The Commissioners having finished all the business in the District that has come before them, their power expired this day. After public notice being three times given by the sheriff for claimers to appear, this Court of Commissioners for the County of Kentucky is dissolved."

This final order is signed by Wm. Fleming, Stephen Trigg, and Edmund Lyne, and is attested by Jno. Williams, Jur., the clerk of the court.

Under date of May 4, 1780, the journal of the presiding judge recites:

> "The Commissioners closed the business of the district by signing the registers and surveyor's lists, and passing receipts for the money they received."

As of May 5, it is said:

> "The surveyor put up an advertisement that he could not take in any locations before Monday next. I returned to Col. Bowman's after breakfast and examined the lists to see that no mistake had been made."

This faithful public official set out on his return journey home on May 12th, and on arriving at this much-desired haven of rest, two weeks later, his journal closes with these significant words:

> "*May 27.* Reached home * * * I found my family well and in health after nine months' absence. *Laus Deo!*"

But two or three features of the court's record remain to be noticed, and this paper will be brought to a close.

In the act of October, 1779, extending for two months the powers conferred upon the Commissioners of the District Court, it was provided:

> "No certificate of right to land for actual settlement or of pre-emption right shall hereafter be granted by the said Commissioners, unless the person entitled thereto hath taken the oath of fidelity to this Commonwealth, or shall take such oath before the said Commissioners, which they are hereby empowered and directed to tender and administer; except only in the particular case of the inhabitants of the territory in dispute between this Commonwealth and that of Pennsylvania, who shall be entitled to certificates upon taking the oath of fidelity to the United States of America." (10 Hening's Stats., pp. 177, 179.)

The record of the Court's proceedings shows that they sometimes required these oaths of allegiance to be taken and occasionally rejected claims and refused to issue certificates because it did not sufficiently appear that the required oath had been taken by the claimant by whom or on whose behalf the claim was asserted. In a few instances, moreover, claims were denied upon the ground

that similar claims had been proved and allowed by the land commissioners of the Monongalia or some other District Court. With but few exceptions, the evidence heard by the Court was not recorded, but, in a few cases of exceptional importance, the testimony was entered at length and the depositions so preserved are often of the very greatest interest.

By an act of May, 1781 (10 Hening's Stats., Chap. XXII., p. 436) it was provided:

> "Whereas the Commissioners appointed for the purpose of carrying into execution the before-recited act (of May, 1779) were discontinued in the District of Kentucky, whereby many good people of this Commonwealth were prevented from proving their rights of settlement and pre-emption in due time, owing to their being engaged in the public service of this country; *Be it therefore, enacted*, That the county courts in which such lands may lie, are hereby empowered and required to hear and determine such disputes as have not heretofore been determined by the Commissioners acting in that country under the act of Assembly; taking for their guide and direction the acts of assembly whereby the Commissioners were governed. And the register of the Land Office is hereby empowered and directed to grant titles on the determination of such courts in the same manner as if the Commissioners had determined the same."

The "public service" contemplated by this act was construed to include military service, and there are numerous cases to be found in the earlier Kentucky Reports where claims allowed by County Courts, in conformity with the above act, were a subject of adjudication by our Court of Appeals.

By an act of November, 1781 (10 Hening's Stats., Chap. V, p. 445), the register of the Virginia Land Of-

fice was authorized to appoint a deputy "to reside in some convenient part of the Kentucky country" and to perform the duties properly appertaining to the office of the register.

That some unaccountable delay had occurred in the return of the papers and proceedings of Kentucky's First Land Court to the office of the register of the Land Office in Virginia, is disclosed by an act of May, 1782 (11 Hening's Stats., Chap. XLIX, p. 91) wherein it is provided:

> "Whereas great inconveniences have arisen from the Register's not having been furnished with a copy of the proceedings of the Commissioners for the District of Kentucky: *Be it therefore enacted*, That the said Commissioners shall forthwith deliver to the said register all the books and papers respecting their said business, which books, or authentic copies of any certificates, shall be sufficient authority to the Register to issue pre-emption warrants, upon the claimants performing the other requisites in those cases."

Here ends our survey of one of the most notable courts that ever exercised judicial functions in Kentucky. A vast and complicated legal structure has been built up on the foundations which this unique tribunal, with signal ability and conscientious fidelity, laid in the inexperienced infancy of the Commonwealth. The evils and woes begotten by the Virginia Land Law of May, 1779, led Henry Clay, as late as the year 1823, to speak of it as a "vicious system," a "calamitous system," and this opinion has been echoed by many others, both before and since. But, if one takes into account how much of fact and circumstance the lawmakers of the Old Dominion had to take for granted with respect to the *terra incognita* of Kentucky, in devising legal machinery adapted

to its condition and needs, the wonder is that they committed as few errors as they did. With all of its defects, this epoch-making law bears the impress of a master hand, and, taken all in all, deserves to be pronounced a remarkable, as it is a venerable, piece of work. Those who, in the beginning, were called upon to execute its provisions not only inspire our respect, they command our admiration and merit our gratitude and praise. Its defects were in large measure supplied by the sound common sense and penetrating as well as practical judgment of the long line of distinguished judges, who, as the successors of Fleming, Barbour, Lyne, and Trigg—these four original "Kentucky Colonels"—undertook to construct a system of interpretation suited to the spirit and purview of the law. Their laborious efforts were crowned with eminent success, and in contributing to this monumental achievement, none may be said to have exceeded Chancellor George M. Bibb. To him we are indebted for a manly vindication of the much-abused system of land law which obtains in our Commonwealth, and one who cares to read his vindication will find it vigorously set forth in the dedication and introduction to the first volume of his reports. The advice he proffered more than a century ago is peculiarly applicable to the conditions which confront us today. In the words of the dedication to 1st Bibb, dated by its editor at Frankfort on August 5, 1815, the accomplished jurist, though dead, yet speaks to us:

> "If litigation abounds and suits are tedious; if fickleness and inconstancy are visible on your statute book, and restlessness and impatience pervade the general body of the people, you can apply the corrective. Elect men to represent you who are neither demagogues, fostering prejudices engen-

dered in ignorance and tending to licentiousness, nor time pleasers, preferring a momentary local popularity to the permanent interests of the country. Elect men who are wise to know, and virtuous to pursue your interests; firm against senseless and tumultuous clamors, with a spirit to demand and pursue reform where reformation is proper. Let them establish salaries competent to retain men of the first talents and known integrity in the important offices of the government—reform the judiciary, by lopping off the useless branches, and infusing a new portion of health and vigor into the system—give the judges *time* and opportunity to acquire a knowledge of the laws, so that *ignorance* or *neglect* of duty can find no palliative but gross stupidity or shameful laziness; and when either of these charges is fixed upon a judge, it will be high time to remove him from office. When judges are studious out of Court, diligent in Court, and capable of imparting information to the bar, lawyers will speak less from choice or compulsion, the business will be dispatched, justice will be administered without favor or affection to the poor and to the rich, order and the reign of the laws will be established, and equal liberty and general confidence in the rights of property and of industry will be the necessary consequence."

Land-Office WARRANT, No. 326

To the principal Surveyor of any County within the Commonwealth of Virginia.

THIS ſhall be your WARRANT to Survey and lay off in one or more Surveys, for *William Fleming* & his Heirs or Aſſigns, the Quantity of *one thousand* Acres of Land, due unto the ſaid *William* for *Military Service performed by him as an Assistant Surgeon in the late War between Great Britain & France, according to the Terms of the King of Great Britain's Proclamation of 1763. A Certificate of which, duly proven, is* received into the Land Office

GIVEN under my Hand, and the Seal of the ſaid Office, on this *Seventh* Day of *February* in the Year One Thouſand Seven Hundred and *eighty*.

J. Harvie D.R.L.O.

FAC SIMILE of original Military Land Warrant, granted to William Fleming, February 7, 1780, for services as an Assistant Surgeon, in the French and Indian War.

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NOTES AND APPENDICES.

A

The eight terms of the Land Court were held as follows:

I. At St. Asaph's, or Logan's Fort, 13th October to October 20, 1779; a session of seven days. Order of adjournment dated October 25, 1779.

II. At Harrodsburg, 26th October to November 6, 1779; a session of eleven days. Order of adjournment dated November 6, 1779.

III. At Falls of Ohio (Louisville), 16th November to November 23, 1779; a session of six days. Order of adjournment dated November 29, 1779.

IV. At Harrodsburg, December 2 and 3, 1779; a session of two days. Order of adjournment dated December 8, 1779.

V. At Boonesborough, 18th December to December 29, 1779; a session of nine days. Order of adjournment dated 31st December, 1779.

VI. At Bryant's Station, on Elkhorn, 3d January to January 18, 1780; a session of thirteen days. Order of adjournment dated January 21, 1780.

VII. At Harrodsburg, 28th January to February 26, 1780; a session of twenty-three days. Order of adjournment dated February 26, 1780.

VIII. At St. Asaph's, or Logan's Fort, 18th April to April 26, 1780; a session of eight days. Final order of adjournment dated 26th April, 1780.

B

STATIONS MENTIONED IN THE RECORD OF CERTIFICATES ISSUED BY THE LAND COURT.

1. McAfee's Upper Station, on the Town Fork of Salt River. Located on land owned by Henry Wilson, about one mile west from Harrodsburg.
2. Wilson's Station, or "Fort Liberty," on a branch of Salt River, and about two miles northwest of Harrodsburg, and three-fourths of a mile below McAfee's Upper Station. Established by Henry Wilson, Jr.
3. The Boiling Spring, on Harrod's Run, six miles east of Harrodsburg. Also, otherwise known as Harrod's Station.
4. Clark's Station, on Clark's Run, a tributary of Dick's River. Settled by George Clark.
5. Whitley's Station, on Whitley's Creek, two miles southwest of the Crab Orchard. Settled by William Whitley.
6. Riddle's Fort or Riddle's Station, on the South Fork of Licking River, three miles below the junction of Hinkston and Stoner Forks. Settled by Isaac Riddle or Ruddle. Sometimes called Ruddle's Station.
7. Bullitt's Salt Lick, frequently mentioned, on the north side of and three miles distant from Salt River, below Brashears Station, and about three miles from the present site of Shepherdsville, in Bullitt County. Here the first salt works were erected and operated in Kentucky. Later known as Saltsburg. Discovered by Captain Thomas Bullitt in 1773.
8. Bramblett's Station, on a branch of Stoner's Fork, a branch of Licking. Settled by William Bramblett.
9. The Little Fort (otherwise known as Twetty's Fort), on Boone's Old Trace (or Callaway's Trace), on the waters of Silver Creek, about five miles south of the present town of Richmond. Said to have been the *first* fort in Kentucky.
10. Strode's Station, on the South or Strode's Fork of Licking, near its head, and about two miles from the present town of Winchester.

11. Lee's Town, on the east side of the Kentucky River, one mile below the present town of Frankfort.

12. Price's Settlement, on the South Fork of Cumberland River, at a place later known as "Price's Meadow," about six miles from Monticello, in the present county of Wayne.

13. Captain Levi Todd's Station, on the waters of the South Fork of Elkhorn Creek, on the east side of the Harrodsburg Road, about ten miles southwest from Lexington, in the present county of Jessamine.

14. Lexington, on the Town Branch of the South Fork of Elkhorn Creek; settled in April, 1779, by Captain Robert Patterson and others, from Harrodsburg and McClelland's Station.

15. McClellan's Fort or McClelland's Station, at the head of the Royal Spring Branch, of North Elkhorn Creek, the site of the present town of Georgetown, in Scott County. Established by John McClelland and others, from Western Pennsylvania.

16. Crittenden's Camp, on Sinking Creek, a tributary of South Elkhorn, in what is now Woodford County. Settled by John Crittenden and Company.

17. James Smith's Station, on the north side of Dick's River, on the road from Crow's Station to the mouth of said river.

18. Dougherty's Station, on the north side of the Hanging Fork of Dick's River (or Clark's Run), about one and a half miles below the site of the present town of Danville.

19. Briggs' Camp, on the north side of Green River, or on the Hanging Fork of Dick's River. Location doubtful.

20. McAfee's Lower Station, on the Town Fork of Salt River, and about six or seven miles northwest from Harrodsburg.

21. James Davis's (or Daviess's) Station, on Whitley's Creek, a branch of Dick's River, about five miles west of Whitley's Station.

22. Linn's Station or Linn's Garrison (also called Linnsville), on Floyd's Fork of Salt River.

23. Stephen Fisher's Garrison, or Station, not far from the site of the present town of Danville.

24. McCown's Station, on a branch of Town Fork of Salt River.

25. Givens' Station, on the waters of the Hanging Fork of Dick's River, or Clark's Run. Settled by Samuel Givens. (Afterwards called John Reed's Station.)

26. Salt River Station, on Salt River.

Numerous Licks, such as "Knob Lick," five miles south of the site of the present town of Danville, are mentioned, but whether they attained to the dignity of Settlements or Stations is not, in every case, certain.

Other Forts or Stations, mentioned in Colonel William Fleming's *Journal*, include:

27. Brashears' Station, at the mouth of Floyd's Fork of Salt River, at or near the site of the present town of Shepherdsville, in Bullitt County.

28. Captain John Floyd's Station, on the Middle Fork of Beargrass Creek, about six miles southeast of the Falls of the Ohio.

29. Colonel (John) Bowman's Station, about eight miles east of Harrodsburg, not far from Dick's River, on Cane Run.

30. Squire Boone's Station, on Clear Creek, a branch of Brashears' Creek, near where Shelbyville now stands.

31. Grant's Station, on North Elkhorn Creek, within five miles northeast of Bryan's Station.

32. English's Station, on the South Branch of upper Dick's River, southeast of Whitley's Station and about three miles east of the Crab Orchard.

33. Pitman's Station, on Green River, about five miles west of the present town of Greensburg.

Trabue's *Journal* also mentions:

34. Holland, or New Holland, near the Falls of the Ohio River, in the present county of Jefferson. (Perhaps identical with Dutch Station.)

These thirty-four settlements or stations are, of course, in addition to the five stations, at which the Land Court held its sessions, viz., Harrodsburg, Boonesboro, Bryant's Station, Falls of Ohio and St. Asaph's, or Logan's Fort. With these added, there appear to have been, at least, a total of thirty-nine stations in Kentucky,

at the time the Land Court transacted its business, in 1779-1780. It is more than likely, however, that there were several other established and well-known settlements or stations, not mentioned by name in the contemporary records we have referred to. Such, for example, was Magee's Station, on Jouett's Creek, a tributary of the Kentucky River, in what is now Clark County, at or near the village of Becknerville. A "station" was established by David Magee (or McGee) on his settlement (of 1775) and his pre-emption at this place. (See Commrs.' Certs. Book, p. 88, under date December 21, 1779, at Boonesborough, and the case of Wilson v. McGhee, 1 Bibb, 34, and, also, the case of Holder's Heirs v. Jouitt, Littell's Selected Cases, 381, and Filson's Map of Kentucke, 1784.)

C

The records known as "Commissioners' Certificates," of the Kentucky Land Court, of 1779-80, show that:

I. James Brown made an "improvement," possibly a cabin, on the Hanging Fork of Dick's River, in 1772. (See, also, Sinclair v. Singleton, Hughes 176.)

II. Squire Gatliff "marked and improved" a tract on the Ohio River, at the third large bottom above a point opposite the mouth of the Scioto River, in 1773.

John Woods "marked and improved" a tract on the Ohio, adjoining Robert Woods, in 1773.

Robert Woods "marked and improved" a tract on the Ohio, about 25 miles above the mouth of the Scioto, in 1773.

III. The following were all made in the year 1774:

1. Martha Black (by William Garrett) "marked and improved" on Lee's Creek, waters of the Ohio.

2. James Brown (probably the same as the James Brown, who made an "improvement" in 1772) made an "improvement" on Clark's Run, one or one and a half miles above Clark's Station. (See, also, Heirs of Crow v. Brown, Sneed 102, and Brown v. Heirs of

Crow, Sneed 106, and Crow's Heirs v. Harrod's Heir, Hardin 443.)

3. John Brown "marked and improved" on Clark's Run.
4. James Carr "marked and improved," adjoining Elijah Harlan.
5. Abraham Chapline made an "improvement" on Shawnee Run. (See, also, Swearingen v. Higgins, Hughes 7.)
6. John Clark made an "improvement" on Clark's Run.
7. John Cowan "raised a Crop of Corn" and "marked" out a boundary on the Ohio, opposite the first island (*i. e.*, Twelve-Mile Island) above Harrod's Creek.
8. James Cowan (of whom David Cowan was "heir-at-law") made an "improvement" and "raised a crop of corn" on Chaplin's Fork of Salt River. (See, also, Dougherty v. Crow, Hughes 42.)
9. John Crawford "marked and improved" on the Hanging Fork of Dick's River. (See, also, Crawford v. Logan, Hughes 51, 63 and 67. This report shows that John Crawford "was made a prisoner by the Indians in September, 1781, and did not return until September, 1783.")
10. John Crow made an "improvement" at "Crow's Station," near the site of the later town of Danville. (See, also, Heirs of Crow v. Brown, Sneed 102, and Brown v. Heirs of Crow, Sneed 106.)
11. William Crow made an "improvement" on Dick's River. (See, also, Dougherty v. Crow, Hughes 42, 47, 49.)
12. James Douglas "marked and improved" on the head of Jessamine Creek. (See, also, Craig v. Cogar, Hardin 391, 392.)
13. Robert Gibert (or Gilbert or Gabbart) "marked and improved" on the Ohio River, adjoining lands of Ann McDonald, who married James Harrod.
14. Thomas Glen "marked and improved" on Glen's Creek. (See, also, Hinton v. Stewart's Heirs, Hughes 4.)
15. Abraham Hamptonstall "marked and improved" on South Elkhorn.

16. Elijah Harlan built a "cabin" on Harrod's Run. (Compare Harland's Heirs v. Eastland, Hardin 599.)
17. Silas Harlan made an "improvement" on both sides of Salt River, about three miles from the Boiling Spring. (See, also, Lillard's Admr. v. Taylor's Heirs, Sneed 210.)
18. Abraham Hite, Jr., "raised a crop of corn" and made "improvements" on Goose Creek.
19. Isaac Hite made an "actual settlement" on the Town Fork of Salt River, called "Fontainebleau."
20. Joseph Hite "marked and improved" and "raised a crop of corn," on Howard's (*Harrod's* ?) Creek, about two and a half miles from the mouth of Harrod's Creek.
21. Shadorick (Shadrach) McLamore "marked and improved" on Simpson's Creek, a branch of Salt River.
22. Jesse Pegman (Pigman) "marked and improved" on Clear Creek.
23. Thomas Quirk built a "cabin" on Dick's River. (See, also, Madison v. James, Hughes 40.)
24. Joel Rees "marked and improved" on the Rolling Fork of Salt River.
25. Isaac Taylor built a "cabin" on Salt River, within a tract lying on both sides of said river. (See, also, Lillard's Admr. v. Taylor's Heirs, Sneed 210.)
26. James Whitley made an "improvement" about three miles from Harrodsburg.
27. Vincent Williams "marked and improved" on Salt River.
28. John Wilson built a "cabin" on Harrod's Run and Shawnee's Run.
29. Edward Worthington made an "improvement" about six miles from Harrodsburg, "on the dividing ridge of Shawnee Run and Salt River."

In addition to the foregoing list of 33 names of adventurers who based their claims to Certificates for Settlement or Pre-emption rights upon services performed or settlements or improvements made prior to the year

1775, the following names are derived from statements in cases contained in the first three volumes of the Kentucky Reports, viz.:

1. William Ballard obtained a Pre-emption Certificate for one thousand acres on the waters of South Fork of Elkhorn "by virtue of his marking out the same in the year 1774."—Jones' Heirs v. Taylor, Sneed 71, and Greenup v. Kenton, Hardin 14. (William Ballard was a chain-carrier under James Douglas, deputy surveyor under Col. Wm. Preston.)
2. Patrick Doran (or Dolan), for Parmenas Briscoe, made an "improvement" on a branch of Salt River "adjoining the lands of Martin Stall and Silas Harlan," in 1774.—Briscoe v. Speed, Hughes 81, and Consilla v. Briscoe, Hughes 84, at page 87, and Craig v. Doran (or Dowlan), Hardin 146, 148.
3. Martin Stall built a "cabin" on the west side of Salt River, and "had several other cabins in the country," in 1774.—Consilla v. Briscoe, Hughes 84, at page 87. See, also, Durrett's "The Centenary of Kentucky," p. 34.

The case of Craig v. Baker, Hardin 288, shows that John Haggin, Robert Patterson, William Garrett and Bartholomew Fitzgerald testified that they had all heard of Haw Creek, a branch of the Ohio, on the north side of the Kentucky River, about eight or nine miles from the mouth of Limestone, and that some of them had been on Haw Creek in the years 1773, 1774 and 1775.

The entire number of claims laid before the Court of Commissioners exceeded fourteen hundred. A few of the claims presented were voluntarily withdrawn before any action was taken thereon; several conflicting claims were referred to the General Court for adjudication or the claimants were remitted to a *caveat* as their only means of redress. Seventy-six claims were, for one cause or another, absolutely rejected. The entries of 1,350 claims

(of which 1,328 were allowed) show that they were distributed as follows, viz.:

For services ("improving") in the year 1772.	1	Claim
For services ("improving") in the year 1773.	3	"
For settlement or services ("improving" or "raising a crop of corn") in the year 1774	29	"
For settlement or services ("improving" or "raising corn," and the like) in 1775....	289	"
For settlement or services ("improving" or "raising corn," and the like) in 1776....	569	"
For settlement or services ("improving" or "raising corn," and the like) in 1777....	113	"
For "actual settlement," usually accompanied by services, such as "improving" or "raising corn" and the like, in 1778.....	80	"
For "actual settlement," occasionally accompanied by services, such as "improving" or "marking," in the months from January to June, 1779.....	266	"
Total.....	1,350	Claims

The following Certificates for Pre-emptions are shown to have been granted by orders of the County Courts, after the Commissioners of the Land Court for the Kentucky District had become *functus officio,* viz.:

1. John Crawford, Pre-emption Certificate, granted by the Lincoln County Court, in September, 1786.—Crawford v. Logan, Hughes 51, 63.
2. Samuel Wells, Pre-emption Certificate, granted by the Bourbon County Court, in September, 1786.—Nichols v. Wells, Sneed 255.
3. William Ballard, Pre-emption Certificate, granted by the Fayette County Court, May 11, 1785.—Greenup v. Kenton, Hardin 14.
4. Thomas Young, Pre-emption Certificate, granted by the Fayette County Court, January 13, 1784.—Ward & Kenton v. Lee, 1 Bibb 18.
5. Thomas Rust, Pre-emption Certificate, granted by the Fayette County Court, in September, 1784.—Ward & Kenton v. Lee, 1 Bibb 32.

In the case of Crawford v. Logan, Hughes 51, at page 58, it is stated that "Samuel Craig, on the 30th day of March, 1776, made an entry of 640 acres, on Henderson's books, lying on the main Hanging Fork, on the north side, at the forks of the creek." This same case, at page 66, recites that "James Craig swore that, in 1776, Samuel Craig made an improvement on the west side of the Knob Lick Fork, below where Thomas Black since lived, called the Rail Camp, and that he sowed apple seeds there, which he did not hear of his doing at any other of his improvements." (The Commissioners' Certificates Book, at page 153, records that Joseph Lindsay (afterwards killed at the Battle of the Blue Licks) sowed some apple seed on the Town Fork of South Elkhorn Creek, below Lexington, in the year 1775.) Turnip seed were sowed on the East Fork of Jessamine Creek by a company, of which Leonard Helm was a member, in 1776. (Helm's Heirs v. Craig, Hardin, 117.) In Evans' Heirs v. Manson's Exors., 1 Bibb 7, decided in 1808, the Court of Appeals speaks of Central Kentucky as "the garden of the Kentucky country."

In the case of Estill v. Hart's Heirs, Hardin 577, at page 585, it is stated that "(Squire) Boone's Stockfield tract (of one thousand acres) acquired its name from a private survey made for him under Henderson & Co., in (April) 1776." This tract was located on Hart's Fork of Silver Creek, in what is now Madison County, Ky.

The same case, at page 587, discloses the fact that "(Nathaniel) Hart, in 1775, made his choice at or near the mouth of the branch leading up to Twitte's Fort, and expected to hold a mile square (*i. e.*, 640 acres) under Henderson & Co., but the claims of that company had been silenced before Hart improved in 1779." This tract was also in what is now Madison County.

D

PLACE NAMES AND LANDMARKS

Other than Forts, Licks, Roads, Traces, Military Surveys, Cabins, Springs, Streams, or Stations, mentioned in the Records of the "Land Court."

(References are to the pages of the original Copy of the "Commissioners' Certificates" in the Clerk's Office of the Fayette County Court, Lexington, Ky.)

1. "Crab Orchard Tract" or "The Crab Orchard," on or near Crab Orchard Creek, on the south side of Dick's River. (Pp. 4, 61 and 194.) (Property of William Moore.)
2. "Dorchester's Improvement," on the waters of Dick's River. (P. 12.) (Property of Charles Cameron.)
3. "A large House, built by Azariah Davis," on the waters of Salt River, about one mile southwest from Harrodsburg. (P. 19.) (Property of Azariah Davis.)
4. "The Shawnee Springs," about six miles from Harrodsburg. (P. 27.) (Property of Hugh McGary.)
5. "Rock Spring," name of a tract of land on both sides of Salt River, claimed by William Stewart. (P. 31.)
6. "The Cave Spring," on the waters of the Beech Fork of Salt River. (P. 32.) (Property of William Combs.)
7. "Woodstock," on Four-Mile Creek, eight miles northeast from Boonesborough, "including a plantation cleared by the said Floyd." (Property of Col. John Floyd.) (P. 36.)
8. "The Boiling Spring," on Harrod's Run. (P. 28.) (Property of James Harrod.)
9. "The Big Boiling Spring," on the head of Salt River. (P. 38.) (Property of James Ray.)
10. "Pottenger's Cabin," on the Rolling Fork. (Pp. 44, 76.) (Also known as "Pottenger's Covered Cabin," on Pottenger's Creek, p. 388.) (Property of Samuel Pottenger.)
11. "A Tract in the Fork of Brashears' Creek," about 10 miles from the mouth, the two first letters of (John) Larue's name cut on the log of the house, above the

door, and all the rest of his company, in the year 1776. (P. 46.) (Property of John Larue.)

12. "A Spring called Rock House," on the north side and about four miles from Kentucky River, on a small branch.

13. "The Locust Thicket," on the waters of Dick's River. (Pp. 54 and 133.) (Property of John Dougherty.)

14. "Pleasant Fields," on the waters of Shawnee Run. (P. 54.) (Property of John Gordon.)

15. "Chaplin's Cabin," on Shawnee Run. (P. 56.)

16. "An Old Indian Town," on Slate Creek, a branch of Licking. (P. 57.) (Property of James Patton.)

17. "An Indian Town," on the north side of Kentucky River, between Lulbegrud Creek and Howard's Creek. (P. 16.) (Property of Cuthbert Combs.)

18. "The Walnut Meadow," on the waters of Paint Lick. (P. 60.) (Property of Joseph Davis.)

19. "Mansfield," on the head of the West branch of Hickman Creek. (Property of Col. John Todd, adjoining "Ashland," the home of Henry Clay.) (P. 61.)

20. "The Brushy Pond," on Brushy Pond Creek. (P. 66.) (Property of William Pope.)

21. "The Round Spring," near Clark's Station. (P. 69.) (Property of Jacob Shilling.)

22. "The Mulberry Spring," on Floyd's Fork of Salt River. (P. 69.) (Property of George Clear.)

23. "The Fish Pools," on Fish Pool Creek. (P. 73.)

24. "New Market," on a branch of Kentucky River, near Drennon's Lick. (P. 76.)

25. "The Stockfields," on Silver Creek, a branch of Kentucky River. (Property of Squire Boone.) (P. 78.)

26. "The Painted Stone," on Clear Creek, a branch of Brashears' Creek, a branch of Salt River. (P. 79.) (Property of Benjamin Vancleave.)

27. "Soverins' Valley," on the North Branch of Soverins' Creek, a branch of Green River. (P. 80.)

28. "Soverins' Cabin," in Soverins' Valley. (P. 80.)

29. "An Old Indian Town," on a large Buffalo Road, near a large Mud Lick, on a branch of Licking. (Same as No. 16, *supra.*) (P. 81.)

30. "The Locust Bend" (or Bent), on both sides of Silver Creek. (Pp. 85 and 312.) (Property of John Kennedy, Senior.)

31. "An Old Indian Town House," on the head of an Eastern branch of Paint Lick Creek, near a Sink Hole Spring. (P. 86.) (Property of John Tate.)

32. "The Cave Spring," on South Elkhorn Creek. (The Military Survey of Col. William Preston, West of Lexington, was also known as the "Cave Spring Tract.") (P. 86.)

33. "Best's Cane Brake," on the head of Paint Lick Creek, near the Knobs. (P. 86.) (Property of Humphrey Best.)

34. "Chaplin's Spring," on Chaplin's Fork of Salt River. (P. 87.) (Property of William Stewart.)

35. "Boone's Mill Seat," on Silver Creek about two miles below the Locust Bend. (P. 89.) (Property of Joseph Benning.)

36. "The Beech Spring," near Paint Lick Creek. (P. 89.)

37. "Denton's Spring," on Tate's Creek. (P. 90.) (Property of Stephen Hancock.)

38. "Poplar Ridge," on Huston's Fork of Licking Creek, about four miles below a Buffalo Road. (P. 91.)

39. "Lydia Mount," on the dividing ridge of Licking Creek and Elkhorn, near the head of Cooper's Fork. (P. 91.) (Property of John Beasley.)

40. "The War Road," on Camp Creek, a branch of Kentucky River. (P. 93.)

41. "The Rocky Ford on Licking," *i. e.*, on Stoner's Fork of the South Fork of Licking. (Pp. 93, 95 and 97.)

43. "The Locust Thicket," on the waters of Muddy Creek and Otter Creek, within one mile of the "Little Fort." (P. 95.) (Apparently not the same as No. 13, *supra.*) (Property of James Estill.)

44. "The Sycamore Forest," on the Trace from Boonesborough to the Lower Salt Spring, on Licking Creek. (Pp. 96, 128 and 425.) (Property of Samuel Henderson.)

45. "Knock's Buckle" (possibly an error for *Knox's* Buckle or *Knee* Buckle), on the head of Callaway's Creek, the last fork of Otter Creek. (P. 97.) (Property of Caleb Callaway.)

46. "The Vineyard," on one of the South Forks of Brashears' Creek, the waters of Salt River. (P. 98.) (Property of the heirs of Daniel Goodman.)

47. "The Walnut Bottom," on Tate's Creek, about three miles from its mouth. (P. 99.) (Property of John Peter Bondurant, heir of David Bondurant.)

48. "A Large Hickory Bottom," on the north side of Kentucky River, about five miles from its mouth. (P. 69.) (Property of Jesse Pendergrass, heir of Garrett Pendergrass.)

49. "The Indian Camp," on the North Fork of Howard's Creek, near the Crossing of Salt Spring Trace. (P. 100.)

50. "Russell's Spring," on the west side of Boone's Creek, about one and a half miles from its mouth. (P. 101.) (Property of Capt. John Holder.)

51. "Hancock Taylor's Grave," on Taylor's Fork of Silver Creek. (P. 102.) (Property of William Hicks.)

52. "Tate's Bottom," on Kentucky River, about two miles above Boonesborough. (P. 106.) (Property of William Moore, assignee of James Anthony.) (See Calk v. Hart's Heirs, Hardin 440.)

53. "A Camp and some bushes cut down" (by Daniel Boone in 1775), on the waters of Licking, by a spring on the northeast side of a small branch, about twenty miles east from Boonesborough. (P. 101.) (Property of Daniel Boone.)

54. "The Clover Bottom," on the Left Hand Fork of Otter Creek, about one mile from its mouth, at a Lick in the Creek. (Pp. 106, 111 and 115.) (Property of John South, the younger.)

55. "Martin's Cabin," on Stoner's Fork of Licking. (P. 107.) (Property of Reuben Searcy.)

56. "An Old Indian Town," on Lulbegrud Creek, a tributary of Red River. (Pp. 109 and 134.) (The same as No. 17, *supra.*)

57. "An Old Indian Town," on the waters of Silver Creek, about two miles from the Stone Lick. (P. 113.) (Property of Samuel Brooks.)

58. "Farrow's Land," on the South Fork of the Left Hand Fork of Otter Creek, near the head thereof. (P. 115.) (Property of John Farrow.)

59. "Hines' Bend," on the south side of Kentucky River about six miles below Boonesborough. (P. 118.) (Property of Jacob Starus or Starns.)

60. "Irvin's Cabin," on the dividing ridge between the waters of Harrod's Lick and Flat Lick branch, waters of Licking Creek. (P. 119.) (Property of John South, Senior.)

61. "Price's Settlement," on Cumberland River, on the south side. (P. 119.)

62. "A Remarkable Camping Place," on the head of Jessamine Creek, and on said Creek, five or six miles below Hickman Creek, a branch of Kentucky River. (Pp. 121 and 192.) (Property of James Douglas.)

63. "Crittenden's Camp," on or near Sinking Creek, waters of South Elkhorn. (Pp. 125, 177, 251 and 262.) (Property of Robert Desha or William Bennett.)

64. "Hudson's Cabin," on Paint Lick Creek. (P. 126.) (Property of Peter Hudson, heir of William Hudson.)

65. "Colonel (Evan) Shelby's Land," on the Town Fork of the South Fork of Elkhorn, west of Lexington. (This was a Military Survey.) (Pp. 127 and 148.)

66. "Lecompt's Run" and "Lecompt's Spring," on a branch of the North Fork of Elkhorn. (P. 128.) (Property of Joseph Waller.)

67. "An Old Camping Place," on the Middle Fork of Licking Creek one and a half miles above Benj. Johnson's survey. (P. 129.) (Property of John Callaway.)

68. "The Stamping Ground," on a creek running into the North Fork of Elkhorn, on the north side. (Pp. 131, 155 and 177.) (Property of Anthony Bledsoe, assignee of William Pittman.)

69. "Simon Kenton's Cabin," on the west side of a branch of Lee's Creek, a branch of the North Fork of Licking. (P. 133.) (Property of Richard Wied.)

70. "John Clark's Cabin," on the south side of a branch of Glen's Creek. (P. 134.) (Property of Samuel Estill.)

71. "Glen's Cabin," on Glen's Creek. (P. 134.)

72. "The Shawnee Trace," "made by Capt. Holder's men going to the Nation," on the north side of the North Fork of Elkhorn. (P. 136.)

73. "The Falling Timber," on the head of Wolf Creek, a branch of Licking Creek. (P. 137.)

74. "A Large Boiling Spring," about three miles above the Licking Trace. (P. 140.) (Property of Thomas Thompson.)

75. "About 3 or 4 Acres of Clear and Open Land," about seven or eight miles northeast of the Lower Blue Licks, on Licking, on a Large Buffalo Road. (P. 142.) (Property of James Peake.)

76. "Crittenden's Cabins," on an east branch of Huston's Fork of Licking. (P. 143.) (Property of George Hendrix.)

77. "An Old Camp, made by Daniel Boone and William Bryan," on and about five or six miles up a Creek, running into the North Fork of Elkhorn Creek. (P. 143.) (Property of John Dobbin.)

78. "A Large Cane Brake," about one mile from the head of Cooper's Run. (P. 145.)

79. "A Buffalo Crossing," on Huston's Fork of Licking Creek. (P. 146.) (Property of John Bryan, Senior.)

80. "An Indian Ditch," on the north side of the North Fork of Elkhorn, about six miles North of Bryan's Station. (P. 148.) (Property of Wilson Hunt.)

81. "A Covered Cabin, built by one Townsend," on Hinkston's Mill Run. (P. 158.)

82. "A Camp, made by Daniel Boone and Edward Bradley," on a branch of (North) Elkhorn Creek, eight miles northwest from Bryan's Station. (P. 164.) (Property of Isaac Thrasher.)

83. "The Falling Timber," on the north side of (North) Elkhorn Creek. (P. 167.)

84. "A Well Spring," on the head of Cane Run, about three miles from Bryan's Station. (P. 167.) (Property of William Tomlinson.)

85. "James Forbes' Camp," on the north side of Elkhorn Creek, on the first Big Fork below Dobbins' Claim. (P. 168.) (Property of James Hogan, Senior.)

86. "The White Oak Woods," four or five miles northwest from the North Fork of Elkhorn Creek. (P. 168.)

87. "The Crow Mill Seat," on Harrod's Run, about three miles from Major Harrod's and two miles from Dick's River. (P. 171.) (Property of Zechariah Smith.)

88. "The Poplar Level," about eight miles above the mouth of Floyd's Fork of Salt River, on a branch called Mc-

Collock Run. (P. 172.) (Property of Thomas Johnson, assignee of James McCullock.)

89. "Briggs' Camp," on or near a small branch of Green River, on the north side. (P. 173.)

90. "Briggs' Camp," on the waters of the Hanging Fork of Dick's River. (P. 175.) (Possibly the same as No. 89, *supra.*) (Property of Samuel Briggs.)

91. "The Barrens," on the south side of Salt River, about three or four miles from its mouth. (P. 177.)

92. "The Bald Ridge," near Wilson Creek, a branch of the Rolling Fork of Salt River. (P. 178.) (Property of James Samuel.)

93. "McGray's Spring (or, *McGary's* Spring), on the road from Harrodsburg to the Falls of Ohio, about seven miles from McAfee's Lower Station. (P. 180.) (Property of Ann Poage.)

94. "Bard's Cedar Cabin," on Stewart's Fork of Salt River. (P. 181.) (Property of David Bard.)

95. "Rock Dunda," on "the Indian Shore" (*i. e.*, north side of the Ohio River), about four miles above the first Island in the low country, opposite the end of a long beach on the Kentucky shore. (P. 182.)

96. "The Indian Shore," *i. e.*, the northern shore of the Ohio River. (P. 182.)

97. "Colonel William Fleming's Land," about two or three miles southwest from the head of the North Branch of Beargrass. (P. 186.)

98. "Belvir Spring," adjoining the Lands of James Brown, on the north side of Clark's Run. (P. 193.) (Property of Sam Givens.)

99. "The Spice Woods," on the north side of Elkhorn Creek, adjoining lands claimed by Ezekiel Field. (P. 195.) (Property of Lawrence Slaughter, assignee of Thomas Slaughter.)

100. "A Big Buffalo Path," crossing Flat Creek, that runs into Licking Creek, about 10 or 12 miles above the Upper Salt Spring, near some improvements made by Colo. Wm. Lynn & Co. (P. 197.)

101. "John Kennedy's Name," cut on a Beech Tree, on the side of a large Buffalo Road, dated July, 1775, on the said tree, on a small creek, on the south side of the

Middle Fork of Salt River, about 10 miles from Bullitt's Lick. (P. 198.) (Property of Thomas Carland.)

102. "Where Colonel (John) Bowman now lives," opposite a Run that empties into Dick's River, on the north side. (Pp. 200 and 456.) (Bowman's Station was "eight miles from Harrodsburg on Cane Run," according to Col. Fleming's Journal.)

103. "The Yellow Banks," on the Ohio River, about 30 miles above the mouth of Green River. (Pp. 201 and 345-346.)

104. "The White Oak Spring," on the waters of Cane Run. (P. 202.) (Property of William Bryan, heir of David Bryan.)

105. "The Walnut Bottom," about five miles from the mouth of Salt River, and three or four miles from the Ohio. (P. 206.) (Property of Thomas Hargess.)

106. "The Mountains," on the waters of Licking Creek, near a large Mud Lick, reached by a Buffalo Road. (Pp. 209 and 386.)

107. "A Large Encampment, supposed to have been made by the Indians," on the East Fork of Licking, about three or four miles below the Upper Fork of said branch. (P. 211.) (Property of William Philip Pendleton, assignee of William McClay.)

108. "A Large Cane Brake," on the last fork of Cooper's Run. (P. 213.) (Probably the same as No. 78, *supra*.)

109. "A Buffalo Road Crossing," of Kentucky River, at the mouth of a Creek that empties into said River below Jessamine Creek. (P. 215.)

110. "A Cabin built by Alexander McClelland," on the North Fork of Licking, on the Lower Buffalo Road that crosses said North Fork, and about two miles therefrom. (P. 226.) (Property of Thomas Maxwell.)

111. "A Cabin built by William Stewart and William Beard," on Cedar Creek, a branch of Chaplin's Fork of Salt River, adjoining *Baird's* Pre-emption. (P. 230.) (Property of Ephraim Peyton, assignee of William Jennings.)

112. "The Knobs," about 21 miles from the mouth of Beech Fork of Salt River. (P. 234.)

113. "The Puncheon Camp," about two and a half miles from Clear Creek, a branch of Brashears' Creek. (P. 234.)

114. "Greyer's Camp" (or *Greer's* Camp), about three miles above a small branch that runs into Clear Creek, on the north side. (Pp. 242 and 267.)

115. "An Old Indian Town," about six miles from a large Sinking Deer Lick, on a west branch of the east side of Licking Creek. (P. 248.) (Possibly the same as No. 16 and No. 29, *supra.*)

116. "The Linn Spring," on the waters of Dolan's Run, which empties into Glen's Creek. (P. 248.) (Property of Andrew Miller.)

117. "A Large Meadow," about six or seven miles, near a southwest course, from the Falls of Ohio. (P. 248.) (Property of Benjamin Roberts, Junior.)

118. "McGrew's Mill Seat," on a branch of the East Fork of Licking. (P. 254.) (Property of James Beard.)

119. "The Timber Ridge." (Location uncertain.) (P. 256.) (Property of Adam McConnell.)

120. "Rees Lottery Cabin," a covered cabin built by John Crow in 1774, southwest from "Fisher's Garrison." (P. 289.) (Property of John Crow.)

121. "The Cove," on the north side of Kentucky River, above Drennon's Lick. (P. 290.) (Property of Joel Rees.)

122. "A Remarkable Round Hill," near the head of Buck Lick Creek, waters of the South Fork of Licking. (P. 298.) (Property of Charles William Cross.)

123. "Gerushes' Grove" (or, Gerusha's *Grave*), on the west side of *Sclever* (Silver ?) Creek, at St. Asaph's Fork. (P. 302.) (Property of George Smith.)

124. "A Honey Locust Flat," on a branch of Silver Creek, about 27 miles south from the Locust *Bent* (or Bend). (P. 312.) (Property of Hugh McGary, assignee of Jos. Robertson.)

125. "The Cove Spring," on the head of the North Fork of Goose Creek, a branch of the Ohio. (P. 318.) (Property of Adam Hite.)

126. "The Big Meadow," on the south side of Cumberland River. (Pp. 320 and 321.) ("Price's Settlement" was here. See No. 61, *supra.*) (Claimed by Abraham Price.)

127. "The Fountain Blue" (or, Fontainebleau), a Spring and Improvement on the east side of the Town Fork of Salt River. (P. 322.) (Property of Isaac Hite.)

128. "The Cedar Spring," on the south side of the Beech Fork of Salt River. (P. 323.) (Property of Gower Soverns.)

129. "A Large Cane Bottom," on the south side of the Rolling Fork of Salt River, about five miles below the mouth of Pottenger's Creek. (P. 324.) (Property of the heirs of Eli Garrard.)

130. "Thomas Denton's Station Camp," on the South Fork of the Rolling Fork of Salt River. (P. 325.)

131. "The Trough Spring," on Glen's Creek, waters of Kentucky. (P. 325.) (Property of David Glen.)

132. "A Cabin, said to have been built by William Garrott," on the waters of Chaplin's Fork of Salt River. (P. 334.) (Property of David Cowan, heir of James Cowan.)

133. "A Buffalo Road, that leads to McClelland's Fort." (P. 336.)

134. "Bunton Camp" or "Phoenix-land," on or near the mouth of the South Fork of Hardin's Creek, waters of the Beech Fork of Salt River. (P. 344.) (Adjoining property of William White, heir of Charles White.)

135. "Poff Mill Seat," on Beargrass or Harrod's Creek. (P. 349.)

136. "Two Springs, marked in the year 1774" (probably by Isaac Hite), on the South Fork of Beargrass. (P. 361.) (Property of Hannah Soverins, who had become the wife of Benj. Lynn.)

137. "A Camp called Bullskin," on the waters of Brashears' Creek, on the last branch that the Old Trace crosses that leads to the Falls of Ohio. (P. 362.) (Property of Roger Topp, assignee of Thomas Gibson.)

138. "The War Road" or "War Path," from the mouth of Limestone to the Blue Licks, which crosses the North Fork of Licking Creek. (Pp. 365-366, 368 and 382.)

139. "A Large Pond," on the Ohio River, about four miles above a Large Rock and about 10 miles below the mouth of the Big Miami. (P. 370.)

140. "The War Road," leading from the mouth of Cabin Creek to the Upper Blue Lick. (P. 373.)

141. "Two Cabins built by Thomas Denton and William Stewart," on the north side of Green River, waters of Sinking Creek. (P. 376.) (Property of Thomas Den-

ton, assignee of Eliza White, who intermarried with Andrew Johnston.)

142. "An Old Camping Place," on the north side of Kentucky, nearly a southeast course from the Shawnee Run, and about three and one-half miles from the same. (P. 377.) (Property of John Boyd.)

143. "The first Large Bottom," on the Ohio, below the mouth of Kentucky. (P. 386.) (Property of William Kennedy.)

144. "The Elkhorn Spring," on the waters of Licking Creek, on the east side of a large Fork. (P. 387.) (Property of Hugh Ledwell.)

145. "A Large Bottom," on the Ohio River, about five or six miles below the mouth of Kentucky. (P. 393.) (Possibly the same as No. 143, *supra.*) (Property of Jos. Hunter, Senior.)

146. "The Lands of Revd. Charles Cummins," on the head of Wilson's Run. (P. 398.)

147. "The Buffalo Crossing," on Salt River, about three miles from Bullitt's Lick. (P. 411.)

148. "Two Cabins, one built by William Stewart, the other by John Gabriel Jones," on the north side of the North Fork of Elkhorn, on a creek that runs into Elkhorn opposite to McClelland's Fort. (P. 414.) (Property of William Steele.)

149. "Locust Ridge," on a branch of Licking Creek, west of the "Sycamore Forest." (P. 425.) (See No. 44, *supra.*) (Property of John Dunley.)

150. "The Cypress Springs," on the north side of Green River, about two or three miles above the mouth of Panther Creek. (P. 427.) (Property of George May, assignee of Joshua Willis.)

151. "The Flat Licks, near the Knobs," about four miles from Dick's River. (P. 432.)

152. "Boone's Mill Seat," on a branch, on the south side of Dick's River. (P. 438.) (Compare with No. 35, *supra.*) (Property of Henry Bryan.)

153. "A Cabin made by John McCracken," on the head-waters of the South Fork of Elkhorn, at McConnell's Fork, about one mile northwest of "Mansfield." (P. 440.) (See No. 19, *supra.*) (Property of John Todd, Junior, assignee of John May.)

154. "A Cabin made by William Field," on the second South Fork of Clear Creek. (P. 444.) (Property of John Miller.)

155. "The Elk Lick," on the Fork between Dick's River and Kentucky, about two miles from Kentucky River. (P. 444.) (Property of William Mitchell.)

156. "Carland's Spring" (a Sinking Spring), about a mile from the Jessamine Spring. (P. 446.) (Claimed by Thomas Carland and also by David Gass.)

157. "Pottenger's Camp," on the north side of the West Fork of Licking Creek and below the Rolling Fork of Salt River and Green River. (P. 453.) (Property of John Halloday or Halloway.)

158. "The Barrens of Salt River," adjacent to the waters of Otter Creek on the west side. (P. 454.) (See No. 91, *supra.*) (Adjoining property that of Nathan Allen.)

159. "The Barrens' Hill," same location as No. 158, *supra.* (P. 454.)

160. "A Large Spring Mill Seat," on a large Fork of Licking Creek, about two miles from Samuel Brown's Land. (P. 458.) (Property of George Bellow or Belleau.)

161. "An improvement made by Isaac Hite and Company," on Jessamine Creek, adjoining the lands of John Williams (Jr.) and Adam Stephen. (Pp. 465 and 468.) (Property of the heirs of Daniel Bryan.)

162. "A Cabin built by Simon Butler" (*alias* Kenton), on the head of Mill Creek, a branch of Licking Creek. (P. 466.) (Property of Daniel Whelen.)

163. "A Cabin built by Simon Butler" (*alias* Kenton), on a Buffalo Road, that leads from the Upper Blue Licks, seven miles west from said Lick. (P. 466.) (Property of John Peters.)

164. "Three Cabins of Simon Butler's" (*alias* Kenton's), on the North Fork of Licking Creek, joining the Middle Fork of Lawrence Creek. (P. 296.) (Property of William Crow.)

The foregoing list is not exhaustive but is practically so. A few "Cabins," "Springs," Mill Seats," "Fords," and "Crossings" have been mentioned, but by no means all. There were "Salt Springs," "Sinking Springs,"

"Well Springs," "Rock Springs," "Pond Springs," "Falling Springs," "Flat Springs," and "Buffalo Springs," etc., innumerable. "Roads," "Paths," and "Traces," other than the half dozen mentioned above, are collected in the following list.

E.

PIONEER ROADS AND TRACES.

(Some of the Locations are only approximate, and there are probably a number of duplications. References are to the same source indicated above.)

1. "The Road leading from the Boiling Spring to the Knob Lick," in part on Clark's Run. (P. 33.)
2. "The Large Buffalo Road that goes through Patrick Henry's first Survey," on a branch on the north side of the North Fork of Elkhorn. (Pp. 42 and 43.)
3. "A Trace crossing Dick's River." (P. 51.)
4. "The Road from Boonesborough to the Salt Springs," on the waters of Licking. (P. 53.)
5. "The Road from Harrodsburg to Logan's," in part on a branch (the Hanging Fork) of Dick's River. (Pp. 58 and 345.) (Otherwise called "The Trace leading from Harrodsburg to St. Asaph's," p. 311.)
6. "The Path that leads to Gordon's Lick," about two miles south of the Knob Lick. (P. 59.)
7. "The Old Trace that leads from the Falls of Ohio to Harrodsburg," in part on the waters of Floyd's Fork, and near Brashears' Creek. (Pp. 68 and 75.)
8. "The Road that leads to Harrod's Landing," in part on Shawnee Run. (P. 69.)
9. "The Trace from the Falls of Ohio to Bullitt's Salt Lick," in part on the waters of Floyd's Fork of Salt River. (P. 77.)

10. "A Large Buffalo Road," which crosses one of the South branches of Hinkston's Fork of Licking, called Soverin's Creek, about four miles from its head. (P. 81.)

11. "The Hunters' Path," that leads from Harrodsburg, along a Dry Run, a branch of Chaplin's Fork. (P. 84.)

12. "The Road or Path that leads from Harrodsburg to Harrod's Landing," on the waters of Shawnee Run. (Pp. 85, 348, 407 and 409.) (Compare No. 8, *supra.*)

13. "Boone's Old Trace," on a branch of Silver Creek (known as Hart's Fork.) (Pp. 89 and 95.)

14. "A Buffalo Road," that crosses Huston's Fork of Licking Creek. (Pp. 91 and 146.)

15. "The Salt Spring or Hunters' Trace," on the waters of Licking, and crossing the North Fork of Howard's Creek. (Pp. 94 and 110.)

16. "The Salt Spring Trace," the same as No. 15, *supra.* (Pp. 94, 97, 100, 103, 112 and 113.)

17. "The Trace from Boonesborough to the Lower Salt Spring on Licking Creek." (Probably the same as Nos. 15 and 16, *supra.*) (Pp. 96 and 107.) (Or, reversed, "The Trace from the Lower Blue Licks to Boonesborough," p. 312.)

18. "The Path from Boonesborough to the Log Lick," in part on a branch of Muddy Creek. (P. 97.)

19. "Colonel (Richard) Callaway's Trace to the Red Lick," on the first branch of Silver Creek, near the "Little Fort." (Pp. 97 and 105.)

20. "The Path or Trace leading from Boonesborough to St. Asaph's," on Tate's Creek and passing Tate's Lick. (Pp. 101 and 139.) (Otherwise called "The Road from Boonesborough to Logan's," p. 165.)

21. "The Salt Spring Trace near Stoner's Path," on the waters of Licking. (P. 104.) (See No. 16, *supra.*)

22. "A Small Buffalo Road," that makes to a Spring, near a fork of a branch of Licking Creek. (P. 106.)

23. "The Leading Road from Boonesborough to the Lower Salt Spring, on Licking Creek." (P. 117.) (Same as No. 17, *supra.*)

24. "The Road leading from Boonesborough to the Blue Licks." (P. 120.) (See No. 17, *supra.*)

25. "Harrodsburg Road" to (Levi) Todd's Station, on the South Fork of Elkhorn. (P. 124.)

26. "The Road leading from the Lower Blue Lick to Limestone Run." (P. 124.)

27. "The Licking Creek Road or Trace," about one mile above the North Fork of Cane Run and the North Fork of Elkhorn. (Pp. 124, 140 and 145.)

28. "A Buffalo Road," crossing a small fork of Stoner's Fork of Licking Creek. (P. 131.)

29. "The Buffalo Road, leading from the Blue Lick to Limestone" (and an "Upper Road"). (P. 132.) (Probably the same as No. 26, *supra.*)

30. "A Buffalo Road," crossing Hinkston's Fork. (P. 133.)

31. "Hinkston's Buffalo Road." (P. 138.)

32. "Haggin's Trace," three miles north of the Kentucky River, on a branch of said River. (P. 138.)

33. "The Middle and Upper Roads, leading from the Lower Blue Licks to Limestone Run and Lawrence Creek." (P. 139.) (See No. 29, *supra.*)

34. "The Hunters' Trace," on the North Fork of Elkhorn Creek, about two and a half miles from Bryan's Station. (P. 141.)

35. "The Trace that leads from Licking to Lexington," passing Hinkston's Branch of Licking Creek, about eight miles from Riddle's Station. (P. 144.) (See Note below.)

36. "The Middle Road, leading to Lawrence Run," one point of which is about nine miles from the Lower Blue Lick. (P. 153.)

37. "The Buffalo Road," on the north side of the North Fork of Elkhorn. (P. 154.)

38. "The Buffalo Road," leading to the Lower Salt Springs (or Lower Blue Lick) from Riddle's Station. (Pp. 162 and 163.)

39. "A Buffalo Road," that leads to the Lower Blue Lick, near a branch of the Middle Fork of Licking Creek. (P. 162.)

40. "The Hunters' Road," near Stoner's Fork. (P. 166.)

41. "The Road leading from Harrodsburg to the Falls of Ohio." (P. 180.) (See No. 7, *supra.*)

42. "A Large Buffalo Road leading to the Long Lick," on the waters of Salt River. (P. 182.)

43. "The Hunters' Road or Trace," on Pleasant Run, near its head waters, a branch of Beech Fork of Salt River. (Pp. 183 and 333-334.)

44. "The Old Path," which crosses the Hanging Fork of Dick's River, between the Knob Lick and the Flat Lick. (P. 183.)

45. "The Old Trace from Whitley's to the Settlements on Holston," passing one mile west of a Spring at the head of Skagg's Creek. (P. 188.)

46. "The Hunters' Trace," on the south side of Miller's Creek, waters of the Beech Fork of Salt River. (P. 190.)

47. "Boonesborough Road." (Location uncertain, but in vicinity of Hawkins' Branch and Dick's River.) (P. 192.)

48. "Denton's Trace," on the east side of and near the Bullskin Fork of Brashears' Creek. (P. 198.)

49. "A Buffalo Path," on Hinkston's Mill Seat Creek, about three miles from Riddle's Station. (P. 206.)

50. "A Buffalo Road," on the waters of Licking Creek, and Flat Creek, which leaves said Creek about 10 miles above the Upper Blue Licks. (P. 207.)

51. "The Buffalo Road" and "Crossing," on the North Fork of Elkhorn Creek. (P. 208.)

52. "A Buffalo Road," leading to a Large Mud Lick, on the waters of Licking Creek. (P. 209.)

53. "The Old Trace at Boonesborough," which crosses Silver Creek. (P. 214.)

54. "The Old Hunters' Trace," between the Sulphur and Indian Licks, on the Rolling Fork of Salt River. (P. 222.)

55. "A Buffalo Road," near to Salt River, passing a Lick. (P. 225.)

56. "The Lower Buffalo Road," that crosses the North Fork of Licking. (P. 226.)

57. "A Large Buffalo Road," that crosses the Rolling Fork of Salt River, about two miles from the South Fork. (P. 231.)

58. "The Buffalo Road," that crosses the North Fork of Elkhorn, about three miles below the mouth of McConnell's Branch. (Pp. 234 and 257.)

59. "A Large Buffalo Road," on the waters of Kentucky River, between 10 and 15 miles south from Drennon's Lick. (P. 243.)

60. "A Small Path," that leads from Leestown to Bartlett Fitzgarrard and Andrew McConnell's. (P. 252.)

61. "The Second Buffalo Crossing," on the Middle Creek of Stoner's Fork of Licking Creek. (P. 252.)

62. "A Large Buffalo Road Crossing," at the mouth of a Dry Run, which empties into the Main Fork of Elkhorn, on the south side. (P. 263.)

63. "The Buffalo Road." (Location uncertain.) (P. 264.)

64. "A Buffalo Road," on Buckhorn Run, a branch of the North Fork of Elkhorn Creek. (P. 267.)

65. 'The Buffalo Road," about one mile from the Middle Fork of Licking. (P. 268.)

66. "A Buffalo Road," about the Forks of McConnell's Run. (P. 268.)

67. "A Buffalo Road," on the North Fork of the South Fork of Licking Creek. (P. 268.)

68. "The Buffalo Road," on the south side of the East Fork of Licking Creek. (P. 273.)

69. "The Buffalo Road," on the Left Hand Fork of Drennon's Lick Creek, about seven miles above the Lick. (P. 273.)

70. "An Old Trace" (possibly made by Joshua Wright and Squire Boone), four or five miles below Floyd's Fork of Salt River. (P. 299.)

71. "A Large Buffalo Road," that leaves Flat Creek, waters of Licking Creek, at a small branch. (P. 306.)

72. "The Trace that leads to Bullitt's Lick," about seven miles south of the Falls of Ohio. (P. 310.)

73. "The Upper Road," leading to Cabin Creek, passing the Lick Fork of Licking Creek. (P. 313.)

74. "The Hunters' Trace," which crosses the Rolling Fork of Salt River. (P. 317.) (See No. 54, *supra.*)

75. "The Road leading from Beargrass to Bullitt's Lick," which passes along or near Floyd's Fork of Salt River. (P. 323.) (Or, reversed, "The Path from Bullitt's Lick to Beargrass," p. 407.)

76. "A Large Buffalo Road," on the waters of the South Fork of Licking Creek, near to the lands of John Hinkston. (P. 335.)

77. "The Road leading from Riddle's Station to Elkhorn," near the head of Hinkston's Creek, waters of the South Fork of Licking Creek. (P. 336.)

78. "A Buffalo Path," just above a Spring on the South Fork of Beargrass. (P. 361.)

79. "The Old Trace that leads to the Falls of Ohio," crossing a branch of Brashears' Creek. (P. 362.)

80. "The Upper Limestone Road," which passes two and a half miles west of the head of Mill Creek. (P. 375.)

81. "The Buffalo Path," on the south side of Salt River, from its first Great Crossing above and about three miles from Bullitt's Lick. (Pp. 378 and 411.)

82. "A Large Buffalo Path," on the dividing ridge of Salt River waters and Floyd's Fork, about eight miles from the mouth of Floyd's Fork. (P. 382.)

83. "Hunters' Road," about two miles from a branch that runs into Chaplin's Fork on the east side, about a mile from its mouth. (P. 384.)

84. "The Big Buffalo Crossing," on Kentucky, about four miles above the Clay Lick. (P. 393.)

85. "A Large Buffalo Road," on the north side of the Middle Fork of Licking Creek. (Pp. 419, 420 and 421.)

86. "A Buffalo Path," on a branch of the Middle Fork of Licking Creek. (P. 422.)

87. "Harrodsburg Trace," on the west waters of Brashears' Creek. (P. 435.)

88. "The Buffalo Road," which crosses Mill Creek, at a Sulphur Lick, about 15 miles south of Bullitt's Lick. (P. 448.)

89. "A Trace from Crittenden Camp to Licking Creek," made by Crittenden and Company, in part on the south side of the South Fork of Elkhorn Creek, about five miles from Lexington. (P. 262.)

90. "The Road from the Little Flat Lick to the Little Salt Lick," which crosses Briggs' Branch, of the Hanging Fork of Dick's River. (P. 176.)

Colonel William Fleming, in his Kentucky *Journal* of 1779-1780, describes various journeys he took but he makes but scant reference to the primitive roads of Kentucky. He mentions "a Buffalos' path that runs on a ridge, dividing the waters of the Town from Chaplain's Fork." By the Town Fork he meant the East Fork of

Salt River, which flows close to Harrodsburg, and by Chaplin's Fork, the West Fork of Salt River. Again, he says: "Our march about 8 miles went along a Buffalo path; crossed the River (*i. e.*, Salt River) several times, went through some rich bottoms but subject to overflow." Again, he says: "We went up Salt River for two miles on a Buffalo path." This about covers his notes on the roads, except his detailed account of his return trip to Virginia over the old "Wilderness Road," which need not be inserted here.

With reference to No. 35 above, it may be of interest to read the following extract from the opinion of Chief Justice Boyle, in the case of Manifee, &c., v. Conn's Heirs, 2 Bibb, 623, decided in 1812. Here the entry was made by Isaac Ruddle and Maurice Bird on a Treasury Warrant, on May 27, 1780. Said the Court:

> "In the investigation of the merits of the entry in question, the first call which demands the attention of the court is that for 'the Trace from Licking to Lexington.' There are three traces or roads delineated on the connected plat as leading from Licking, or its waters, to Lexington, all of which appear from the evidence in the cause to have existed before and at the time this entry was made. Two of these lead from Licking, or its waters, to Bryan's Station, on Elkhorn, and thence to Lexington. The third leads from Licking to Lexington, without passing any intermediate station. This latter is claimed by the complainants as the one intended by the entry. It appears to have been made in the Spring of the year 1779, when Ruddle, with upwards of fifty others, marched from Harrodsburg by Lexington to Licking, where they built the station afterwards known by the name of Ruddle's Station. That subsequent adventurers would have understood the entry to call for this trace, rather than either of the others, is

highly probable from the evidence. A considerable number of the witnesses, indeed almost every one who seems to have travelled the trace, declare that it was generally called and known by the name of the Trace from Licking to Lexington; whereas none, even of those most conversant with the other traces, say that either of them was known by that name, and some of them in direct terms declare that they had not heard them so called. It is true that some of the witnesses also knew this trace by the name of the Trace from Ruddle's Station to Lexington, but the other name seems to have been the most current. It probably took its rise from the circumstance that the trace was made before the station was built; and the name having once obtained, it was natural enough to continue to be the most prevalent. But independent of the name the trace had acquired, the call appears in point of propriety of description better to fit the trace claimed than either of the others. Bryan's Station, by which the other traces passed, after leaving the waters of Licking, before they reached Lexington, was a place at that early period of at least as great note and distinction as Lexington; and probably from the circumstance of the Commissioners for adjusting land claims having sat there, was more so. If either of the traces from Licking by Bryan's Station were intended, it would have been most natural, as well as most proper, to have described it with reference to Bryan's Station, rather than Lexington, the former being more contiguous to Licking and certainly not less distinguished than the latter. But if the trace claimed be the one intended, no such objection to the description occurs, there being no intervening station nor any other object of equal distinction by which the trace passed after leaving the waters of Licking until it reached Lexington."

See, for a somewhat divergent view, the case of Respass, &c., v. Arnold, Hardin 120, decided in 1807.

F

The following extracts from Col. Fleming's *Journal* will show how the business of entering Settlement Certificates and Pre-emption Warrants or Military Warrants or Land-Office Treasury Warrants was handled by the Surveyor's Office for Kentucky County.

"*April 28.* Rode down to Wilson's Station (on a branch of Salt River, two miles Northwest of Harrodsburg, also sometimes called "Fort Liberty"). * * * Entered my military warrants upon Green River on Panther Creek.

"*May 2.* * * * As the method for taking in the State Warrants was settled that all the warrants of the first date should be drawn for to settle the priority of entry, each Claimer to make his entries according to the number drawn to his name, and the drawings to be made on the 4th inst. I returned to Wilson's Station, where the office is kept, on Thursday morning. About one o'clock the numbers for Warrants of the first date were drawn; my Fortune turned up No. 24; there was 300 Tickets. When the first was finished, tickets for the warrants of other dates were drawn till the whole was finished.

"*May 5.* The Surveyors put up an Advertisement that he (they) could not take in any locations before Monday next (*i. e.*, May 8th, 1780).

"*May 8.* Went to the Surveyor's Office, but the Warrants taken in on Thursday Last not being in order, as the drawing was done with Confusion by the plan, they took in no Locations till *the ninth* and then verry slowly. Numbers of people being wearied out went away, there being no provisions to be purchased.

"*The Tenth,* made my Locations and returned to Col. Bowman's."

This account of the procedure is corroborated by the following extracts from the *Diary and Autobiography* of Daniel Trabue:

> "My brother, John Trabue, came out this spring (1780); he was a Deputy Surveyor under John (*George*) May: he made several surveys for the people near Logan's Fort. The Land Office was opened this spring at Wilson's Station, for entering Land Warrants. James Trabue and I went there to make some entries but there were so many people we had to cast lots, and according to lot, he, James Trabue, made some few entries. It would be several days before he could make any more, and it would be several days before I could make any entries, as my warrants were not on the first day.
>
> "So we went home, and James Trabue told me he would make my entries for me when he made his, if I would stay at home, and attend to hoeing our corn. I agreed to it, and gave him my warrants and a memorandum where my land was to be laid. It was 2,000 acres, and choice land.
>
> "James Trabue said he would go to Licking on his Commissary business, and would be back to Wilson's Station in time to lay our warrants. So he went to Licking and got to Ruddle's Station at night, and when morning came, their Fort was surrounded by Indians. Col. Byrd, a British officer from Detroit soon arrived with a cannon. Col. Byrd sent in a flag to the fort, demanding them to surrender to him as prisoners of war, to which they refused. The cannon was fired twice. * * * The flag was sent back and forward several times before they agreed, and the articles were signed or agreed to."

James Trabue was taken prisoner with the rest and, despite Col. Byrd's assurances to the contrary, was maltreated and robbed by the Indians. "My land warrants were gone, that had cost me a great deal," says

Daniel Trabue, "but that did not disturb me like the loss of my brother." The investment and capitulation of Ruddle's and Martin's Stations, on Licking, took place on June 22, 1780. James Trabue, together with some of his companions, escaped from Montreal, where he was held in captivity, in the winter of 1780-81, and after visiting his family in Virginia, returned to Kentucky.

An interesting illustration of how the business of trafficking in land claims went on, during the existence of Kentucky's "First Land Court," may be drawn from certain parts of the record in the case of John Patrick, &c., v. William Irvine, &c., heirs of Christopher Irvine, deceased, which is preserved practically in its entirety in "Complete Records," Book "A," in the Clerk's office of the Fayette Circuit Court. The controversy in this case was over a Settlement and Pre-emption granted to Joseph Benning, of Buckingham County, Virginia, at Boonesborough, on December 21, 1779. This was sold by Joseph Benning to Colonel Richard Callaway, for the benefit, as alleged, of Captain Richard Crump, of Powhatan County, Virginia, and was by Richard Crump transferred to Captain Christopher Irvine, of Lincoln County, Virginia (now Kentucky). This land was located in what is now Madison County "on Silver Creek, including a Mill seat, known by the name of Boon's Mill seat, about 2 Miles below the Locust Bend." (Commissioners' Certificates Book, p. 89.)

Higgason Grubbs, a witness in this case, who was also one of the Trustees of the town of Boonesborough, under the Amendatory Act of 1787, testified, on 13th March, 1804, as follows:

"This deponent, being first sworn, deposeth and saith that, in the year, 1779, when on his way to Kentucky, he formed an acquaintance with the late Col. Richard Calloway, that after his arrival in Boonsborough, he continued in habits of intimacy with Col. Calloway, and, in consequence of that intimacy, he had frequent opportunities of knowing that the said Calloway's principal object was to secure all the lands in his power in this country. This Deponent further saith that he was at Boonsborough during the sitting of the Commissioners at that place, and that Col. Calloway appeared to him, from the transactions that took place, to have been as well acquainted with the Land business as any other person he seen there. And that the said Calloway appeared to continue his arrangements for securing land until his death, which happened in March, 1780." (Comp. Records, "A," p. 267.)

Two original autograph letters, written by Colonel Callaway on the subject of land and both addressed to Capt. Richard Crump, were filed as evidence in the above-mentioned suit, one being identified by Captain Richard Crump and the other by Captain Joseph Benning, in depositions given by them. The first of these letters reads as follows:

"Kentucky, January the 3rd, 1780.

"Sir,

I have bought of Capt. Joseph Benning a Settlement & Preemption of land, for which I have given my bond for Twelve hundred pounds, *for* which bond he will present to you, which I must beg you will take in, and if you don't like the land, when you see it, I will pay you the money and take it myself; it is a very valuable place, but not so beautiful to settle on as I would have; I am agoing to see another place of the same quantity for which I must give Three thousand pounds. For the place I bought

of Benning, he can give you account of, and as for the land on Cumberland, I am to get of Henderson, if I like it, at about Twenty pounds per Hundred. *As the winter is very bad,* I shant go to see it till Spring or thereaways. I expect to call on you for money to clear it out, and some to help cleane my own, and if I can get good Land, to cleane out for grant. I shall bargain for you, Captain Turpin, & myself on the best Terms I can. The thousand acres will take four hundred pounds. I shall direct the man to call on you, as I send down the Certificates, and perhaps I can give further account by that time.

"I am, Sir, Your Humble Servant,

Richard Callaway"

"To Capt. Richard Crump)

"N. B. I think there is not any better way to make money than by land."

The contents of the second letter are, in substance, like the first, but it was written a month later and reads as follows:

"Boonsborough—February 6th, 1780.

"Sir,

I have bought a Settlement and pre-emption of Captain Benning at Twelve hundred pounds, and sent him to you for the money, and you will send the money down for the Warrant. I will direct the Survey and have the platt and Certificate returned in your name—the Land is so high that I could not buy for less than £3,000. and shant buy any more, as I am going to Cumberland and have got a very good account of that place—I intend to buy for you and Captain Turpin, and then get of the best that is not settled as far as you give me instructions, and for some others—if you can, let me have some money to help along with my intents. The place I bought of Benning is good land and a good Mill seat on a

large Creek, but not so beautiful a place to Settle on, as I want for you, but I am in hopes to get such at Cumberland and let you know by the first opportunity.

"I am, sir,

Your humble Servt.,

Richard Callaway."

(Comp. Records, "A," pp. 272-273.)

Colonel Richard Callaway, who was killed by Indians near Boonesborough on March 9, 1780, just a month after the above letter was written, was busy at the time building a flat-boat with which to operate the ferry at Boonesborough, a franchise for which had been granted him by the Virginia Assembly at its October session, 1779. (10 Hening, Chap. XXXV.) This tragic event, noted by Colonel William Fleming in his *Journal,* under date of March 12, 1780, is again mentioned by him, under date of March 14, 1780, as follows: "We this day had a confirmation of Col. Calaways and Pembertons (*i. e.,* Pemberton Rawling's) being kild and scalped, and two negroes taken prisoners; they were making a flat a mile and a half from Boonsburg." (See, also, Clarke, &c., v. Calloway's Heirs, Sneed 46; s. c. 2 Am. Dec. 706.)

G

CORRESPONDENCE.

Lexington, Kentucky,
30th July, 1923.

Hon. John W. Richardson,
Register of the Land Office,
Richmond, Virginia.

My Dear Sir:

Recently I prepared and delivered before the State Bar Association of Kentucky an address on "The First Land Court of Kentucky, 1779-1780." This address is based on the proceedings of the Commissioners for the Kentucky District, who were appointed pursuant to the Virginia Land Law of May, 1779 (Hening's Stats., Vol. 10, Chap. XII). I am preparing the paper for publication and wish to embellish it with certain appendices, designed to elucidate the text. Among other things, I should like, if possible, to obtain a photostat *fac simile* of one of the original Certificates prepared and issued by the Commissioners. I have an attested *copy* of one or two such certificates, but no original.

By the terms of the Act of May, 1779, these Certificates (with a single exception mentioned below) were required to be returned to the Virginia Land Office, and thereupon a Land Warrant would be issued in lieu of the Certificate, and this Warrant would then be entered with the Surveyor for the County of Kentucky, and upon the due return of the Warrant, and Plat, and Certificate of Survey, to the Land Office, and the payment of the prescribed fees, a Patent would be granted. Section III of the Act (among other things) provides:

> "It shall not be lawful for any surveyor to admit an entry for any land without a warrant from the Register of the Land Office, except in the particular

case of Certificates from the Commissioners of the County for tracts of land, not exceeding four hundred acres, allowed in consideration of settlement."

But even these Certificates for Settlement had to be returned to the R. L. O., along with the Plats and Certificates of Survey, so that, in the end, it would seem that all of the Commissioners' Certificates must have reached the Land Office, and, unless they have been destroyed, some or all of them should still be lodged there. For your better information, I am enclosing a copy of the attested copy of one such certificate now in my possession.

I call attention to the further fact that, by the terms of the Act (Sec. VIII) it was provided that "the said Commissioners, immediately upon having completed the business in their district, shall transmit to the Register of the Land Office, under their hands, and attested by their clerk, an exact list or schedule, in alphabetical order, of all such certificates by them granted, and a duplicate so signed and attested to the County Surveyor, for their information." I am anxious to know whether such a "list or schedule" was returned, as thus required, and whether same or any original record of the proceedings of the Commissioners is still preserved in the Virginia Land Office. Any information on this subject will be greatly appreciated. The book from which I have derived information is in the Clerk's Office of our County Court here, but it is evidently an unofficial and, apparently, an imperfect and incomplete *copy* of the original.

However, I am most anxious to obtain a true *fac simile* of one of the *original* Certificates issued by the Kentucky Commissioners, if any of them are still in existence, and will thank you for any trouble you may take in the matter of ascertaining for me whether such originals have been preserved.

As I must deliver my manuscript to the printer at an early date, I shall esteem it a favor if you will kindly let me have a reply as speedily as possible.

Thanking you in advance for all courtesies and assuring you that I stand ready to pay all fees and expenses incurred in attending to these inquiries, I am,

Very truly yours,

(SEAL) (Signed) Samuel M. Wilson.

COMMONWEALTH OF VIRGINIA
Land Office

John W. Richardson,
Register,
Supt. of Grounds and Buildings
and Weights and Measures.

Richmond, Va., August 1, 1923.

Samuel M. Wilson, Esq.,
Attorney at Law,
Lexington, Kentucky.

My Dear Sir:

Replying to yours of July 30th, with enclosure, I have made a thorough search of the Commissioners' reports, signed after long lists of names, at the head of which is written out "Certificate of Right of Settlement, &c.," but I am totally unable to locate any of these certificates, and go upon the assumption that the same were turned over to the surveyors making the surveys and that they were never returned to this office, and if so have been filed where I am unable to locate them.

I see from the certificate you enclose the character of those that were sent out, but I am unable to locate any either for Kentucky or any other County in which the parties owning these certificates had them located.

I am herewith returning the copy you sent me and will be glad to assist you in any further way that I can.

Yours very truly,

Enclosure (Signed) Jno. W. Richardson,
JWR/H Register Land Office.

P. S.—Did you wish any special certificate? The reason I ask is that two sets, of three commissioners each, acted, and if I can't locate one, I may locate the other commission.

H

(The originals of the following attested copies of Certificates issued to William Slaughter, Jr., and James Waters, were discovered in the files of the Clerk's Office of the Fayette County Court, at Lexington, Ky.)

(A True Copy.)

Kentucky County, Sct.

We do hereby certify that William Slaughter, jr., is Intitled to a Settlement of four hundred acres of Land in the District of Kentucky on account of Raising a Crop of Corn in the Country in the year 1775, lying on the North side of Kentucky River, on the upper side of the junction of Eagle Creek and the said Kentucky River, and that the said Slaughter, Jr., is also Intitled to the pre-emption of One Thousand Acres of Land adjoining the s'd. Settlement.

Given under our hands at Harrodsburg this 8th day of February, 1780.

Wm. Fleming,
Stephen Trigg,
Edmund Lyne.

Test, John Williams, Jr., C. C. C.

a Copy
Test
John Harvie Re. L. Off.

I do assign to the Rev'd. Robert Andrews all my right and Title to the four hundred acres allowed for Settlement in the within Certificate, as also to the Thousand

acres to the Pre-emption of which I am Intitled by the same Certificate. Given under my hand at Williamsburg this 29th day of May, 1780.

Wm. Slaughter.

Test

Alex'r. S. Bullitt—

I do certify that the above writing is a true Copy of an assignment made on the Original Certificate, Lodged in the L'd. Office, of which said Certificate the within Writing is a true Copy.

Test

John Harvie Re. L. Off.

(For the book entry corresponding to the above Certificate, see Commissioners' Certificates Book, p. 196.)

(A True Copy.)

Kentucky County Sct.

We do hereby Certifie that James Waters is intitled to a Settlement of Four Hundred acres of Land in the Destrict of Kentucky on account of raising a Crop of Corn in the County in the year 1776, lying on the Waters of the East fork of licking Creek adjoining the settlement and Preemption of John Williams, Jun., on the west, including an Improvement, and that the said James Waters is also intitled to the Preemption of one Thousand Acres of Land adjoining the said settlement. Given under our hands at Herodsburgh this 26 of February 1780.

Wm. Fleming
Stephen Trigg
Edmund Lyne

Teste

John Williams, j., C. C. C.

The above pre-emption was assigned by James Waters to Wm. Poage & from Rob't Poage, Heir at Law to Wm. Poage, to Christopher Clark & Co. (For the book entry corresponding thereto, see Commissioners' Certificates Book, p. 463.)

Land Office Treasury Warrant No. 695.

To the Principle Surveyor of any County within the Commonwealth of Virginia—

This shall be your Warrant to survey and lay off in one or more surveys for Christopher Clark & Co., their Heirs or assigns, the Quantity of one Thousand Acres of Land due unto the said Christopher Clark & Co. on Pre-emption as by Certificate from the Commissioners of the Kentucky Destrict and in consideration of the sum of Four Hundred Pounds, Current money paid into the Public Treasury, the Payment whereof to the Treasurer hath been Duly certified by the Auditors of Public Accounts and their Certificate received into the Land Office; Given under my hand, and the seal of the said Office this 26th Day of April, in the year one Thousand and seven Hundred and Eighty.

a Copy

Teste John Harvie, Re. L. Off.

(A True Copy.)

Kentucky County Sct.

We do hereby certify that John Grayson is entitled to four Hundred acres of Land in the District of Kentucky on account of Settlement & raising a Crop of Corn in the Country in the year 1775, lying on the Waters of Cane Run, join'g the Lands of James Wiley, and that the s'd. John Grayson is also entitled to the Preemption of one

thousand acres of Land adjoining his s'd. Settlement. Given under our Hands at Harrodsburg this 4th Nov'r., 1779.

Will'm. Fleming
Stephen Trigg
Edmund Lyne

Teste,

John Williams, jr., C. C. C.

A Copy,

Geo: May, S. K. C.

The above Settlement and Pre-emption Certificate is not an original but is a copy entirely in the handwriting of George May, Surveyor of Kentucky County. This copy must have been made at some time prior to November 1, 1780, when the County of Kentucky became extinct. A *fac simile* thereof is inserted as an illustration of this reprint.

The book entry, corresponding to this Certificate, is found, under date of 4th November, 1779, at Harrodsburg, at page 55 of the Commissioners' Certificates Book. Although in substance the same, the Certificate and Entry differ slightly, as will appear from the following copy of the entry:

> "John Grayson this day claimed a right to a Settlement & Pre-emption to a tract of Land lying on the waters of Cain Run, joining the Lands of James Willys, by improving the same & raising a crop of Corn in this Country in the year 1775. Satisfactory Proof being made to the Court, they are of Opinion that the said Grayson has a right to a Settlement of 400 Acres including the said improvement & the Pre-emption of 1000 Acres adjoining & that a Certificate issue for the same accordingly."

The marginal notation in the Certificates Book shows that a Certificate for 1,400 acres was issued; fees, &c., paid; and the Certificate delivered to Stephen Trigg.

This Certificate was entered with the Surveyor and in due time a survey was made. The Certificate of Survey of the Settlement of 400 acres bears date 23d January, 1781, and reads as follows:

"Lincoln County, St)

Surveyed for Stèphen Trigg, Esqr., Asee. of John Grayson, 400 Acres of Land On the waters of Cain Run, By virtue of a Certificate &c. from the Com'rs. for the District of Kentucky, Beginning at two Walnuts corner to Jacob Froman's Land, thence 45 Wt. 253 P. runing through a Pond to a White Oak & Red Oak, Thence So. 45 Et. 253 P. to Hiccory & Buckeye, Thence No. 45 Et. 253 P. to Walnut & Buckeye, Thence No. 45 Wt. 253 P., passing John Gordon's corner to the Beginning.

Hd. Taylor, Ast.,
James Thompson, S. L. C.

3 East Variation,
23d January 1781."

The endorsements show that this Certificate of Survey was returned May 31, 1781, and, under the same date this endorsement appears:

"Auditor's Office, Charlottesville, May 31, 1781.
Rec'd. the Treasurer's receipt for 53/4 for this Survey.

H. Randolph,
B. Stark."

£2.13.4.

This endorsement is of interest as having apparently been made during the hegira of the Virginia authorities from Richmond, at a time when it was menaced by the British.

A grant for the above land was issued to Colonel Stephen Trigg 1st June, 1782, a little less than three months before his tragic death at the Battle of the Blue Licks, on August 19th, 1782.

(A True Copy.)

Kentucky County Sct.

We do hereby certify that William McConnell, Senr., is entitled to a Settlement of Four hundred acres of land in the district of Kentucky on account of Raising a Crop of Corn in the Country in the year 1776, lying on McConnell's Run a branch of the North fork of Elkhorn about half a mile below the Buffaloe Road including a large spring & his improvement—He has already obtained a Certificate for a Preempn.

Given under our hands at St. Asaph this 24th day of April, 1780.

Willm. Fleming
Stephen Trigg
Edmund Lyne

Test
John Williams, jr., C. C. C.

The above Settlement Certificate, which was discovered in the State Land Office, at Frankfort, Kentucky ("Virginia Land Warrants," File Box 1-19), is an *original* entirely in the handwriting of John Williams, Jr., the Clerk of the Court of Commissioners, by whom it is attested, except that it also bears the autograph signatures of the three acting members of the Court, viz., William Fleming, Stephen Trigg, and Edmund Lyne. A photostat *fac simile* of this Certificate has been inserted as a frontis-

piece to the present reprint. The body of the Certificate shows that John Williams, Jr., was an excellent scribe, and it establishes beyond any possibility of dispute that the copy of the Commissioners' Certificates Book, now in the custody of the Clerk of the Fayette County Court, at Lexington, Ky., is *not* in the handwriting of said Williams, and hence is not an original or official copy but one made by private hands for private use. On a fly-leaf of this copy appears the bold autograph of James Hughes, one of the earliest and ablest "Land Lawyers" of Kentucky, and it is believed that the copy in question was made by or at the instance of said Hughes. James Hughes was the compiler and editor of the first volume of Kentucky Reports, a work which he prepared and published in 1803 at his own expense. The records of the Fayette County Court having been almost entirely destroyed by fire in 1803, it is not improbable that, in order to supply the loss of what may have been an *official* copy of the Commissioners' Certificates Book, James Hughes generously donated to the County Clerk's Office his own private copy of this public record. That the Clerk of Fayette County or, at least, the Surveyor of Fayette County, whose records were probably kept in the Clerk's office, was provided with an official copy of the Commissioners' Certificates Book before the occurrence of the destructive fire of 1803, seems likely from the following provisions in the Virginia Act of May, 1780, creating out of the County of Kentucky the three new counties of Jefferson, Fayette, and Lincoln, to commence November 1, 1780 (Hening's Stats., Vol. X, p. 315, Chap. XXXVI). After providing that "the court of the said county of Fayette shall have jurisdiction of all actions and suits in law and equity, which shall be depending before the Court of Kentucky County, at the time the said division

shall take place, and shall and may try and determine all such actions and suits, and issue process and award execution thereon," this Act further provides:

> "That the Surveyor of the County of Kentucky, as it now stands, shall, as soon as the division shall take place, make his choice of the counties so divided and shall make out and deliver to each surveyor of the other two counties, a fair and correct copy of all entries for lands, in such other county, which have not been surveyed, with the warrants or rights upon which such entries were founded; for each of which entries he shall be paid by the surveyor furnished with such copy three pounds of tobacco."

George May, who had been chief surveyor of Kentucky County, chose to become Surveyor of Jefferson County, and whatever original records he may have accumulated as Surveyor of Kentucky County were, in all probability, taken to and deposited at the county seat of the new county of Jefferson, with the single exception of warrants and certificates, located in Fayette or Lincoln, which had been "entered" but not surveyed. This "unfinished business" was to be disposed of as the law above provided. Colonel Thomas Marshall, father of John Marshall, who later became Chief Justice of the Supreme Court of the United States, was appointed Surveyor of Fayette County, and James Thompson, a nephew of Colonel Isaac Shelby, was appointed Surveyor of Lincoln County. These three chief surveyors, May, Marshall, and Thompson, were assisted by numerous deputies.

The Certificate for a Settlement Right, issued, as above shown, to William McConnell, Sr., bears upon its back the following endorsements, viz.:

"I assign over all my right and title of the within Certificate to John May for Value Rec'd. Given under my hand and seal the 2nd of May 1780.

John Maxwell (Seal)
for Wm. McConnell, Senr.

Test
Rob't. Johnson
Geo. Thompson"

"Oct'r. 10th, 1782. For Value rec'd. I assign the within Certificate to John Craig & Robert Johnson, their Heirs and Assigns.

Teste John May"

"Ent'd. the 7th of Dec'r. in Fayette County, 1782.
T. Marshall, S. F. C."

"Jan'y. 21st, 1783, for Value Rec'd., I assign The within Certificate to Rob't. Johnson, his heirs and assigns.

John Craig."

The book entry, corresponding to this Certificate, is found, under date of 23d April, 1780, at St. Asaph's, at pages 256-257 of the Commissioners' Certificates Book. It reads as follows:

"Wm. McConnell, Senr., having obtained a Cert. for a preempt. of 1000 Acres in the District of Kentucky the (24th) day of Feb'y., 1780, and now comes into Court & make it Appear that he is intitled also to a Settlemt. by Virtue of raising a Crop of corn in the Country in the year 1776, lying on McConnell's

Run, a branch of the North fork of Elkhorn abot. ½ a Mile below the Buffaloe road, including a large spring & his improvemt. Ordered that a Cert. issue accordingly."

The Pre-emption Certificate referred to in the above entry is identified by a book entry, at Harrodsburg, under date of 24th February, 1780, found at pages 415-416 of the Commissioners' Certificates Book. It describes land located in an entirely different part of the country from that described in the Settlement Certificate granted to the same claimant. In this respect it differs from the ordinary case, where the pre-emption was made to adjoin the settlement. This entry reads as follows:

"Wm. McConnell, Senr., by Fras. McConnell, this day claimed a pre-empt. of 1000 Acres of Land at the State Price in the District of Kentucky on Acct. of marking & improving the same in the year 1775, lying on the middle branch of Lawrence Creek, adjoining a Settlemt. & Pre-empt. granted Joseph Frazer, to include his improvemt. Satisfactory Proof being made to the Court, they are of opinion that the sd. McConnell, Senr., has a right to a pre-empt. of 1000 Acres to include the above Location & that a Cert. issue accordingly."

Robert Johnson, who acquired title to the Settlement Certificate issued to William McConnell, Senior, on April 24, 1780, for 400 acres, on McConnell's Run, also acquired title to a Pre-emption Warrant for 1,000 acres, issued upon a Pre-emption Certificate originally granted to Adam McConnell, Senior, at St. Asaph's, on the 25th April, 1780. This Pre-emption Certificate appears to have been assigned by Adam McConnell, Sr., to John May, probably on May 2, 1780, the same date on which

the Settlement Certificate of William McConnell, Sr., had been assigned to said May. The book entry, corresponding to the Pre-emption Certificate of Adam McConnell, Sr., is found at page 270 of the Commissioners' Certificates Book. It reads as follows:

> "Adam McConnell, Senr., by Wm. McConnell, this day claimed a pre-empt. of 1000 Acres of land at the State Price in the district of Kentucky on Acct. of Marking & improving the same in the year 1776, lying on the waters of McConnell's Run, a branch of the North fork of Elkhorn, adjoining the Lands of Solomon Corn & Wm. McConnell, to include his improvemt. Satisfactory Proof being made to the Court, they are of Opinion that the sd. McConnell has a right to a preempt. of 1000 Acres of land to include the above location & that a Cert. issue accordingly."

The foregoing Pre-emption Certificate, assigned as has been supposed, was doubtless deposited, as the law required, in the office of the Register of the Land Office, and thereupon there was issued to John May, as assignee of Adam McConnell, Sr., the following Land Warrant, viz.:

> "Land-Office Treasury WARRANT, No. 1126.
>
> *To the principal Surveyor of any County within the Commonwealth of Virginia.*
>
> (Seal)
>
> This shall be your WARRANT to Survey and lay off in one or more Surveys, for John May—Adam McConnell, Sen'r., his Heirs or Assigns, the Quantity of One Thousand Acres of Land, due unto the said John May as assignee of Adam McConnell, Sen'r., on Preemption as by Certificate from the Commissioners of the Kentuckey district, and in Con-

sideration of the sum of four hundred *acres* (pounds) current Money, paid into the publick Treasury; the Payment whereof to the Treasurer hath been duly certified by the Auditors of Publick Accounts, and their Certificate received into the Land Office.

GIVEN under my Hand, and the Seal of the said Office, on this twenty-third Day of August, in the Year One Thousand Seven Hundred and eighty.

John Harvie, Re. L. Off."

The foregoing Pre-emption Land Warrant, No. 1126, bears upon its back the following endorsement:

"Octr. 10th, 1782. For value rec'd., I assign the within warrant to John Craig & Robert Johnson, their Heirs & Assigns.

John May.

Teste
Cave Johnson
James Arnold
Arch'd. Campbell"

It is also endorsed: "Ent'd. Dec'r. 7th, 1782."

On a separate slip of paper, but attached to the above Pre-emption Warrant No. 1126, is the following assignment, viz.:

"Jan'y. 21st, 1783—I Assign my part of a pre-emption warrant No. 1126, which is Entered in the name of John Craig and Rob't Johnson, being a 1000 acre warrant, to Rob't. Johnson, For Value Rec'd.

John Craig."

The title to the Settlement Certificate of William McConnell, Senior, for 400 acres, and the title to the Pre-emption Warrant, based upon the Pre-emption Certificate of Adam McConnell, Senior, for 1,000 acres, having become vested in Robert Johnson as sole owner, and the Settlement Certificate and Pre-emption Warrant having been duly "entered," as we have seen, with the Surveyor of Fayette County, a survey of the entire 1,400 acres, in a single tract, was presently made. The Certificate of Survey of this boundary of 1,400 acres bears date January 29, 1783, and reads as follows:

"Fayette Sc.

Surveyed January 29th, 1783, for Robert Johnson, Assinee of John Craig, who was Assinee of John May, who was Assn. of William McConnall, 400 Acres of Land upon McConnall's Run, a Branch of North Elkhorn, by virtue of Certificate for settlement, and 1000 Acres as Assn. of Adam McConnal upon Preemption Warrant No. 1126, upon s'd. Run and North Elkhorn. The settlement Represented by the Letters A, B, C, D, Beginning at A, Elm and sugar tree and Hickory, about half a Mile N. W. of the Buffeloe Crossing on s'd. Run, thence S. W. 146 po. to B, (Buckeye, sugar tree & hoopwood), thence S. E. 438 po. cross s'd. Run to C, (Hickory and Mulbery, near the Head of a drean), thence N. E. 146 po. to D, (2 Hoopwoods & 2 Buckeyes), thence N. W. 438 po. cross s'd. Run to the Beginning: the Remaining 1000 Acres Represented by the Letters B, E, F, C, beginning at B, (Buckeye, sugar tree and Hoopwood), corner to John Edwards and Solomon Corn, thence S. W. 365 po. to E, (Sugar tree and 2 Hickorys), thence S. E. 438 po. Cross s'd. Run and North Elkhorn to F, (Elm in the Edge of a Meadowy Swamp), thence N. E. 365 po. Cross s'd. Creek to C, (Hickory and Mulbry near the Head of a draft),

thence N. W. 438 po. Cross s'd. Run to the Beginning.

Rob't. Johnson, D. S. F. C.

James Twyman
Nicholas Tomlinson C. C.
James McConnal, Mkr.

Ex'd & Cert'd pr. T. Marshall, S. F. C."

The endorsements thereon show that this Certificate of Survey was received by the Register of the Land Office, 20th September, 1783, and that a grant was issued therefor on the 15th May, 1784.

From the manner in which the history of these certificates has been traced, from the time they were issued until they were finally "carried into grant," it must be very evident that the Certificates issued to claimants by the Land Commissioners were in no case equivalent to a deed nor did they "answer in lieu of deeds." Nor, in spite of the broadly beneficent intent of the Act, did the certificates issued by the "Land Court" created by the Law of May, 1779, effectually "quiet the titles" of any claimants. When the successful claimant before the Court of Commissioners had gotten his Certificate, his troubles had barely begun. He still had to run the gauntlet of procuring a warrant (in the case of a Pre-emption Certificate), of making a proper entry or location of his Settlement Certificate or Pre-emption Warrant with the County Surveyor, of having the survey actually "run out on the ground," of obtaining from the Surveyor a Certificate of Survey and Plat, then of filing the original Land Certificate or Warrant, together with the Certificate of Survey and Plat, with the Register of the Land Office, and, after payment at every stage of the prescribed

fees and consideration money and awaiting the lapse of several months or years, he eventually obtained a Grant or Patent for the land allotted him. All the while he was liable to be halted and delayed indefinitely by a *caveat* interposed by some adverse claimant, and, even in the end, his patent or grant was in danger of being set aside or subordinated to some prior conflicting location or claim held superior to the one on which he had so vainly relied. This was frequently though, of course, not universally true, and the dangers and defects of the system are amply illustrated by the reports of decisions in early land controversies in Kentucky.

Under date of December 24, 1779, at Boonesborough, the following entry in the Certificates Book of the Land Commissioners for the Kentucky District appears, at page 106 thereof:

> "William Fleming this day claimed a preemption to a tract of land of 1000 Acres at the State Price in the district of Kentucky, lying on the waters of the North fork of Beargrass, joining Colo. Wm. Christian's land, to include a survey made for the said Fleming by marking & improving the same in the year 1775 Satisfactory proof being made to the Court, they are of Opinion that the said Fleming has a right to a preemption of 1000 Acres of land, including the above location & that a Certificate issue accordingly."

The marginal notation opposite this entry reads: "Cert. iss'd. for 1000; fees &c. pd. D. D." But this notation is not dated. In Colonel Fleming's *Journal*, however, is found this entry:

"*1780 Jan. 4.* Obtained a Certificate of preemption for One Thousand Acres of land for improving in 1775, located on Beargrass Joining Wm Christians. The Commissioners Certificate I sent in by Capt. Craig, a duplicate by Capt. Owen the 11th Feby 1780."

This shows that certificates were not always made out and delivered to claimants on the same date on which their rights were adjudicated. In the case of John Grayson, William Slaughter, Jr., and James Waters, whose Certificates are copied herein, the Certificates bear the same dates as those shown in the book entries; but, in the case of William McConnell, Sr., the book entry is dated April 23, 1780, and the Certificate is dated April 24, 1780; and also, in the case of Colonel William Fleming, the book entry is dated December 24, 1779, and the Certificate is dated January 4, 1780.

Two Pre-emption Warrants, Nos. 69 and 70, for 500 acres each, dated 28th February, 1780, were issued in the name of William Fleming, being "due unto the said Fleming," as they each recite, "on Preemption as pr. Certificate from the Commrs. for the district of Kentucky, & in Consideration of the Sum of Two hundred pounds current Money paid into the publick Treasury."

From Colonel Fleming's *Journal* it appears that he actually received the above warrants about the middle of April, 1780, if we may draw the inference from the following entries:

"*April 10th.* Capt. Pawling came to Col. Bowman's and brought Letters from home informing me that the Military warrants were sent down by Capt. Todd, who had not returned, and my preemption Certificates by James Brown who had Returned. * * *

"*April 16.* Left Col. Bowman's for St. Asaphs, lodged at Fishers *the 17th* reached St. Asaphs *the 18th* went on Business; received a Letter and Preemption Warrant by Campbel."

Then, under date of May 10, 1780, he makes this entry:

"*The Tenth* made my Locations and returned to Col. Bowmans."

As Colonel George Nicholas, counsel for the appellant, in the case of Whitledge v. Kenny, informs us (Hughes, p. 44): "Entered, or located, are used in the (land) law as synonymous terms." So we may understand from the above memorandum in Colonel Fleming's *Journal* that he made his "entries" with George May, Surveyor of Kentucky County, just as he had previously made his "locations" with the Commissioners of the Kentucky District.

A considerable interval of time elapsed before a survey was made in pursuance of the entry of the Pre-emption warrants with the County Surveyor. Thus the Certificate of Survey recites:

"Surveyed for William Fleming 1000 acres of Land in Jefferson County by Virtue of a preemption Warrant No. 69, 70, lying on the South fork of Goose Creek. Beginning at four Sugar Trees on the south side of the Creek Corner to Colo. Christian's Land and runneth thence N. 53 E. 338 poles crossing the Creek three times to an Ash & two Beech Trees marked WF-AH on the S. W. side of a Branch, then S. 37 E. 510 poles crossing a Branch and the South fork to a Walnut & two Sugar Trees in Taylor's line & with the same S. 66 W. 344 poles passing Taylor's Corner to a Hoop Wood, Sugar Tree & Beech (marked W. Fleming) in Christian's Line & with the

same N. 37 W. 440 poles crossing the Creek twice to the Beginning.

15th January 1783
Jn. Floyd, Asst. Surv'r.
Geo: May, S. J. C."

This Certificate and the annexed Plat were returned the 8th April, 1783, and a Grant issued thereon 19th January, 1784.

To follow up one of these complicated transactions in the reverse order, we find that a survey of February 12, 1783, for 1,400 acres, in favor of Colonel James Barbour, a member of the "Land Court," reads as follows:

"Surveyed for James Barbour, Assee. of John King, 400 acres of Land by virtue of a Cirtificate for Settlement, &c., Lying & being in the County of Lincoln on Muddy Creek, Beginning on the East side of Muddy Creek at a White Thorn & White Oak Tree at A, thence W. 400 poles crossing s'd. Creek to a Mulberry & hicory tree at B, thence S. 160 poles crossing a branch to a Large sugartree at C, thence E. 400 poles crossing a branch to an Ash & black Walnut Tree at D, thence N. 160 poles crossing Muddy Creek to the Beginning.

Sam: Grant, D. S. L. C.

"Also 1000 acres by Virtue of a preemption Warrant No. 213, Lying & being in the County of Lincoln on Muddy Creek, adjoining his Settlement on the South, Beginning at the S. W. corner of his settlement at a sugartree at C, thence S. 160 poles to two white Oak trees at E, thence E. 80 poles to two hicory Trees at F, thence S. 300 poles crossing two branches to a Large Cherry Tree at G, thence E. 320 poles, crossing Muddy Creek twice, to two Ash trees standing on the bank of s'd. Creek at H, thence N. 480 poles, crossing Muddy Creek twice, to the S. E. cor-

ner of his settlem't. at an Ash & Black Walnut Tree at D, thence W. with s'd. settlem't. Line 400 pole to the Beginning.

Sam'l: Grant, D. S. L. C.

February ye 12th day, 1783.

James Thompson, S. L. C.

Variation 3 East."

The endorsements on the back of this Certificate of Survey show that it was "returned" 27th May, 1783; that the Auditors received the Treasurer's receipt for two pounds, 13 shillings, four pence (*specie*), for the survey on 27th March, 1784; and that the Grant issued 15th June, 1784.

The Pre-emption Warrant No. 213, issued March 18, 1780, to James Barbour, assignee of John King, for 1,000 acres "due unto the said Barbour on Preemption as pr. Certificate from the Commissioners for the District of Kentucky," &c., was "entered" with the Surveyor of Lincoln County January 1, 1783, about six weeks prior to the survey.

At the bottom of it all, we find, under date of 2d November, 1779, at Harrodsburg, that the following entry was made on the Certificates Book of the Commissioners, viz.:

"Lewis Craig, Attorney for John King, this day claimed a right to a Settlement & Preemption to a tract of Land lying on Muddy Creek about 12 Miles from Boonsborough near a South East course where there is the two first letters of the said King's name on a tree, by Marking the same in the year 1778 & residing in the Country ever since the year 1775. Satisfactory Proof being made to the Court, they are of Opinion that the said King has a right to a Settle-

ment of 400 Acres, including the Land above mentioned & the Preemption of 1000 Adjoining & that a Cert. issue accordingly."

The marginal notation opposite this entry contains a hint of Col. Barbour's interest in the transaction, for it reads: "Cert. iss'd. for 1400; fees &c. pd.; DD. to Colo. James Barbour."

Similarly one may trace two surveys on Settlement Certificates and part of a Pre-emption Certificate acquired by Colonel Edmund Lyne by assignment from the original grantees.

Under date of January 17, 1780, at Bryant's Station on Elkhorn Creek, appears the following entry in the Commissioners' Certificates Book (p. 162):

"John Conway, Senr., this day claimed a Settlemt. & Preempt. to a tract of land in the district of Kentucky lying on a branch of the Middle fork of Licking Creek Near a Buffaloe Road that leads to the lower Blue lick, Joining Jacob Sadowski on the North Eastwardly, including a lick & Cabbin by Settling in the Country in the year 1777 & residing ever since. Satisfactory Proof being made to Court, they are of Opinion that the said Conway has a right to a Settlemt. of 400 Acres of land to include the above Location & the Preempt. of 1000 Acres adjoining & that a Cert. issue accordingly."

The description in the Certificate of Survey follows the language of the Settlement Certificate very closely, as appears from the following copy:

"Fayette County, Sct.

Surveyed for Colo. Edmond Lyne, Assee. of John Conway, the following Tract of land containing 400

acres, by Virtue of Certificate for Settlement &c. duely Entered, lying on a branch of the Middle fork of licking Near a Buffelo Road leading to the lower blue Licks, Adjoining Soduskie's land on the N. E., Beginning at A, a large black walnut on the Buffeloe Road near a Branch & running thence N. 200 pole with Soduskie's line to B, a Walnut, Hackberry and Elm tree, thence E. 320 pole to C, three Sugar trees, Crossing the branch at 140 pole from C, thence S. 200 pole to D, 2 Buckeyes & an Elm, thence W. 320 pole to the Beginning, Crossing the Branch at 300 pole from D, and Encluding a lick and Cabbin.

Timo: Peyton, D. S. F.
Jan'ry. 10th, 1783.

Richard Muse }
Thomas Foster } Chainmen
James Parberry, Pilot & Marker.

Ex'd & Cert'd.
pr. T. Marshall, S. F. C."

The endorsements on the back of the foregoing Certificate of Survey show that it was returned 8th January, 1784; that, on July 17, 1784, J. Pendleton, for the Auditors' Office, acknowledged receipt of the Treasurer's receipt for Two Pounds 13/4 "for the Within Survey;" and that a Grant was issued thereon 25th December, 1784.

Under date of January 4, 1780, at Bryant's Station on Elkhorn Creek, appears the following entry in the Commissioners' Certificate Book (p. 126):

"The Heir of Wm. Hudson, dec'd., by Benj. Logan, this day came into Court & claimed a Settlemt. & preemption to a tract of land in the District of Kentucky, lying on Paint lick Creek, including a Cabbin known by the name of Hudson's Cabbin adjoining Estille, Assee. of Carpenter, land, by the

said Decedent's raising a Crop of Corn in the Country in the year 1776—Satisfactory proof being made to the Court, they are of Opinion that the said Heir of Wm. Hudson, Dec'd., has a right to a Settlement of 400 Acres of land to include his improvemt. & the preemption of 1000 Acres adjoining & that a Cert. issue accordingly."

The heir of William Hudson was Peter Hudson, as appears from the Certificate of Survey, dated October 27, 1783, signed by "Wm. Montgomery, Asst. S." and "James Thompson, S. L. C." The survey of the Settlement of 400 acres for Edmund Lyne, Assignee of Peter Hudson, "who is William Hudson's heir," is described as "Beginning at a Black Walnut at A, about 100 poles Easterly from John Boyle's Station," and as adjoining certain lines of Jno. Kennedy, deceased. On the Preemption Warrant, No. 387, there was surveyed but 230 acres, adjoining the Settlement. This survey touched the "North West corner of Jno. Kennedy's Settl't. as Assee. of Hynes." Endorsed on the back of this Certificate of Survey is the following:

"I do hereby Certify that the within named Edmund Lyne claims no Land adjoining the within mentioned Surveys to my knowledge or beleife, Jan'y. the 8th, 1784.

Jas. Thompson, S. L. C."

This Certificate of Survey, with the annexed Plot of 630 acres, was returned 8th January, 1784, and a Grant issued thereon 25th December, 1784.

I

The first claim allowed by "The First Land Court of Kentucky," at its first business session at St. Asaph's or Logan's Fort, on October 14, 1779, was a claim in favor of Isaac Shelby, afterwards the first Governor of Kentucky. The entry in the Commissioners' Certificates Book (p. 2) reads as follows:

> "Captain John Logan for and in behalf of Isaac Shelby this day produced a claim [*] *and* making a Crop of Corn on the same in the year 1776, Lying on a branch that heads at the Knob Lick, & about a mile and a half or two Miles from the said Lick a southeastwardly course, proof being made satisfactory to the Court they are of Opinion that the said Shelby has a right to a settlement & Preemption according to Law and that Certificates issue for the same."

The entry, at this point, indicated by square brackets [*], appears to be defective, suggesting a hiatus in the record, as preserved in the Fayette County copy. Perhaps the missing words were somewhat to this effect, viz., "to a tract of land in the District of Kentucky, for improving," etc.

The marginal notation opposite this entry reads: "Issued for 1400 Acres; & DD. to Colonel Lyne; fees paid."

The original Certificate issued by the Commissioners, upon this claim, has not been found, but the Pre-emption Warrant is on file in the State Land Office at Frankfort, Ky. This Warrant is No. 18, and bears date the 7th February, 1780. It has been reproduced in *fac simile* to

Land-Office Treasury **WARRANT**, N°. 1d.

To the principal Surveyor of any County within the Commonwealth of Virginia.

THIS shall be your WARRANT to Survey and lay off in one or more Surveys, for Isaac Shelby ..... his Heirs or Assigns, the Quantity of one thousand ..... Acres of Land, due unto the said Isaac on Pre-emption as a Settler from the Commissioners for the District of Kentucky in Consideration of the Sum of four hundred pounds ..... current Money paid into the publick Treasury; the Payment whereof to the Treasurer hath been duly certified by the Auditors of publick Accounts, and their Certificate received into the Land Office.. GIVEN under my Hand, and the Seal of the said Office, on this Seventh Day of February in the Year One Thousand Seven Hundred and eighty-

J. Pan D.K.L.C.

FAC SIMILE of original Pre-emption Warrant, granted to Isaac Shelby, February 7, 1780, on the first Pre-emption Certificate issued by the Kentucky Land Court, given at St. Asaph's, or Logan's Fort, October 14, 1779.

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illustrate this reprint. It authorizes "the principal Surveyor of any County within the Commonwealth of Virginia" to survey for Isaac Shelby "one thousand Acres of Land, due unto the said Isaac on Preemption, as pr. Certificate from the Commissioners for the District of Kentucky, & in Consideration of the Sum of four hundred pounds current Money paid into the publick Treasury," etc. The Warrant (like many others) is signed by G. Carr, D. R. L. O., for his chief, John Harvie, Register of the Land Office. The entire boundary of 1,400 acres was surveyed for Isaac Shelby on May 4, 1780, by James Douglas, Assistant Surveyor, for Geo. May, Surveyor of Kentucky County. The body of the original Certificate of Survey, which is properly signed by both Douglas and May, appears to be in the handwriting of Isaac Shelby himself and suggests that he was present and assisted in the actual running of the survey. On the same date, as appears from original Certificates of Survey, duly signed by Douglas and May, and the body of each of which is also apparently in the handwriting of Isaac Shelby, three separate surveys adjoining Shelby's Settlement and Pre-emption tract and aggregating five hundred acres, were made for "Isaac Shelby, Assee. of John Fox who was Assee. of Charles Tomkins (or Tompkies), by virtue of a Warrant for Military service performed by the said Charles Tompkins." All of these lands were located "in the County of Kentuckey, on the Waters of the *Nob* (Knob) lick branch of the Hanging Fork of Dick's River."

The Military Warrant issued to Tomkies bears date October 27, 1779, and is as follows:

"Land-Office WARRANT, No. 130.

To the principal Surveyor of any County within the Commonwealth of Virginia:

(SEAL) This shall be your WARRANT to Survey and lay off in one or more surveys for Charles Tomkies, his Heirs or Assigns, the Quantity of Five Hundred Acres of Land, due unto the said Charles for Military Service performed by him as a Subaltern Officer dureing the late War between Great Britain & France according to the terms of the King of Great Britain's proclimation of 1763, Certificate for which duly proven is received into the Land Office.

"GIVEN under my Hand, and the Seal of the said Office, on this twenty-seventh Day of October, in the Year One Thousand Seven Hundred and Seventy-Nine.

John Harvie, Re: L: Off."

On the back of this original Warrant are the following assignments:

"I do hereby Assign all my right & title to the Within Warrant to Mr. John Fox, his heirs or Assigns, for value received.

October 30th, 1779. Chas. Tomkies."

"I do hereby Assign all my right & title of the Within Warrant to Mr. Isaac Shelby or his Assigns for Value received.

Nov. 1st, 1779. John Fox."

The three surveys on the Military Warrant and the two surveys on the Settlement Certificate and Pre-emption Warrant were numbered consecutively from 81 to 85. They were all received into the Land Office on July 14, 1780, and Grants were issued thereon February 22, 1781.

The Certificate of Survey of Isaac Shelby's Settlement and Pre-emption is in the following words:

"Surveyed for Isaac Shelby one thousand, four hundred acres of Land by virtue of a certificate for Settlement of four Hundred Acres from the Commissioners of the district of Kentuckey, and a Warrant for Preemption of 1000 acres Adjoining said Settlement, of which the above is an inclusive Plott, situated, laying and being in the County of Kentuckey, on the waters of the *Nob* (Knob) lick branch of the Hanging Fork of Dick's River—Beginning for the Settlement Tract of 400 acres at the letter A, being three Hickorys, a Hoopwood & Sugar Tree about one & a quarter miles South East of the Nob Lick standing near a small branch on the South West side thereof, runing thence South 20 West 240 poles to four white Oack Trees standing on the South banck of the Nob Lick branch of the Hanging fork, on the Top of a high Clift of Rocks, thence South 30 East 170 poles to a black Oack & Sugar tree, in some high flat Oack land, corner to his own 200 acre tract, thence South 83 East 144 poles to two beech trees, thence North 360 poles to Two Sugar Trees, corner to his own preemption Tract, then North 83 West 144 poles to the Beg'g.

Begining for the Preemption Tract of 1000 acres at the letter B, being two beech trees corner to the above Settlement tract, runing thence South 83 East 456 poles, passing a linn & sugar tree, corner to his own 200 acre tract, to three Sugar trees in a flat caney piece of land, on the South side of the said Nob lick branch of the Hanging Fork, thence North 360 poles, crossing the aforesaid branch of the hanging fork to four Sugar Trees on the point of a low ridge on the East side of a small branch, about 15 or 20 poles from the s'd. small branch, then North 83 W. 456 poles to Two Sugar trees, corner to his own Set-

tlement tract, thence reversing a line of the said Settlement Tract South 360 poles to the Begining.

Variation 3 degrees East }
May 4th, 1780. }

James Douglas, Ass. S.
Geo: May, S. K. C."

Besides the usual filing endorsements, this Certificate of Survey bears the following notation on its back: "July the 13th, 1780, Rec'd. Treas'r. Rec't. for 53/4.—E. Archer, H. Randolph."

On the above described Settlement and Pre-emption Tract of 1,400 acres, the historic home of Governor Shelby, known as "Traveler's Rest," was erected in 1783, and on this spot, where he had pitched his camp and planted a crop of corn in the spring of 1776, he peacefully passed away fifty years later, on July 18, 1826, and there, in the family burial ground, his remains rest to this day.

J

The earliest survey as yet discovered which was made in pursuance of a Certificate for Settlement issued by the Kentucky Court of Land Commissioners was one for Thomas Denton, under date of December 5, 1779. This Certificate of Survey reads as follows:

> "Surveyed for Thomas Denton a tract of 400 Acres of land in Kentucky by Virtue of a Certificat from the Commisoners for this Destrict for Settlement, lying on Salt River about 3 miles above Fort Liberty,
>
> Beginning at a Sugar tree in the midel of a line,
> S. 70° W. 120 Poles to a Hecory and sugar tree, thence
> S. 20° E. 240 Poles to 2 Sugar trees by a Drawght, thence
> N. 70° E. 266 Poles to 2 Sugar trees, thence
> N. 20° W. 240 Poles to 2 Sugar trees and crossing Salt River,
> S. 70° W. 146 Poles crossing Salt River to the Beginning.
> Dec'r. 5th, 1779,
> Variation 3 E.
>
> James Douglas, D. S. K. C.
> Geo: May, S. K. C."

The book entry, at page 31 of the Commissioners' Certificates Book, corresponding to this item, shows that the Certificate for a Settlement and Pre-emption was issued to Thomas Denton (apparently, Thomas Denton, *Junior*) at Harrodsburg, on October 27, 1779.

As appears by endorsements thereon, the above survey was assigned by Thomas Denton to William Harrod

on October 7, 1780; and, on the 14th November, 1780, it was again assigned by William Harrod to James Harrod. It was "offered to be returned to the Register's office 22d December 1780," and was actually "returned" 22d September, 1782. The Auditors' receipt is in these words: "Auditors Office, August 7th, 1783, Rec'd. the Treasurer's Receipt for £2: 13: 4 for the above Survey.—J. Pendleton, Jr." The Grant to James Harrod issued 23rd January, 1784.

The earliest Pre-emption Warrant as yet discovered is one in favor of Enoch Smith, No. 15, bearing date the 4th February, 1780. The book entry of the Commissioners' Certificates Book (p. 62) corresponding thereto, shows that this claim was allowed at Harrodsburg on November 6, 1779. The lands covered by the Certificate for Settlement and the Pre-emption Warrant, however, were not surveyed until January 1, 1783, but the description in the Certificate of Survey corresponds closely to the location made with the Land Commissioners, as evidenced by the above entry. The endorsements thereon show that this survey was received 4th July, 1783, the Auditors' Office acknowledged, on the same date, receipt of "the Treasurer's rec't. for Two pounds, thirteen shillings, and four pence, specie, for the within survey," and a Grant issued thereon on 7th May, 1784.

In the Clerk's Office of the Fayette County Court has been found a Land Office Treasury Warrant, No. 1962, dated the 20th December, 1781, which was issued by John Harvie, Re. L. Off., to William Kenaday, for 1,000 acres of land, "due unto the said Wm. Kenaday on preemption

as by Certificate from the Commissioners of Washington & Montgomery Counties, and In consideration of the Sum of four hundred pounds current Money, paid into the Public Treasury," etc. Whether or not any survey *in Kentucky* was ever made on this warrant has not as yet been ascertained. At least one survey in Kentucky on a Monongalia District Warrant, however, was made, as is shown by the original Certificate of Survey on file in the Land Office at Frankfort, Ky. This Certificate reads as follows:

> "Surveyed for Paul Froman by virtue of a Pre-emption Warrant from the District of Yohogania a tract of 1000 acres of Land in Kentucky County, lying on an East branch of Polke's Run, the Waters of Cox's Creek, and Bounded as followeth, Beginning at A, three poplars, running So. 10 Et. 400 poles to a White Oak in the edge of a Glade, thence No. 80 Et. 400 poles to a Hickory, White Oak and Ash Trees (crossing a small run making into the Beech Fork at 20 poles), thence No. 10 Wt. 400 poles to a beech, White Oak & Hickory Trees (crossing Polke's run at 276 poles & a draft at 390 poles), thence So. 80 W. 400 poles to 3 poplars, the beginning, crossing a dry run at 152 poles and Polke's run at 187 poles.
>
> October 9th, 1780,
> Variation 3 Et.
>
> John Fitch, Asst.
> Geo: May, S. K. C."

This paper is endorsed: "Rec'd. Nov'r. 7th, 1781," but it has not as yet been ascertained whether any grant ever issued upon it.

In the Commissioners' Certificates Book, at page 207, it appears that, at Harrodsburg, on February 10, 1780, a Pre-emption Certificate for 400 acres was allowed to Paul Froman. The entry recites:

"Paul Froman, by Jacob Myers, this day claimed a preempt. of 400 Acres of land at the State Price in the District of Kentucky on Acct. of Making an Actual Settlem't. in the Month of May, 1779, lying on Froman's Creek, a branch of Chaplin's fork of Salt River, about 20 Miles above Bullitts Salt Lick, to include his improvemt." &c.

It is, at least, doubtful whether Paul Froman was entitled to the two pre-emptions, one of 1,000 acres in the Monongalia District, and the other of 400 acres in the Kentucky District, for, in the early case of Briscoe v. Speed, Hughes 81, the Court, at page 83, said:

"Briscoe then, having obtained from the Court of Commissioners for the counties of Monongalia, Yohogania and Ohio, a certificate of his right to a settlement and pre-emption in the county of Monongalia for an actual settlement made in the year 1773, and having completed his title to that settlement and pre-emption, has precluded himself by that election from obtaining any other land, by virtue of any of the services mentioned in the land law."

It should be noted, also, that, in the case of Jones' Heirs v. Taylor and Lee, Sneed 71-73, it was decided, in conformity with the provisions of the Land Law of May, 1779, that private surveys were null and void.

And, in the case of Gist's Heirs v. Robinet, &c., 3 Bibb, 2, it was decided that the King's Proclamation of October 7, 1763, conferred upon the beneficiaries for military service therein mentioned a vested right, which was descendible or devisable even before a warrant had issued

for the bounty lands thereby awarded. This holding is recognized and tacitly approved in the later case of Trustees of Lexington v. Lindsay's Heirs, 2 A. K. Marshall, 443.

Furthermore, in the argument of counsel in Hickman v. Boffman, Hardin, p. 358, it is pointed out that "prior to the law (*i. e.*, the Land Law) of 1779, appropriations of Military Warrants were made by survey only," *i. e.*, not by *entry* anterior to the survey.

In studying the records of the Land Court, it should be borne in mind that the devolution of title by inheritance during the period covered by these records was different from what it later became and what it is today. Thus, in the case of Marshall v. Rough's Heirs, 2 Bibb, 629, the Court of Appeals said: "It appears in proof that Nicholas Rough was killed by the Indians in the year 1776. By the then law of descents, the elder brother, and not the father, was the heir at law."

K

The First Land Court of Kentucky dealt exclusively with lands located in Fincastle County (1772-1776), of which Colonel William Preston had been Surveyor, and with those located in Kentucky County (1776-1780), of which George May was Surveyor. (Among the Deputies or Assistants of George May, in 1780, were John Fitch, inventor of the steamboat, and John Bradford, founder of the Kentucky Gazette.)

In Consilla v. Briscoe, Hughes 84, 89-90, the point was decided that what was certified by the Land Commissioners must be taken as true, and was not subject to contradiction or collateral attack.

In McConnell v. Kenton, Hughes 277, it was said: "It appears from the law and the nature of the case that the Court of Commissioners was a court of special and limited jurisdiction."

The case of Ward & Kenton v. Lee, 1 Bibb, 18, expressly holds that one in "the military service" was "in the public service" within the meaning of the Land Law. (See, also, Hening's Stats., Vol. 10, p. 132, Chap. II, October, 1779.)

The decision, in the case of Hickman v. Boffman, Hardin 356, in harmony with the argument of appellant's counsel in the case, declares (p. 371):

> "The military warrant was a loose paper, not required by law to be recorded. It ought to be recollected that the papers of the land-office have been carried, since the year 1781, from Richmond to this country. The law, too, at the time the grant issued, and for nine years after, required all warrants, upon which grants had issued, to be annually destroyed. It is true the law required an account of those destroyed to be kept; giving credit for those executed, and charging those not executed. But the law did not require such account of the warrants destroyed to be kept as would distinguish them from others; and no such account has been kept. The law requiring warrants which were executed to be destroyed, may not, in all instances, have been observed; but we can not say, it was not in general." (See 10 Hening's Stats., p. 64, and 1 Bradford's Laws of Kentucky, p. 318.)

This same case (*Hickman* v. *Boffman*), at page 360, shows that, on the extinction of Fincastle County, by the law of October, 1779, Montgomery County retained the Fincastle officers, papers, etc. This Act of October, 1776 (Hening's Stats., Vol. IX, p. 257, Chap. XLIV), dividing Fincastle into the three counties of Kentucky, Washington, and Montgomery, provided (pp. 258-259):

> "That the court of the said county of Montgomery shall have jurisdiction of all actions and suits in law and equity which shall be depending before the Court of Fincastle County at the time *of* the said division shall take place (*i. e.*, December 31, 1776), and shall and may try and determine all such actions and suits, and issue process and award execution in any such action or suit."

Colonel William Preston became Chief Surveyor of Montgomery County, upon the establishment of that county.

For reference to the Act of May, 1782 (11 Hening's Stats., p. 91, Chap. XLIX), requiring the Land Commissioners for the Kentucky District to deliver their books and papers to the Register of the Virginia Land Office, see Waits v. Whitledge, Sneed 30.

The Land Law of May, 1779 (10 Hening, Chap. XII), provided that the party entering his warrant with the surveyor "shall direct the location thereof so specially and precisely as that others may be enabled with certainty to locate other warrants on the adjacent residuum;" and, as to the manner of making surveys, this law further provided that "The surveyor, at the time of making the survey, shall see the same bounded plainly by marked trees, except where a water-course or ancient marked line shall be the boundary, and shall make the breadth of each survey at least one-third of its length in every part, unless where such breadth shall be restrained on both sides by mountains unfit for cultivation, by water-courses, or bounds of lands before appropriated."

In Bryan v. Wallace, Hughes 369, at page 375, it was said:

> "Though locations with the commissioners seem not to have been required, by the legislature, to be made with any great degree of specialty, yet the law which directs entries or warrants founded on treas-

ury rights, among which are pre-emption warrants, to be entered with the surveyor, requires that the party shall direct the location thereof so specially and precisely as that others may be enabled with certainty to locate other warrants on the adjacent residuum. This direction of the law having been almost universally unattended to, the late Supreme Court and this court (*i. e.* Court of Appeals) have, in order to prevent the loss of far the greater part of those claims, relaxed the rigor of this positive injunction, and where the entries contained some direction which might guide a subsequent locator where they could be supported by any reasonable construction, have given them their aid."

In the case of Whitledge v. Kenny, Hughes 211, decided in the year 1799, the Court, at page 255, said:

"If it should be objected that this doctrine greatly extends the uncertainty, which, in other instances, is produced by the land law, the answer will be, that if it be the law which produces those mischiefs, the court is not responsible for them, and it can not be denied that there are defects in the land law which are beyond the power of construction to remedy."

Nevertheless, it should be observed that Justice Story, in his "Miscellaneous Writings," could say:

"The land law of Kentucky, while it stands alone in its subtle and refined distinctions, has attained a symmetry which at this moment (1821) enables it to be studied almost with scientific precision. So little assistance can be gained from the lights of the common law for its comprehension, that, to lawyers of other States, it will forever remain an unknown

code with a peculiar dialect, to be explored and studied, like the jurisprudence of some foreign nation."

In the above case of *Bryan* v. *Wallace*, James Hughes, for the appellant, pointed out, at page 382, in his argument, that:

"During the regal government, and notwithstanding a proclamation forbidding the settling of vacant lands, settlers had spread themselves over the country on the western waters.

"In June, 1776, it was resolved by the convention of Virginia that such settlers should be entitled to tracts of land not exceeding 400 acres, and by an act of the assembly of Virginia, of the October session, in the year 1777 (Chan. Rev., p. 60, Sec. 5), the said resolution was recited, and the same provision made."

Archer Butler Hulbert (*The Ohio River*, pp. 85-86), with respect to the King's Proclamation of 1763, says: "As well might the King of England have issued a mandate ordering the laurel buds not to burst in the Alleghenies in the spring as to so misjudge the genius of the American people as to attempt to prohibit their expansion simply to secure the good will of the Indians, and their heavy rolls of peltry."

Other historical writers have commented in similar vein on the futility of the royal edict.

In Whitledge v. Kenny, Hughes 211, it was decided that a pre-emption appendant to a settlement right was

sufficiently identified, if it *adjoined* the settlement—it did not have to *surround* the settlement.

By an Act of May, 1780 (10 Hening's Stats., p. 237, Chap. IX), "for giving farther time to obtain warrants upon certificates for pre-emption rights, and returning certain surveys to the Land Office," etc., it was provided (Sec. IV):

> "*And be it further enacted,* That the farther time of eighteen months be given to all persons who may obtain certificates from the said commissioners for pre-emption, on their obtaining warrants from the register of the land office, to enter the same with the surveyor of the respective counties in which their claims were adjusted: *Provided* that the court of commissioners for the district of the counties of Monongalia, Yohogania, and Ohio, do not use or exercise any jurisdiction respecting claims to lands within the territory in dispute between the states of Virginia and Pennsylvania north of Mason's and Dixon's line, until such dispute shall be finally adjusted and settled."

Several subsequent acts were passed, from time to time, further extending the time for obtaining warrants on certificates for pre-emption rights, &c. (See Hening's Stats., Vol. 10, pp. 403, 484, 485, and Vol. 11, pp. 91, 291, 376, 476, 508.)

An Act of May, 1783 (Hening's Stats., Vol. 11, p. 291, Chap. XXXIX), provided (Sec. III):

> "And whereas the good purposes for which a deputy register was appointed in the western country, will not be fully attained unless all plats and cer-

tificates of surveys, made in the district of Kentucky, are registered in his office; *Be it therefore enacted,* That from and after the first day of November next (1783), the register of the land-office shall not receive any plat and certificate of survey, made in the district of Kentucky, before it has been registered and transmitted to him by his deputy in that country, agreeable to an act, intituled, 'An act to empower the register of the land-office to appoint a deputy on the western waters'; and no patent shall issue until such survey has been registered six months in the principal land-office."

The Act of May, 1779, establishing the Land Office, had provided (Hening's Stats., Vol. 10, Chap. XIII, p. 60) that "due returns of the several articles hereinbefore required being made into the land office, the register, within not less than six nor more than nine months, shall make out a grant by way of deed poll to the party having right."

Difficulties in the way of getting surveys "carried into grant" multiplied instead of diminishing and so, by an Act of May, 1784 (Hening's Stats., Vol. 11, p. 371, Chap. X), "to amend an act for establishing a land-office, and ascertaining the terms & manner of granting waste and unappropriated lands," it was provided (Secs. V and VI):

"And whereas the register of the land-office is restrained from receiving surveys, unless the warrant under which each survey is made is also therewith returned, which in many cases is productive of great inconvenience, and the register by having in his office a list of warrants is possessed of a sufficient check to prevent imposition herein;

"*Be it therefore enacted,* That the said register may henceforth receive into his office any survey certified by a sworn surveyor, which corresponds with

the warrant it refers to, although the said warrant under which the said survey is made shall not be returned into his office."

Section V, of the Land Law of May, 1779 (Hening's Stats., Vol. 10, Chap. XII), provides in part:

> "The proper claimants (of village rights) shall be respectively entitled to entries with the surveyor of the county, wherein the land lies, upon producing to him certificates of their rights from the said Commissioners of the county, duly attested, within twelve months next after the end of this present session of Assembly, and not afterwards; which certificate the said surveyor shall record in his books, and then return them to the parties, and shall proceed to survey the lands so entered according to law. And, upon due return to the land office of the plats and certificates of survey, together with the certificates from the said commissioners of the rights by settlement, upon which the entries were founded, grants may and shall issue to them and their heirs or assigns, in manner before directed."

Surveys could be made forthwith by the County Surveyors on Certificates for Settlement entered with them, which certificates were held equivalent to a warrant; but before they could survey pre-emptions, the certificates for such pre-emptions must have been lodged with the Register of the Land Office, and, in lieu thereof, warrants for pre-emptions obtained from him, upon payment of the consideration money and prescribed office fees.

Pre-emption warrants could not be entered or located in the Surveyor's books until after April 26, 1780, but

had to be so entered and located prior to June 26, 1780, in order to hold the original location, but they might thereafter be entered on any other vacant and unappropriated land. Legislation, designed to relieve the rigor of the very short time limit originally prescribed for the entry of pre-emption warrants, was enacted from time to time, after July, 1780.

By Section III of the Act of May, 1779, establishing a Land Office (Hening's Stats., Vol. 10, Chap. XIII), it is provided that no warrant on Treasury Rights, "other than pre-emption warrants," should be granted or issued before October 15, 1779, and, as a matter of fact, such Treasury Warrants appear to have been first issued, commencing on October 15, 1779.

Pre-emption warrants on Land Commissioners' Certificates appear to have been first issued about February 1, 1780. None of an earlier date than that has as yet been discovered.

Again, by Section III of the Act of May, 1779, creating the Land Office, it was provided that no surveyor should admit the entry or location of any warrant on Treasury Rights, *except pre-emption warrants,* in his office, before May 1, 1780. As has been already pointed out, this section further distinctly provided:

> "It shall not be lawful for any surveyor to admit an entry for any land without a warrant from the register of the land office, except in the particular case of certificates from the commissioners of the county for tracts of land, not exceeding four hundred acres, allowed in consideration of settlement."

In the case of Whitledge v. Kenny, Hughes 211, it is stated by Colonel George Nicholas, of counsel for the appellant (p. 243):

"The land office was open for the entry of treasury warrants in May, 1780; and the right to the pre-emption under the pre-emption warrant was not forfeited until July, 1780; therefore, no person could enter a treasury warrant for this land until July, 1780; but the owner of the pre-emption warrant might, before May, 1780, have entered his pre-emption warrant on other vacant land, and at any time before July, 1780, and after the beginning of May, have entered a treasury warrant on the same land, and then withdrawn his pre-emption warrant and entered it adjoining his settlement, and he would by this means have covered both tracts, and thus have the pre-emption of 2,000 instead of 1,000 acres of land."

By Section IX, of the Act of May, 1779, known as the "Land Law" (Hening's Stats., Vol. 10, Chap. XII), it is provided that no grants should issue upon any claims determined by the Land Commissioners until December 1, 1780.

In Section II, of the Act of May, 1779, establishing the Land Office (10 Hening, Chap. XIII), the consideration for Land Warrants is fixed at 40 pounds for every hundred acres. Section VI, of the "Land Law" (10 Hening, Chap. XII) (which must always be read and construed *in pari materia* with the Act establishing the Land Office, adopted at the same session of the Virginia Assembly), provides that claimants of Settlement Certificates for 400 acres or less must pay "the usual composition money" of "ten shillings sterling for every hundred acres," payable "in current money" at the rate of 33⅓% exchange, and the "common office fees."

Concerning the compensation of the several functionaries charged with the execution of that law, the Land Law, of May, 1779, provides (in Sec. VIII) that the sur-

veyor, for each day's attendance on the Commissioners, should, "out of the fees received for certificates," be paid three pounds, and that the sheriff, for each day's attendance, should be paid two pounds, out of moneys derived from the same source. Section VIII, of the same Act, further provides that 10 shillings should be payable to the Commissioners for each 100 acres covered by certificate, issued by them, and a fee of 10 shillings to the clerk for each certificate issued. Section IX, of the same Act, provides that the Commissioners, for every day actually employed in the execution of their office, should be allowed eight pounds each, and should make due account for all money received upon issuing certificates, except the fee payable to the clerk. This section further provided that the Sheriff and Clerk should receive for their services the fees allowed by law for like services in the County Court, and witnesses the same allowance for their attendance, "to be paid by the party," but the clerk was not entitled to any fee beyond 10 shillings each for entering and issuing a certificate.

The Land Law of May, 1779 (10 Hening, Chap. XII), provided that every person having a land warrant and desiring to locate same on any particular waste and unappropriated lands, should "lodge such warrant with the chief surveyor of the county wherein the said lands, or the greater part of them, lie." It further provided that "every chief surveyor shall proceed, with all practicable despatch, to survey all lands entered for in his office," and "shall, as soon as it can conveniently be done, and within three months at farthest after making the survey, deliver to his employer, or his order, a fair and true plat and certificate of such survey," etc.; also, that "the said

plats and certificates shall be examined and tried by the said principal surveyor, whether truly made and legally proportioned as to length and breadth, and shall be entered within three months at farthest after the survey is made, in a book'' provided for the purpose. This law further directed that ''every person for whom any waste or unappropriated lands shall be so located and laid off, shall, within twelve months at farthest, after the survey made, return the plat and certificate of the said survey into the land office, together with the warrant on which the lands were surveyed,'' etc. A grant thereon, as elsewhere pointed out, was to be issued by the Register within not less than six, nor more than nine, months after the due return of the required documents to the Land Office.

L

Special treatment by the Land Court of exceptional claims, having features out of the ordinary, may be summarized as follows:

One claim was rejected because it appeared to the Court that the claimant ''was a servant to Adam Fisher while in this country.'' (Comm'rs' Certs. Book, p. 78.)

Similarly, a claim by the heir-at-law of a former servant was ordered to ''be set aside,'' ''it appearing to the Court that (the decedent) was a Servant to Robt. McAfee during his residence in this Country and untill he (*i. e.*, the servant) died.'' (*Id.*, p. 363.)

One claimant was held ''not entitled to any Lands in this Country, as he was under age at the time of Making an improvement on the said Land.'' (*Id.*, p. 26.)

One claim, based on raising a crop of corn, in 1776, "in the country on Pittman Creek, a branch of Cumberland River, that runs in on the North side," was rejected because it appeared to the Court, by the evidence, "that the s'd. (Edmon) Douglass raised the Corn in that part of the Country reserved for the use of the Army, & having made no Settlemt. or improvemt. in any other part of the country, the Court are of Opinion that the Law has made no provision for persons in that Situation, that they are not Authorized to grant a Certificate for the same." (*Id.*, p. 167.)

A like ruling was made with respect to the claim of Abraham Price, who claimed a settlement and pre-emption, "on Acct. of raising a crop of Corn in the Country in the year 1776, on the Bigg Meadow, on Cumberland River, on the South side of s'd. River, whereon the sd. Price now lives." The entry recites: "It Appearing to the Court from the evidence offered that the sd. Price rais'd Corn in that part of the Country reserved for the Use of the Army, and having made no Settlemt. or improvemt. in any other part of the Country, they are of Opinion, as the Law has made no provision for persons in that situation, that they are not authorized to grant a Cert. for the same." (*Id.*, p. 320.)

Again, identically the same ruling was made with respect to a joint claim of Benjamin, Moses, Aaron, and Samuel Price, who "claimed a settlemt. & Preempt. to a tract of Land in the District of Kentucky, on Acct. of raising a crop of Corn in the Big Meadow on Cumberland River, on the South side thereof, in the years 1775 & 1776, it being the Land whereon they now live." This claim being located "in that part of the Country reserved for the use of the army," the Court held that it was not authorized to grant certificates therefor. (*Id.*, p. 321.)

An order of April 18, 1780, recites: "It not being made to appear to this Court that the sd. (John) Fleming had taken the Oaths of Fidelity & Allegiance to this State, the claim was not further enquired into." (*Id.*, p. 211.)

A similar order was made, on the same date with reference to John Smith (p. 212), and with reference to Adam Smith (p. 215). Under date of April 19, 1780, a similar order was made with reference to Jacob Froman (p. 219), and likewise with reference to Edward Smith (p. 219), Peter Keller (p. 219), and Alexander Moore (p. 221). On April 20, 1780, the same disposition was made of the claim of John Carpenter (p. 224); and on April 22d the "Heir of Henry Carlter" (p. 241) was dealt with in the same fashion. On April 23, 1780, like orders were made with reference to John Peaxcall (p. 254), Lenifield Sharp (p. 255), and Michael Findley, Sr. (p. 259). And, on April 26, 1780, the last day on which the Land Court was in session, orders to the same effect were made with reference to John Kendrick, "of Loudoun County" (p. 293), William Rice (p. 293), and Jacob Wickerham (p. 301).

Under date of April 19, 1780, the claim of Joseph Tomlinson was rejected, "It appearing to the Court that the said Tomlinson had Obtained a Certificate for a Settlemt. & Preemption in the district of the Monongalia; therefore the Court are of Opinion that he has no right to a claim in this District." (*Id.*, p. 221).

Similarly, on April 21, 1780, the claim of John Swan was rejected, "As it Appeared to the Court that he had Obtained a Certificate for a Settlemt. & Preemption in the District of Monongalia." (*Id.*, p. 231.)

On April 25, 1780, the claim of Jacob Severton was rejected for a like reason (*Id.*, p. 280), as was that of Adam Wickerham, on April 26, 1780. (*Id.*, p. 301.)

Under date of April 21, 1780, the claim of Brezin Vergen was rejected for the two-fold reason: "It Appears to the Court that he obtained a Certificate from the Commissioners of the District of the Monongalia, &c., for lands, nor does it Appear that he had taken the Oaths of Fidelity & Allegiance to the State." (*Id.*, p. 235.)

On February 12, 1780, a claim for a Settlement right was refused Edward Davis, "It Appearing to the Court from the evidence offered that the sd. Davis came to this Country as a Soldier of the Militia of Montgomery County, & that he did not reside here 12 Months after he was discharged; therefore the Court are of Opinion that the sd. Davis has a right to a preempt. only of 1000 Acres." (*Id.*, pp. 328-329.)

On February 17, 1780, lands claimed by Roger Topp, Assee. of Thomas Gibson, on the waters of Hickman Creek (p. 49), appearing to be "within an Officer's Survey," he was permitted to alter the Location of sd. lands, which he did, entering his claim to a tract on the waters of Brashear's Creek. (*Id.*, p. 362.)

An order of April 25, 1780, recites: "It Appearing to the Court that a Settlement & Preempt. to a Tract in the District of Kentucky (on a branch of the South Fork of Elkton) was granted the (6th) day of (November), 1779 (p. 59), to Rich'd. Thomas, which sd. Land, so granted, is within the bounds of a tract of Land surveyed by Virtue of a Military warrant, therefore the Court are of Opinion that the sd. Cert. should not be carried into execution, & that the sd. Thomas have leave to locate the sd. Settlemt. & Preempt. on Mulberry Creek, waters of Brashear's Creek," etc. (*Id.*, pp. 273-4.)

M

An interesting example of the method pursued by the Land Court in hearing evidence and determining disputed claims is preserved at pages 152-153 of the Fayette County copy of the Commissioners' Certificates Book, under date of January 14, 1780, "At Bryant's Station on Elkhorn Creek." The record of this particular controversy reads as follows:

> "Joseph Lindsey this day claimed a Settlemt. & Preemption to a tract of land in the district of Kentucky. Witnesses being sworn & examined, in consideration of which the Court are of Opinion that the said Lindsay has a right to a Settlement of 400 Acres of Land & the Preempt. of 1000 Acres adjoining. He offering to locate the same on a large spring, three Miles below Lexington, Joining Wm. McConnell's, thence West for quantity, which Spring & land Appearing by Colo. Preston's Books to have been Surveyed for Evan Shelby the 16th of July. 1775, by Virtue of a Military Warrant, the sd. Lindsey alledging that the said Survey was not legal, he being Settled on the land before the sd. Shelby entered it with the Surveyor; several Witnesses were sworn & examined, the deposition of Patrick Jourden taken before John Cowan, Gent., a Majestrate for Kentucky County, was given into Court in Evidence & showeth that Patrick Jourdon was in Company with the sd. Joseph Lindsey on or about the 1st day of May, 1775, when the sd. Lindsey marked out & improved a Certain tract of land at a large Spring, near the head of the North fork of the South fork of Elkhorn, & at the same time heard the sd. Lindsey declare that he intended that place for his Settlemt. Wm. McConnell appeared in Court & being Sworn

declared he knew the sd. Lindsey about 1st day Jany., 1776, & saw him on the above mentioned Tract of Land employd. in building a Cabbin in Company with 2 other men & that the sd. Lindsey showd. the sd. McConnell his name marked on a tree & some trees deadned, which had been done in 1775, & likewise saw where some Apple seed had been sowed by the sd. Lindsey; & that some time after that he knew the sd. Lindsey & his brother to go & finish the sd. Cabbin by Covering & cutting a door in it. It appearing to the Court by the Testimony of Hugh Shannon that the sd. Lindsey had planted a few hills of Corn near the Cabbin in the year 1776, Wm. McConnell being further Called upon, declared that in May, 1776, being at work on his own land, John Floyd & Isaac Shelby & John Mills, in Company with some Others, came to him, when the surveyor, John Floyd, informed him that the Land the Witness was then at work on had been run out for John Maxwell the year before, & that he would not Compound with Maxwell for the same, that he would lay on a Military Warrant for Evan Shelby; on which the sd. McConnell gave the sd. Maxwell seventy pounds for his Claim to the sd. land. The sd. McConnell further Witnesseth that he heard the surveyor, John Floyd, declare that he had run out a Survey for Wm. Garrott & that he understood by John Maxwell that Garriott was willing to give up his claim to the sd. Land & that he would lay Evan Shelby's Warrant on the same. The sd. Floyd Declared he understood that Joseph Lindsey had improved the land in dispute & that Garrott could not get the said Survey; after which Conversation, they went from the said McConnell's to Look at the sd. Land & were gone about 2 Hours. When they returned, the witness heard Isaac Shelby say that he liked the Land & that he would lay his father, Evan Shelby's, warrant on it. The above Evidence being taken at the request of the said Joseph Lindsey, the sd. Shelby not being present & lives at so great a distance that he possibly cannot

attend this Court during its Sitting to make his defence, therefore this Court think they are Not Authorized to give the sd. Lindsey a Certificate for the above Location."

This record constitutes one of the strongest pieces of documentary evidence known to us of the presence of white men at and near the site of the city of Lexington in the Spring and Summer of the year 1775. The "improvement" said to have been made by Joseph Lindsay about May 1, 1775, was, in all probability, the earliest deliberate "improvement" ever made by any white man in the immediate vicinity of Lexington, if we except the military surveys for Major Edward Ward, made by James Douglas and party, on July 1, July 8 and July 12, 1774. Joseph Lindsay acted as Commissary of Supplies under Colonel George Rogers Clark and afterwards lost his life in the Battle of the Blue Licks, August 19, 1782. As the above record indicates, John Floyd, Deputy Surveyor of Fincastle County, under Colonel William Preston, the Principal Surveyor of that county, made, in July or August, 1775, "private surveys" for John Maxwell and for William Garrett, who was a chain-carrier for Floyd. These "private" and unofficial surveys appear never to have been perfected, but they constituted interesting historical land-marks, nevertheless.

The military survey of 2,000 acres for Colonel Evan Shelby, referred to in the above record, lying just west of Lexington, was made by Floyd on July 16, 1775. A Patent to Evan Shelby on this survey was granted October 23, 1779, and this was probably the first grant of any kind ever issued by the *Commonwealth* of Virginia on any survey of land in Kentucky. As the above record further shows, the Evan Shelby survey of 2,000 acres was visited by Isaac Shelby, a son of Evan, in company

with John Floyd, John Mills, and others, in the month of May, 1776, and Isaac Shelby at that time located for his father another 500-acre military land warrant, adjoining the above-mentioned 2,000-acre tract. These lands, with others on the East Fork of Hickman Creek, in Fayette County, were conveyed by Colonel Evan Shelby to his two sons, Evan Shelby, Jr., and Moses Shelby, by a deed bearing date October 13, 1783, which is recorded in the office of the Clerk of the Court of Appeals at Frankfort, Ky. The title eventually became vested in Governor Isaac Shelby and later passed, in part, to his sons, James and Thomas Hart Shelby. (For further data, see the case of Greenup v. Coburn, Hughes' Reports, p. 200; the case of McConnell v. Kenton, Hughes' Reps., pp. 257-322; and the case of Bosworth v. Maxwell, Hardin's Reports, p. 214.)

An illustration of how the Land Court viewed and asserted its jurisdiction is furnished by the following instance, recorded under date of February 15, 1780, at Harrodsburg:

> "Ordered that the Surveyor of this County attend this Court with his books today, as there is some claims already granted upon Lands, which appears has been entered by Virtue of Military Warrants. * * *
>
> "Geo. May, Surveyor for this County, in consequence of an Order of this Court, requiring him to attend them with his books, accordingly attended. * * * Jno. Bowman and Jno. Hite being personally in Court informed them that having Obtd. Certificates from this Court in the name of Isaac Bowman, Hannah Soverins & Vangelist Harden for settlemt. & preempt. each, which they had Located on the Yellow Banks on the Ohio River above the mouth of Green River, being informed by the Surveyor that

entries were made by Virtue of Military Warrants on the sd. Land, they apply to the Court to have their rights of claim Determined; upon examining the Surveyor's Books, which finds the lands above mentioned to be entered by Geo. May for and in behalf of Jno. May, Thos. Mann Randolph, & Jos. Woods, Exors. of Lenard Price, dec'd., & Theoderick Bland, Junr., who acknowledged himself their acting Attorney for the purpose of making the sd. entries but now objects to the Court's authority in determining the rights of claim to the sd. Lands. It being the opinion of the Court that they are fully empowered & authorized to adjust & settle all titles of claims to unpatented Lands, under the present & former government, thought proper to examine sundry Witnesses, in consideration of which, the Court are of Opinion that the sd. entries made by Virtue of Military Warrants and preempt. rights are good & that the Location of the sd. persons be withdrawn."

N

It is no part of the purpose or plan of this paper, or of the additions made thereto, to deal with "Proclamation Warrants" granted for military service in the old French & Indian War. But it may not be entirely useless to call attention to a few landmarks established by surveys under such Military Warrants and the dates of these surveys may also serve to aid one's study of the chronology and progress of the pioneer movement into Kentucky. Of course, each of the surveys here mentioned was made while the territory of Kentucky was embraced within the County of Fincastle, Virginia, and during the time that Colonel William Preston was Principal Surveyor of that county.

Informal and unofficial or "private" surveys appear to have been made in what later became Bracken County, by Captains John Hedges and Thomas Young, in the year 1773 (Collins' Hist. of Ky., Vol. 2, pp. 94 and 517), The surveying party, under Captain Thomas Bullitt, as it proceeded down the Ohio River to the Falls, halted long enough, it is said, in the month of May, 1773, to make surveys in what later became Lewis and Boone Counties (2 Collins, p. 465). It is not known for certain whether these surveys were made on Military Warrants or not.

A series of surveys about the Falls of the Ohio, covering, in part, the surveys made by Captain Thomas Bullitt and his party in 1773, were made, in the months of May and June, 1774, by John Floyd, Hancock Taylor, Isaac Hite, and James Douglas, all acting as Assistants or Deputies under Colonel William Preston.

What is now the heart of Louisville was surveyed, in part, in July, 1773, by Bullitt & Company, for Dr. John Connolly and Charles de Warrenstaff (or Warrensdorff), and, under date of December 10 or 16, 1773, grants for 2,000 acres each, on these surveys, were issued by Lord Dunmore, Governor of Virginia, to Connolly and Warrenstaff. The latter had served as an Ensign in the Pennsylvania Regiment, in the French & Indian War. In the Revolution, Connolly held the rank of Lieutenant-Colonel, Commandant, in the Provincial Line of the British Army in North America. By deeds of Lease and Release, of February 12, 1774, Warrensdorff conveyed his two thousand-acre tract to John Connolly and John Campbell, as tenants in common, and, in pursuance of Articles of Agreement between Connolly and Campbell, of 19th August, 1773, Connolly, by two deeds, one of February 25, 1775, and the other of February 6, 1776, conveyed to Campbell half of his (Connolly's) own survey of 2,000 acres, and made a partition of the combined boundary of 4,000 acres, consisting of Connolly's and Warrensdorff's grants. The division, as actually made by survey of Daniel Sullivan, Deputy Surveyor of Jefferson County, on July 20, 1784, was confirmed by a deed from Connolly to Campbell, of 21st November, 1788. By deed of the same date, Connolly conveyed to Campbell "all the westernmost moiety or half of Charles de Warnsdorff's tract of land on the Ohio River, below the Rapids thereof," containing 1,000 acres; and by another deed, of the same date, Connolly conveyed to Campbell a considerable number of Lots and Squares "in the Town of Louisville." The title of Doctor Connolly, a British subject, had become involved in the Act of May, 1780, establishing the town of Louisville (10 Hening, 293), and in an Inquest of Escheat, held at Lexington on July 1,

1780, but by three successive Acts of the Virginia Legislature, the first passed at the May Session, 1783, the second at the October Session, 1783, and the third at the October Session, 1784, his rights had been saved in favor of his grantees, mortgagees, and creditors. (Hening's Stats., Vol. 11, Chap. XXXI, p. 276, Chap. XV, p. 321, and Chap. XXVI, p. 474; and Deed Book "B," pp. 1-22, of the Supreme Court for the District of Kentucky, in Clerk's Office of Court of Appeals, at Frankfort, Ky.)

Still another part of the present City of Louisville consists of lands surveyed, on June 1, 1774, by James Douglas, on three Military Warrants of 2,000 acres each, in favor of Alexander Finnie, who had served as a Lieutenant in Col. Wm. Byrd's regiment, and in favor of his two sons, William Finnie, a Surgeon's Mate, and John Finnie, an Ensign, in the same regiment. These lands were on the Ohio above the mouth of Bear Grass Creek. They were assigned to Richard Charleton and James Southall.

The tract, which embraces the site of Bryan's Station, was surveyed for 1,000 acres, on behalf of William Preston, a Captain in the Old French & Indian War, on July 13, 1774, by John Floyd. This survey was assigned by Colonel Preston, on October 8, 1779, to Joseph Rogers and John Seabery (or Seabury), and was afterwards acquired in its entirety by Joseph Rogers, who resided on it for many years.

The tract, which embraces the "Big Spring" (or "Floyd's Spring," as it was called at the time of its discovery, on July 9, 1774, or "Royal Spring," as Floyd subsequently named it), and the site of McClelland's Station, at Georgetown, was surveyed as 1,000 acres, on a Military Warrant granted by Lord Dunmore to Alexander Waugh, who had been a Lieutenant in the Second Vir-

ginia Regiment, in the French & Indian War. Lieutenant Waugh assigned this warrant to Col. William Preston, and Preston, in turn, assigned it to John Floyd, by whom the survey was made on July 21, 1774. Upon this survey, a Patent was issued to Floyd on December 1, 1779. Before the issual of the Patent, Floyd had exchanged the survey for another to John McClelland, the founder of McClelland's Station, who located his fort at the "Royal Spring" in 1775, but the title was afterwards re-acquired by Floyd.

The tract, which embraces a large part of the present City of Lexington, was surveyed as 200 acres, for James Buford, a Sergeant, on August 5, 1775, by John Floyd, "near the head of the Middle Fork of Elkhorn," joining John Maxwell. The "Middle Fork," as used in this description, means what has since come to be known as the Town Fork of South Elkhorn. This survey was assigned by James Buford to James Cowden, by Cowden to Charles Cummins, and by Cummins to John Floyd. Floyd afterwards transferred the survey to John Todd, and Todd sold and conveyed seventy acres of it to the Trustees of the Town of Lexington. Other portions were later acquired by Lexington from Mary Owen Todd Russell, the only child and heir-at-law of Colonel John Todd, who was killed at the Blue Licks, on August 19, 1782. The Military Warrant granted to Sergeant James Buford by Lord Dunmore, Governor of Virginia, was dated *April 19, 1774*, exactly one year to a day before the Battle of Lexington. In view of the circumstances under which Lexington, Kentucky, got its name, this is certainly a noteworthy coincidence.

In regard to the purchase of lands by Richard Henderson & Company from the Cherokee Indians, James Douglas gave a deposition, at Williamsburg, Virginia, on October 28, 1778, in which, among other things, he said:

> "That he was not at the Treaty held in March, 1775, between Rich'd. Henderson & Company & the Cherokee Indians: but that he arrived in Transylvania about the end of April, & about the month of June or July following, departed from that place in order to return to Williamsburg—That he was acquainted with Rich'd. Henderson whilst at Transylvania & thought he treated those exceeding well, who intended to become settlers—Except in conferring large Grants on some & refusing to others. * * *
>
> "And this deponent further sayeth that about the Spring of the Year 1773, in going down the River Ohio, from Pittsburg, in company with Colo. Thos: Bullit as his deputy Surveyor, the said Bullit left the Company about 100 miles above the Great Canawah (Kanawha), in order, as he averred, to visit the Shawanese Towns, to acquaint the Indians with his design of going down that River. * * *
>
> "They then proceeded on their Journey and at the great Falls of the Ohio met with another party of Indians, which this deponent understood were Kickapoos & Shawanese, whom they likewise acquainted with their intentions & appeared to be friendly.
>
> "This deponent sayeth that they made sundry & large surveys, including the country from ten miles above the Falls to twenty miles below. These surveys this deponent returned to Bullit, & was informed that they were of no effect, because Bullit had no warrant from the Governor to survey, except the Surveys made for Connelly & Campbell of Fort Pit—And the reason which this deponent alledges why the surveys for Connelly & Campbell were declared valid was that he was appointed a deputy surveyor under Colo. Preston in the Year 1773 or 1774: & previous to

granting the patents: this deponent further sayeth that he sent down the surveys signed by himself as deputy to Bullit; but that he understands that after his appointment as deputy to Preston, the said Preston signed them—And that Patents were refused to Connelly & Campbell until they were signed by the said Preston—And this deponent further saith that after the patents were granted to the said Connelly & Campbell, he returned to the Ohio in company with sundry other deputy surveyors, vizt., John Floyd & Isaac Hite, and resurveyed the said tract of Connelly's & Campbell's, containing in the whole four thousand acres. And this deponent saith that there were about sixty thousand acres surveyed under proper warrants from the Governor for Officers' claims—

"This deponent, being asked whether at the time he surveyed under Colo. Preston in the year 1774, his warrants were located to any particular spot of ground? Answered, that to the best of his remembrance, he acted under several warrants, specifying the Lands on the south side of Kentuckey.

"This deponent, being further asked whether, whilst he was surveying in the year 1774, there were not several Improvements made in that part of the Country? Answered, that he was informed that there were Improvements made there by a certain James Harrod & Company, who he understood were drove off by the Indians—This deponent, being asked whether Mr. Harrod, Mr. Isaac Hite & Mr. John Floyd were not present at the time that Livery of Seisin was made to Col: Henderson in May, 1775? Answered, that he believes they were present—that he himself was present & heard no one object to the Livery of Seisin—Being asked whether they, the said Harrod & his Company, did not enter under the said Henderson & Company as Proprietors of that Country? Answered, that he believed they did—&c. * * *

"Being questioned further, (he) deposeth * * * that he is so far interested in this dispute that, should

Colo. Henderson & Company obtain a grant for the sd. Lands, a very great number of People may suffer, who have claims for a large quantity of the Transylvania Tract, surveyed by me & others, under Lord Dunmore's warrants, as they will be thereby excluded from what I think is their proper Right." (Calendar of Virginia State Papers, Vol. I, pp. 307-309.)

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To make them available to readers to whom they may not otherwise be readily accessible, the following newspaper items are here given:

The Lexington "Reporter," of Saturday, July 8, 1809 (No. 21, Vol. 2), has a very full account of the Fourth of July celebration, which included a dinner at Maxwell's Spring. One of the volunteer toasts, proposed by John Wyatt, was to "John Maxwell—a soldier in the revolutionary war, and an early adventurer to this country—whose ground is consecrated to Liberty and Independence." The "Reporter" was then published by William W. Worsley.

The "Kentucky Gazette," of Tuesday, July 11, 1809 (Vol. XXII, No. 1,237) (then conducted by Daniel Bradford, Printer), has an account of the "Fourth of July," much like that in the "Reporter" of July 8, 1809. Its account shows that Wyatt's toast to John Maxwell was followed by "6 cheers."

In the "Reporter" for Saturday, July 29, 1809 (No. 27, Vol. 2), is an editorial article, entitled "Origin of the Name of the Town of *Lexington.*" It reads, in part, as follows:

"The county of Fayette was named in gratitude to the services, and to perpetuate the remembrance of the *Marquis de la Fayette* of France, who rendered himself so conspicuous by volunteering in defense of American liberty. The names of many towns and counties in the United States also immortalize other heroes of our revolutionary war.

"But in a particular manner was the town of Lexington consecrated. Its beginning was laid in the cradle of Liberty, and its foundation sprinkled and cemented by the blood of our citizens first murdered by the *British Tyrant*, at the battle of Lexington, in Massachusetts, in 1775.

"John Maxwell,
Levi Todd,
John McCrackin,
Hugh Shannon,
Isaac Greer,
James Dunkin,
William McConnell,

and a few others of our first settlers, were collected around their fire, seated on logs, and Buffaloe hides, supping on their parched corn, in a cabbin (at McConnell's station), where the widow Campbell now lives, on the Leestown road, when a conversation commenced respecting what name they should give to the new town they contemplated; *York*, *Lancaster*, and a number of other names were mentioned. But recollecting the battle of Lexington, which they had heard of a few days before, it was unanimously resolved to perpetuate the first opposition by arms to British tyranny, by erecting in the then wilderness, a monument more durable than the pyramids of Egypt, to the memory of those citizens murdered, a monument lasting as the foundations of the universe, and also to perpetuate their own devotion to the sacred principles of Liberty.

"They consecrated the new town by the name of

LEXINGTON.

"Such was the origin of the name of the town of Lexington. And its encrease has hitherto been commensurate with the honor of its origin. An origin, whose recollection, we trust, will forever maintain in the breasts of our *farmers* and *mechanicks* and our fellow citizens universally, that proud pre-eminence which the inhabitants of Fayette have always shewn for the pure principles of *democracy*. * * *

"Whilst recording this history of the origin of the name of the town of Lexington, it is a duty we owe to our venerable and respected revolutionary soldier, John Maxwell, whose name is already mentioned, to add that the ground on which the town was first named was then his property; that the soil of *John Maxwell* has ever since been devoted to the cause of freedom; on his plantation have our citizens for many years past celebrated the anniversary of American independence, and where that memorable era will still continue to be celebrated by the friends of liberty, notwithstanding the *trifling* inconveniences of a publick dinner."

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In this connection may appropriately be reproduced the "Citizens' Compact" of January 25, 1780, entered into by the then residents of Lexington, which constitutes the basic documentary act looking toward organic union and permanent existence of the new settlement. This formal covenant, bearing date January 25, 1780, has fortunately been preserved to us in the records of the Fayette Circuit Court, and is, in all probability, the earliest documentary evidence, which has survived, of the political birth of Lexington. Its reproduction here may serve the better to insure its preservation for future times.

This historic paper, styled "Articles of Agreement between the Citizens of Lexington," together with the signatures of the forty-seven subscribers thereto, is as follows, viz.:

> "Articles of Agreement this day made by the inhabitants of the town of Lexington, in the County of Kentucky, are as follows, viz:
>
> "That we do agree to lay off the sd. town in (in-) lots of half acres each, and out-lots of 5 acres each, at the joint expence of the inhabitants. And that the said lots, when laid off, to be numbered, and that we draw for the same, allowing the settlers of last year the benefit of their field and to clear adjoining the said field for three years.
>
> "No man to be allowed to draw for a lott unless he is an inhabitant of the town 12 months or raise a crop of corn for the ensuing year.
>
> "That each man entitled to a half acre lot by these articles to clear the same by the first day of June.

"And, whereas there may be disputes concerning the lots drawn by settlers of last year, we do agree to throw up all right and title to the said lots & take an equal chance in drawing the new lots, to be laid off regularly as above mentioned.

"And whereas it (may) not be convenient to lay off the 5-acre lots at this time, because of Indians, every new settler may be allowed the privilege of clearing on any part of the town land, till it may be safe to lay off the said 5 acre lots and confine every man to his lot; provided they do not interfere with the field already cleared, and the privilege allowed to the first settlers. And when the said 5-acre lots is laid off, each man shall take the lot most convenient to his half-acre lot.

"These articles we oblige ourselves to abide by under the penalty of five hundred pounds current money of Virginia.

"Witness our hands this 25th day of January, 1780.

"Robert Patterson, 3;
William Elliotte;
William Davis;
Samuel Johnson, 3;
James Lindsay, 2;
James Guy;
(James) Morrow;
Hugh Shannon;
Alexander McNair;
William Martin, 3;
Jacob Wimer (Wymore);
Charles Seaman, 3;
John Wimer (Wymore), Jr.;
John W. Clark;
James Farrow, 3;
Elisha Colans (Collins), 3;
Joseph Turner, 3;
Matthew Caldwell;
Robert Thompson, 2;
Hugh Thompson, 2;
James January;
William McDonald, 3;
Thomas Trimble;
Alex. McConnell.

Chr. Johnston;
John Stevenson;
Robert Thompson;
William Niblack;
(mutilated) kwimor;
Thomas Stevenson, 5;
John Niblack;
(Michael) Warnock, 3;
John Wimer (Wymore), 3;
Hugh McNair;
Samuel Martin, 3;
John Stevenson;
Arthur Lindsay, 2;
William Shannon;
James McKnitt, 2;
Isack McBride, 3;
James Wason, 3;
William Hedon (Haydon), 3;
John Newell, 3;
David Vance, 3;
John Foreon (Froman ?) 2;
Syrus Colans (Collins), 3;
James McConnell, 2;

(Certified) "The foregoing is a true copy from the original in my office.

Att. Thos. Bodley, C. F. C. C."

(See *Sharp* v. *Trustees of Lexington*, 7 T. B. Monroe, 22; *Trustees of Lexington* v. *Lindsay's Heirs*, 2 A. K. Marshall, 443; and articles on the "Birth and Beginnings of Lexington," by Samuel M. Wilson, in the *Lexington Herald*, of January 25, and February 1, 1920.)

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