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UNIVERSITY OF LOUISVILLE

LAND LAWS OF KENTUCKY

A Dissertation

Submitted to the Faculty of the

Graduate School

of the

University of Louisville

In partial fulfillment of the
Requirements for the Degree of
Master of Arts

DEPARTMENT OF HISTORY

By

LILLIAN LOGAN

1930

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LAND LAWS OF KENTUCKY

INTRODUCTION

This thesis follows the growth of settlement in Kentucky from the time of her birth as a state in seventeen hundred and ninety-two, to the year eighteen hundred and thirty-seven, a period during which all of the land within her borders was opened for settlement. It does not pretend to relate a complete story of the march across Kentucky, but only to tell the important stages as revealed by the laws governing appropriating of land.

There were no ⁽¹⁾ Indian towns or villages within the boundaries of what is now Kentucky, but certain tribes had definite hunting grounds. The Cherokees were one of these tribes. ⁽²⁾ "On the borders of Virginia and North Carolina the ancient limits of the Cherokees seem to be shrouded indoubt and confusionAfter following Catawba river to its source in the Blue Ridge, the course of the mountains is pursued to the Great Iron Mountain range near Floyd Court House, Virginia, thence to Kanawhadown that stream to Ohio. Later they claimed down Ohio to the ridge dividing Cumberland and Tennessee." At the treaty of Hopewell in 1785, Chief Tassel presented a rude map on which a line was drawn marking the bounds of the Cherokees ⁽³⁾.

(1) History of North America Vol.II p.237

(2) Fifth Annual Report "Bureau of Ethnology" p.141

(3) Am. State Papers "Indian Affairs" Vol.I pp.42 & 431

The line began at a point on the Ohio above the Kentucky and ran thence to "where the Kentucky road crosses the Cumberland River," (Pineville), thence south to Chimney Top Mountain. Governor Blount of the Territory South of the Ohio, stated that the Cherokees had their chief hunting grounds further south on the Holston and Tennessee and rarely visited Cumberland waters. These Indians themselves admitted their loose hold there, for ⁽⁴⁾Colonel Tatham of Richmond reported that he heard a Cherokee warrior say to Richard Henderson, "You, Carolina Dick, have deceived your people. You told them we sold you the Cumberland lands. We only sold you our claim, they belong to our brothers, the Chickasaws."

The Chickasaws had become masters of Cumberland waters ⁽⁵⁾ by defeating the Shawnees who had their villages there, and sweeping them across the Ohio. The Cherokees had helped in the fighting so they claimed some rights to the territory. Major Robert Rogers of the English army, traveling in America before 1765 writes, "Below the Ohio River, on the east side of the Mississippi, down to its mouth the country is owned and inhabited by the Chickasaws for nearly two hundred miles to the eastward their chief settlements are on the banks of the Ohio, on the streams that flow into it from the east. The Tennessee is wholly uninhabited below the mountains to where it joins the Ohio but the country upon it is claimed by the Chickasaws."

(4) *ibid.* p. 637

(5) Malone, J.H. "The Chickasaw Nation" pp. 302 & 304

The northern Iroquois claimed the lands lying between the Ohio and Tennessee Rivers as part of their Ohio Valley territory.

The Indians had relinquished most of their rights to Kentucky soil before the time of her statehood. The Iroquois ceded to the English crown all their pretensions to lands south of the Ohio at the treaty of Fort Stanwix. The Chickasaws ceded to Virginia their claim to the Cumberland lands in 1782. The Cherokees ceded land to Virginia and Richard Henderson.

At the treaty of Hard Labor in 1768, the Cherokees agreed that the southwest boundary of Virginia should be⁽⁶⁾ "a line extending from the point where the northern line of North Carolina intersects the Cherokee hunting grounds about thirty-six miles east of Long Island in the Holston River; and thence extending in a direct course north by east to Chiswell's mine on the east bank of the Kenhowa River, and thence down that stream to its junction with the Ohio." By the treaty of Lochaber, South Carolina, October 18, 1770, this boundary was made a straight line from a point on the Holston six miles east of Long Island to the mouth of the Great Kanawha. In 1772, by treaty and purchase, the line extended west from White Top Mountain in latitude $36^{\circ} 30'$.

When Richard Henderson desired to establish a

colony in Kentucky, he applied to the Cherokees for some land. Although their claim to the land desired was shadowy, these Indians commanded the path from Virginia and the Carolinas to Kentucky, so Henderson thought it best to negotiate with them and to settle the land territory armed with a deed of cession. His company met twelve hundred Cherokees at⁽⁷⁾ Sycamore Shoals on the Watauga in March 1775. For fifty thousand dollars worth of cloth, clothing, utensils, ornaments and firearms, the Indians sold him an immense tract including all the country lying between the Kentucky and Cumberland Rivers, and an approach to it through Powell's Valley. Such purchases of land from the Indians by private individuals had been inhibited by a royal proclamation of King George III under date of October 7, 1763, so Henderson was not allowed to keep this tract long. It was taken over by Virginia and North Carolina as inherited Crown Lands after the Revolution. But⁽⁸⁾ because he had been "at very great expense in making a purchase of the Cherokee Indians" and because the commonwealth was "likely to receive great advantage therefrom," Henderson was granted compensation elsewhere. The Virginia legislature decreed that: "All that tract of land ... beginning at the mouth of Green River, thence running up the same twelve and a half miles, when reduced to a straight line, thence running at right angles with the said reduced lines twelve and a half miles on each side the said river, thence running lines from the termination of the line

(7) *ibid.* p. 147
 (8) Hening "Statutes at Large" Vol. 9 p. 571.

extended on each side the said Green river at right angles with the same, till the said lines intersect the Ohio which said Ohio shall be the western boundary of said tract, be granted to Richard Henderson and company."

Virginia respected the Indian claims within her borders. Her general land act passed in 1779, states,⁽⁹⁾ "No entry or location of land shall be admitted within the country and limits of the Cherokee Indians or on 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 or in that tract of country reserved by resolution of the general assembly for the benefit of troops serving in the present war."

This last mentioned "reserved tract" was⁽¹⁰⁾ "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 said river to the Ohio river, and with the Ohio to the said Green river."

Kentucky land had been bargained for and had been granted in various ways by the state of Virginia before Kentucky became a state. The settling of these old Virginia grants, the extinguishing of the Indians' title to their remaining hunting grounds, and the sale of these lands by Kentucky makes a complicated and interesting story.

(9) Henning "Statutes at Large" Vol.10 p.54

(10) *ibid.* p.56

THE KENTUCKY LAND OFFICE

N-O-T-I-C-E

Is hereby given that on Monday, the 9th day of July next, at Mr. M'Gowan's tavern in Lexington the Land office for the state of Kentucky will be opened for the purpose of receiving Plattes and Certificates where due attention will be given.

Baker Ewing, Re. L. off.

June 28th, 1792.

The machinery for administering the sale of public land was an important part of the new state government. The Kentucky Gazette of June 30, 1792, carried the following announcement. "Yesterday ended the first session of the General assembly, during which they passed the following laws viz.

.....

11. An act for establishing a land office

.....

20. An act concerning Surveyors

.....

32. An act authorizing the Governor to appoint Surveyors to the reserved military lands.

The Kentucky Land Office was created June 27, 1792⁽¹⁾ and Baker Ewing was appointed Register. A surveyor was

(1) Act of June 27, 1792.
Littell "Statute Law of Kentucky" Vol.1 p.75

appointed by the governor for each of the counties, The law required that the register deliver to the Secretary of State his bond for five thousand dollars for five years. He was to hold office during good behavior, with no stated salary, but in this new country the fees collected would certainly amount to a goodly sum especially when⁽²⁾ "all persons chargeable with any fees for services in the register's office shall discharge the same in specie at the rate of eight and four pence per hundred for tobacco." Tobacco had been the usual medium of exchange in Virginia transactions. By an act of December 22, 1792, the treasurer of the state was ordered to pay the register five shillings for issuing a grant. After 1796⁽³⁾ this officer was put on the civil list with an annual salary of two hundred pounds,* and was required to account to the state auditor for all fees collected for any service paying them into the treasury every six months. There was a penalty of two thousand pounds for failure to make such an accounting. If the register desired to extend credit to any person, he did so at his own risk, all fees being accounted for as if paid in cash.

- (2) Act of Dec. 22, 1792. Littell "Statute Law of Kentucky"
Vol. 1 p. 160
(3) Act of Dec. 14, 1796. *ibid.* Vol. 1 p. 368
* Stated as \$1000. in schedule of Dec. 20, 1800.

The following list gives the principal fees of
the land office. (4)

Register's Fees.

For receiving plat and certificate,
recording same and issuing the grant,
where the survey does not exceed 400 acres - \$1.12½

For every 100 acres exceeding 400
and excluding same included in same ----- .12½

Entering a caveat or copy thereof ----- .25

For a copy of any grant or patent
of land ----- .43

A search for anything and for reading-- .12½

Copy of plat or certificate ----- .25

Copy of warrant with assignment----- .17

Copy of warrant ----- .17½

Receiving relinquishment or copy ----- .17

Recording power of attorney for
relinquishment ----- .50

Surveyor's Fees. If these were not paid they
could be collected by the sheriff.

For every survey by him plainly bound-
ed as the law directs - for a plat of such
survey upon delivering of plat where survey
shall not exceed 400 acres ----- 4.00

For every survey contained in one
survey more than 400 acres ----- .25

For surveying a lot in town ----- .50

Where a surveyor is stopped or other-
wise hindered from finishing a survey begun- 2.50

For running a dividing line -----	\$2.00
For re-survey of land -----	4.00
One plat made of surveys of several adjoining surveys -----	.25
Dividing line between counties ten miles or under (straight) -----	10.41
Every mile over ten -----	.34
For receiving warrant of survey and giving receipt -----	.17
Recording certificate from commis- sioners of any district for land allowed them -----	.17
Making an entry or copy -----	.17
Making a copy of plat or certificate of survey -----	.25
Every connected plat originally made out, each plat over and above services on the ground -----	1.00
Every single plat from field notes ---	1.00
Additional plats -----	.09
Additional copy of connected plat ----	.50
Recording all official surveys -----	.09
Survey or record in book all con- nections of surveys officially made, each plat (not over 4) -----	.25
Over four -----	.04 $\frac{1}{2}$
For every three poles actually run ---	1.00
Processioning land (per diem) -----	2.00

Patents were to be issued by the Kentucky Land Office just as they had been issued in Virginia. In May 1779,⁽⁵⁾ the

(5) Act of May 1779. Henning "Statutes at Large"
Vol. 10 p.52

Virginia General Assembly had passed "An act for establishing a Land office, and ascertaining the terms and manner of granting waste and unappropriated lands." This statute provided, "That any person may acquire title to so much waste and unappropriated land as he or she shall desire to purchase, on paying the consideration of forty pounds for every hundred acres, and so in proportion for a greater or smaller quantity, and obtaining certificate from the publick auditors in the following manner: The consideration money shall be paid into the hands of the treasurer, who shall thereupon give to the purchaser a receipt for the payment, specifying the purpose it was made for, which being delivered to the auditors, they shall give to such person a certificate thereof, with the quantity of land he or she is thereby entitled to upon application the register shall grant a printed warrant under his hand and the seal of his office, specifying the quantity of land and the rights upon which it is due, authorizing any surveyor ... to lay off and survey the same, and shall regularly enter and record all such certificates and the warrants issued thereupon, which warrants shall be always good and valid until executed by actual survey, or exchanged. ... Every person having a land warrant and desirous of locating the same on any particular waste and unappropriated lands shall lodge such warrant with the chief surveyor of the county. The party shall direct the location thereof which location shall bear date the day on which it shall be made, and shall

be entered by the surveyor in a bookEvery chief surveyor shall proceed with all practicable despatch to survey all lands entered for in his office He shallwithin three months after making the survey, deliver... a fair and true plat and certificate of such surveyEvery person for whom lands shall be so located and laid off shall within twelve monthsreturn the plat and certificate of the said survey into the land office together with the warrant When any grant shall have been finally completed the register shall cause the plat and certificate of survey on which the grant is founded to be exactly entered and recorded ... (and) shall make out a grant by way of deed poll to the party having right."

A settler was also allowed a pre-emption right (6) to one thousand more acres for marking and improving his regular grant.

The land office promptly started to put the land data in order. Kentucky like Virginia disposed of her land in irregular tracts without government survey. The patent or grant referred to the lines actually run out on the ground rather than to the courses and lines named in the returns. (7) "The original marks and living monuments constitute the survey. Uncertainty arises when corners or marks on the ground are lost. These, restored by recollection of witnesses or by reputation, are the best evidences for settling boundaries."

(6) Littell & Swigert "Digest of Statute Law" p.713
 (7) Dembitz "Land Titles" Vol.1 p.19

"In Kentucky,⁽⁸⁾ he who claimed title under a grant had the burden of proof to show what had been granted." He could not, as in Virginia, get a grant to a large acreage and subtract the number of acres granted to others under another survey, but had to definitely locate and account for all previous surveys in the tract.

In 1792, all Virginia grants⁽⁹⁾ relating to lands west of the Big Sandy were transferred to Kentucky and placed in the custody of the register of the land office. As time went on, the legislature passed various acts to enable this office to collect data and keep track of land granted. "The surveyor of Kentucky County in many cases did not enter the number of the warrant in the locations made. Many warrants were lost or mislaid⁽¹⁰⁾." This meant that people were living on land to which they could not prove the right of possession. The county surveyors of the commonwealth refused to certify that warrants for these locations had been issued and then lost or mislaid, because they had never come into their possession. The General Assembly had to legalize these claims by a legislative act authorizing the county surveyors to certify plats with date of location and to state that warrants had not come to their possession. The register was then to receive the plat without the number of the warrant or warrants being specified, and to issue patents.

At this same time, provision was made for the re-survey of old grants to rectify errors in the previous

(8) *ibid.* Vol. 1 p.41

(9) *Littell "Statute of Law"* Vol. 1 p. 75

(10) *ibid.* Vol. 1 p.216

survey if greater then the surplus of five acres for every one hundred. The person desiring the re-survey must "advertise his intentions at the door of the court house on two several court days - also having given notice to owners of adjoining land." He must then present the petition to the court of the county in which the lands lie. The court can order a re-survey at the charge of the petitioning party according to the original or authentic title papers. If the general court certifies that the new survey is reasonable, the person can demand a register's receipt. Any one objecting to the patent of the new survey must file complaint within six months. Re-surveys were necessary because of the many overlapping claims in the old grants.

Sometimes, the taker-up of land found that he had contracted for a larger claim than he could manage to acquire. In that case, he could disclaim⁽¹¹⁾ part of the land and relinquish right to it by making an entry of the tract. The title of the relinquished land then reverted to the state.

In 1797, the General Assembly⁽¹²⁾ instructed the register to "apply to the executive of Virginia for all original papers in the register's office on which titles of land in Kentucky depend ... and monies received by him for plats and certificates on which patents were not issued."

(11) *ibid* - Vol. 1 p.222

(12) *ibid* - Vol. 1 p.652

At the next Assembly,⁽¹³⁾ the authorities were also instructed to apply to the surveyors of the Virginia state and continental lines residing in Kentucky for the entries in their offices made on military warrants. The time which Virginia had stipulated for holding the reserved tract as military lands had expired. This territory was about to be opened to settlers, so it was necessary to locate outstanding surveys and so to avoid future litigation due to over-lapping claims. Many plats and certificates of land which were brought from Virginia were lying in the Kentucky land office. In 1798, the General Assembly directed the⁽¹⁴⁾ register to secure an order for the return of fees paid to Virginia by the owners of these plats and certificates and to carry them into grant as speedily as possible.

When more land was opened for patenting, the land office had increasing difficulty in keeping a systematic record of transactions. So, in 1799, an act of the General Assembly ordered all surveyors in Kentucky to transcribe, within eight months⁽¹⁵⁾ all original entries "in a fair and legible hand and in good books, well bound in calf and deposit same with the register of the land office."

Two years after the general land law was passed opening up most of the vacant country in the state to settlers, it was necessary to order⁽¹⁶⁾ all clerks of the county courts

(13) *ibid* - Vol. 1 p. 118

(14) "Acts of General Assembly" 1798 - p.33

(15) *Littell* - "Statute of Law" Vol. 2 p.302

(16) *ibid* - Vol. 3 p. 60

to transmit to the register all certificates given for vacant land.

The first constitution of Kentucky contained a provision concerning land titles which, in the light of future judicial proceedings in the state, was exceedingly unfortunate. Article V, Section 3, states ⁽¹⁷⁾ "The Supreme Court shall have original and final jurisdiction in all cases respecting the titles to land under the present land laws of Virginia including those for the district of Kentucky, and in all cases concerning contracts for land prior to the establishing of those titles." John Marshall, in commenting on this constitution, declared it to be nearly perfect and thoroughly republican in its apparent features except for this giving of original jurisdiction in land cases to the Appellate Court. To take such cases out of the sphere of the more frequent and more accessible general courts proved most "mischievous and expensive" in practice.

The land laws of Virginia were in force in the new state to protect ⁽¹⁸⁾ the rights acquired by settlers of 1779-1791 but no new grants could now be acquired under them. The surveyors of military land were continued and county surveyors appointed, whose business was to make the official surveys to be recorded in the land office.

The peculiar ⁽¹⁹⁾ land laws of Kentucky are based

(17) Young, Bennett H. - "History and Texts of the Three Constitutions of Kentucky" 1890 pp. 32, 33.

(18) Littell & Swigert - "Digest" - Vol. 1, p.712

(19) Jillson, W.R. - - "Kentucky Land Grants" - p.3

on the Virginia act of 1779"as modified and interpreted according to the principles of law and equity contained in decisions of the appellate court." Although the original Virginia act was drawn by George Mason, one of her most able statesmen, it was amended before its passage, in such a way as to destroy system in procuring patents and consequently caused much confusion over conflicting claims in Kentucky.

At this time taxes on land were two shillings for a hundred acres, the same tax as paid on a working slave.

OLD VIRGINIA LAND GRANTS

In considering the land laws of Kentucky, it is important to note that these laws were not all enacted by the Kentucky General Assembly, but in many cases the general principles and often the actual laws were those of the parent state, Virginia. Offices for the disposal of public land had been opened in the district of Kentucky.⁽¹⁾ George May, the surveyor for the new county of Jefferson arrived from Virginia and opened his office at Cox's station in November 1782. Colonel Richard Clough Anderson was chosen principal surveyor of bounty lands to be entered for the Virginia officers and soldiers of the continental line. He opened the office of the Virginia military district at the Falls on July 20, 1784.

Virginia had failed to survey her public lands, a failure destined to bear sorry fruitage for the new state. Sometimes as many as five or six patents covered the same piece of land. Court action for generations has not succeeded in clearing them all out. Many and various surveyors ran lines for claims in the country which later became Kentucky. These surveys had to be recorded at Richmond. A lurking Indian or a treacherous mountain stream often prevented the surveyor's return and gave rise to many claims with unregistered surveys. This meant land litigation brought to the attention

(1) Collins - "History of Kentucky" Vol. II p. 368

of the Virginia assembly. Harassed by this ever-recurring trouble, these legislators were quite willing to grant a liberal county government to this wilderness of theirs beyond the mountains, as early as 1776, that it might have authority to settle some of these disputes. In 1792, they were not reluctant to see Kentucky become an independent state, able, thereafter to settle all her own troubles. The complications of Kentucky's land laws produced a large crop of eminent lawyers who gained wealth and prestige through taking up disputed claims and through contingent fees.

Kentucky's first constitution contains this provision - (2) "All laws which on the first day of June one thousand seven hundred and ninety two were in Virginia and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the legislature of this commonwealth, shall be in force within this state, until they shall be altered or repealed by the General Assembly." Thus did young Kentucky inherit land laws from old Virginia.

During the time she was petitioning for statehood, Kentucky entered into a "Compact with Virginia". When the first constitution was adopted it contained this clause: (3) - "The compact with the State of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part

(2) First Constitution of Kentucky -Article VI, Sec.8
Littell & Swigert -"Digest" - p.35

(3) ibid - p. 37

of this constitution." And this is what the compact says about land.⁽⁴⁾ "All private rights and interests of lands within the said district, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state and shall be determined by the laws now existing in that state."

"....The lands within the proposed state of non-resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time ... nor shall a neglect of cultivation or improvement of any land within (Kentucky) subject such non-residents to forfeiture or other penalty within the term of six years."

Thus Kentucky validated the Virginia land grants within her borders,⁽⁵⁾ 9,564 of which have been found recorded.* Many of them were grants on military warrants given to soldiers as part payment for military service in the Revolutionary War and in George Rogers Clark's expeditions.

Virginia had promised "bounty land" in trying to raise the six new battallions required of her during the Revolution.⁽⁶⁾ She promised to those who enlisted to serve through the war, the following portions of land to be given at the close of the war, or whensoever discharged, to the officers and soldiers who shall engage in the said service or to their representatives if slain by the enemy, to wit: To

(4) *ibid* - p.18

(5) Jillson - "Kentucky Land Grants" - p.7

* See Appendix 1.

(6) Hening - "Virginia Statutes at Large" Vol.9 p.179

every non-commissioned officer or soldier, one hundred acres, to every ensign one hundred and fifty acres, to every lieutenant two hundred acres, to every captain three hundred acres, to every major four hundred acres, to every lieutenant-colonel, four hundred and fifty acres, to every colonel five hundred acres." (7) She promised to the soldiers of General Clark who "enlisted and continued till the taking of several posts in the Illinois country" two hundred acres each.

These grants were very near to the hearts of the people of Kentucky. On the third day after the first House of Representatives had been assembled, Mr. Bedinger of Bourbon County gave notice that next day he would move for leave to bring in a bill giving further time to officers and soldiers of the Virginia State and Continental lines to locate and survey their bounty lands.

As late as December 17, 1796 a Virginia law was acknowledged in force which states:-(8) "All surveys of waste and unappropriated land made upon western waters before January 1, 1778, by any county surveyor commissioned by William and Mary College acting in conformity with laws then in force, tracts not exceeding four hundred acres, for military service either from the King of Great Britain or any former governor of Virginia are good and valid." Soldiers were to be given the lands if the surveys were returned within twelve months. In 1797 the time expired when the only surveys legal in the country south of Green River were those

(7) *ibid* - Vol. 10 p.26

(8) *Littell* - "Statute Law of Kentucky" Vol.1 p.387

made on military warrants. Even after this land was opened for general settlement, tracts could be taken up on these old warrants for many years if the surveys had been made.

(9) An act of February 12, 1798, states that any one found guilty of making a survey on a military land warrant "issued by the state of Virginia on which an entry was not made on or before May 1, 1792, unless the same shall have been ... authorized by law, and all persons aiding or assisting therein shall forfeit five hundred dollars, to be recovered in court." The passage of such an act seems to indicate deliberate attempts to lay a military warrant on land taken up and so secure it without paying the state purchase price. Early land "speculation".

Land certificates or warrants were sometimes circulated as specie and so left the possession of the old soldiers or their heirs. Two later enactments indicate there must have been traffic in these military warrants and misuse of them. One act⁽¹⁰⁾ made any military warrant void if knowingly laid on land granted to another settler. Another stated that the commonwealth would expect fees and payment for any land taken up as head right land even if a military warrant were later laid upon it.

An announcement appearing in the Kentucky Gazette for August 11, 1792, seems to be the advertisement of an early real estate broker and illustrates how warrants

(9) Littell - "Statute of Law" - Vol. 2 p. 109.

(10) Digest -- Dec.23, 1803. Littell - Vol. 3 p. 135.

changed hands.

For Sale

At a very low price.

A settlement and Preemption, containing fourteen hundred acres of land, lying within the settlement near Stroud's station.

I will also purchase a quantity of Treasury land warrants and paper money of all kinds.

John Fowler.

July 7, 1792.

Litigation arising from the claims of holders of Old Virginia land entries was so persistent and annoying that acts outlawing them had to be passed by the General Assembly. During the session of 1815-1816, this law was enacted⁽¹¹⁾ "Whereas it is represented to this General Assembly and is moreover manifest from an inspection of the books of the Register of the land office that the habit is now prevailing to an injurious extend, of surveying in the name of heirs and others, entries made under Virginia Treasury office land warrants upon the unappropriated lands of this commonwealth and upon lands appropriated by the good citizens and under the laws of this commonwealth, whereby the public revenue is defrauded and the citizens aforesaid subject to embarrassment and inquietude (therefore)" No plat or certificate of survey which purports to be made on an entry upon a Virginia land office treasury warrant made since October 19, 1785 shall

(11) Littell - "Statute of Law" Vol. 5 p. 316

be recorded and carried into grant unless the surveyor who shall have made out the same officially certifies on it that the identical objects called for in the entry, or some of them, are embraced in the said survey and the proprietor files an affidavit that the land called for under the survey is the same as that in the entry." False swearing was to be punished by the laws of perjury and a fine of five hundred dollars.**

** See Appendix 2.

GENERAL LAND LAWS

The tract south of Green River set aside for the satisfying of military land warrants had been reserved by Virginia only until 1797. During this "closed" period, many immigrants with no military warrants had settled on these lands. It was early decided⁽¹⁾ that "locations on islands in the Ohio below the mouth of Green River" made on a land office, treasury or other warrant should be received by the register, recorded, surveyed and patented. In 1795 the legislature moved⁽²⁾ to provide patents for the other settlers who had "squatted" on the military reservation:

"Every housekeeper or free person above twenty-one years of age who is an actual settler on land not previously taken by military warrant on or before January first next shall be entitled to hold land not exceeding two hundred acres." No salt or ore land was to be taken up with a grant. Entry had to be made before August first, survey, within six months from this date and plat returned six months from date of survey. Three persons were appointed to hear and determine the right of settlement.* In surveying, the longest part of the tract was not to be

(1) Littell- "Statute Laws of Kentucky" Vol. 1 p. 216

(2) ibid - Vol. 1 p. 349

* See Appendix 3.

more than twice the width at the narrowest part. The price was thirty dollars for one hundred acres. A warning was tacked on to this statute - "No person shall settle on vacant land in the state in the future, with an expectation of being given preference in settlement."

In March, 1797, the Green River country was opened for new locations.⁽³⁾ "Any widow or free male person of twenty-one years of age, every other person having a family who shall settle upon vacant and unappropriated land south of Green River on or before July 1, 1798 and reside thereon one year, clear and fence two acres of ground and tend it in corn, shall be entitled to two and not less than one hundred acres to include such improvement," provided the settlement was not on lands ceded by Congress to any Indian tribe. The claims were to be surveyed as nearly in a square as intervening claims would permit. Sixty dollars was charged for one hundred acres of first rate land, forty dollars for second rate. No one who had taken up land under the act of 1795 could qualify under this act. The money was to be paid into the treasury within twelve months - the plat and certificate to be returned in twelve months. No mention was made of excepting salt and ore land.

At this same time money for the 1795 land was made payable in installments with 5% interest.

On February 10, 1798 an act practically identical with that of March, 1797, was passed, but "salt

(3) Littell - "Statute Laws of Kentucky" Vol. 1 p.682

lick or spring or one thousand acres around same laid off in a square to the cardinal points," and lands reserved for seminaries of learning, were set apart from those on which locations were allowed. This new act of course extended the time limit for settlement until July 1, 1799. The "takers up" were to get a certificate of settlement when the commissioners sat, pay, get the auditor's quietus in twelve months and return the plat in twelve months.

Of course, arrangements were made for the payment of Green River land on the installment plan.⁽⁴⁾ Acts passed at various times allowed first for four annual installments then for nine. The dates when various installments were due were postponed sometimes for six months, sometimes for ten.

After the general land law of 1800, (which allowed four hundred acres to be taken up) came into effect,⁽⁵⁾ Green River settlers, who had two hundred acres or less, located and actually settled under the former laws, could take up their extra acreage without actually residing on it.

In 1805, the auditor of public accounts was ordered⁽⁶⁾ to have an accounting made to show what was owing or would be due on Green River land. A fee of three cents for each certificate or entry was allowed. Evidently Kentucky was having difficulty in collecting her installments on "debts of the commonwealth for the sale of vacant lands."

The first really general Kentucky act for grants

(4) Littell - "Statute of Law" - Vol.2 pp.262-380

(5) ibid - - Vol. 2, p. 459

(6) ibid - - Vol. 3, p. 306

was passed by the Assembly December 20, 1800,⁽⁷⁾ This "act for settling and improving the vacant lands of the Commonwealth," was effective three months after passage. It read:- "Whereas--- there are large quantities of vacant land which by being occupied by citizens (of Kentucky) or citizens of the United States or foreigners, who being thereby encouraged to reside thereon, will greatly add to the population, wealth and consequence of the commonwealth any free person above the age of eighteen years who will improve, occupy and hold four hundred acres (shall be granted land) provided he actually settles and resides thereon." The price was twenty dollars for one hundred acres. The taker up had three months after settling to apply to the court of the county for a certificate of settlement. This certificate described the location and told the quantity of land he was entitled to claim - Green River settlers were only allowed two hundred additional acres. This certificate cost one shilling. Within twelve months from the date of the certificate, the claimant must show it to the register of the land office, pay the treasurer the twenty dollars for each one hundred acres and get a warrant for the location. Within six months from this date the warrant must be lodged with the county surveyor who surveyed the land cited in the warrant within twelve months. At the expiration of this time, the survey must be returned and the regular fees paid. The length of the strip was not to exceed the breadth by more than one third unless

(7) Littell - "Statute Law of Kentucky" Vol.2, p.420

interrupted by prior claims.

The settler had to reside on his land two years before he received his patent, during which time no transfer or assignment was lawful. In all contests by settlers under this act "those who first did actually and "bona fide" settle and reside on said lands" were given preference. All persons settling prior to this act could have the benefit of its provisions by obtaining a certificate of settlement before August first 1800.

A notable fact is that foreigners were allowed to qualify for land. Five years before this,⁽⁸⁾ three large tracts of land of 120,000 acres each had been purchased in Pennsylvania and Kentucky for immigrants from Wales. The principal settlement was in Nelson County, Kentucky, five miles from Salt River. This is a point of interest because at that time aliens, though allowed to acquire land by purchase, had been declared by the Supreme Court of the United States to be unable to acquire it by inheritance.⁽⁹⁾ The fact that if a person who had applied for land died before the grant was issued it would descend to his heirs, further complicated alien holdings. If the heirs were aliens, the next of kin who could qualify would receive it. On December 22, 1800 a law was passed⁽¹⁰⁾ "allowing aliens to hold lands in fee simple in the commonwealth," after they had been residents for two years.

Due to the careless way Kentucky allowed

(8) Collins - "History of Kentucky" Vol. 1, p.24

(9) Condensed Reports-Supreme Court of U.S. 4 (Wheaton) 506

(10) Ky Gazette-Dec.22,1800. Littell - Vol.2 p.399

grants to be located, claims continued to overlap. Sometimes one of the claimants would fail to pay the price for his lands and they would revert to the state. The question arose - Would the other and overlapping claimant lose his right to own that acreage? It was decided⁽¹¹⁾ he should be given a prior right to obtain a patent for that land upon paying the state price for it, and the General Assembly enacted such a law for his protection.

Sometimes attempts would be made to lay a military warrant on land known to be held by other settlers under Kentucky acts. The General Assembly voted the claim of the holder-of-the-military warrant to be "null and void and his warrant rendered invalid by the act of knowingly laying it on the land of a settler." Furthermore, he could not get another patent for his military claims until after nine months had elapsed.

Times were so hard for the settlers that an⁽¹²⁾ act for their relief was arranged. "Whereas ... many citizens ...are unable...because of their late emigration and the scarcity of money, to discharge the state price now due, lands can be paid for in equal annual installments on or before November 1, 1810," the first installment to be due November 1, 1804. Six per cent interest was to be charged on each installment from the time such debt should become due, the interest to be paid with the installment. The state reserved the right to pass laws to coerce payment

(11) Littell - "Statute of Law" Vol. 3 pp. 132, 134.

(12) *ibid* - Vol. 3 p 132.

of installments. "All lands for which a certificate has been or may be granted by virtue of any of the afore recited acts shall remain subject to the demand of the state for the money due therefor as head-right land notwithstanding any omission or neglect to carry same into grant and a subsequent appropriation thereof by military warrant or otherwise."

(13)

Later, no claim was allowed which interfered with any prior claim. The overlapping acreage could, however be re-located. This would have given an opening for some shrewd patentee under the older grants when land sold for a high price, to re-locate under the twenty dollar law. This was expressly forbidden in the act.

The next year the legislature modified its land act. From and after March 1, 1806, ⁽¹⁴⁾ no county court in Kentucky could grant any certificate for settlement or other right. To prevent imposition being practiced on the court, any applicant had to prove by three disinterested witnesses, (1) that he or she was actually living on the land and had lived there with family, household furniture and personal property for one month before making application and (2) that he or she was a person of good fame, "provided nevertheless that no certificate shall be granted to any bachelor or female other than a widow."

Because of the difficulties of communication in

(13) *ibid* - Vol. 3, p. 195

(14) *ibid* - Vol. 3, p. 306

scattered places, some persons did not find out that the general land law had been repealed soon enough to get their certificates in time. Another law⁽¹⁵⁾ had to be made assuring any one who was a bona fide settler before June 1, 1806, of a certificate.

At the 1806 session of the General Assembly, the legislators began to inquire anxiously into the "debts due the commonwealth from the sale of vacant land." Money was scarce and the men did not wish to put too heavy a burden upon the settlers, so it was decided that the money due could be paid in twelve annual installments with six per cent interest. If the money was not then paid the lands were to be disposed of.⁽¹⁶⁾ Within fourteen days after December 1st in every year, the auditor of public accounts was ordered to transmit to the register a list of certificates and entries upon removed certificates upon which installments were not paid, showing the amount due the state. On the third Monday of December the register was to sell such lands "at public auction at the state house for ready money." The sales were to be made at the rate of not less than fifty tracts a day.

In 1808 and for several years thereafter the legislature promptly and annually suspended these sales for a year.⁽¹⁷⁾ Before this time land had been sold for taxes under authority of two acts one passed December 21, 1800, the other

(15) *ibid* - Vol. 3, p. 359.

(16) *ibid* - Vol. 3, pp. 385, 406.

(17) "Acts of General Assembly" 1809-10 p. 53

December 19, 1801.

All of the vacant land of Kentucky was not again thrown open for grants until the year 1815. In February of that year another general land law was enacted.⁽¹⁸⁾ Provisions were more carefully made than in the older act in order to avoid litigation.

"Whereas there are large quantities of waste and unappropriated lands in this Commonwealth, the granting of which will promote population, increase the annual revenue and erect a fund for public use: ...from and after the last day of February, 1815, any person except aliens may acquire title to so much waste and unappropriated lands as he or she shall desire to purchase, on paying the consideration of twenty dollars for every hundred acres." The Treasurer, upon receiving payment for the land, would give a receipt specifying the purpose for which the money was paid. Upon delivery of this receipt to the Auditor, that officer would give a certificate stating the quantity of land. The Register would then take the certificate and give a printed warrant specifying the quantity of land, and authorize the county surveyor to survey it and lay it off. This warrant was valid until executed by actual survey or exchanged. The county surveyor was instructed to make most careful records of surveys applied for and survey them strictly in the order of application. Only actual settlers could ask for surveys before January 1, 1816. The proprietor could have his survey made on any

(18) "Acts of General Assembly" - 1814-15 - p. 398.

waste and vacant lands he might point out, but he was to buy not less than one hundred fifty acres unless "joined around by lines of prior existing claims."

The officials in charge of issuing patents were ordered to be most careful in keeping records and most prompt and diligent in making surveys. Every survey was to be "bounded plainly by marked trees, stones or stakes except where a water course or ancient marked line shall be a boundary. They shall be made in the presence of two house-keepers resident in the county not interested in the survey. .. The surveyor shall upon finishing the survey and before leaving the ground specify in his field notes for whom the survey was made, the number of the warrant and have same attested by the said house-keepers, these field notes to be as carefully preserved and as open to inspection as any other books and papers. The surveyor must make a fair and true plat and certificate of the survey within three months ... and at the foot (must appear) the names of the housekeepers, chain-carriers and marker signed by him as to the number of acres in full."

The plat, certificate and warrant were to be lodged with the Register within one year from the time of survey and to remain there six months, then the patent would be issued in the usual form. When the warrant was carried into grant, the Register was to write on its face "satisfied" or "exchanged".

To prevent doubts as to title, the actual survey was to be considered the commencement of title and

an early date of survey took precedence over an elder grant with a younger survey. "For quieting litigation, all entries heretofore made and all titles founded upon surveys heretofore made authorized by laws then in force, are superior to surveys made upon warrants obtained by virtue of this act, notwithstanding any alleged vagueness in the entries or certificates on which the surveys were founded." No lands could be appropriated which had escheated to the commonwealth for non-payment of taxes, etc., on which were claimed by the Indians. This act was to be in force for none but actual settlers until December 1, 1815, and was to continue in force until January 1, 1818. Money accruing from the land sold was to be reserved in the treasury for further action. Laws allowing persons to relinquish a claim or part of a claim were suspended.

In the winter of 1820, the price of vacant
(19)
land was reduced to ten dollars for a hundred acres. This did not apply to land west of the Tennessee River or south of Walker's line.

The state still had trouble collecting the installments due for land because the settlers were poor indeed. At each session of the General Assembly indulgences were passed. These were of various kinds some allowing a longer time over which to make payments; some discounting the interest due if paid within a certain time limit; others forbidding the buying up of land

stricken off for debt and allowing it to revert to the state to be held for redemption, or allowing only an original settler to redeem land stricken off to the state.

Conflicting claims due to careless surveying and the hap-hazard locating of entries, caused the General Assembly to take action for the protection of actual settlers. These laws are known as the "Occupying Claimant Laws". The one passed February 27, 1797 states: "Whereas from the frequency of interfering claims to land, and the unsettled state of the country; it often happens that titles lay a long time dormant, and many persons deducing a fair title from the record, settle themselves on land supposing it to be their own, from which they may be afterwards evicted by a title paramount thereto; and it is just that the proprietor of the better title shall pay the occupying claimant of the land for all valuable improvements made thereon; and also that the occupying claimant shall satisfy the real owner ... for all damages; ... therefore... every person ... evicted from the land ... shall be exempt... from all and every species of action." The court was to have the value of lasting improvements and damages estimated and to enter them as judgment against the persons and see that it was paid. The principles of this law were not new but were acted upon in the colony of Virginia in 1661.

On January 31, 1812 "an act to amend an act

concerning Occupying Claimants of Land" was "passed according to the provisions of the constitution, notwithstanding the Governor's objections." This act again asserted the right of an occupant who had "peaceably seated or improved" lands to compensation for such improvements and further provided that when the improvements amounted to three-fourths of the value of the unimproved land, and the rightful owner was not willing to expend so much, that the occupant should pay the difference and own the land. If the improvements did not amount to more than three fourths of the value of the land, the right owner of the land should pay the occupant his money.

LAWS GOVERNING LATER ACQUISITIONS

THE CHEROKEE LANDS

When Kentucky was admitted to the Union the Cherokee Indians still owned lands in the southeastern part of the state lying between the Cumberland River and the Carolina line. Naturally, it was desired to acquire this territory so that white settlers could take up grants there. It was a matter to be undertaken by the ⁽¹⁾ Federal Government.

After the Revolution, a report on the condition of the Southern Indians was brought into Congress. It contained stories of fights and depredations. ⁽²⁾ Congress decided that five commissioners should be elected to treat with the Cherokees and other southern Indians who had been at war with the United States "for the purpose of making peace with them, receiving them into the favor and protection of the United States and removing as far as may be all causes of future contention and quarrels." On November 26, 1785, ⁽³⁾ the commissioners met with the Indians at Hopewell on Keowee in South Carolina and made a treaty by which land was secured from the Cherokees. Article four of the treaty states: - ⁽⁴⁾ "The boundary allotted to the Cherokees for their hunting grounds between the said Indians and the citizens of the United

- (1) U.S.Bureau Am.Ethnology - Vol.18 pt.2 p. 553
- (2) "Journal of the Continental Congress" Vol. 10 p.74
- (3) American State Papers "Indian Affairs" Vol. 1 p.42
- (4) "Journal of the Continental Congress" Vol. 10 p.56

States shall be the following viz. beginning at the mouth of Duck River on the Tennessee, thence running N.E. to the ridge dividing the waters running into the Cumberland from those running into the Tennessee, thence eastwardly along the said ridge to a N.E. line to be run which shall strike the river Cumberland forty miles above Nashville, thence along the said line to the river; thence up said river to the ford where the Kentucky road crosses the river thence to Campbell's line near Cumberland Gap." Thence the line was continued marking a south and southeast boundary. There was some misunderstanding as to the meaning of "a N.E. line to be run which shall strike the river Cumberland forty miles above Nashville." There were two interpretations. One was the literal construction making the line strike the river at a point of the river which was forty miles above Nashville. The other, made the sentence read "a N.E. line shall be run, (which shall strike the river Cumberland), forty miles above Nashville." This latter reading gave more land to the white man and was the one used when the line was finally run. So by "Hopewell", the Cherokees ceded more than half of their land in Kentucky and retained only a tiny patch in the extreme southeast. The treaty provided that -

"If any citizen of the United States or other person not being an Indian shall attempt to settle on any of the lands westward or southward (of the line) which are hereby allotted to the Indians for their hunting grounds,

or have already settled and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States and the Indians may punish him or not as they please."

William Blount,⁽⁵⁾ as the representative of the state of North Carolina, objected to the provisions of the treaty because the commissioners had assigned land to the Indians which the legislature of North Carolina had appropriated to discharge bounty claims of officers and soldiers of that state. Georgia also protested. The commissioners, however, insisted "that a steady adherence to the treaty alone can insure confidence in the justice of Congress and remove all causes of further contention and quarrels." When the head men of the Cherokees returned home from Hopewell, they found that the treaty displeased the young warriors who wished to keep the Cumberland lands. It is therefore not surprising that the treaty was not carried out for some time. The line along Cumberland waters was not established until 1797 when General Winchester ran it according to the interpretation which gave the United States more land.

The pioneers enbroached upon the lands of the Indians despite the assurance of the Central

(5) American State Papers "Indian Affairs" Vol.1
pp. 38, 44, 637.

Government that the Indians could drive the white settlers off.⁽⁶⁾ Proclamations of Congress that the whites should remove from Cherokee lands as well as proclamations by the Governor of Virginia to the same effect were unheeded. The Indians complained. Henry Knox, Secretary of War, wrote to the President. "It has been proved that the said treaty (Hopewell) has been entirely disregarded by the white people inhabiting the frontiers styling themselves the State of Franklin."^{*}

Settlers continued to pour into the west. In 1803, the legislature of Tennessee sent a memorial to Congress asking that some measure be adopted for extinguishing Indian claims in that state. Whereupon,⁽⁷⁾ Congress appropriated the sum of fifteen thousand dollars to procure "Indian claims lying within the limits of the United States." This of course included the Cherokee claims in Kentucky.

These Indians were reluctant to part with more of their hunting grounds. A delegation⁽⁸⁾ headed by Chief Glass had even gone to the capital in June, 1801, to interview the Secretary of War. They reminded him of the promise made at the treaty talk of 1798, that no more land cessions would be asked of them. They desired to know whether the United States or the settlers had

(6) *ibid* Vol. 1 pp. 19, 41

* A proposed state in what is now east Tennessee.

(7) History of Congress - "Debates in Congress"

Vol. 13 p.106 (senate)

(8) Fifth Annual Report-Bureau of Ethnology p.85

gotten the land already sold. The Secretary of War told them that there was no desire to purchase more land from them unless they were *anxious* to sell; that Kentucky and Tennessee had been formed out of the lands already bought from the Cherokees and that the main object of a future proposed treaty would be to secure a right of way for roads through their country in order to maintain communication between detached white settlements.

After several fruitless conferences, the commissioners who had been appointed to treat with the Indians in regard to extinguishing their claims in Tennessee, Kentucky and Georgia, met the head men of the Cherokees at ⁽⁹⁾ Tellico block-house and arranged "for a cession of all land which they formerly claimed north of the following boundary (a line drawn) from the mouth of Duck River up the main stream ... to the junction of the fork at the head of which Fort Nash stood, with the main south fork, thence a direct course to a point on the Tennessee River bank opposite the Hiwassee River ... up the middle of the Tennessee (islands being left to the Cherokees) to the mouth of the Clinch, up the Clinch to the former boundary line, reserving to the use of the Cherokees a small tract at or below the mouth of the Clinch, to a notable rock on the

(9) American State Papers "Indian Affairs" Vol. 1 p.369

north bank of the Tennessee in view from Southwest point, thence a course at right angles with the River to the Cumberland Road, thence eastwardly along the same to the bank of the Clinch River and down the same to the mouth thereof, together with two other sections of one square mile each, one of which is at the foot of Cumberland Mountain at and near the place where the turnpike gate now stands; the other on the North bank where the Cherokee Tolotiski now lives."

For this land, the Indians were to receive immediately three thousand dollars in valuable merchandise, eleven thousand dollars within ninety days of the ratification of the treaty by the United States, and three thousand dollars annuity from the day of signing the treaty (October 25, 1805). Part of the eleven thousand dollars would be paid in machinery if the Indians so desired.

The treaties of Hopewell and Tellico block-house together wiped out all Cherokee claims to any land in Kentucky, and the state could now dispose of their holdings in southeastern Kentucky between the Cumberland River and the Tennessee line.

As soon as the news spread that the government had acquired the Cherokee lands, white settlers promptly moved in. Some had been established there when the tract was still Indian hunting ground. In Kentucky, ⁽¹⁰⁾ the

(10) Littell - "Statute of Law" Vol. p.
Act of Dec. 26, 1805.

General Assembly decreed "no certificate shall be granted for or removed upon any land the Indian title to which may have been extinguished since the year 1794 or may hereafter be extinguished by treaty or otherwise, until further order of the legislature."

These ⁽¹¹⁾ lands ceded in 1805 became known as the** "Tellico Lands". They were opened for registration to old and new settlers by the same legislative act of January 31, 1810, effective April first⁽¹²⁾"... Every free white male, or widow, or other unmarried female, above the age of eighteen years, who may have actually settled and resided, and who may hereafter actually settle and reside, for the space of six months, on any waste and unappropriated lands, ... acquired by the treaty of Tellico, (may) apply to the circuit court of the county ... and upon proving ... by two respectable and disinterested witnesses, that he or she has settled and resided ... for the space of six months, be entitled to ... not exceeding two, nor less than one hundred acres." Salt springs, mines, minerals with one thousand acres could not be so appropriated. The settler had to pay a shilling for a certificate wherein was given a description of his "location". The certificate, accompanied by the payment for the land at the rate of forty dollars for each one hundred acres, had to be returned within twelve months to get a warrant. The warrant must then be surveyed within twelve months and the plat and certifi-

(11) Jillson "Kentucky Land Grants" p.9

** The name is now Jellico.

(12) Acts of General Assembly- 1809-10 - p. 130

cate recorded and returned to the register's office, whereupon the patent would be issued. The length of the strip taken up could not be more than one third greater than its breadth. If any settler did not take up his lands in one year, another settler of a year's residence on Tellico lands, was permitted to take up the location. Money received from the sale of this section was to be spent to buy arms for the militia.

In 1811,⁽¹³⁾ provision was made whereby Tellico grants could be paid for in four annual installments with six per cent interest. Holdings could be sold for failure to pay. The price of Tellico lands was later reduced to⁽¹⁴⁾ twenty dollars for a hundred acres payable in three equal annual installments, but no person who had secured a grant under the other Tellico act could buy under this one.

From the time of opening the lands for grant on, through many years, the Acts of the General Assembly of Kentucky are punctuated with acts "for the relief of Tellico settlers," promising rebate of interest postponing payments or the like.

In 1831, the General Assembly decided that⁽¹⁵⁾ since lands of the Tellico tract and those south of Green River were "poor and of little value," the settlers could pay at the rate of five dollars for a hundred acres. If partial payments had been made on any claim, the balance

(13) "Acts" 1810-11 - p. 115 (Act of Jan. 31, 1811)

(14) "Acts" 1811-12 - p. 214

(15) "Acts" 1831 p. 103

still due was to be determined by calculating the value of the entire acreage of the tract at five dollars a hundred and subtracting the amount already paid from this figure.

A short time afterward an act was passed⁽¹⁶⁾

"... to repeal the law now in existence in relation to Headright settlers and dispose of the balance of the debt due from this class of debtors to purposes of internal improvements." This was to be done by having the owners of headright certificate claims file certificates in the county clerk's office showing the balance due the Commonwealth; then the county court was to determine on what public highways within the county, the money or labor "arising or due from said Head-right debtors be appropriated;" and to appoint "overseers authorized to collect either in money or labor the said balances and receipt for the same." Any head-right certificate not patented within two years was to be forfeited to the state. The court could relieve widows or poor persons from paying. Succeeding legislatures, as usual, put off from time to time the day of executing this law in regard to taking up head-right land within two years.

There are⁽¹⁷⁾ five hundred and seventy-two grants in the Tellico records. The Cherokee lands ceded to the United States lay in the present counties of Cumberland,

(16) "Acts" 1832-33 p. 167 (Act of Jan. 31, 1833)

(17) Jillson - "Kentucky Land Grants" p. 9.

Clinton, Wayne, Russell, Pulaski, McCreary, Whitley, Knox and Bell. Among the "Tellico Grants" are found recorded scattered entries from other parts of the state. Mr. Jillson does not know why such claims were recorded as Tellico. There were probably careless and dishonest clerks then as now.

THE CHICKASAW COUNTRY

The Chickasaw Indians held the country from the ridge in western Kentucky dividing Cumberland waters from Tennessee waters to the Mississippi River. They were a brave and superior nation and showed dignity and pride in their dealings with the white people. They liked the things the white traders had to sell and bought more than they could pay for. The traders encouraged the Indians to get deeper and deeper in debt for there was always good security - land which the whites coveted. In 1805, the Chickasaw nation⁽¹⁸⁾ "embarrassed by heavy debts due to their merchants and traders," ceded for the consideration of twenty thousand dollars, a vast territory stretching from the Ohio, along the dividing ridge between Cumberland and Tennessee many miles south. Just a narrow strip of the land was in Kentucky, The treaty gives the cession as "the tract of country within the following bounds - Beginning on the left bank of the Ohio at the point where the present Indian boundary adjoins same; thence down the left bank of Ohio to the Tennessee river; thence up the main channel of the Tennessee river to the mouth of Duck river." This takes the ceded territory into Tennessee where the southern boundary is described. The eastern boundary runs into Kentucky again, - "northwardly to the great ridge dividing the waters running into the Tennessee from

(18) American State Papers "Indian Affairs" Vol. 1 p.697.

those running into Cumberland river so as to include all the waters running into Elk river, thence along the top of the said great ridge to the place of the beginning."

The Chickasaws still held their hunting grounds beyond the Tennessee. The authority of Virginia had already touched this territory. George Rogers Clark had established Fort Jefferson at the Iron Banks on the Mississippi in 1780. This had been done to strengthen the claim of the United States to the Mississippi as its western boundary. The Indians had been angry about this fort on their hunting grounds.

(19) Virginia had also granted some of the lands west of the Tennessee River to officers, soldiers and treasury warrant claimants. The Kentucky General Assembly now turned its attention to securing this country from the Indians. On February 11, 1809, a resolution was adopted concerning the advisability of extinguishing the Indian title.

The resolution was sent to Washington, but no attention was received from the General Government. A year later another communication was drafted. (20) The people of Kentucky taking into view the Indian encumbrance by treaty with the United States on the lands within this state below the Tennessee River, a large

(19) "Acts of General Assembly" 1809-10 p. 41

(20) *ibid.*

portion of which had been by the state of Virginia sold to officers and soldiers and treasury warrant claimants who are deprived of the use thereof, and taking into view the probable willingness of the Indians to extinguish the encumbrance, and that the United States having funds more than sufficient arising from the sale of lands on the northwest side of the Ohio River which were ceded by the state of Virginia subsequently to her sales aforesaid; passed a resolution in their General Assembly, February 11, 1809 in order to obtain the attention of the General Government. But it is presumed the executive of the United States hath not embraced the same views." The Assembly ordered further correspondence with the government for procuring the extinguishment of Indian claims at costs and charges of the United States. A similar resolution was voted January 31, 1811. Then the legislature became occupied with war, the wearing of home manufactures and militia, so the matter was dropped.

After the war with England was over, the matter of the lands beyond the Tennessee was revived.

At last after much prodding, the United States government authorized a commission to negotiate with the Indians for their lands east of the Mississippi. Isaac Shelby and Andrew Jackson arranged a treaty Oct. 19, 1818, at the treaty ground east of Old Town. It was approved by Congress in 1819.⁽²¹⁾ The Kentucky portion of

(21) Jillson - "Kentucky Land Grants" p. 11.

of the land became known as the Jackson Purchase.

The treaty read - (22) "... the Chickasaw nation of Indians cede to the United States of America (with exception of reservation herein mentioned), all claim or title which the said nation have to the land lying north of the south boundary of the State of Tennessee which is bounded south by the thirty fifth degree of North latitude and which land hereby ceded lies within the following boundary viz: Beginning on the Tennessee River about thirty-five miles by water below Colonel George Colbert's ferry where the thirty fifth degree north latitude strikes the same; thence due west with said degree of north latitude to where it cuts the Mississippi at or near Chickasaw Bluffs; thence up the said Mississippi river to the mouth of the Ohio, thence up the Ohio river to the mouth of the Tennessee River, thence up the Tennessee to the place of the beginning." "Article 3 .. The commissioners of the United States agree to allow said nation twenty thousand dollars per annum for fifteen consecutive years to be paid annually." Other special monies were paid to individuals for personal claims. "Article 4 "... For the benefit of the poor and warriors of said nation, ... a tract of land containing four square miles to include a salt lick or spring on or near the river Sandy, a branch of

the Tennessee and within the land hereby ceded be reserved ... so as to include the best timber. (They may) "lease said land to citizens of the United States for a reasonable quantity of salt to be paid annually to the said nation."

Some venturesome souls immediately moved in to locate sites on the new land. They were sternly rebuked by the General Assembly declaring⁽²³⁾ "no entry can be made on any portion of land within the late Chickasaw Indian boundary ... It is not lawful to receive the survey or issue patents on it." Kentucky had learned about land complications in a tedious and expensive school and she did not intend to repeat the mistakes of former years. The Jackson Purchase land was to be handled and sold carefully and accurately. There was much to be done before offering it for sale.

In his message to the General Assembly December 7, 1819, acting governor Gabriel Slaughter inquired,⁽²⁴⁾ "Would not our lands in the west lately acquired by treaty with the Indians together with other vacant lands judiciously disposed of form a fund competent to the education of the youth of the state?" No action was taken on this suggestion.

The General Assembly took forward steps towards the occupation of the Chickasaw country by an act of February 14, 1820.⁽²⁵⁾ At that time they voted "that

(23) "Acts of General Assembly" 1818-19 p. 606

(24) "Journal of the Senate" 1819 - p. 16

(25) Littell & Swigert - "Digest of Statute Law of Ky" p.816

a fit person be appointed by joint vote of both houses to superintend the survey of the lands west of the Tennessee ..., to lay off and divide the land by north and south lines running according to the true meridian, and by others crossing at right angles so as to form townships of six miles square unless where the course of navigable rivers may render this impracticable ... The corners of the townships (were) to be marked with progressive numbers ... and each township divided into sections containing six hundred forty acres each, by running through the same five lines parallel to the east boundary lines of the townships beginning at the distance of one mile from each other ... Each section (was) to be marked with a stone or tree. A general plat (was) to be made exhibiting, the situation of each township and section, stone or post marked therein, ... the situation of mill sites; ... the crossing of water courses; and the quality of the soil." Also it was "to describe the situation of all mines, salt springs or licks and all remarkable places and whether there was any person residing in any section or township and also report the land as first, second or third rate." The surveyor was to receive two dollars for every mile he necessarily ran.

William T. Henderson was appointed to make the survey. The following December he was ⁽²⁶⁾ "authorized to publish at his own expense and costs and for his own benefit, the map and survey of the land west of the

(26) "Acts" 1819-20 p. 145
(Act of Dec. 19, 1820)

Tennessee River to which he may add any notes of explanation deemed necessary and ... have the exclusive right of publishing and vending the maps for ~~ten~~ years."

These carefully laid off townships and sections, however, were not unencumbered. In citing to the national government the advantages of extinguishing the Indian title to the land, various warrants emanating from the Virginia Assembly were mentioned. Virginia had acted as if all the land to the Mississippi was hers to dispose of. Kentucky undertook to provide for these claims. ⁽²⁷⁾ "Be it enacted that ... the surveyor of lands set apart for the satisfaction of the legal bounties of officers and soldiers of the Virginia line on state establishment, be and is required to procure chain carriers and markers and to survey without delay all entries made in his office prior to May 1, 1792, on military warrants and shall make out a full and fair connexion of surveys so made showing where and how they interfere with the townships and sections as laid off by William T. Henderson, surveyor for the state." No grant was to be issued until six months after the plat and certificate of survey was registered. The land west of the Tennessee was to be taxed the same as other land, beginning March 10, 1821. The act also provided that "if persons entitled to a plat and survey do not take the same out of the surveyor's office and file it with the register on or before January first, 1823, the right of such person to the

(27) "Acts" 1820 - p. 197 (Act of Dec. 26, 1820)

entry on which the survey was made will be considered lapsed and forfeited to the state." The surveyor did not get them all recorded in time, so the General Assembly gave him a further time of one year⁽²⁸⁾ to perform his duties. No patent was to be issued on any such claims until after January 1, 1823.

(29) In its October session of 1783, the "General Assembly of Virginia authorized the deputation of officers of the Virginia lines, on state as well as on continental establishment to lay off four thousand acres of land, in such manner and form as they may judge most beneficial, for a town, on the Mississippi or waters thereof." On August 2, 1784, they located four thousand acres for the town upon the Mississippi, including the "Iron Banks". The Kentucky legislature now in 1820 had to take up the story of this town upon the Iron Banks because a majority of its trustees had "departed this life before the trust reposed in them was executed." William Croghan, the surviving trustee, together with Joseph Rogers Underwood, Richard Taylor Junior, William Montgomery, and David L. McKee were appointed to have a survey made for the four thousand acres, record it in the office of the surveyor of lands set apart for military bounty on state establishment, return plat and certificate to the register and receive their grant. The trustees could not sell or dispose of this land until further disposition was made by the

(28) "Digest" p.825
 (29) ibid p.821

legislature, but they were required forthwith to proceed to lay out a town with "convenient lots, avenues, streets and alleys, to number the lots and name the streets, alleys and avenues, reserving for the public square and public buildings what is expedient and right provided that not more than three hundred acres shall be laid out in lots not exceeding one acre each." A plat of the town was to be made out and recorded. The trustees were authorized to adopt the necessary rules and regulations for the town government. When lots were ready to be sold, the month's notice was to be given in the newspapers, then not more than one hundred lots of half an acre each were to be disposed of and the proceeds paid into the state treasury. Thus the town of Columbus was started.

These town trustees were bonded for fifty thousand dollars. One year later⁽³⁰⁾ this bond required of the trustees was repealed and they were instructed to appoint a treasurer for the town who would then be bonded. At the same time it was decided that notes on the Bank of the Commonwealth or the Bank of Kentucky would be received in payment for land. All monies arising from the sale of land in Columbus or of adjoining lands donated by the State of Virginia to her state and continental lines was to be appropriated for the use and benefit of those soldiers and their heirs.

As usual, claimants were slow in returning plats and certificates of survey made upon these western

lands by right of old Virginia military warrants (previous to May 1, 1792), and various⁽³¹⁾ acts were passed extending the time until June 1, 1826.

All previous grants in the Purchase now having been taken care of, the first sale of land was authorized on December 21, 1821, under the title⁽³²⁾ "An act providing for the sale of vacant lands west of the Tennessee River." This sale was to be conducted by the register of the land office on the first Monday of September, 1822, at Princeton, Caldwell County. The time and place of the sale was to be advertised in certain designated newspapers in Kentucky, and in papers in North Carolina and Virginia four months before it was held. If enough bidders did not appear, the register could suspend the sale. On no account could he buy lands for himself either directly or indirectly. The crier employed for the sale, was to sell the odd sections in certain specified townships for ready money to the highest bidder. Notes of the State and Commonwealth's bank, gold, silver, or notes of any specie paying bank in the United States would be accepted in payment. The cashier of the Branch Bank of the Commonwealth at Princeton was designated to receive the purchase money, to be held subject to the order of the President and directors of the principal bank. Not more than a quarter section could be sold at one time. No section included in the military survey could be sold.

The act also contained this statement, very im-

(31) "Digest" - p.830 - "Acts" 1825 p.182
 (32) "Acts" 1821-22 - p.409

portant and very significant because of the agitation then being stirred up over Kentucky's "Occupying Claimant Laws". "Many people have settled on lands west of the Tennessee River hoping some liberal provision would be made for them by their government. Actual settlers on the land to be sold are entitled to reasonable compensation for improvements, or to hold the same five years rent free, according to the choice of the purchaser." This clause was in line with Kentucky's other occupying claimant laws which always contended that a citizen⁽³³⁾ "Peacefully seated" on land which he thought was his, should be entitled to payment for permanent improvements and could not be put off the site until he had gathered his standing crops, if another person appeared who had a proved, prior title to the land. Money paid on the land by occupier could be transferred to another claim.

Richard Biddle was one of the settlers who had given up his claim to John Green, and the two parties had adjusted their difficulties. The higher state courts had always supported the validity of the occupying claimant laws. On the eve of the opening of the new lands west of the Tennessee River where old warrants were known to be outstanding, the Green-Biddle case was carried to the Supreme Court of the United States where it was⁽³⁴⁾ ruled that these laws were null and void.

Governor John Adair in his message to the

(33) "Acts of General Assembly" 1811-12, p. 117

(34) Condensed Report Supreme Court of U.S. 5 (Wheaton) p. 373

senate, October 16, 1821, ⁽³⁵⁾ urged the retaining of counsel to support the validity of the laws and urged the opening of communication with Virginia for the purpose of "amicable explanations". He stated that, "The legislature never doubted its authority to pass all of them. This authority has been affirmed by our highest judicial tribunal in every instance where the question has been made ... The validity of some of these acts has been called in question before the Supreme Court upon the ground of their imputed repugnancy to the compact between Kentucky and Virginia. Virginia has never complained and has never asked for a commission. Kentucky has intended strictly to observe its compact because it is incorporated in both constitutions, one of them adopted after the (occupying claimant) act of 1797."

The part of the compact referred to was Section 7 which says, ⁽³⁶⁾ "All private rights and interests of lands ... derived from the laws of Virginia prior to... separation shall remain valid and secure under the laws of the proposed state and shall be determined by the laws now existing in this state (Virginia)." In Section twelve it was agreed that any disputed point arising out of the compact should be decided by a specially appointed commission, two chosen by Kentucky, two by Virginia and two chosen by the other four.

After considering the matter the General Assembly decided to transmit the report of the committee

(35)"Journal of Senate" 1821 - p.23
 (36) Littell & Swigert "Digest" p.18

to the senators and representatives in Washington and also to send a commission to Virginia.

Henry Clay and George M. Bibb went to Virginia. The next May they were ready to report.⁽³⁷⁾ Virginia communicated by Benjamin Watkins Leigh the resolution of her legislature "touching the unsatisfied claims of officers and soldiers of the Virginia state line to bounties in lands." Kentucky was required either, "to recognize by law the right to locate unsatisfied military warrants west of the Tennessee River, and to permit the holders of those already located on bad land or so as to interfere with other claims, to withdraw the same and survey them on any land in the district west of the Tennessee River;" or to appoint a board of commissioners authorized to decide the points of difference between Kentucky and Virginia. It was felt that Kentucky could not possibly accede to the first proposition so it was deemed expedient to appoint the board of commissioners by joint vote of the senate and house.

Henry Clay met Benjamin Watkins Leigh on June 5, 1822, and reported the result of their conference at the fall meeting of the General Assembly.⁽³⁸⁾ They had decided to suggest that the four commissioners for Kentucky and Virginia meet in Washington on the fourth Monday in January, 1823. Washington was chosen because there would be many eminent people there at that time from

(37) "Acts" 1822 - p. 15

(38) "Journal of Senate" 1822 - p.30

whom to choose the other two members of the board of arbitration.

Jacob Burnet, a supreme court judge of Ohio, and Hugh L. White, a supreme court judge of Tennessee, were elected⁽³⁹⁾ commissioners from Kentucky. Henry Clay and John Rowan were appointed counselors to the commission. The Treasurer was ordered to advance six thousand dollars for the expenses and pay of the delegates.

Clay and Rowan⁽⁴⁰⁾ "determined to proceed to Washington without delay in order to get there at the time the Virginia commissioners would arrive who had so short a distance to go." Jacob Burnet also proceeded to Washington but the Honorable Hugh L. White, for good and sufficient reasons, declined to accept the appointment as commissioner. The two Kentuckians were ready "without loss of time to supply the vacancy."

Of course Kentucky had gone ahead "not doubting that Virginia would ratify the solemn act of her commissioners." Imagine their consternation when she refused to do so! The House of Delegates approved the appointing of commissioners to settle the dispute but the Senate would not approve. The House of Delegates of Virginia sent a courteous note to the Governor of Kentucky⁽⁴¹⁾ hoping "that" friendly relations between the two states be unimpaired" and that "the wisdom and good dispositions of future legislatures may yet succeed in removing all causes of difference between the two states."

(39) "Acts" 1822 - p.152

(40) "Journal of the House" 1823 p.53

(41) ibid p.54

And there in Washington sat Henry Clay, John Rowan and Jacob Burnet the "fit counsel" and the honorable commissioner from the state of Kentucky. They had remained there knowing of the difficulty in the Virginia senate because they "thought it their duty to remain at their post and thus exhibit to the world that ... the fault was not on the side of Kentucky." Burnet was paid seven hundred and forty-four dollars and proceeded to take his muddy journey back to Cincinnati.

The Supreme Court of the United States again passed on the occupying claimant laws and again declared them⁽⁴²⁾ null and void. This time they even went beyond the compact with Virginia and fell back upon the "Constitution of the United States which declares⁽⁴³⁾ "no state shall pass any law impairing the obligation of contracts." The decision was handed down very late in the term at a session when only four of the seven justices were sitting. Thus we have a decision against the Kentucky occupying claimant laws really made by a minority of the Supreme Court. Quoting from Rowan's "Vindication"⁽⁴⁴⁾ - "The opinion was formed by three only of the seven justices. Had one of the three, instead of concurring therein concurred with the dissentient judge, the position of things in Kentucky would not have been disturbed, so that in effect, the rights of half a million people are to be afflictively changed and controlled by the opinion of one

(42) Condensed Report Supreme Court of U.S. Vol.5 (Wheaton) pp. 369-399

(43) "Journal of House" (KY) 1823-24 p.13

(44) ibid - p.60

single individual member of the court."

The people of Kentucky were by no means unanimous in wanting the occupying claimant laws upheld. (45) When a vote was taken in the legislature upon the sending of a remonstrance to Congress against the Supreme Court decision, the voting for and against was pretty equal. The complaint was sent and both national houses considered it and gave strong indications that Kentucky's (46) "cause was considered the cause of every other state and every ... defender of the true principles of our Federal Union would ... support such ... changes and reforms in the Judicial Department of the Federal Government as may be necessary to defend the states from further encroachment of that powerful tribunal."

About this time there was (47) a movement of settlers from Kentucky to Illinois and Missouri. The governor stated it was his belief that the insecurity felt by the cultivators of the soil was the cause of the extensive emigration. For several years the governors continued to urge action against the (48) "encroachments of the Federal authorities upon the sovereignty of our states and the rights of our citizens through the medium of the judiciary," but ^{there is} ~~I can find~~ no record of further definite action taken within the period ending in 1837. In Carroll's Statutes of Kentucky, revised to 1930, laws in

(45) ibid - pp.389-396

(46) "Acts" 1824-25 - p.281

(47) Collins - "History of Kentucky" p. 31

(48) "Journal of House" 1828-29 p.15

force,⁽⁴⁹⁾ we find "If any person believing himself to be the owner by reason of a claim in law or equity, the foundation of which being of public record, hath or shall hereafter peacefully seat himself and improve any land, but which land shall be decided to belong to another, the value of the improvements shall be paid by the successful party to the occupant." Kentucky kept her occupying claimant laws.

On June 1, 1825, the Receiver of Public Moneys for the Land District west of the Tennessee River, opened his office at Wardsborough, Calloway County. The General Assembly had willed⁽⁵⁰⁾ that this receiver be appointed to sell the public land. Every three months he was to pay over his receipts to the Branch Bank of the Commonwealth at Princeton. On the first Monday in October, 1825, he was to offer "all unappropriated sections in a public sale to the highest bidder." Not more than a quarter section could be sold at a time and if it did not bring one dollar an acre, the plot was to be stricken off to the state. This land could be bought later for one dollar an acre. Section fourteen of the act authorizing the sale, declared "If any lands sold... shall be taken from a purchaser ... by prior claim ... the person shall receive the amount of the original purchase money ... without interest."

"An act⁽⁵¹⁾ to reduce the price of vacant lands west of the Tennessee river to actual settlers, and

(49) Carroll - "Statutes of Kentucky" Section 3728 p.729

(50) "Acts" 1824-25 p.85

(51) "Acts of General Assembly" 1828-29

more effectively to encourage the settlement and improvement of said land" was passed by the General Assembly in January, 1829. "....Hereafter it shall be lawful for any actual and bona fide settler with a family who at the passage of this act resides within the land district west of the Tennessee River to enter ... one quarter section of land at twenty-five cents per acre." The offer was open to any person who became a settler within twelve months. Less but not more than a quarter section could be taken. No one but a settler could enter the tract for nine months.⁽⁵²⁾ If two people were living on the same quarter section and both wanted to take it up under the act, the elder settler was to have it provided the junior was left in peaceable possession of his improvement for two years.

"To prevent further conflicting land claims and to secure to Seaters and Improvers a preference of location to lands improved by them,"⁽⁵³⁾ any person intending to take up^{by} grant the land a settler had cultivated, was required to give the occupant three full months notice so he himself could take up the land if he so desired.

The Receiver of Public Monies⁽⁵⁴⁾ for the land district west of the Tennessee, failed to make satisfactory settlement of his accounts, until ordered by the General Assembly to bring his books before a commission appointed to settle with him on or before the first Monday in May, 1832.

(52) *ibid.*

(53) "Acts" 1830-31 - p. 147

(54) "Acts" 1831-32 - p. 126

After February 20, 1835,⁽⁵⁵⁾ the price of land west of the Tennessee was reduced to twelve and a half cents an acre. The settler was not protected in more than two quarter sections and he must reside on one of them. In 1838, Bath County⁽⁵⁶⁾ was allowed to fix the price of her remaining vacant land but it must not be less than that allowed by law. The islands owned by Kentucky in the Mississippi River and Cash Island in the Ohio were sold⁽⁵⁷⁾ at auction to the highest bidder in 1837, but they could not be sold for less than twenty-five cents an acre.

By the year eighteen hundred and thirty-seven, all of the public land owned by Kentucky had been offered for sale. The land office continued to function for some years afterwards but the main body of public land law and policy had been written and determined by 1837..

(55)	"Acts"	1834-35	p.182
(56)	"Acts"	1837-38	p. 30
(57)	"Acts"	1837-38	p. 194

SPECIAL LAND GRANTS

THE SURRENDERED TERRITORY

For years the boundary between Virginia and North Carolina, and later between Kentucky and Tennessee was in dispute. Colonial charters gave the parallel of thirty six degrees and thirty minutes as the place of division. Surveying parties, made up of men from both Virginia and North Carolina spent days in the wilderness locating this line. The surveyors would disagree, separate and each group run a line it deemed correct. Dr. Walker's line of 1779-80 was regarded as the boundary until an accurate survey was made. This line fell from six to ten miles north of the true parallel.⁽¹⁾ "The line was accurately established by Robert Alexander and Luke Monsell in 1819 following legislative appointment." In 1820 commissioners from Kentucky and Tennessee came to an agreement about the land lying between the two lines. The land was in Tennessee but Kentucky was given the right to issue grants for all territory north of 36° and 30' and east of the Tennessee River. Surveys of this land are not recorded but the papers are found in file boxes in the land office.

An act opening these lands to settlement was passed December 28, 1824.⁽²⁾ "From and after the first

(1) Jilison - "Kentucky Land Grants" p.11.

(2) "Acts" - 1824-25- p. 68.

day of March next, any person ... may acquire as much vacant ... land in Tennessee between Walker's line and the latitude thirty-six degrees thirty minutes north and between the Cumberland River near Ob^ehy's river, and the Tennessee River, as he or she, may desire to purchase upon the payment into the Treasury of this State ... twenty dollars for every one hundred acres." They might acquire land between Walker's line and thirty-six degrees thirty minutes and Cumberland River and part of Cumberland Mountain for ten dollars for a hundred acres.

The survey was to be made within three months, plat in the Register's office six months from date of survey. Actual settlers on the land at the time of opening it had exclusive rights to appropriate their places of settlement and one hundred acres. The money was not assigned to any particular use. Later the price was reduced⁽³⁾ and any person except an alien could acquire title to land south of Walker's line for five dollars a hundred acres. No surveys were to be for less than fifty acres and no surveys were made west of the Tennessee River. This rate was in effect about a year when the price was raised⁽⁴⁾ to ten dollars a hundred acres. A capable mathematician was to be secured to mark the line $36^{\circ} 30'$. There have been 4,583 grants in Walker's Addition.⁽⁵⁾

(3) *ibid* - p. 129

(4) "Acts" - 1825- p. 135

(5) Jillson "Kentucky Land Grants" p. 11

THE SEMINARY GRANTS

A few years after Kentucky became a state, a Presbyterian school was established and called Kentucky Academy. George Washington, John Adams and Aaron Burr were among the easterners who subscribed to it. In 1798, the General Assembly granted this academy six thousand acres of land.⁽⁶⁾ Like quantities were given to Franklin and Salem academies and to Lexington and Jefferson seminaries. This started the seminary grants. These appropriations were made from⁽⁷⁾ "lands in Kentucky on the south side of the Cumberland River below Obey's River now vacant and unappropriated or on which at this time there is no actual settler under the Green River grants." They were reserved by the General Assembly "to be appropriated as it may hereafter from time to time see fit, to the use of seminaries of learning throughout different parts of the commonwealth." By an act of 1808, a seminary was to be established in each county.⁽⁸⁾ The county surveyor marked off the seminary lands when they were chosen. Unfortunately they had a hard time collecting fees for this service and a bill had to pass the legislature requiring the trustees of the institutions to pay for the surveying service. Some of the seminaries were slow in

- (6) Littell "Statute Laws of Kentucky" Vol. 2 pp.107/8
- (7) Littell & Swigert "Digest" p.11
- (8) Littell "Statute Law" Vol. 3 p. 440

taking up their grants, so in 1811,⁽⁹⁾ the justices of the county courts of Knox, Boone, Estill and Clay, had to petition to be allowed six months more to procure more donation lands to make up their six thousand acres. They were allowed to locate "on any vacant land except Tellico lands, and lands lying west of the dividing ridge between Cumberland and Tennessee Rivers." No one seminary⁽¹⁰⁾ was to have more than six thousand acres. The time for locating was extended two more years. Many seminaries were "land poor" - having no resources sufficient to equip a plant upon these liberal acres. The General Assembly had to come to the rescue⁽¹¹⁾ and decree that if the trustees wished to sell all or part of the lands donated for seminaries two persons (paid two dollars a day) should be employed to appraise the land. The land must then not be sold for less than three fourths of the appraised value. The commissioners could give deeds to the property.

After Kentucky had been thrown open to settlement as far as the Mississippi, and more and more counties formed, extra land was needed for seminary grants. So⁽¹²⁾ "an act appropriating a portion of the vacant lands in the district of country west of the Tennessee River for purposes of education" passed the General Assembly. When the agents of the seminaries attempted to get this land, they con-

- (9) "Acts" 1810-1811 p. 101
- (10) "Acts" 1811-1812 p. 171
- (11) "Acts" 1811-1812 p. 126
- (12) *ibid* 1833-34 p. 378

flicted with grants taken by actual settlers. The county courts were then allowed⁽¹³⁾ to appropriate other acreage upon any vacant land west of the Tennessee or upon islands in the Ohio or Mississippi Rivers (as soon as they were surveyed), in place of thatrelinquished to the settlers.

(13) "Acts" 1835-36 P. 648

GRANTS FOR MANUFACTURING

In opening up public lands for occupation it was frequently stated that no salt mine or mine of ore was to be included in the grants. These deposits then had to be obtained by special act. Salt manufacturing was an important industry in these early days. "Good old Kentucky salt"⁽¹⁴⁾ was advertised for sale in Cincinnati, April 15, 1794. This is typical of the salt land grants.⁽¹⁵⁾ "Be it enacted that ... John Francis and Richard Slavey ... be granted land for a salt works, ...(the grant to be) not less than one thousand acres ... No grant shall be issued until they prove to the county or circuit court of Wayne county that they have manufactured at least one thousand bushels of salt within three years of this act." The price of the land was ten dollars for a hundred acres. The grant was not to interfere with any actual settlement or to give them the rights to iron, silver or lead found thereon. "If they transfer their rights so as to aid in a monopoly of salt making," continued the legislative act, "the land is to revert to the state." Some early anti-trust legislation.

In order to encourage manufacturing in Kentucky the General Assembly granted⁽¹⁶⁾ to a group of trustees,

(14) Collins - "History of Kentucky" Vol. 1 p. 22

(15) "Acts" 1810-11 p. 113

(16) Littell - "Statute Law of Ky." Vol.2 p.290

six thousand acres south of Green River to be distributed to settlers in two hundred acre tracts. Two thirds of the settlers were to manufacture wool, cotton, brass and iron for two years. The remaining one third ~~was~~to reside on the land for one year, clear, fence and cultivate five acres each.

GRANTS FOR TOWNS AND FOR COUNTIES

Two acres of land⁽¹⁷⁾ could be appropriated for every court house erected in Kentucky. Either "land built upon or adjacent thereto not having any house, orchard or other immediate conveniences thereon" could be taken. The land was held by the county court in fee simple.

Land was granted to trustees to establish towns.⁽¹⁸⁾ The forfeited lands of John Connelly at Louisville were surveyed and sold at auction. The buyer was obliged to "build a dwelling house sixteen feet by twenty feet at least with a brick or stone chimney to be finished within two years of date of sale." The lots were conveyed in fee simple. If not built ⁱⁿ on the time specified, the lot reverted to the trustees of the town who could either sell it and use the money for public works or use the lot for public purposes. In December of 1793 the General Assembly extended the time limit for building four years.⁽¹⁹⁾ In 1808, the trustees of Louisville were ordered "to employ some good surveyor to survey and make a correct plan of the town "and" to fix and establish such corner stones or other landmarks to perpetuate the arrangements of said town." This plan was to be returned to the clerk of the circuit court and thereafter streets, lots and so forth were to be regulated by the plan.

- (17) Littell & Swigert "Digest" p. 357
- (18) Littell "Statute Law" Vol. 1 p. 184
- (19) ibid Vol. 3 p. 493

When Kentucky was young, the vacant public lands were a handy source of revenue for the counties. Many times in the "Acts" of this period appear entries for⁽²⁰⁾ "appropriating certain vacant lands to the improvement of the public roads." One example - "... The county court of Russell County ... (is authorized) to have located, surveyed and patented, within the bounds of said county, five thousand acres of vacant and unappropriated land, and to have power to sell and convey ... said land to any purchaser." "... The money arising from the sale ... shall be applied to improving the public roads." Again⁽²¹⁾ "six thousand acres in Harlan" is appropriated to build a bridge across Straight Creek. In another place we read that Monroe County⁽²²⁾ was allowed to appropriate one hundred dollars of the money received from the sale of vacant land to finish the court house. In 1838, the proceeds⁽²³⁾ from the sale of the waste land in Clinton County was given to the County Court to go towards lessening the county levy.

- (20) "Acts" 1833-34 p. 554
- (21) -ibid. 1833-34 p. 560
- (22) ibid 1836-37 p. 74
- (23) ibid 1837-38 p. 118

GRANTS FOR RELIEF OF INDIVIDUALS

In these early days there were no institutions to care for the poor and insane and such dependents of the state. Public land solved the question of their support and grants⁽²⁴⁾ were made by the General Assembly when cases were brought to their attention.

An act for the benefit of poor widows was passed in 1820.⁽²⁵⁾ Since "there are many poor widows in this state, with numerous helpless children, destitute of homes; (and) as there is vacant land now in this state, which might be of great utility to the poor and indigent; inasmuch as it is consistent with good policy, for the legislature to protect the poor widows and fatherless: Therefore, ...any widow, ... who shall make satisfactory proof ... that she has not estate in her own right to the value of one hundred dollars; (the) fact proved in open court by the testimony of two or more credible witnesses; ... the auditor.. shall issue his warrant to the treasurer for one hundred acres of land." Land south of Walker's line or west of the Tennessee River could not be so taken up. Land secured on these grants was not liable to "sale by execution" or "tenancy by the courtesy", it was to be a life estate for the widow then to pass to her children. If there were no children to inherit it, the property reverted to the state.

(24) "Acts" 1812-13 pp. 29, 30.

(25) "Acts" 1820 p. 159.

THE LAND POLICY OF KENTUCKY

The story of the securing and patenting of the public lands of Kentucky,^{was} complicated by the careless way entries were located, the irregular size and shape of the grants and the lack of actual ground to satisfy all entries.

Virginia had been too busy with the Revolution to have either time or money for the surveying of her lands on western waters, so grants were carelessly located and their shape and size irregular. Surveying in a dense wilderness was no simple undertaking, carrying a heavy chain and surveying instruments for hundreds of miles was no easy job. Can we blame an early surveyor for cutting a length of wild grape vine measuring eleven times his own height to be used instead of the sixty-six foot chain? Of course there would be complications in the survey when the twisted grape-vine was straightened out on the ground. Can we condemn a man for paddling a canoe up a river looking for a notable land mark from which to locate a survey rather than cutting his way through the wilderness seeking the exact spot mentioned in an entry? Of course, when the entry and the survey were not identical, title could be established only to the land included in both. Can we be surprised, with land so abundant, that many tracts seem to have been "measured with a coon skin with the tail thrown

in?" Mistakes were multiplied when a survey full of errors was accepted in marking out adjacent grants. Distances incorrectly stated, water courses erroneously shown caused overlapping of patents.

Virginia had granted land in her unmeasured wilderness with a free hand. Often four entries would cover the same ground.* There were no banks in these early days and land warrants were used as currency, security and for investment. Companies in the East owned grants for vast acreage of western lands. When Kentucky applied for statehood, there was a rush to locate the warrants under the Virginia laws. The influence of these eastern men with western holdings probably played a prominent part in delaying Kentucky's admission to the union. Litigation over these old land titles persists even to this generation.

Kentucky's land policy was directed by a General Assembly which strove to help the individual settler become a land owner and an established citizen; and to protect the rights of the poor claimant in his struggle to own land. Laws passed for acquiring title to land were intended to benefit the actual settler. Persons

* Mr. R. C. Ballard Thruston of Louisville, Ky., says he, himself, has found Virginia grants four deep on Eastern Kentucky lands.

receiving a large grant were obliged⁽²⁶⁾ to definitely understand and allow for the grant of the small settler in their tracts. The occupying claimant laws insisted that a person "peacefully seated on land which they have improved, supposing them his own ... (shall) be paid by the owner for improvements," if a prior claim to the land forced him to relinquish it. A settler was allowed to take up other vacant lands and to transfer⁽²⁷⁾ all fees paid to the new holdings when it was proved he had taken up military land by mistake.

If the settler failed to secure the necessary money for land payments, extra time was given him. Many acts⁽²⁸⁾ extended the time for making the survey and registering the survey of grants. Land could be paid for over several years in annual installments.⁽²⁹⁾ The time of payment was many times extended. Annually the sales of land for debt were postponed.⁽³⁰⁾ Head-right land struck off to the state for debts could be redeemed by paying the amount of the principal due with costs of sale and redemption. The state held this land for the original owner to redeem,

Land was not exposed⁽³¹⁾ for sale after the

- (26) Dembitz "Land Titles" Vol. 1 p. 41
- (27) Littell "Statute of Law" Act of Dec. 20, 1802
- (28) ibid Vol. 1
- (29) "Acts" 1809-10 p. 53
- (30) ibid 1809-10 p. 54
- (31) ibid 1809-10 p. 40

death of the taker-up or assignee until after the infant heirs were twenty-one years of age.

There were dishonest lawyers and land speculators who took advantage of the ignorance and poverty of settlers. From these the state was powerless to give protection. False entries and dishonesty in surveys by state employees was penalized by law, but there were dishonest clerks and surveyors. Later laws were unable to entirely rectify the consequences of early mistakes and carelessness. But, on the whole the story of the disposal of her public land by the State of Kentucky is an honest and honorable one.

APPENDIX I

This survey, the original of which is in the Daniel Boone Collection at the old state capital in Frankfort, Kentucky, is an old Virginia surveyor's certificate.

Feb. 10, 1784.

Surveyed for Daniel Boone

Ap^{ee} of William Hayes Ap^{ee} of Benjamin Winslow 500 acres of land by virtue of a treasury warrant duly entered October the 2^d, 1780. No 223 Situate lying and being in the County of Fayette on Boon's Creek joyning and between the Lands of James Hickman and Matison (?) and bounded as Follows by

Begining at A. T. Hickman's and a white oak being Matison's S. E. corner, Thence East 92 Poles to (B) a white oak, thence S 25° E 118 Poles to (C) two cedars on Bogse's Fork, Thence East 88 Poles to (D) Two White Oaks and an Elm, Thence North 486 Poles to (E) Two Hickeries and a Red Oak in Hickman's line, Crossing Boon's Creek six times, Thence West 102 Poles to (F) a hickery in Matison's line crossing one fork of B creek Thence south 27° W 318 Poles to A the Begining.

Daniel Boone Dr (?)

Tellar J. Hall

Samuel Brink)
) Chain Men
Samuel Boon)

John Snowdy - Marker

Runs contrary to location and not
proportioned.

APPENDIX II

An interesting example of laying an old Virginia warrant on land is shown in this advertisement appearing in the December 14, 1810 issue of the "Argus of Western America" a newspaper published at Frankfort. "On the 8th day of January next, if fair, if not, on the next fair day, we shall attend with the commissioners appointed by the county court of Shelby, at the fork of the Frankfort and Drennon's Lick roads for the purpose of perpetuating testimony on the following entries (and continue from day to day until completed), to wit - Dec. 24th, 1782 - Squire Boone enters 12335 acres on a T.W. No 12194 on the head waters of Drennon's Lick objects of notoriety to be established are - Drennon's Lick Creek - the Big Creek - the painted stone and Boone's 12335 acre tract."

John White

John McClelland

APPENDIX III

The commissioners regularly appointed to determine settlement and boundaries met where convenient. "Notice is hereby given to all whom it may concern that Commissioners appointed in conformity with an act of Assembly of the State of Kentucky entitled "An act to ascertain the boundaries of land and for other purposes" will meet on the land of Thomas Williams on the big west fork of Lawrence's creek in the county of Mason etc."

And again "I shall attend with commissioners appointed for the county court of Clark at a poplar tree marked J. H. on a branch of Lulbulgrad Creek etc."

Kentucky Gazette, Dec. 5, 1795.

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