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Land Legislation and acquisition in Virginia in the seventeenth centruy

L. W. Gibbon
University of Richmond

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In the charters to the London Company the King of England seems to have ignored any claim that the Indians might have had to the lands in the new world. He granted the land as if it had had no inhabitants before the coming of the English. The idea among the civilized nations of that time seems to have been that

> "the civilization of the soil was an obligation imposed upon mankind, and that the human race could not well subsist, or greatly multiply, if rude tribes which had not advanced from the hunter state, were entitled to claim and retain all the boundless regions through which they might wander. If such a people will usurp more territory than they can subdue and cultivate, they have no right to complain, if a nation of cultivators puts in a claim for a part, and confines the natives in narrower limits."[1]

While this was the view taken by many of the leaders of the period, others thought that the natives should be paid for all land taken from them. The Virginia Colonists, wishing to"keep on the good side"of the Indians, soon after they landed, bought the Island of Jamestown for a few pieces of copper. This was the first land transfer in the new world after the arrival of the English. The amounts paid for the land seem to have been small, but the Indians were

"land poor" and they were well satisfied with what they received.

Master West, through Captain John Smith, in 1609 bought a large area of the country near the falls of the James for a few pieces of copper.[2] He, by doing this, acknowledged that Powhatan was the rightful owner of the land. He also agreed to protect Powhatan's tribe from the other warring Indians.

In the first years of the colony the land was held by the Company in free and common socage, and could not be "forbidden to any man."

Another interesting feature of land transfer took place in 1615. The Indian towns were suffering from a scarcity of food, while the English were well supplied. The Indians, knowing this, mortgaged large quantities of their land to the English for corn and other provisions.[3]

Corporate rights to land were given to an association of planters in 1617, the rent being paid in barrels of corn. This move brought about trouble a few years later (1619) when Martin's Hundred requested a grant of land. The Hundred asked this land to take the place of that which they had lost by gift to another plantation, and to cover the expenses of settling men on the land.

Four objections were raised to this request by the court of the Company, in a meeting held on July 21, 1619.[4]

First, "it was contrary to His Majesty's Letters Patent." These letters had stated that the land was to be divided among the adventurers "by money or service and to the Planters in person, and was not to be given to a corporation for its expenses.

Second, "it was repugnant to the standing orders of the Company." The orders of the Company made no allowance for private expenses, only for those incurred in transporting persons to the colony.

Third, "it failed in the very end it aimed at, for it was not any advancement to the planting of Martin's Hundred." The benifit from holding the land was not from having title to it, but came from the profit gained by the settling and cultivation. No good could possibly come from granting land when there were no provisions for settling pr cultivating it.

Fourth, "it was prejudicial and that in a high degree to the general plantation and to the strength place and prosperity of the Colony." By granting large tracts to one group, others would be kept out of the colony. Also, the best land would be taken up by these plantations and leave only the poorer land for those coming in later. This poor land would also be far from the center of the colony, both from the standpoint of protection and the social life of the community. From

this it can be seen that the colony would be hindered both in its social relations and in the wide spread areas demanding protection in times of trouble with the Indians.

In the same year that the discussion concerning Martin's Hundred was occupying the time of the Court, the "first division"was made. Throughout the later part of the records of the London Company are found mentions of the granting of land to individuals for service rendered the colony, but no mention is made of the actual grant of the land for these services.

Under the "first division" every settler who came into the colony before April, 1616 was to receive 100 acres of land, and,if this was "seated" in the required time, he was to receive another hundred acres.[5] He was also allowed 100 acres for each share of stock he held in the London Company. No grantee was allowed to sell his land for less than the value of a share of stock, then about £12-10s., unless he received permission of the company to do so. This rule was passed by the company because they thought that it was unfair to let certain individuals have land for less than than it would cost those members who had subscribed to the stock. All persons who came in after April, 1616 were to receive fifty acres of land under the same conditions as the hundred acre grants. The first grant on record in the State Land Office is for 200

acres.[6] This grant is dated January 6, 1621. The rent on this land was to be paid at Jamestown at the feast of St. Michael, the Archangel. This rent could be paid in corn, tobacco, or current English money.

After 1624 each person paying his own way to the colony was to receive fifty acres. He was also allowed fifty acres for each person he brought with him. This fifty acres was supposed to cover the expenses of travel from England to the colony. The land thus granted was subject to two conditions; first, it must be "seated" within three years after the grant was made; second, that a "fee rent", later called "quit rent", of one shilling for each fifty acres must be paid to the Secretary of the Colony at Jamestown. The term "seating" is understood to mean that the grantee must clear a small place in the grant, build a house, and plant a few trees within the required time.

The method of acquiring title to land under the London Company was very complicated. The applicant must first present a petition to the Quarter Court in London requesting the grant of land. This petition was referred to a standing committee for examination and consideration. They reported back to the Court and the final confirmation took place at a later meeting. It was then sent to the Colony, signed by the Governor, and by him turned over to the Secretary for recordation.[7] No grant came into effect until it was

recorded in the ~~Land~~ Secretary's Office. When the Governor and Council in Virginia made a grant the same procedure had to be followed before the grantee could receive the land.

In 1624, when Virginia came under the Crown, the procedure became much simpler. When a person claimed "headrights", as the land granted for the transportation of persons to the colony was called, he went before the clerk of the county in which he resided and took oath that he had transported the number of persons whose names he gave the clerk. The clerk certified this list and sent it to the Secretary of the Colony at Jamestown. From this certificate the patent or grant was issued.

In March, 1624 the Assembly ordered every planter to have his lands surveyed and the bounds recorded.[9] If there was any dispute as to the bounds it was to be referred to the Governor and Council for settlement. The Council at this time acted in a triple capacity, e.i., executive, legislative, and judicial. The surveyor was to receive £10 of tobacco for every 100 acres surveyed. This fee was to be paid by the parties disputing the bounds.

An article in the Virginia Historical Register for 1849 gives a summary of how this land was laid off, and explains many things in connection with the

surveying which might be easily misunderstood. The author, after a brief survey of the early history of the colony, continues:

> "All of our earliest grants for land are situated on some water course. The first claimant of lands in any particular region, having pitched upon some notorious point on the watercourse as a beginning of his survey, the surveyor ran a meridinal line from thence along the margin of the watercourse to a distance on poles equal to one half the number of acres to which the claimant was entitled. Thence from either extremity of this base line, if it was necessary to do so, the surveyor ran another line at right angles to the first, to the distance of one statute mile or 320 poles. These side lines he marked and the survey was complete. The same course was pursued with the next survey of land contiguous to the first. The base of this was established on some watercourse as before and from the farther extremity of the base line a side line was drawn paralell to the marked side line of the contiguous survey, which side line was also extended one mile and marked as before. Each succeeding survey was made in the same manner, all fronting on the watercourse and running back one mile. The back lines of these grants became the base or side lines for a new series of grants. The length of one mile was given to facilitate the calculation of the quantity, a breadth of one pole with this given length would necessarily include two acres. The compass used in the surveys was graduated as a Mariner's Compass, the subdivisions being only one fourth

> of a point. This caused much error. Often in running the side lines of a survey, if the required distance fell short of or extended over any natural boundary, the back line was extended or drawn in to include this boundary, altho the length of the line was supposed to have been one mile. The variations in the granted acreage of land and the actual acreage, due to survey, can be accounted for in this manner."[9]

The February 1632 Assembly passed an act ordering every man to "enclose his ground with sufficient fences *****upon their own perill."[10] This seems to be the first time that the Assembly made any note of the way in which the owners protected their land, and is evidently the result of several disputes arising from the encroachment upon land by people who had no interest in the sections, but who "liked the looks" of the ground and decided to acquire it for their own use without a grant. Often in surveying a grant the bounds might overlap, in some cases without the surveyor's knowledge. If the bounds were fenced he would know he was on a plot that had been granted at some previous time. He could then change the lines of the survey and avoid a court suit in later years.

The Bland Manuscript gives a brief summary of the system of granting land, under the date of December, 1633. It states that the "Compa's Governor used to grant patents here and after the compa. confirmed them, and after their disolution the K. confirms all patents made in their time agreeable to their laws.

'When large tracts of land were petitioned for and the Gov'r and Council were willing to grant it, they used to recommend it to the King's com'rs. for the affairs of the colony for confirmation."[11] This method differs from that of the recognised procedure in that it states that the power of granting land was in the hands of the Governor before the cancelation of the company's charter, but as has been stated previously [p. 5] this was not the case. This method would have placed an unusual power in the Governor's hands which could have been used in any manner he wished, and would certainly have hindered the proper advancement of the colony.

Great trouble was taken by every Assembly during this period to protect the orphan's lands. Acts were passed ordering that no orphan's land should be taken up or sold until three years after he had reached his full age. It was also provided that no overseer of an orphan's land should rent any part of it for a longer period than the orphan's minority.

The Assembly of March, 1642/3, in Act XXXIII of that session, due to the large number of suits that had been troubling the courts of the colony at that time, provided for the unintentional settlement of one person upon anothers land.[12] This act states that when a person settled upon the land of another without knowledge of so doing, and improved the land, the owner should pay him for the improvements he

had made, provided they did not amount to more than the actual value of the land. If, however, this was the case, twelve sworn persons were to judge the value of the land. This sum must then be paid by the settler to the original owner of the plot.

Each year the Assembly reenacted all former acts concerning the surveying of lands and the recordation of the surveys. The Assembly of this year [1643] confirmed all former acts, and added that no person after the passing of this act could be forced to resurvey his land.

In June 1642 the Assembly had granted Sir William Berkeley a section of land and two houses as a "free and voluntary gift in consideration of many worthy favors manifested to the colony." The Assembly of the following year confirmed the grant in order to make it secure.

The method of acquiring "headrights" was changed at this session. This act states that it is a reenactment of a statute passed in June 1642, but there seems to be no record of the previous act. The person desiring land through this means could go either to the Governor and Council and request the grant or to the Secretary of the colony and show a certificate from the county court of the county of his residence. No grant should be made unless an exact survey was made and recorded in the Secretary's office.

Land on the Rappahannock River had been granted

for some years, but the grantee was not allowed to "take up" this land. He was to hold the grant until the Assembly ordered the "seating" of that part of the colony. This step was evidently due to fear of trouble with the Indians, and the Assembly's knowledge that, in case of trouble, the proper protection could not be furnished so remote a settlement.

Much trouble had been caused the colony by persons receiving grants to land, seating it, and then after a few years leaving it unoccupied. In February 1644/5 after much consideration and deliberation on the subject, the Assembly decided that any person leaving a plantation after seating it, should forfeit the grant. Anyone desiring the land should be allowed to "take it up." Any person holding land under a lease and desiring to leave it should be allowed to sell his lease to another party, provided the grantee had not seated it or would not seat it when the leesee relinquished claim to it. It was also ordered that any person deserting land should not burn the buildings he had placed on it, but should leave them as he had erected them and the colony would give him the number of nails he had used in erecting them.

Much of the land that the English held had been taken from the Indians by force, but later possession was confirmed by treaty. Nicotowance, in 1646, agreed, in a conference with the representatives of

the colony to abandon claim to all the country between the James and the York, and from the falls of the Powhatan to the falls of the Pamunkey. He still held his claim to the lands lying between the York and the Rappahannock. It was considered a felony for any of the colonists to enter into this Indian territory without just cause. The Indain king acknowledged, however, that the land was held under the authority of the King of England.

A few years later this statute was repealed and the English moved to the north side of the York and Rappahannock. The government gave as a reason for this move that the land on which the planters had settled was not fertile enough for the planting or had lost its fertility, and that they wanted a more virgin soil.

The land of the Pamunkey and the Chickahominy Indians was protected from the intrusion of the English by a statute passed in 1653. Any one who had previously seated land within this section was to be removed from it by an order of the Governor and Council. The Indians were given the right to dispose of parts of their land if the Governor and Council approved of the disposal. The first recorded case of this kind is found in the Northampton records under the date of 1654. This was a conveyance from the Northampton Indians to the English of a town

in their territory. It was admitted to record and recorded in the same manner as a deed from one individual to another. In a case of this kind the acknowledgement of the sale had to be made before the commissioners of the county, and, added to this, there must be the permission of the majority of the Indian tribe.

The Indians seemed ready and willing to convey their lands under these conditions, but after a few years [1656] the Assembly put restrictions on these sales for two reasons. First, that the consideration in many cases was too small. The Indians had little or no idea of the value of the land in proportion to what they received for it. Second, that the Assembly must go to the trouble of assigning them new land on which to settle and hunt.

This land problem between the Indians and the whites became so acute that the Assembly refused, in March 1657/8, further grants to the English until each Indian tribe had been allowed a proportion of fifty acres for each bowman in the tribe. The total grant to the tribe was to be in one place and not scattered throughout the colony. If in any grant to the Indians was included land that had been previously granted to a white person, the white owner was either to buy the land from the Indian tribe, or was to relinquish his claim in favor of the tribe.

Much of the land up to this time was taken from the Indians either by force or by playing upon their superstition and innocence. Seeing that this condition must lead to trouble the Assembly, in 1658, passed a statute prohibiting the sale of Indian lands, and also prohibiting anyone from settling on the Indian lands unless the Governor and Council had forst given permission for the action. The Indian lands could only be conveyed ay a meeting of the Quarter Court. As the inhabitants of the county gathered at the sessions of the Quarter Court this gave publicity to the sale and there was little chance of fraudelant deals.

The Indians in some instances showed that they wished to move to another place, and under these conditions there was no trouble in conveying the land, as they usually stated to whom they wished it transfered. In many cases they asked that the land be placed in the hands of the Governor.

In the same year there was a slight change in the method of acquiring lapsed or deserted lands. No person could take up this land without the permission of the Governor and Council. The first patentee, if he deserted the land, or his grant lapsed, could take up the same quantity in some other part of the colony. The term "deserted" or"lapsed" land was applied to any grant that was not planted in the required time of three years.

The many acts, passed at various times, governing the surveying of land, seem to have been of no use, as there was still, in 1659, much trouble in acquiring a clear title to land. In the March, 1658/9 session the Assembly took steps to clear this up by a statute governing the surveying of land. This act states that no surveyor should give a plot [by this was meant a plat, or drawing of the land] of land to anyone until six months after he had surveyed it. In making this survey he was to use due diligence in seeing that he he was not encroaching upon a former survey. Any previous patentee was to do all in his power to assist the surveyor in ascertaining the proper bounds for the land.

The Accomac Indians, in 1660, petitioned the Assembly for a further grant of land and permission to raise a barrier to stop the rapid advance of the English. The Assembly was not willing to trust the surveying of this land to an Eastern Shore surveyor, because of his possible partiality, but appointed one from another section of the colony. In this grant the Indians had no power to alienate the land. The Assembly throughout this period seems to have tried to do all it could to assist the Indians, often giving them a decision above the whites. As an example of this, the case of the Wicocomico Indians and the heirs of Samuel Mathews might be used. In this case the transfer

of the land appeared upon record, but it was not stated whether the land was taken by force or was the voluntary gift of the Indians. The Assembly ordered the heirs to pay to the Indians the equivalent of fifty pounds sterling as a consideration for the land. If this was rejected by the Indians, the heirs were not to acquire title to the land until the Indians deserted it of their own free will. In another case, that of the grant of Colonel Fauntleroy of Rappahannock, the Assembly deemed the consideration was not sufficient and ordered him to pay an additional sum.

The Assembly of March 1661/2 reaffirmed all former acts concerning land belonging to orphans. They added to these further instructions for the tenants on orphan lands. These tenants were to maintain a good fence about their orchard, and to build a house and keep it in good repair. It should be left tenantable at the end of their lease. Provision was also made that the timber in the lease should not be wasted, or used in any other manner than on the plantation.

The act following this, concerning the granting of land, is better understood when copied from Hening.

"ACT LXVIII
Grants of Land.

Bee it hereby enacted that any person or persons clayming land as due by importation of servants shall first prove their title or just right before the governor and council, or produce certificate from the county court to the secretarys office

before any survey be made or grant admitted it being unreasonable that others furnisht with rights, should be debarred, by pretence of survey which in itselfe is noe title."

This Assembly also repealed the former act allowing a patentee, who had deserted land, to take up a grant in another part of the colony. It states that he had the advantage of acquiring the land and did not use it so he has forfeited all rights that were allowed him under the first grant.

In 1661 the Chickahominy Indians were given permission to dispose of their lands to the English provided that each sale received the approval of the majority of the head men of the tribe, and was published at a Quarter Court or meeting of the Assembly.

All quit rents, for a long period had been due in money, but for several years the owners had failed to pay them because of the scarcity of corn, the main product that could then be turned into money. The Assembly decided to relieve this condition by allowing the rent to be paid in tobacco, at the rate of two pence per pound of tobacco. By the payment of double rent for the next two years all delinquent rent was cancelled by the Governor.

By an act passed in 1662 the Assembly stated that the cause of all the trouble between the Indians and the English was the encroachment of the latter upon the lands of the former. They decided that the only solution of this was to follow the same course

with all the Indian tribes that they had done with the Accomacs. After the passage of this act any conveyance made by the Indians was considered illegal. Commissioners were appointed to see that the English did not encroach upon the grants made to the Indians. These provisions remained in force until the Indian War of 1676. At this time it was decided to sell all these lands for the benefit of the public. The English tried to evade the various laws passed governing the Indian by securing leases from the tribes for them. The General Court condemned these arrangements and refused to acknowledge their legality unless they proved advantageous to the Indians.

As the Indian population died out, large trects of land became deserted. These tracts were either taken up by the English or by the neighboring Indian tribes.

In 1661, due to several disputes concerning the ownership and seating of land, the Assembly passed an act stating that any person seating himself upon land, thinking it his own, but later finding it was not, was to be paid by the owner for all improvements he had placed upon it. If, however, the improvements amounted to more than the land was worth, the owner should sell the land to him at its value. Many cases of this kind occurred in the colony from time to time, due to the inefficiency of the surveyors' instruments.

Later in the same session another act was passed ordering that the bounds of all land be surveyed and marked. These marks were to be renewed every four years. The bounds,as agreed upon by this survey, were to be conclusive, and no dispute should arise from them in later years. If there was any dispute in the present survey two surveyors should decide the question, with the aid of the neighbors who knew the surrounding country. The disputing parties were to share and share alike in the cost of the survey.

From the date of the first grant on record [1620] throughout the period to 1666 the terms"seating" and "planting" had been used in almost every grant. These terms had never, as far as appears on record, been defined by the Assembly. In the session of October, 1666 the Assembly defined these terms in the following manner: "Seating" was to build upon the land and keep stock upon it for one year. "Planting" the land was to clear, plant and tend the product planted on the ground. No matter how large the grant only one acre of it must be treated in this manner to cover the clause in the grant, unless otherwise stated.

The following report appears under date of October 29, 1666, concerning the granting of land:

"October 29, 1666.
THE house met, there was read the result of the conference between the right honorable the governor and committee of burgesses, Oct-

ober 27, 1666, as followeth, vizt.

Then was read the petition of Mr. William Drum, concerning the land commonly called the governours land, in the main reserve, the 29th of October, 1666, by the governour and councel, to the assembly for their judgments therein, returned thus endorsed;

"This petition or one to this effect was exhibited in June last, to which the house gave this answer, vizt."

June 8th, 1666.

"The house humble conceiving the grants of lands to appertain only to the governor and councel(and things thereby without their cognizance) think fit this petition be returned to your honours."

And now do humbly conceive the same answer be (sufficient) the result of their judgments as conceiving this matter to be here coram non judice."

In 1673 the entire colony was granted to the Lords Culpeper and Arlington. As the discussion on this grant covered a period of several years it is thought better to omit it at this point and give the whole subject in a separate article (see Appendix)

Often land was granted by the Governor and Council for the good work of some citizen of the colony. A strange happening in this connection appears in 1674 when the Assembly granted, or rather reaffirmed a former grant, to Sir William Berkley, to 1096 acres ofland to be held forever, and gave him a ninety-nine year lease on seventy acres. The act granting this land states that it was for the good service he had rendered the colony, and the Assembly had to affirm the grant as the governor was not allowed to give himself land. [See page 10]

The Indian troubles, mentioned before, caused the Assembly, in 1676, to pass an act allowing seven years

for the seating of land, instead of the three years as was formerly allowed. This act also stated that settlements on the frontier were to be allowed seven years for seating, due to the inaccessibility of the frontier counties to the rest of the colony.

Robert Liny, in April, 1679, complained to the Assembly that he had been stopped from fishing on water that adjoined his land, and petitioned the Assembly to state how far into the water the grant to land extended. The Assembly, in answer, stated that the grant extended to the low water mark, and that no one should fish within this line unless he had permission to do so from the owner. If anyone was found fishing within these lines he was to be punished in the same manner as those caught hunting on land without permission.

In the session of 1681 the Assembly took steps to lay out towns in various parts of the colony. The buying and selling of goods imported to the colony or exported from the colony could only take place at these towns, under penalty of a heavy fine, if the act was violated. The Assembly, fearing that some owners might not wish to convey lands for the said towns, followed a procedure similar to condemning it. The justice of the county issued a warrant to the sheriff to empanel twelve men of his baliwick and have them judge the value of the land, taking into consideration any inconvenience that the loss of the land might cause

the owner. This price was then paid the owner. If he refused the price set, he forfeited the land to the trustees of the town, and received no consideration for it. The trustees, as appointed, held the title to the land, and had the power to convey it to anyone they wished.

This Assembly also laid out the bounds of the Indian lands on the south side of the James River as follows: "That a line from the head of the cheife or principle branch of the black water, to the upper part of the old Appamattocks Indian Town field, and thence to the upper end of the Manokin Town be judged * * * the said bounds." All patents formerly granted which lay in this area were null and void "as if never granted."

This act also provided for the construction of a road from above the inhabitants on the north side of the James River to a place above the inhabitants on the Rappahannock River. No surveys were to be made beyond this road for three years.

In April 1692 the act governing the seating of lands was changed slightly. This act stated that lands added to a patent already granted were not to be forfeited for want of seating if they were seated within three years after the passage of the act. All lands granted after the passage of this act were to be seated as required by law or were to be forfeited. This act was brought about by persons receiving large grants of land, some as great as 10,000 or 15,000 acres, and seating only a small section of the grant.

A P P E N D I X I

The Arlington-Culpeper Grant.[13]

In 1673 Charles II granted to Lords Culpeper and Arlington the country of Virginia, Under this grant all lands were to escheat to them, instead of to the King. They were to receive quit rents and all other dues, make grants to land, and appoint all pfficers.

The colonists arose against this grant as it was contrary to their laws and the charter that had been granted when they first settled the country. The next year the Assembly voted money to send representatives to England to plead against this grant, and to get the King to give the colony a new charter.

An agreement could not be reached so a compromise was made. The Lords agreed to relinquish their claim to the land and only receive the quit rents.

Arlington later conveyed his interest to Culpeper, who in turn relinquished his patent in favor of the King in 1684.

A P P E N D I X II

The Potomac-Rappahannock Grant.[14]

A few years before the Arlington-Culpeper grant the territory between the Rappahannock and the Potomac was granted to several of the King's friends. They were to pay as a rent on this land £6 13 s. 4 d.

and also a part of all gold and silver found in the region. In 1671 this same territory was granted to a new group, as the first grantees had died. They had the power to divide the land into manors and hold court twice a year. They were not allowed, however, to interfere with the grants previously made in this section. The power over military affairs and the levying of taxes also remained in the hands of the Assembly. The proprietors of this territory tried to sell it to the agents of Virginia, but without success. They later transfered it to Thomas, Lord Culpeper, who in turn gave it to Thomas, Lord Fairfax.

After several years, Lord Fairfax persuaded the King to include the Shenandoah Valley in his grant. To persons already in the territory he gave ninety-nine year leases on the property, with a rent of twenty shillings annually for each hundred acres. To a new settler the rent was two shillings per year for each hyndred acres. He was also forced to pay ten shillings on receiving his grant.

R E F E R E N C E S

NOTE-References to the various acts found in Hening have been omitted, as in each case the year of passage was noted. Many references can also be found in Bruce and Ingle, but in each case these authors refer to the aforesaid acts of Hening.

1-Kent, Commentaries, III, sec. 387, quoted in Ingle, Local Institutions, p. 24.

2-Bruce, Economic History, Vol. I, p. 489

3-Ibid, p. 490

4-Records of the London Company, Vol. I, p. 249.

5-Bruce, p. 502

6-Patents, Virginia Land Office, Vol. I, p. 1

7-Bruce, p. 500

8-Hening, Vol, I, p. 123

9-Virginia Historical Register, Vol. II, p. 192

10-Hening, Vol, I, p. 176

11-Ibid, p. 552.

12-Ibid, p. 260.

13-Ingle, p. 29. Burk, History of Virginia, Vol. II p. 34 of Appendix.

14-Ingle, p. 31.