

THE SCANDALOUS INDIAN POLICY OF WILLIAM PENN'S SONS: DEEDS AND DOCUMENTS OF THE WALKING PURCHASE

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IN 1737 Thomas Penn and James Logan produced a show that came to be called the Walking Purchase or Indian Walk. This much-described incident ostensibly was the fulfillment of a contract by which some Lenape Indians had sold a quantity of lands to be measured by a man walking for a day and a half from a fixed starting point. Penn and Logan forced the Walk upon unwilling and resentful Indians who charged fraud consistently from the day of its performance until they finally received compensation twenty-four years later. During this period the anti-proprietary forces in Pennsylvania came to believe that the Walk was a cause of Indian hostilities in the French and Indian War, and they used it as the basis for a political campaign against Thomas Penn which led to a petition by Benjamin Franklin for a royal inquiry. In 1762 the Crown's commissioner, Sir William Johnson, presided over a turbulent hearing during which the chief Indian spokesman withdrew his charge that Thomas Penn had forged the Walk deed; but Johnson paid the Indians anyway at the end of the inquiry out of Thomas Penn's funds, thus raising some suspicions about the nature and purpose of the proceedings.

There has been much contention over these highly dramatic events. Using the voluminous justifications prepared by Penn's lawyers and administrators, one school has held that Penn was libeled unscrupulously for the partisan purposes of some scheming Quakers working with that greatest schemer of them all, Benjamin Franklin. An opposing school sees Thomas Penn as a conscienceless villain, and rests its case largely on Indian testimony as given under the sponsorship of the presumably upright

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leaders of Pennsylvania's Quaker community. Though an odor of wrongdoing has clung to the Walk, judgment remains indecisive. At root, the issue has been the credibility of the witnesses. The lie was given by each side to the other in the original dispute, and the conduct of both sides was confusingly conspiratorial.¹

The purpose of the present article is to focus attention on a series of events that took place before the Indian Walk. These events can be documented in part by deeds and patents of land that offer means of testing the validity of the Walk arguments.² The new evidence, when combined critically with the old, destroys the proprietary case.

Control of the lands in the Lehigh Valley was at issue in the Indian Walk. Eighteenth century Pennsylvanians called the Lehigh River the West Branch of the Delaware; and the area bounded by the Blue Mountain, the West Branch, and the Delaware's mainstream was called the Forks of Delaware. South of the West Branch, flowing roughly parallel to it, was Tohickon Creek, which was recognized by Indians and Europeans alike as the northern boundary of the lands that William Penn had bought from the Indians. In 1726 Secretary James Logan privately purchased the Durham tract beyond the line from Lenape landlord Nutimus, paying £60 for his quitclaim.³ In 1727 a Huguenot refugee named Nicholas Depui settled about two miles

¹I have discussed the Walk literature in my dissertation, "Miquon's Passing: Indian-European Relations in Colonial Pennsylvania, 1674 to 1755" (University of Pennsylvania, 1965), 477-485, and complementarily in "The Delaware Interregnum," *Pennsylvania Magazine of History and Biography*, LXXXIX (1965), 183-184. By far the best single account of the Walk is the concise description in A. F. C. Wallace, *King of the Delawares: Teedyuscung, 1700-1763* (Philadelphia, 1949), 18-30. I am indebted to Professor Wallace both for his anthropological insight and for his pioneer work with sources.

²For procedures in land transactions, see Charles Huston, *An Essay on the History and Nature of Original Titles to Land in the Province and State of Pennsylvania* (Philadelphia, 1948); John Bioren, ed., *Laws of the Commonwealth of Pennsylvania . . . with Notes and References* (Philadelphia, 1810), II, long note, 105 ff.

³*Statutes at Large of Pennsylvania 1682-1809*, 17 vols. (Harrisburg, 1896-1915), IV, ch. CCCXII, 154-156; James Logan to John Penn, 6 December 1727, Logan Papers, I, 89; 29 July 1728, *ibid.*, X, 45; J. T., and R. Penn to Logan [summer, 1730], Penn Papers, Letters of the Penn Family to James Logan, II, 77. Nutimus identified as seller: James Sullivan, *et al.*, eds., *The Papers of Sir William Johnson* (Albany, 1921-1962), III, 779. Ms. references are to collections of the Historical Society of Pennsylvania (HSP) unless otherwise noted.

above the Delaware Water Gap in what was called the Minisink region; Depui also bought from the local Indian landlords.⁴ In the same year, some Palatine immigrants in New York also tried to buy Minisink lands until Secretary Logan threatened them for encroaching on the prerogative of the proprietary Penn family.⁵

The Palatines' effort failed, but its consequences endured in its revelation to the Indians of the market value of their lands. Woefully Logan discovered that the intruders had "actually paid the Indians above twenty pounds per hundred" for some of those acres. He warned the proprietaries that future Indian purchases would "fall very heavy" on them because of the "late vile practices" of those "wicked people."⁶ Logan hurried a party into the Minisink to make a preemptive survey for William Penn's grandson and namesake, but the Indians flatly forbade the attempted survey "on any terms whatsoever" until a descendant of their great friend William Penn should personally come to negotiate with them.⁷

In 1729 another source of friction developed when rich young William Allen bought 20,000 acres of unlocated Pennsylvania lands directly from the proprietary family, with authority to survey them at once.⁸ Allen demanded a formal survey warrant from Logan in spite of the latter's objections. Less than a year before, Logan had insisted that a survey of unlocated lands should be "clear of Indian and other Claims," but the warrant for Allen says no more than to caution the surveyor to "take

⁴ Statements of Ann Erb, late Depui, 20 May 1845, and Daniel Stroud, 6 May 1845, HSP Archives, Box 1, fol., Depui Family and Monroe County; Indian deed, 18 September 1727, Northampton Papers, Misc. Mss., 1727-1758, 1.

⁵ Copy of Articles between Conradt Wyser and Jno. Crook, Kingston, 5 April 1726, Penn Papers, Pa. Land Grants, IX, 23; Logan to J. Penn, 25 November 1727, Logan Letter Books, IV, 151-152.

⁶ Logan to J., T., and R. Penn, 29 July 1728, Logan Papers, X, 45 (18 of ltr.).

⁷ Logan to J. Penn, 6 December 1727, Logan Papers, Correspondence of James Logan, I, 89; Logan to W. Penn (grandson), 6 December 1727, Logan Parchment Letter Book, 1717-1731, 515.

⁸ Deeds: 28 August 1728, 4 April 1729, 16 April 1729, Pennsylvania Patent Books, F-5, 92, 562; F-6, 1; Authority: J., T., and R. Penn to R. Hill, *et al.*, 6 September 1729, Penn Papers, Letters of the Penn Family to James Logan, II, 74-75. Originals of Pennsylvania Patent Books are in Department of Internal Affairs, State Capitol, Harrisburg. Microfilm copies are in Archives Division, Philadelphia City Hall; see also Francis Jennings, "Incident at Tulpehocken," *Pennsylvania History*, XXXV (1968), 344-346.

the utmost Care herein that no offence be given to any of the Indians." As it is clear from subsequent deeds that Allen's surveyor was very busy in Indian territory, it is apparent that Logan's meaning was simply, "Don't get caught."⁹

It is significant that throughout this period Logan was stressing to the proprietaries that the Indians' claims were just and that purchase agreements were a necessity. When his assistant voyaged to England, Logan instructed him emphatically to tell the Penns, "The lands . . . on Delaware above Tohickon Creek must be purchased."¹⁰ Nevertheless the Penns continued to sell land when they could get cash, without regard to Indian rights. They warranted surveys for 2,000 acres, under date of April 23, 1730, to the affluent button maker Casper Wistar; though the language of the warrants is often enigmatic, over a third of these lands were surveyed in Indian territory.¹¹ The Penns acted in the full knowledge of what they were doing. Responding to Logan's persistent warnings, they wrote to him after their sale to Wistar, "We see the Absolute Necessity of Hastining the purchases with the Indians."¹²

Until the critical moment when Thomas Penn came personally to the province, William Allen continued to be the most aggressive intruder on the Indians' lands. Logan forbade Allen's surveyor to continue, but apparently was unable to enforce his prohibition.¹³

⁹ Logan to John Chapman, 12 March 1730, Logan Letter Books, III, 141, 129; for the Logan-Allen rivalry, see Jennings, "Miquon's Passing . . .," 327-331.

¹⁰ Logan to J., T., and R. Penn, 29 July 1728, Logan Papers, X, 45; Logan to J. Penn, 14 May 1729, Penn Papers, Official Correspondence, II, 68; Logan to J. Steel, 16 November 1729, *ibid.*, II, 101; Logan to T. Penn, 18 December 1730, *ibid.*, II, 145; Logan to J. Steel, 18 November 1729, *ibid.*, II, 101; Logan to J., T., and R. Penn, 16 November 1729, Logan Letter Books, III, 309-318.

¹¹ Wistar resold some of this land to George Zewitz, yeoman, 24 May 1737. The profit in such land speculations is shown by the markup in this instance. Wistar had bought from the Penns at a rate of approximately £7 sterling per hundred acres. Seven years later he sold to Zewitz at a rate of about £53, Pennsylvania currency, per hundred acres. After allowing for the exchange differential between sterling and provincial currency, the profit is on the order of 500%. Wistar's actual surveys were made in August and October, 1730, and February, 1731. Pa. Patent Books, A-6, 162; Zewitz' deed, 24 May 1737, is in Northampton County Deed Books, B-1, 177-178, Easton Courthouse.

¹² J., T., and R. Penn to J. Logan [summer, 1730], Penn Papers, Letters of the Penn Family to James Logan, II, 77.

¹³ Logan to Isaac Norris, 9 November 1730, Etting Collection, Misc. Mss., I, 93. The letter's enclosure is in American Philosophical Society (APS):

When Thomas Penn finally did arrive, he intensified instead of relieving the pressure on the Indians. His motive is clear. He had a mission to get his family out of debt, and all other considerations were subordinate to it. Impressive as the Penns' estate looked on a map, claims and encumbrances made it appear as a profitless venture. Because of the persistent claims advanced by Lord Baltimore for Maryland's boundaries, settlers in the disputed border regions refused to pay quitrents to the Penns until every legal technicality should be removed. Because of unpurchased Indian rights, only a small area in the southeastern corner of Pennsylvania could be sold with free and clear title, and few purchasers would pay for any other kind.¹⁴ The Penns really managed an area that we know today as Philadelphia and its suburban counties, with the addition of part of Lancaster County; the sites of today's Easton, Bethlehem, Allentown, Reading, Harrisburg, and York were in Indian territory. From their constricted estate the Penns' only appreciable income came from the purchase money laid down for large tracts of land, and the only open spaces large enough to locate large tracts in were over the Indian line. The income was far too little to allow the Penns to live in the fashion befitting gentry. They had back-breaking debts bequeathed by their father (as well as those incurred by themselves); they were constantly embroiled in expensive lawsuits; and they were being cheated out of legitimate revenue by embezzlement in their land office. Further, they were

Logan to Nicholas Scull, 9 November 1730, Misc. Mss. Coll. Allen's lands: In addition to the 20,000 acres he had bought from Springett and William Penn (grandson), Allen picked up 5,000 acres from Letitia Penn Aubrey, which, after several resales, became the site of Nazareth. Allen paid £500 in 1735, and sold for £2,200 in 1740. Pa. Patent Bks., F-6, 120; Northampton Co. Dd. Bks., C-1, 156-164. On 18 May 1732, a tract of 5,000 acres was granted to Thomas Penn as a private person. He sold it the same day to Allen's merchant partner, Joseph Turner, for £350 sterling. Turner sold it to Allen for £500 Pa. currency, on 10 September 1735. Allen resold it in parcels to the early settlers of the "Irish settlement" that grew into Allentown. Minutes of the Commissioners of Property, Bk. K, 24 July 1739, *Pennsylvania Archives*, 3 Series I, 106-107; Warrants and Surveys of the Province of Pennsylvania, 1682-1759 (9 ms. vols. in Archives Div., Philadelphia City Hall), VIII, 9; Chidsey, *Penn Patents*, Sheet No. 8. Allen also acted as attorney for London merchant John Simpson in disposing of another 5,000 acres bought by Simpson in 1731. Deed, 14 January 1731, and power of attorney, 18 January 1731, HSP Collection.

¹⁴ Logan to J., T., and R. Penn, 16 November 1729, Logan Letter Books, III, 309-317; Logan to T. Penn, 18 December 1730, Penn Papers, Official Correspondence, II, 145.

a numerous clan, and several were profligate. The truth was that the Penns were land poor, living on pretence, agility, and great expectations. Their purpose in sending Thomas Penn to the province was to bring about the realization of their long-frustrated hopes.

The brothers Penn made certain preparations before Thomas' departure from England. They jointly signed five survey warrants, for 1,000 acres each, made out to Thomas individually, and five more made out to Richard. They also signed warrants for their brother-in-law Thomas Freame for 10,000 acres. All of these warrants were dated May 12, 1732, and they all were qualified to apply to "Land purchased of the Indians and whereon No Persons are Seated." Four days later, another warrant for 5,000 acres was signed without the Indian clause, in Thomas Penn's name. On the 18th of May, still another warrant for 5,000 acres was issued, which Thomas Penn immediately endorsed over to William Allen's partner, Joseph Turner. Its price was £350, and it probably paid the expenses of Thomas' trip to Pennsylvania. Documents left in the trail of this warrant show that most of its acres were subsequently laid out in Indian territory.¹⁵

It is not possible to follow the trail of all these warrants within the scope of this article. Attention must necessarily be confined to events in the region above Tohickon Creek. There we shall find a gradual alteration of the postures originally taken by John and Thomas Penn and James Logan.

Throughout 1733 and 1734, Logan and the Penns continued to recognize Indian ownership. In one interesting incident, a Lenape sachem called Tatamy applied to the Land Office to obtain a patent under Pennsylvania law for his 200-acre farm in the Forks of Delaware area, reversing the usual procedure by purchasing the Penns' claim against the land which he held by native right. Someone with a strange sense of humor made out Tatamy's survey warrant with the comment, "Let this be done with caution and by Consent of the Indians." On this piece of paper that would

¹⁵ Penn Letter Books, I, 50-51. When Freame encountered difficulty selling his lands, John Penn suggested to Thomas that the warrants be altered to remove the "particular limitations." 20 July 1732, Penn Letter Books, I, 58. Turner's purchase: Warrants and Surveys, II, 226-227; VII, 96, 189; VIII, 90; Pa. Patent Bks., A-6, 210; A-9, 68 ff.; A-16, 329 ff.

naturally be discussed by the Indians, officialdom thus took pains to be ostentatiously correct.¹⁶

A month later, another Forks sachem came to Philadelphia to pay the proprietary a friendly ceremonial call. Nutimus, the man who had sold James Logan the land for Logan's ironworks, had in his entourage several other chiefs, but no one seems to have said anything about the pressures on the Forks lands.¹⁷ The omission does not signify that Thomas Penn had overlooked the region, as Tatamy's curious warrant demonstrates. Penn was in a dilemma. To discharge his family's debts he needed to sell lands, but to sell those lands he had to get the money to make the prerequisite Indian purchase.

Instead of climbing out of debt, the Penns were sinking more deeply into it. From Thomas' high position in Pennsylvania, the situation did not seem so frightening. His brother John later defended him against charges of extravagance by saying that Thomas lived "in as frugall a Manner as was Possible for any Person that Must appear as the first Man in the Place he resides in."¹⁸ It was a tolerable standard of austerity. But John Penn was not the "first man" in England and did not enjoy Thomas' privilege of practical immunity from creditors' pressures. In March, 1734, John estimated the Penns' debt at £7,000 besides what they owed their nephew William. They had an "absolute necessity" to receive "subsistence from abroad." Within two months, in a letter never sent, John raised his estimate to £8,000 and hinted that his next letter might be sent from debtors' prison. His language reveals the mood in which the Penns would soon conduct their affairs. "We [John and Richard] are very Sorry we are obliged to write to you in this Manner but as Necessity has no law, and we are under the Greatest you must excuse us, for to have nothing to Live upon but what Comes from thence

¹⁶ James Steel to John Chapman, 17 May 1733, James Steel's Letter Book, 1730-1741, 51. Tatamy had to pay £48.16.6 to keep his land. See entries for 2 April 1742, Penn Papers, Pennsylvania Journals, III, 19.

¹⁷ Minutes of what pass'd between the Proprietor and the Delaware Indians, 9th June 1733, Penn Papers, Indian Affairs, I, 37. An appended list of the names of attending Indians includes Tetoscunck (Teedyuscung) and Joseph Niewtemys (son of Chief Nutimus) who seem to have been the only persons also attending the final adjudication of the Walking Purchase at Easton in 1762.

¹⁸ John to Thomas Penn, 4 March 1734, Penn Letter Books, I, 115-117; 20 February 1736 (erroneously dated 1735), *ibid.*, 143-144.

and to be Continually dun'd for Debts that are due is Certainly the most uneasy Life a Person Can live under nor indeed is it to be Supported." John proposed to sell the whole province on the grounds that "we are now at the Mercy of our Creditors without anything to Maintain us."¹⁹

Searching for a means of raising money quickly, John hit upon the device of a land lottery. He discussed it with brother-in-law Freame who assured him of its probable efficiency. There was the difficulty that Quakers regarded lotteries as immoral, but Quaker John Penn thought that "as there is no fraud in it . . . no Person even the Most Godly can gainsay it." He saw little real choice. "There is an absolute Necessity to do this and Everything to Raise all the Money that is Possible if we have any thought of Continuing the whole Interest [i.e., the provincial estate] or appearing with any Credit in the World."²⁰

John, in his desperation, decided that Thomas was too far or prison too near. Instead of sending his message he suddenly boarded ship to carry himself, surprising everyone by appearing in Philadelphia on September 21, 1734. The pace of proprietary business immediately quickened. About a week after John's arrival, an invitation went forth to Chief Nutimus to treat with the brothers at Durham, the site of Logan's ironworks.²¹ The Penns asked Logan for advice on what to pay the Indians "if they should sell." Logan estimated two pounds per thousand acres as a reasonable price, adding, "You have the sharpest fellows to deal with that I have known amongst the Indians, and to set prices here is to no purpose, but I think you should purchase." Though Logan himself did not attend the conference, he was represented by his son.²²

No contemporary minutes of the Durham conference have survived. Another document, purported to be the minutes, was produced by proprietary legal counsel 28 years after the event. Close analysis has disclosed that the lawyers offered a substitute for the original minutes, tailored by selection and emphasis to

¹⁹ John and Richard to Thomas Penn, 12 May 1734, *ibid.*, 118-121.

²⁰ John to Thomas Penn, n.d., *ibid.*, 123.

²¹ James Steel to James Calder, 21 September 1734, James Steel's Letter Book, 1730-41, p. 76; "The Proprietaries Journey to Durham," Board of Trade Papers, Proprieties, 1697-1776 (ms. transcripts), XXI-1, 179.

²² Logan to the Proprietaries, 8 October 1734, *Pennsylvania Archives*, 2 Series, VII, 171-172.

suggest support for the proprietary case.²³ The lawyers' paper mentions that the Durham conference broke up in disagreement, but it is silent about the Penns' pressure that started the dispute. However, this missing information can be found in other sources supplied by Lenape chief Nutimus, one of the participants at Durham, who was confirmed on the critical point by the Penns' appointee (and Nutimus' antagonist) Governor George Thomas. Nutimus recalled that, "When We Were With Penn [at Durham] to treat as usual with his Father. He kept begging and plagueing us to Give him some Land and never gives us leave to treat upon any thing till he Wearies us Out of Our Lives." Governor Thomas agreed that the Indians had resisted the Penns' proposals. They had appeared, said the Governor, "as if they had an Inclination to be paid" for their land.²⁴ The omission of this fact from the so-called minutes of the Durham conference implies, without saying so, that the Indians had there acknowledged the Penns' right to survey and take title to their lands, whereas really the Penns, by bargaining for a low price, had confessed their lack of right to do anything without Indian consent. Although this issue later became prominent in the litigation that produced the lawyers' misleading "minutes" of the Durham conference, present purposes do not require examination of charge and countercharge. It is enough to note that the Penns did then

²³ "The Proprietaries Journey to Durham." See Jennings, "Miquon's Passing . . .," 339-343. Proprietary Secretary Richard Peters identified this document under oath in highly equivocal language that may easily be read as an effort to make an untrue impression without literally lying. He swore, 12 June 1762, that he "did some Time ago (but the particular Time he cannot now set forth) find deposited (among others in his care) the hereunto annexed ancient Paper purporting to be Minutes of the Transactions in a Journey of the said Proprietaries to Durham in the year 1734 and of a Conference then held between them and certain Indians therein mentioned." It may be seen that Peters carefully avoided any commitment to the validity of the document or the means by which it got into the papers in his care, and he did not plead lack of memory about when he found the paper. He swore only that he could not "set forth" the time; he did not say that he lacked knowledge of the time. Such fine distinctions were undoubtedly very important to Peters who was simultaneously an ordained Anglican minister and an absolute dependent upon Thomas Penn. Another of Penn's officials identified the handwriting of the Durham document and its indorsement as that of two men conveniently deceased. Affidavits, Bd. of Trade Papers, Proprietaries, 1679-1776, XXI-1, pp. 177-178.

²⁴ Nutimus, *et al.*, to Jeremiah Langhorne, 21 November 1740, Penn Papers, Indian Affairs, IV, 30. Governor Thomas to the Delawares, 27 March 1741, *loc. cit.*

recognize Indian ownership and that they tried to negotiate for conveyance of that ownership to themselves.

After the Durham conference, the Indians simply waited for their terms to be met. The Penns, however, decided to change tactics. Starting with unquestioning recognition of Indian rights, the proprietaries and their agent had become increasingly irked by the Indians' refusal to grant away their lands for mere token payments. As the full cost of legitimate purchase revealed itself to the Penns, they now turned to methods of evasion. Such methods entailed difficulties, but not of the sort usually imagined. There was no Indian Menace at that time and place; the Indians were weak and knew it. They were also committed by solemn treaties, respected tradition, and commercial interest to settle their disputes with Pennsylvanians by pacific means. The Penns understood these matters and were little concerned about Indian reactions to the seizure of Indian lands. What gave them pause was its possible effect on public opinion among white Pennsylvanians.

The likelihood of Quaker censure could not be ignored, and such censure would have had political repercussions in the provincial assembly as well as among Friends with influence at the royal court in London. An open seizure of recognized Indian property would defeat its own purpose since the whole point of seizure would be to raise money by selling the seized lands, and no one would buy those lands if title continued to be encumbered by Indian claims publicly accepted to have merit.

The Penns' problem was to devise ostensibly legal means of procedure to mask an illegal act. The device that they hit upon was elaborately public in enough of its aspects to achieve the desired appearance of legality. This was the Walking Purchase. But the Walk was only the visible part of a series of negotiations and transactions, all of which were conducted out of sight of possible critics, and the records of which were guarded in strictest secrecy.

The Penns' new tactic depended on proving that the Forks of Delaware lands had really been bought and paid for by their father in the remote year of 1686, but that the boundaries of that purchase had not been measured off in the manner duly provided by the terms of the conveyance. The Penns had not advanced

this claim at the Durham conference, a fact which implies something about their own belief in its validity, but they proceeded thereafter to erect their case upon it. For a while, however, they kept the Indians in ignorance while they made certain preparations.

The significance of their next actions will best be understood if we first look at the evidence that was to be brought forward to substantiate the Penns' claim. It was an old paper purported to be a copy of a deed. On its face this paper was a grant by certain Indians to William Penn of lands to be bounded by a man's walk for a day and a half from a stipulated starting place, with enclosure lines to be drawn from the point where his walk would end. The Penn brothers intended to prove that their father's agents had made full payment of the Indians' price, but that the measuring Walk had never been performed and therefore the heirs of the Indians who had been paid owed the lands that had been bought to the heirs of the man who had paid for them. That is to say, Nutimus and his fellow chiefs were already in debt to the Penns for a large quantity of land. Pursuing this theory, the Penns planned to organize a formal Walk to measure the land owed to them, and to compel the Indians to assent to the outcome.

The authenticity of this old document became a central issue in all the events of the Walking Purchase. Though the Penns were later charged with having forged the paper, its contents seem to be authentic under a certain interpretation rather different from that of the Penns. We are hampered by having nothing to work with except a copy of the purported copy. The available transcript represents Indian signatures and seals as having been affixed on the original in their proper places, but possibly the transcript's representations are only images of other representations appearing on the Penns' "copy"; one would expect only the missing original itself to bear seals. Our transcript also shows blank spaces where there ought to be words specifically stating the compass direction for the Walk to be made; and in this respect there can be no doubt that our transcript accurately represents omissions in the Penns' document since much attention was given to those blanks by both the Penns' lawyers and their opponents. On the face of it, then, the Penns' old document discredited itself as a copy of a presumably

lost original, suggesting instead that no such original had ever been finally executed. To be accepted as authentic, the "copy" must be seen as an unconsummated *draft*. Its defects of omission alone would have disqualified it in any fair court.²⁵

As a legal instrument, the Penns' paper suffered also from disqualifying age, both by Indian custom and provincial law. The applicable rules have been given to us by William Penn himself, who relied upon them in his dispute with Lord Baltimore over their provinces' boundaries.

It hath been the Practice of America, as well as the Reason of the thing itself, even among Indians and Christians, to account not taking up, marking and (in some degrees) planting a Reversion of Right; for the Indians do make People buy over again that Land [which] the people have not seated in some years after purchase, *which is the Practice also of all those [provincial] Governments towards the People inhabiting under them.*²⁶

²⁵ The 1686 draft is not in the state archives at Harrisburg nor among the Penn Papers in the Historical Society of Pennsylvania's library. A copy of it was included as Document (b) in the papers delivered to Sir William Johnson in 1762, which he forwarded to the Board of Trade. I have worked with the transcripts of these papers in HSP. Board of Trade Papers, Proprietaries, 1697-1776, XXI-1, Ind. X.12, Doc. (b). (Penciled pagination is irregular.) There was a very close connection between the proprietary lawyers' allegations about the 1686 "copy," on the one hand, and the "minutes" of the conference at Durham, on the other hand. At an inquiry into the whole affair, conducted by Sir William Johnson in 1762, the lawyers stated about the ancient "copy": "The Truth is there was no Vestage of the said Deed until Thomas Penn Esquire, one of the present Proprietaries came from England in the Year 1732 and happened to bring with him among his Father's Papers the said ancient Copy of this Deed." The point is that Penn knew about the old document when he and his brother went to Durham, but did not produce it then. Plainly his only reason for trying instead to bargain for the Forks lands was his own recognition of the invalidity of the ancient paper. His lawyers saw this weakness and concocted the false "minutes" that enabled them to claim in their covering argument that the old document had been "the Occasion of the several Meetings with the Chiefs who claimed the Lands now in Dispute at Durham, Pennsbury and at last at Philadelphia." Proprietary Commissioners' answer to the Assembly's Commissioners, Easton, 24 June 1762, Bd. of Trade Papers, Proprietaries, 1697-1776, XXI-1 (Ind. x.20), p. 332.

²⁶ Wm. Penn's Instructions to Capt. Markham respecting Lord Baltimore, c. 1683, Cadwalader Collection, Thomas Cadwalader (Coates List No. 12). My italics. For the circumstances surrounding Penn's statement, see Jennings, "Glory, Death, and Transfiguration: The Susquehannock Indians in the Seventeenth Century," *Proceedings of the American Philosophical Society*, CXII (1968), 46-47.

However, the very inadequacies in the 1686 document, whatever it was, that made it inadmissible in a court of law were essential to the Penns' plans. The document's vagueness presented an opportunity to capitalize on public ignorance of the Lenape land-holding system; thus the fact could be disregarded that the Indians supposed to have made the original agreement in 1686 were as limited in their own holdings and as powerless to sell neighbors' lands as any Europeans would have been in similar circumstances.²⁷ Ignoring all such considerations, about which they had full knowledge, the Penns determined to limit their acquisition only by the physical endurance of the man hired to walk its bounds. They tested the possibilities by secretly hiring a party of men to make a trial walk in order to determine the most advantageous route that could be read into their document's language. The secret walkers blazed a trail that could be made to encompass not only the lands of troublesome old Nutimus but also the entire Forks of Delaware and the Minisink region beyond. Possessing this information the Penns set out to meet Nutimus and the other Lenape landowners at Pennsbury Manor in 1735, as previously appointed at Durham.²⁸

Once again the contemporary minutes have disappeared, and we are obliged to create the scene out of the materials of partisan briefs. The central feature of the Pennsbury treaty was the presentation by the Penns of their 1686 "copy" of the purported deed of that date. According to William Allen, whose greatest estates were heavily weighted with the Indian encumbrances, James Logan "made a Speech to the said Indians In which, among other Things, he mentioned to them the Purchase made from their Ancestors of the Lands in and near the Forks of the River Delaware by the Said William Penn Esquire or his Agents in the said Year 1686; and that that Purchas had been fairly made by the said old Proprietor for a large Consideration paid to the

²⁷ For Lenape land tenure rights and customs, see Anthony F. C. Wallace, "Woman, Land, and Society: Three Aspects of Aboriginal Delaware Life," *Pennsylvania Archaeologist*, XVII (1947), 1-20.

²⁸ James Steel to Timothy Smith, 25 April 1735, James Steel's Letter Book, 1730-1741, p. 95; Steel to Chapman and Smith, 29 April 1735, *ibid.*, 96. Following refs. in Indian Walk Mss., Friends Historical Library, Swarthmore College: Joseph Doan to Thomas Penn, 29 May 1735, with Penn's indorsement to J. Steel; An Account of Charges accrued in walking the Day and one half Journey, 5 May 1735; J. Chapman to J. Steel, 16 June 1735; T. Penn to J. Steel, 23 July 1735.

Ancestors of the said Indians, and a good Deed executed by them for the said Lands . . . and that his Sons the Proprietaries were therefore not a little surprized and concerned that they should now . . . make Objections to or entertain any Doubts about that Purchase." Logan, according to Allen, "hoped they would . . . not raise any Disputes about that Purchase . . . or Words to that Effect."

The Lenape chief, Teedyuscung, who attended also at Pennsbury, remembered rather more specifically some of the "words to that effect." According to Teedyuscung, Logan told Nutimus, "it wou'd not be worth his while to trouble himself about the Lands: if you do, said He, you'll make the big Trees and Logs, and great Rocks and Stones tumble down into our Road." That is, in Indian metaphor, Logan menaced Nutimus with a threat of hostilities. Logan continued, "He did not value Newtymas, but look'd upon Him as the little Finger of his left Hand; but that He himself [Logan as representative of provincial authority] was a great big man; at the same time Stretching out his Arms."²⁹

Though varying in tendency, Allen's and Teedyuscung's accounts complement rather than contradict each other. From other evidence we are led to believe that Teedyuscung's story conveys the Pennsbury conference's tone the more accurately. Besides asserting their overwhelming power, Logan and the Penns apparently tried to brand Nutimus an impostor without any legitimate right to lands in Pennsylvania. All concerned were fully aware of the falseness of this effort. No less an authority than William Allen, the hard-driving seizer of Indian lands, attested (but many years later and for another purpose) that Nutimus "had been allways esteemed" to be one of "the chief original Owners of the land in and about the Forks of Delaware."³⁰

²⁹ Both accounts are contained in the supporting documents forwarded to the Board of Trade in 1762 by Sir William Johnson, along with the report of the inquiry into the Walking Purchase made by him earlier that year. Pagination of the ms. transcripts is uncertain. Teedyuscung's account was given verbally and is recorded under date of 19 June in the minutes of the 1762 inquiry. Allen's deposition appears as exhibit G of the documents produced for the Proprietaries. Board of Trade Papers, Proprietaries, XXI-1, indorsed X-12. The minutes are printed in *The Papers of Sir William Johnson*, III, 760-818. Allen's deposition is not given there, but Teedyuscung's remarks are at p. 767.

³⁰ J. Penn to Logan, 17 February 1737, Penn Letter Book, I, 189; Logan to Conrad Wyser, 19 October 1736, Logan Papers, X, 64.

The Pennsbury conference broke up, like its predecessor at Durham, with the Indians agreeing to nothing except the face-saving formula that "on their returning Home they would consult their old Men." However, the Penns had laid the desired legal foundation for seizure of Forks lands, and they no longer concerned themselves about meetings.

In strong contrast to the two weeks elapsing between John Penn's arrival in the province and the opening of the conference at Durham, over two years were to elapse between the conference at Pennsbury and the performance of the Walk. But if the Penns moved slowly thereafter in dealing with Nutimus, they compensated with outbursts of energy in other directions. Their surveyors became especially busy. The Pennsbury conference had opened on May 5, 1735; on May 20 a tract of 1,500 acres was laid out, high up on the Delaware, beyond even the farther edge of Nutimus' claims. This tract was surveyed for the Penns' solicitor Ferdinando John Paris.³¹ Another tract of 1,500 acres was surveyed for their old friend John Page.³² On June 4, William Allen's surveyor laid out the 5,000 acres that were to become Nazareth, and the 500-acre "Tract No. 1" of another 5,000 in the region where Bethlehem now is.³³

The printers were busy also. On July 12, the Lottery Scheme was issued, as John Penn had envisioned it, for 100,000 acres. Winners might have their lands laid out "any where within the province, except on manors, lands already surveyed, or agreed for with the proprietors or their agents, or that have been actually settled or improved before the date of these proposals," and squatters might legitimize themselves by becoming winners (first buying a 40-shilling ticket). To make the offering even more attractive, assurance was given that no new warrants would issue for a year, during which time the hopeful adventurers might browse in the woods and fields for attractive sites. For those who

³¹ Warrant issued 31 December 1733, survey made 20 May 1735, warrant returned 10 September 1735: Warrants and Surveys, V, 108; Pa. Patent Bks., A-7, 268; Benjamin Eastburn's map of the upper part of Bucks County, 1737, HSP, AM 2349.

³² Warrants and Surveys, V, 108; Pa. Patent Bks., A-7, 266 ff. Description mentions William Allen's land nearby, and tract is plotted on Eastburn's map of 1740 (see n. 42, below). A "general warrant" had been issued for Page and Paris, 31 December 1733.

³³ Northampton County Papers, Bethlehem and Vicinity, 1741-1886, 19-20.

preferred shopping at home, surveys were made and a map prepared of a number of desirable 500-acre tracts, the map being kept in the Land Office for inspection by ticket buyers.³⁴ The printer distributed the prospectus along with his newspapers; he was probably Andrew Bradford whose *American Weekly Mercury* bore advertisements of the lottery in a number of issues.³⁵

If the scheme had worked out, it would have provided a bonanza of about £15,000, enough to pay all the Penns' debts and leave a comfortable surplus. After having gotten this auspicious project well launched, a satisfied John Penn took ship in September for the return to England and his creditors.³⁶ But the lottery did not catch on, after all. The original scheme provided for a drawing of prizes in December, 1735, or January, 1736, "or sooner, if the whole number of tickets shall be disposed of before that time." Optimism soon faded. First the drawing was postponed until August, 1736; then credit terms were offered for tickets.³⁷ Thomas Penn had followed his brother's lead in the public lottery scheme with some reserve, and he now discovered with chagrin that Pennsylvania had a statute against lotteries.³⁸ One of the Penns' staunch supporters reported that the lottery was "discouraged" even by persons who had obligations to the proprietaries. Several men "frequently and Publickly declaimed against itt." They "had influence enough either to stifle or discourage the project so that after [John Penn] went away itt was seldom mentioned." It failed to sell out, and the money was to be returned.³⁹

³⁴ Pa. Patent Books, 12 July 1735, 13 August 1735. A-7, 224-226, 239, 240; Eastburn's map (cited, n. 42). Fifty-four thousand acres were surveyed in the region: Nicholas Scull's Bill for Surveying Lottery Lands in 1735, 10 January 1736, Charles S. Ogden Papers, Series 4, Scrapbook 4, 30, Friends Historical Library. Several drafts of Land Surveyed on the Lottery Scheme by Nicholas Scull are in HSP: Cadwalader Collection, Copies of the Returns of Surveys, 73, 74 (uncatalogued). And see memo listing names of purchasers, Penn-Physick Papers, VIII, 39.

³⁵ Thomas Penn to Samuel Blunsten, 20 July 1735, Penn Papers, Thomas Penn, 1730-1766 (boxed). *American Weekly Mercury*, Nos. 814, 816, 817, 831, 833, 834.

³⁶ *American Weekly Mercury*, Nos. 820, 821.

³⁷ *Ibid.*, Nos. 840; 844.

³⁸ Thomas to John Penn, 10 September 1736, Penn Papers, Correspondence of the Penn Family, XVIII, 26. The law against lotteries is given in *Statutes of Pennsylvania*, IV, 141-147. For discussion of moral and legal difficulties involved in lotteries, see Asa E. Martin, "Lotteries in Pennsylvania Prior to 1833," *Pennsylvania Magazine of History and Biography*, XLVII (1923), 307-327, and XLVIII (1924), 66-93, 159-180.

³⁹ Clement Plumsted to John Penn, 4 October 1736, Penn Papers, Official Correspondence, III, 25.

John Penn was soon angling again to sell "the whole interest"—Pennsylvania plus the three "lower counties" of Delaware. He had returned to England with nearly £2,000 in cash realized from the expedients of 1735, but the money flew out of his fingers at once. Ruefully, John soon wrote that only £41 were left, while all but £300 of the remainder had served only to pay interest.⁴⁰ He was offered £60,000 for the province if Thomas would agree without delay. He pressed Thomas to agree, and asked brother-in-law Freame to act as attorney in the transaction, stressing that all "must be kept absolutely private." He tried to push the bidder's offer up to £80,000.⁴¹ This maneuver failed, and the original offer was eventually withdrawn after Thomas procrastinated in responding.

Meanwhile Thomas had hit upon a means to salvage something out of the foundered lottery. His idea was to let ticket holders convert their tickets into rights to purchase on liberal terms—£15.10 per hundred acres—which would average out to the rate of return the lottery had been expected to yield. While John in England chased a will-o'-the-wisp, Thomas sold real estate. He netted nearly £1,800 within a few months from a small and secret lottery of 500-acre tracts in the Forks of Delaware, confined to eight close proprietary associates.⁴² William Allen, already the biggest dealer in the area, bought six tracts to add 3,000 acres to his baronial holdings. In a curious transaction, Thomas Penn also allotted two tracts to himself as a private individual, but masked the action by using James Hamilton as a front.⁴³ Probably to avoid a shadow on titles, every deed cloaks

⁴⁰ John to Thomas Penn, 20 February 1736, Penn Letter Books, I, 143.

⁴¹ J. and R. to T. Penn, 4 February 1736, and J. and R. Penn to Thomas and Margaret Freame, 9 February 1736, Penn Letter Books, I, 130-136, 141-142.

⁴² The key document for this event is the deed of James Bingham's sons to John Benezet, 1 June 1741, Bucks County Deed Books, VII, 408, Doylestown Courthouse. Including this and the following sources, cross references establish all the purchasers: Pa. Patent Books, A-8, 218, 220, 222, 231, 234, 245; A-10, 405; Northampton County Deed Books, A-1, 346-347; B-1, 352-353; D-23, 335-339, Easton Courthouse. Two maps, taken together, locate the tracts: an anonymous, undated draft of "sundry Tracts," and Surveyor General Benjamin Eastburn's draft of the same areas, dated 1740. Both in HSP maps, OF, 549*, 1740.

⁴³ Chidsey, whose thorough work and detailed, authenticated maps are invaluable, mentions that Penn's lottery tracts were patented to James Hamilton in 1737, "who sold them to Thomas Penn in the same year." A. D. Chidsey, Jr., "The Penn Patents in the Forks of the Delaware,"

the lottery behind the phrase, "By agreement some time since made." No patents were issued until 1737 although warrants were given and surveys made in 1736.

The lands had been sold and paid for, but no patents could be issued for them until the Indian encumbrance had been lifted, not only prospectively but actually. What had been prepared at Pennsbury would now have to be put into effect. By sundry means the Indians were brought to Philadelphia and persuaded to sign a confirmation of the 1686 document, blank spaces and all, and the Walk was walked, on September 19, 1737.

The circumstances of the Walk itself have been described so often that they need not be repeated here. After it had ended Thomas Penn contentedly informed his brothers that the Walk, "at no very great Expence . . . takes in as much ground as any Person here ever expected." His accompanying remark that all had been done by Indian consent and "to their satisfaction" is somewhat shaded by his afterthought that "The Minutes of the Treaty are not settled in so exact a Manner as I shal have them reduced to."⁴⁴ Apparently, to produce sufficient Indian satisfaction, a bit of editing was required. Even so, the minutes were altogether too informative for later purposes; though Thomas promised to send a copy of them along with a copy of the confirmation deed of 1737, only the deed survived among the Penn papers. It is little more than a reiteration of the ambiguous 1686 document, and it tells nothing of the Indians' understanding of what that document meant to them. However, the minutes of the 1737 treaty survived elsewhere, and they do tell the Indians' understanding of what they signed.

Though these minutes vanished not only from the Penns' private papers but also from the official records of the Provincial Council, they appear (in the form of minutes of a meeting of the Provincial Council) among the papers accompanying a report made by Sir

Northampton Co. Hist. and Gen. Soc. *Publications*, II (Easton, 1937), 22. But the Penns' private papers show those lots surveyed to Thomas Penn on 15 and 26 October 1736. A thousand-acre tract surveyed at the same time for "our Selves" became the site of Easton. Penn Papers, Warrants and Surveys, Large Folio, 96; Copies of the Returns of Surveys made for the Honorable the Proprietaries, Cadwalader Maps, 73, 74, 76. See also William J. Buck, *History of the Indian Walk* (Philadelphia, 1886), 163-164.

⁴⁴ T. Penn to Brothers, 11 October 1737, Penn Papers, Official Correspondence, III, 55. Confirmation deed, 25 August 1737, Penn Papers, Indian Affairs, I, 41.

William Johnson in 1762 to the Board of Trade. When read carefully they show a feat of prestidigitation on the level of a carnival shell game. Briefly, the minutes are explicit that the Indians had continued to withhold their assent to a Walk in accordance with the old 1686 draft because "the Proprietor knows well how the Lines mentioned in the Deed from Maykeerickhishoe &c are to run, but they [the Indians present in 1737] do not fully understand them." The minutes continue, "Hereupon a Draught was made and the same being explain'd to the Indians and they conferring together, their Speaker proceeded and said That upon considering all that they had heard touching the said Deed and now seeing the Lines in it laid down they are sufficiently convinced of the Truth thereof, and that the Lands mentioned therein were sold by their Ancestors to Wm. Penn."

This sounds like honest dealing until one looks at the "draught" shown to the Indians and compares it with a map of the Delaware valley. Then the trick becomes apparent. It was a simple matter of switching labels. What appeared to the Indians to be Tohickon Creek was labeled "West Branch River Delaware." Streams were drawn in a pattern that the Indians recognized as representing the lower end of Bucks County, but the illiterate Indians could not read the false names that extended the representation far beyond its picture. When the device is comprehended, the survival pattern of the papers also makes sense. The minutes and "draught" could be sent on to England as evidence of the righteousness of the Penns' negotiations because nobody in England would know the local terrain well enough to catch on. Only the provincial antagonists of the Penns would be able to interpret the papers correctly, and they were never permitted to see them.⁴⁶

As we have noted, Thomas Penn used the agreement thus obtained to order the Walk. Indian witnesses began to complain even during the course of the Walk; their official observers left the walking party in protest when the party reached the Delaware West Branch and started to cross it. Tempers flared high, but no one declared war and no one attempted evictions. The Indians resentfully declared the whole affair as something done contrary

⁴⁶ Council minutes, 24 August 1737, Board of Trade Papers, Proprieties, XXI-1, Ind. X.12, pp. 195 ff. The map trick is described in Wallace, *King of the Delawares*, 25-26.

to agreement and therefore null and void. Thomas Penn, on the other hand, released the flood of patents he had been withholding for sales "by agreement some time since made."

Formal relations were maintained: in 1738, Nutimus paid another ceremonial visit to Philadelphia, giving and receiving presents in the usual ritual.⁴⁶ New settlement of the Forks lands seems to have continued. Some of the settlers made private extra-legal arrangements with their local Indians to keep the peace. So it happened with the Moravians founding Nazareth. In spite of objections from Philadelphia to recognition of a right that had been officially extinguished, the Moravians found it advisable to pay off their Indian claimants.⁴⁷

The year 1739 passed quietly enough so far as Indian affairs were concerned. William Allen thought that the province's affairs were "upon a very good Footing."⁴⁸ The Indians had reconciled themselves to white settlement and continued to hope that some sort of compensation would be given them. But as they perceived that nothing would be forthcoming their resentment grew, and by 1741 it was audible even in Philadelphia. A gesture of conciliation might still have patched things up. Instead, James Logan and Governor Thomas contrived another scheme, this time enlisting the Iroquois to run the Lenape off their land.⁴⁹ The road of repression led circuitously but inexorably to its bloody destination. As Lenape sachems much later told missionary John Heckewelder, "they never should have joined the French in their Wars against the English, had they not been so shamefully dealt with at the time."⁵⁰

It appears that Israel Pemberton, Benjamin Franklin, and Charles Thomson had good grounds for their attacks after 1756 on Thomas Penn's Indian policies. Their motives, methods, and objectives require separate study, but the factual basis for their charges appears now to be established beyond reasonable doubt. To vindicate the anti-proprietary party and their Indian inform-

⁴⁶ 3 November 1738, *Minutes of the Provincial Council of Pennsylvania*, 16 vols. (Harrisburg, 1838-1853), IV, 312.

⁴⁷ Joseph M. Levering, *A History of Bethlehem, Pennsylvania, 1741-1892* (Bethlehem, 1903), 50-51, 154-155.

⁴⁸ William Allen to John Penn, 17 November 1739, Penn Papers, Official Correspondence, III, 91.

⁴⁹ Jennings, "The Delaware Interregnum," 184-192.

⁵⁰ John Heckewelder, "A short account of the Mengwe . . ." ms., APS.

ants is necessarily to affirm the distortion and falsification of documents prepared or preserved by proprietary supporters. Not only the lawyers' briefs are in question. Sources accepted as authoritative for centuries, such as the minutes of the Provincial Council, seem to have been edited extensively by the proprietary propagandists. Clearly the conclusions drawn from these sources must be reviewed. The records themselves must be subjected to tests of verification and validation more rigorous than they have yet received.