

PREFACE

By Charles R. Hildeburn (1898)

The present volume of the Statutes-at-Large of Pennsylvania, although in accordance with chronological accuracy called the first, is more than likely to be the last of the series. It was always intended that it should be so, but the causes which now produce the result were not within the purview of the Commissioners when they decided upon this course. That it should be the final volume is due simply to the failure of the Legislature to provide the funds necessary to go on with the work, the magnitude of which has far exceeded the expectations of the Commissioners. The delay in its publication arises from two causes. First, the Commissioners were not until quite recently able to discover the text of certain temporary acts passed during the transition period of 1699-1700, which were essential to the completeness of the work, although no pains were spared in searching their natural depositories. Secondly, because the general survey of the whole work, which the Commissioners deemed it their duty to prefix to it, could not be written with requisite exactitude until, by means of their annotations to each Act as it came under their notice in its chronological sequence, they were enabled to trace as a whole the course of our legislation from its birth to its death, or to the modified form in which it still survives. The missing Acts were only recently and most unexpectedly found among the manuscripts of the American Philosophical Society, and by this discovery the Commissioners are enabled to present a complete text of our legislative enactments from the foundation of Pennsylvania by William Penn in 1682 to the rising of the Legislature in 1801, to which period the scope of their work is, by law, limited. At the same time they

feel that they have just cause to call special attention to this vindication of their course in delaying the appearance of the first volume, which would otherwise have been imperfect so far as the Acts just recovered are concerned, and they also claim credit for the elaborate and exhaustive notes which have been appended to every Act as it passed under their notice. The contents of this volume being, with the exception of the Constitution of the Commonwealth now in force, purely historical and illustrative of existing legislation, it was felt by the Commissioners that no material harm could be done by suspending its publication until every chance of completing it had vanished, or all the rest of their work was done.

The legislative history of Pennsylvania presents as many and as varied phases as does the origin of her people of their numerous forms of religious worship, and may be divided under five heads, viz.:

1. The sentimental,
2. The practical,
3. The restrictive,
4. The revolutionary, and
5. The existing.

In the first class are comprised the "Laws agreed upon in England"; in the second, the enactments made between 1683 and 1717; in the third, the laws passed from 1718 to 1775; in the fourth, those passed between 1775 and 1785; while the fifth class comprises the laws made from the last-mentioned date down to the present time, with a few survivors of the preceding classes. All these *genera* have their various species, each exhibiting different phases of development of thought and civilization. To a proper understanding of the sources of our early legislation due consideration must now be paid, not only to the environment of the people, the complexity of their origin, languages, and religious training, but to the very perceptible influence of the enactments of the older British Colonies in North America, as well as to the modifying pressure in many directions exercised by the Home Government. It may be also that some traces of Roman Law are to be found in the legislation of the first half of the present century, imported by the preponderating electoral influence of the inhabitants of German origin.

These sources of our legislation may be divided into three classes, viz.:

- I. Those conferred by the charter,
- II. Those "imported" by the first settlers,
- III. Those assumed as inherent.

Their legislative product may be subdivided thus:

I. The statute and common law of England, so far as then existing, imported by the colonists or first settlers, together with such Acts of Parliament as might, under the royal charter, apply to Penn and his heirs.

II. The laws "imported" may be further divided thus:

- (a) The charter from the Crown,
- (b) The statute and common law as enacted and determined up to 1681,
- (c) The statute law of England, passed subsequently, which by express mention applied to Pennsylvania or to all the American dependencies of Great Britain.

III. The laws enacted by the colonists with the approval of the Proprietor or Proprietors.

(a) The laws agreed upon in England, which seem never to have been actually in force and are supplied by

(b) The laws made subsequently to the arrival of Penn in 1682 and prior to 1777, in which year the Assembly chosen under the provincial enactments adjourned for the last time.

IV. The laws enacted by the representatives of the people.

- (a) The ordinances of the Constitutional Convention of 1776,
- (b) The enactments made under the constitution of 1776,
- (c) The enactments made under the constitution of 1791,
- (d) The enactments made under the constitution of 1836,
- (e) The enactments made under the constitution of 1872.

Originally intended by its promoter as a kind of Quaker Utopia, Pennsylvania soon found the impracticability of a government by an avowedly non-combatant, but certainly not entitled to be called a non-contentious sect, and its failure should have been a foregone conclusion. To plant a numerous people in a wilderness of uncertain boundaries, whose neighbors (except on the east) were as unfriendly

as differences in nationality, religion, and polity could make them, was the undertaking of a visionary more entranced than Beauchamp Plantagenet, and only escaped an equally dismal failure by reason of the inevitable growth and marvellous assimilative powers of the Anglo-Saxon race. The strip of land on the west bank of the Delaware, which for fifty years constituted the nucleus of this great Commonwealth, but for the natural advantages of its watershed and the fertility of the lands drained by it, would not more probably have afforded a permanent foothold to a community founded on the principle of non-resistance than had the opposite bank of the Delaware given to the Knights of New Albion. But the little colony, by copious draughts of blood alike alien to its founders in nationality and religion, survived, grew strong, and waxed mighty in the course of years. Theoretical, impractical, and needful of support, full of the vagaries of Locke, Harrington, Hobbes, and George Fox,—a strange blending of fanaticism and philosophy,—the Founder had sought to erect an asylum for the sect he had joined, and at the same time retrieve his own embarrassed fortune.

Before leaving his native land Penn joined in adopting the “Laws agreed upon in England,” thirty-three in all, of which one was not then made public. This code was more in the nature of an agreement between Penn and the first purchasers as to what laws should be enacted, than as a body of law to be immediately put in force. Most of its sections were amplified and enacted into laws known as the “great body of laws” at the Provincial General Assembly.

The legislative process in Pennsylvania differed from that of every other American colony of Great Britain. Upon a freedom in legislative enactment, restrained only by the Governor’s or Deputy Governor’s negative, was imposed an absolute veto by the Crown-in-Council. Penn at one time claimed to hold a veto power over the approval of laws by his Deputy Governors, but if he ever attempted to exercise such a power it has not come under our notice, and it was certainly abandoned at a very early time. It might be a king or a queen or the “Lords Justices in Council,” but the prerogative of the Crown to approve or disallow the enactments of the Pennsylvania Assembly was a charter provision which was exercised down to the Revolution. The complicated process

for successful legislative action in Pennsylvania requires some explanation, and this may be briefly stated thus:

Prior to 1700 all bills were originated in the Council, assented to by the Assembly, approved by the Governor, and then allowed or disallowed by the Crown-in-Council. Under the charter of 1700 this process was so far modified that the bills originated in the Assembly, went through the approvative proceeding as above, and pending the royal action were of full force. Neglect to act by the Crown-in-Council within the period of six months, as limited by the royal charter, made the provincial Act as valid as if it had been approved, and perfectly irrevocable except by the Provincial Assembly with the assent of the Governor for the time being.

The first chapter of the great body of laws is a very liberal but possibly ambiguous declaration of faith, failing as it does to recognize the divinity of Christ, the efficacy of the Holy Ghost, or to make reference of any kind to the Trinity, and placing no other restriction on forms of belief of biblical origin than the observance of Sunday and attendance at some place of religious worship wherever possible. This is followed by four Acts against profanity; then three Acts against adultery and self-pollution; next, one each against rape and bigamy; four against drinking, one of which prohibits the supplying of the Indians with spirituous liquors in trade, or even by gift. Other sumptuary enactments were numerous; what were deemed riotous sports, plays, and games were strictly prohibited, and the routine of daily toil was not to be varied or interrupted except by the elements over which even the "meeting for sufferings" did not *publicly* claim entire control.

Military association, even for defence, was discouraged until the days of the "Old French War of 1745," when the Quakers had lost control of the sentiments, if not of the Legislature, of the Province. Grants for warlike purposes, it is true, were occasionally made, under pressure from the people within, combined with that of the Home Government and the ravages of foreign foes from without; and these, though not illiberal nor infrequent, were qualified by impositions upon the Proprietary estates, which caused endless delays and contentions over the production of legislation.

The Commissioners have avoided any expression of opinion as to the force of Acts not specifically repealed by internal limitation or subsequent legislation. In the notes which they have appended to each Act they have sought only to give a reference to every later Act which in any way modified the one under their consideration,—a task of no mean magnitude, as will be seen by reference to Chapter CCXXXVI., the “Crimes Act” of 1718, the note to which cites over nine hundred and sixty modifying Acts passed down to the present time and required a careful examination of every subsequent enactment, and many other notes not as voluminous, but quite as exhaustive, are not of infrequent occurrence.

The Colonial Governors were under heavy bonds, both to the Proprietaries and the Crown, not to assent to bills inimical to royal prerogative or to the Proprietary interests. Money had to be raised to protect the frontier, but the Proprietary estates were not to be included in the general levy. The deadlock resulting was dissolved more than once by a grant of money from the Proprietaries, but the Assembly could find no other way of raising sufficient funds than by the issue of paper money. A direct tax, large enough to meet the exigencies of provincial defence, they would not vote even at the armed invasion of Philadelphia, where the Assembly sat, by the Paxton Boys. The paper-money policy went on from session to session till it culminated during the Revolutionary period in a currency whose value was at a ration of 1700 (paper) to 1 (gold); and the notes issued under these Acts are more valuable as specimens of Colonial currency than as promises to pay on the part of “Pennsylvania Colony” or “Commonwealth.”

The Provincial Assembly practised all the powers and procedure of an English House of Commons. In it alone was vested the right to originate taxation, regulate the election of its own members, and decide disputes relating thereto; it also claimed in the case of Provost Smith *et al.* the Parliamentary power to commit to jail for contempt, but this power was upon appeal denied by the King in Council. By its annual grant of a salary to the Governor it exercised an influence over him (as in the case of Denny, who was not a man of independent means) which was only offset by the penalty imposed on him in his bond to the Proprietors. The Lieutenant-Governor, as he was officially styled, was

appointed by the Proprietary or Proprietaries, subject to the approval of the Crown, and was, when not a wealthy resident of the province, like Hamilton, either a broken-down military officer like Markham, Gordon, and Denny, or a soldier of fortune such as Evans and Keith.

The five volumes of the Statutes-at-Large of Pennsylvania issued up to the present time contain the full text of the laws enacted from 1682 to 1759, or from the granting of the charter to William Penn by Charles II. to the accession of George III.; whether in force, obsolete, expired, or repealed, and whether of a public or a private character. To each Act has been appended a note, which, besides giving the date of its enactment, gives also the action taken upon it by the King in Council, and a reference to every subsequent Act and proceeding which in anywise affected its provisions. These individual notes are supplemented by a series of appendices largely made up of material obtained from the Public Record Office in London, which exhibit the causes and process by which the royal action was arrived at. In a few instances material of local origin has been deemed sufficiently important to be included.

A great difficulty in the preparation of this volume was encountered in the chirography of the principal manuscript authority for the laws from 1693 to 1699. These are preserved in a volume of one hundred and thirty pages wholly in the handwriting of Patrick Robinson the then Secretary of the Province. It is carefully and uniformly written throughout in what is known as "court hand," but time, use, and an unfortunate wetting which the volume seems to have received at some remote period have all combined to render its pages nearly illegible. It was even found necessary to call in the aid of photography in some cases to enlarge the blurred and faded pages of the original before a satisfactory reading could be had. A specimen of the text selected at random has been reproduced in *fac-simile* and is prefixed to this volume. The clerk of this Commission is not the first to find difficulty in this respect. Robinson himself when threatened with impeachment by the Assembly declared that his records were written "in unintelligible characters, which no person could read but himself, no, not an angel from heaven." The clerk of this Commission, however, has done his best without making any pretension to being the latter; although he *may* have approached it, in some respects, in imitating a certain

biblical character while on his probation (Job). Still another and more serious difficulty was the disappearance from the Archives of the Commonwealth of all trace of the text of certain Acts passed during the transition period of 1699 and 1700. When the Commonwealth in 1879 attempted to print part but not all of these Acts the resultant volume upon examination exhibits from twenty to a hundred typographical errors to a printed page. The Commissioners have spared no pains to insure the accuracy of the text herewith presented, and they believe their work to be as correct a rendering of the original as can possibly be made. In addition to this, as a result of patient waiting and diligent research, they are enabled to present in print for the first time the full text of the laws above mentioned which have been hitherto known only by their titles.

To this completed body of laws they have prefixed a mass of illustrative material such as the secret instructions and commissions to the several Colonial Governors from the Proprietaries and the Crown which have hitherto remained unpublished. These documents are of the highest importance in the study of our Colonial legislation, as they alone explain in many cases the motive which dominated the conduct of the Provincial Governors in refusing time and again their assent to certain lines of legislation. In two cases junior members of the Proprietary family were appointed to the post, but their administrations simply go to prove the text "no man can serve two masters" (which we might amplify by adding "and not starve *himself*").

In certain lines of legislation the enactments of the Pennsylvania Assembly present curious features. Its efforts to check the forced immigration of convicts, slaves, and redemptioners were as persistent as were the efforts of the English government to encourage the transportation of these classes. The Englishman or woman convicted of crimes not imperatively capital, instead of becoming a charge on the State, was handed over to contractors whose compensation for their care and transportation was derived mainly from the sale of the convicts' "time" to the highest bidder upon their arrival in America. This class of servants was vastly increased by people fleeing from the Rhine provinces or Palatinate of Germany before the armies of France, more than thirty thousand of whom found refuge in Pennsylvania prior

to the Revolution, whose "time" was the stipulated means of reimbursing the masters and owners of the vessels engaged in this kind of transportation, and other causes worked to the same end, the most potent of which were the idea of religious liberty and the cheapness of land, both of which were largely advertised by Penn.

The various charters and constitutions of both the Colony and the Commonwealth are now first gathered compactly together; and to these have been added all the borough, town, and city charters granted prior to 1801. It is as confidently asserted as it is firmly believed that not one of the original thirteen States can present so complete a text of its governmental and legislative forms and enactments.

In none of the Anglo-American colonies was the course of legislation more complex than in Pennsylvania; a bill introduced into the Assembly went through the usual Parliamentary process, plus the final ratification within a limited time by the Crown-in-Council. The Assembly's grants of money for the defence of the Province were neither infrequent nor illiberal, but they were coupled with restrictions demanding concessions from the Proprietors which made them double-acting in their effect. It was no more unnatural that the Assembly should expect the Proprietors to contribute to the defence of the frontiers than it was *unreasonable* to expect them to do so willingly. So long as the immigrant paid his few shillings an acre for his frontier home, why should his non-resident ground-lord care what became of him or his, particularly if the caring involved an expenditure which would have curtailed the style of living of an English county-family at home? The evenness of the sward at Stoke Pogis was of more consequence than the relief of the beleaguered block-house on the provincial frontier, and the maintenance in good order of the family coach overbalanced the importance of supply-wagons for the troops on the outlying posts.

The cacology of some of the Acts passed prior to 1710 occasionally renders them difficult to transfer from the unpunctuated manuscript rolls into anything like intelligible English sentences. Every possible care has, however, been taken to adhere strictly to the original text, except in the rejection of the archaic forms and vagaries of their orthographical idiosyncrasies, which can only be attributed to the

particular clerk to whom their engrossing was intrusted, and are therefore neither necessary nor worthy of being perpetuated in print. There is in this no real departure from the original text, and the desirability of the change becomes manifest upon a comparison of the present work with the early laws of Maryland as printed in the "Archives" of that State. In these last the original text was sought to be reproduced with all the peculiarities of the original manuscript, as to spelling, capitalization, and punctuation (or the lack of it), the result being both unsightly and confusing. The orthography of the present work has been made to conform throughout to the spelling given in the latest edition of "Webster's Dictionary," with a view to give it a uniformity in this respect which it would otherwise have been impossible to have attained. Where any authority, even such a poor one as the contemporaneously printed session laws, was accessible, it has been consulted, and wherever found necessary to be used has been as closely followed as in the case of the original rolls, in the transcribing of which even manifest clerical errors have been retained. In the latter case some indication of their being so derived has been inserted. Amongst the very oldest rolls now extant are a few which through frequent handling have become worn and frayed in their folds and edges. Their defects have been supplied from the "Act Books"; these last are a series of large folio volumes begun about 1760, into which were transcribed the Acts passed before and after that date. The necessity of having recourse to them has fortunately been confined to "Book A" and the matter drawn therefrom has been carefully indicated throughout. The collected editions of the laws issued from time to time under the authority of resolutions of the Assembly have not been depended upon as authoritative, as they have been found to err not only by omission, but also by commission.

The printing of the laws was one of the inducements held out by Penn to William Bradford to settle in Pennsylvania and establish a printing-press in the newly founded Colony. Some color is given to this by the fact, as stated by Bradford, that Penn employed him to print the charter, etc., while he was yet at work in Sowle's office in London, but the promise seems to have been but feebly fulfilled by the Founder's representatives. So far as is now known, Bradford got but little if any

work from the provincial authorities, as he seems to have printed but one law made here, and that—the tax bill of 1693—not until after his removal to New York. The first attempt at printing the laws of Pennsylvania was made by Reynier Jansen in 1701, but it was not until 1714 that the laws were regularly published. From that time they were usually issued soon after the close of each session of the Assembly.

The law-making process of colonial times in Pennsylvania differed so materially in its detail from that of the present day as to require some explanation. It was thrice materially changed. During the first of these three periods, which covers the years 1682 to 1693, it was in accordance with the ordinary procedure of an English Parliament of that time,—that is to say, all bills were originated in the Assembly (which in a measure was the House of Commons of the Province) and were then assented to by the Governor in Council, the legislative equivalent of the House of Lords. The final approval of the Crown-in-Council to the perpetual validity of the law being as necessary in the case of an Act of the Assembly of Pennsylvania as it was to an Act of Parliament, but with a seven years' reservation as to the power of the Crown to disallow the Act of the Provincial Legislature. From 1693 to 1696, during the suspension of Penn's governing powers, all bills were originated in the Council and sent to the lower House, as the "promulgated bills" were there approved or rejected as a whole, and were then acted on by the Governor for the time being. Upon the restoration of the Province to Penn in 1697 all bills were originated in the Assembly and approved or vetoed by the Governor acting alone in his executive capacity or upon consultation with the Provincial Council, then a sort of "unportfolioed" cabinet, as the Governor saw fit. The laws of Pennsylvania required a triple action to make them effective, as does our legislation of to-day, and, as then, there still exists a fourth power which differs only in the form that its jurisdiction is appellate and not original.

The editors of the various "Digests" of the laws of Pennsylvania differ greatly as to what Acts are now effective, as appears in the comparison given in the appended table of Acts held to be *in force*, and nothing short of specific decisions by the Supreme Court or a general repealing Act will conclude these variations of opinion. The editor of

one "Digest" holds that thirty Acts passed prior to 1781 are in force or partly so, all of which the editors of the other work treat as inoperative; conversely, the editors of the latter work declare that thirteen Acts held to be effective in the other "Digest" are expired, repealed, or supplied, and are consequently no longer operative. This Commission is not charged with the duty of deciding such points, and has carefully adhered to the citation of expressed repeals, except when the Act under consideration expired by internal limitation.

So long ago as 1742 Chief-Justice Kinsey, in editing that collection of our laws which is now commonly known as "Franklin's Laws," found it advisable to supplement the text of the enactments then in force with an appendix containing "a collection of divers Acts formerly in force within this Province, but since altered, expired, or repealed. The necessity of preserving them in print will be obvious to any one who will consider, that whatever is done by any law whilst it was in force ought to remain valid, though the law by which it was done after[wards] expires or be repealed." The need of such a collection of obsolete Acts at so early a date shows how rapid was the growth of confusion in our Colonial legislation.

This Preface entitled "The Legislative History of Pennsylvania as Exhibited in the Statutes-at-Large" was written by Charles R. Hildeburn, Clerk of the Commissioners for the publication of the Laws of Pennsylvania between 1682 and 1801. It was published in *The Pennsylvania Magazine of History and Biography*, 1898, Vol. XXII, No.4, Pages 393-409. The Preface was to be continued but no further publication has been found.