

HISTORICAL INTRODUCTION *

Although the Burlington Court Book is the most important judicial record of proprietary West Jersey, it has never hitherto been printed. Its legislative counterpart was assembled and published nearly two centuries ago by two public-spirited West-Jersey men.¹ Leaming and Spicer's *Grants* was a propaganda document, material for a study in comparative law by which patriots of that day could, the compilers hoped, readily discover how much better the old proprietary government had been than the royal rule under which they were then living.² Unfortunately for the historian, Leaming and Spicer did not consider it necessary for their purpose to print the Burlington Court Book, in which the laws and constitutions which they admired were enforced and applied. These judicial records have remained in manuscript, inaccessible except to those within travelling distance of Trenton. In 1938 they were microfilmed by the New Jersey Historical Records Survey,³ and now at last, through inclusion in the American Historical Association's *American Legal Records Series*, they become as available to the student as the corresponding laws have been since 1758.

Like most of our earliest judicial records, the Burlington Court Book is a mine of historical ore of many kinds besides the strictly legal or judicial. The editors have not attempted to separate and refine these by-products, considering this a more proper task for specialists in the various branches of social and economic history.⁴ The detailed index which is provided will, it is hoped, be a sufficient guide to the varied contents of the volume. The purpose of this historical introduction is to place the Burlington Court Book in its historical setting, rather than to describe its contents in detail.

To do so, it is necessary to recall, first, that West Jersey was a Quaker colony (the first, antedating its more famous neighbor, Pennsylvania, by six

* The legal introduction which was planned to follow this historical introduction was not completed in time for publication.

¹ Aaron Leaming and Jacob Spicer, *The Grants, Concessions, and Original Constitutions of the Province of New Jersey, the Acts passed during the Proprietary Governments, and other Material Transactions before the Surrender thereof to Queen Anne . . .* (Philadelphia, [1758]; Somerville, 1881). Citations are from the reprint.

² "If our present system of government should not be judged so equal to the natural rights of a reasonable creature, as the one that raised us to the dignity of a colony, let it serve as a caution to guard the cause of liberty" (Preface).

³ See Editorial Note, above.

⁴ *The Princeton History of New Jersey*, several volumes of which have already appeared under the editorship of T. J. Wertenbaker, will cover the various aspects of New Jersey's history more thoroughly than has yet been attempted for any other state. A volume in this series on West Jersey, by J. E. Pomfret, is almost ready for publication.

years), but that, second, the Quaker proprietorship was not the first white government in West Jersey, and the new owners therefore had to dispose of certain embarrassing situations created by earlier regimes before they could proceed unhampered with their own particular experiment in government.

THE QUAKERS OF WEST JERSEY

The religious background and history of Quakerism on both sides of the Atlantic have been studied with industry and insight by their own historians, and need not detain us here.⁵ It is enough to observe that, in West Jersey at least, the Friends' migration was motivated by two purposes: first, to found a colony where they could practice their religion and govern themselves in the way they deemed best; and second, to reap a profit from their investment in this enterprise.⁶ These two objectives were not at all incompatible, for without a certain degree of material well-being among Friends as individuals the Society could hardly hope to flourish as a religious entity. Spiritual and material prosperity went hand in hand. The English Quakers of the earlier period were, it is true, rather less abundantly endowed with this world's goods than their descendants.⁷ Their membership none the less came from the middle and lower-middle economic brackets rather than from the poverty-stricken, while their doctrine and discipline encouraged industry and thrift, helped needy members of the group, and restrained the reckless. The Quaker founders of West Jersey were definitely men of means: few wealthy, among whom Penn was an outstanding example; some whose designs exceeded their resources, such as Byllynge and Fenwick; and scores of others who could spend a few pounds or hundreds of pounds for a tract of land and still have enough money left to bring their families and perhaps a few servants over to settle it.⁸ They were either plain farmers ("yeomen") or craftsmen and tradesmen,

⁵ See especially W. C. Braithwaite, *The Beginnings of Quakerism* (London, 1912), and *The Second Period of Quakerism* (London, 1919), and R. M. Jones, *The Quakers in the American Colonies* (London, 1911).

⁶ R. G. Johnson, the first historian of Fenwick's colony, says of the first proprietors. Fenwick included: "They were, every one of them, speculators in these western lands, and . . . their sole object was to accumulate fortunes; and although they were all men of high character and distinction, yet it must be apparent to every observer that self-interest was at the bottom of all their schemes and manoeuvres" (J. S. Sickler, *The History of Salem County, New Jersey* (Salem, 1937), p. 32). Johnson was a descendant of Fenwick (T. Shourcs, *History and Genealogy of Fenwick's Colony* (Bridgeton, 1876), p. 15), but a Presbyterian (Sickler, p. 200).

⁷ For a comparison see W. Beck and T. F. Ball, *London Friends Meetings* (London, 1869), p. 90. On Quaker economic progress in general, see I. Grubb, *Quakerism and Industry before 1800* (London, 1930).

⁸ For some examples see E. P. Tanner, *The Province of New Jersey, 1664-1738* (New York, 1908), p. 15. Among those who came in the service of their more affluent coreligionists were William Matlack and George Elkinton, servants for four years to Daniel Wills (J. Clement, *The Proprietary Towns of West Jersey. Read before the Surveyors' Association of West New Jersey, August 8th, 1882*; J. Whitney, *John Woolman* (Boston, 1942), p. 445).

rather than gentry.⁹ Over here the emphasis was on agriculture, and while many continued to be known by the occupation they had formerly pursued, especially in the simpler crafts, such as carpentry or smithing,¹⁰ which could be followed in a new country, they tended to become planters, yeomen, or husbandmen.¹¹ Those with good business judgment were likely to become merchants, if they had not been already. Thus Thomas Ollive, an outstanding early Quaker leader, was a haberdasher in Northamptonshire and a merchant in Burlington, where "his talents for business were considerable, and were highly appreciated by his fellow-settlers."¹² William Biddle, for many years a justice of Burlington court and a pillar of Quaker society, was a shoemaker in London; in West Jersey he bought and sold much land, and is designated first as "yeoman" and later as "merchant."¹³ When a settler achieved economic success he might rise in the social scale too and become a self-made "gentleman"—a metamorphosis not entirely unknown even to the democratic Quakers.¹⁴

While the communal aspects of Quaker life were important, and their doctrine and discipline required a high degree of subordination of individual interests to the will of the group, nevertheless economic life in West Jersey was intense and competitive, as it had been in England. It was by no means overshadowed by religious preoccupations, as the voluminous and well-kept "meeting" records might otherwise suggest. The Burlington court minutes are a corrective to any such misapprehension. They contain the *minutiae* of Quaker temporal activities, just as the meeting records illuminate the Friends' spiritual life. The Quaker discipline recognized man as an economic as well as a religious being, and guarded against overtrading and enjoined punctuality in the payment of debts.¹⁵ The Friends were also at first discouraged and

⁹ Among those who purchased shares in West Jersey before emigrating were Thomas Ollive and William Peachec, haberdashers; Daniel Wills, "practitioner in chymistry;" John Lambert, joiner; William Biddle, shoemaker; John Cripps and William Hewlings, woolcombers; George Hutcheson, distiller; Thomas Hooton, chandler; Elias Farr, cheesemonger; Mahlon and Robert Stacy and Thomas Lambert, tanners; John Hooton, husbandman; William Snowden, Thomas Hutchinson, Thomas Pearson, Joseph Helmsley, Michael Newbold, and James Harrison, yeomen. See *New Jersey Archives*, first series (cited hereafter as *NJA*), xxi, 400-500.

¹⁰ *Ibid.*, index, Occupations.

¹¹ "Walter Humphries alias Powell, formerly of Painswick, Co. of Gloucester, England, broad weaver, now of Burlington Co., yeoman" (*ibid.*, p. 496).

¹² J. Bowden, *The History of the Society of Friends in America*, II (London, 1854), 114.

¹³ His many land transactions may be followed in *NJA*, xxi, using index; see also *Pennsylvania Magazine of History*, vii, 263.

¹⁴ Thus Richard Basnett, innkeeper and justice, by 1691 is a gentleman (*NJA*, xxi, 452, 489, 515). Likewise Daniel Leeds, by trade a cooper, became a man of large affairs and graduated from yeoman to gentleman (*ibid.*, index), after he had broken with the Quakers, however (see Jones, pp. 370, 388). In the Burlington minutes the title gentleman occurs first in 1689, applied to Edward Hunloke, merchant. "Esquire" is still higher, being reserved for dignitaries such as proprietor Daniel Coxe.

¹⁵ Yearly Meeting, 1695: "Advised, that none trade, by sea or land, beyond their abilities; and that Friends keep to a word in their dealings, as much as may be; and if any are indebted,

later prohibited from going to law with one another, except amicably. The meeting, not the court, was the place where disputes between Friends should be threshed out.¹⁶ That this rule was strictly observed is apparent from the Burlington records; after the first few years, Quakers rarely let their disagreements get as far as the court room.¹⁷ But there was plenty of other litigation in which neither or but one of the parties was a Quaker.¹⁸ It has often been remarked by students of our early judicial records that our ancestors were a litigious lot. The Burlington records bear out the general truth of this observation. The docket abounds in suits, some of them obviously trivial and exceedingly wearisome to the Quaker judges.¹⁹ However, those who went to law merely in a fit of anger were still in the minority. The bulk of the civil business of the court was taken up with serious matters, with scores of suits entered by habitual drinkers at the fountain of justice, merchant Edward Hunloke for example; and this business originated usually from the most controversial phases of the economic life of the time, the acquisition of land and the collection of debts.

SWEDISH, DUTCH, AND ENGLISH PREDECESSORS

Turning to the historical setting of Quaker West Jersey, we may note first that it forms the eastern half of the drainage basin of the Delaware River. The

at home or abroad, and answer not the same in due time, that such be admonished thereof, that Truth may not be reproached, and people, whether rich or poor, kept out of their just debts." There was a similar admonition in 1701, and in 1710 steps were taken to advise with members "going backward in their worldly estate." See E. Michener, *A Retrospect of Early Quakerism* (Philadelphia, 1860), p. 263.

¹⁶ Burlington Monthly Meeting, 1681: "It is generally agreed and ordered, that if anything fall out, by way of controversy, betwixt Friend and Friend, that if they cannot end the matter between themselves, then to refer it to two Friends, or more, to see if they can end it; then, if not, to bring it to the Monthly meeting, there to be ended." Yearly Meeting, 1681: "It is ordered that if any differences do arise betwixt any two persons that profess Truth, that they do not go to law before they first lay it before the particular Monthly Meeting that they do belong unto." Yearly Meeting, 1710: "As to Friends going to law one with another, it is the sense of this meeting that such things may not be admitted among us," except that, on the authorization of the Monthly Meeting, "when both parties are agreed," recourse might be had to the court when "a judgment of law" was needed "for the legal security of one or both" (*ibid.*, 267). Numerous examples could be cited from the monthly meeting minutes; e. g., Burlington M. M. (MS Minutes, 3rd and Arch sts., Philadelphia), 7 mo. 10 1683: it was the "sense of the meeting" that the arbitration award between William Cooper and Daniel Wills should be performed; two were appointed to arbitrate between Samuel Jenings and Daniel Leeds.

¹⁷ Some early Quaker suits are: *French v. Leeds*, *Shinn v. Arnold*, *Hollinshead v. Warner*, *Cripps*, *Budd*, *Jones*, and *Ollive v. Potts*, *French v. Basnett* (below, pp. 15-16, 20, 41, 42, 49). Later ones are *Pope v. Hancock*, *Calowe v. Wright*, *Hewlings v. French* (pp. 81, 132, 191).

¹⁸ Of 13 civil suits in May 1689 (below, pp. 99-100) two had Quaker plaintiffs, two Quaker defendants, none were Quaker v. Quaker. William Biddle, Quaker justice for twenty years, in that time was plaintiff in but one suit.

¹⁹ Arbitrators in an early Gloucester court case made a report "for the ending of all differences from the beginning of the world to the date hereof" (F. H. Stewart, *Gloucester County under the Proprietors* (Woodbury, 1912), p. 34).

Delaware Valley region was an economic and cultural unit in colonial times, as it is to a considerable degree today. For a generation it was a political unit also. So it was under the Swedes and the Dutch, and under the English it successfully resisted dismemberment until 1680. In fact the Burlington Court Book marks the beginning of the career of West Jersey as a political entity separate from the rest of the region.

The first permanent settlement²⁰ in the valley was made by the Swedes in 1638 at Fort Christina (now Wilmington), on the western or Delaware-Pennsylvania side of the river. The Swedes quickly spread up the river, but except for a transitory establishment near the present Salem, New Jersey, stayed on the western side. So likewise did the Dutch, who conquered the Swedes in 1655 and remained in control until 1664, when they in turn yielded to the superior force of a naval expedition dispatched by the English James Duke of York (later James II). His brother, King Charles II, had granted him (March 12 1663/4) the land between the Connecticut and Delaware rivers, roughly the territory of Dutch occupation on the Atlantic coast.²¹ It was left to the Duke to wrest the territory from the Dutch, and he did. New Amsterdam became New York. A side expedition from the Hudson conquered the Dutch settlements on the South or Delaware River, which were henceforth ruled by the Duke by right of conquest alone, since they lay to the west of the royal grant.²²

During the Dutch regime on the Delaware Fort Christina had been superseded as the metropolis of the river by a newer settlement farther down the river called New Amstel, renamed New Castle by the English, which became the principal seat of local government and justice in the Delaware. Under both the Dutch and the Duke of York, however, the Delaware settlements were never more than an appendage of the more flourishing colony on the Hudson. Manhattan was really the capital of the Delaware region during this period, and to the governors and their councils there, Dutch and English in turn, the Delaware officials looked for authority and guidance until 1680-1682, when the Duke made over the territory to the Quakers of West Jersey and Pennsylvania.

Most of the known materials for the judicial history of this pre-Quaker era of Delaware River history are already in print. For the Swedish period, during which justice was administered chiefly by the governors in person, we have only their reports to Sweden.²³ For the Dutch and the Duke of York regimes most of the original records in the State Library at Albany have been

²⁰ Unless the Dutch trading post on the present site of Gloucester, N. J. (abandoned after a few years) be considered a permanent settlement.

²¹ *Documents relating to the Colonial History of the State of New York*, ii (ed. E. B. O'Callaghan—Albany, 1858), 295.

²² See A. Johnson, *The Swedish Settlements on the Delaware* (New York, 1911) and the histories of New Netherland by J. R. Brodhead (New York, 1853, 1871) and E. B. O'Callaghan (New York, 1848).

²³ A. Johnson, *The Instruction for Johan Printz* (Philadelphia, 1930).

printed or at least calendared.²⁴ For the period of English rule the local court minutes have been printed (usually without benefit of editorial comment), beginning in 1676 and extending on into the period of William Penn's proprietorship.²⁵ These judicial records pertain to the whole valley—to West Jersey as well as Delaware and Pennsylvania—down to 1680, when, as will be explained, the right of government over the eastern half of the area was finally confirmed to the Quakers. However, few if any of the first generation of Swedish and Dutch settlers occupied the Jersey side; a Swedish historian states that at the time of the Duke's conquest "there were as yet no residents upon the east side of the river, . . . which was a poor, sandy, and abominable country."²⁶ But there were a few by the time the Quakers began to arrive, as the censuses of 1677 show,²⁷ and the early lists of landholders in the Burlington Court Book²⁸ indicate an increasing influx from across the river in the next few years. These people, although retaining their language and customs, had of course been under English rule since 1664. Their ruler, the Duke of York, also claimed jurisdiction over the Quaker newcomers—not merely claimed it, but, as will be seen, exercised it for several years. Consequently, for the history of government in West Jersey, particularly of its judicial side, we must begin with the Duke of York and his representatives in New York and New Castle.

FENWICK'S COLONY

Conventional accounts of the English in New Jersey, West and East, open with the grant by Duke James of the area between the Hudson and the Dela-

²⁴ E. B. O'Callaghan, ed., *Calendar of Historical Manuscripts*, 2 v. (Albany, 1865, 1866); *N. Y. Col. Docs.*, especially xii (ed. B. Fernow—Albany, 1877), relating entirely to the Delaware settlements; *Calendar of Council Minutes, 1668-1783* (New York State Library, *Bulletin* 58, March 1902, *History* 6—Albany, 1902).

²⁵ *Records of the Court of New Castle on Delaware, 1676-1681* (Lancaster, 1904). A second volume, 1681-1699, contains land and probate matters only (Meadville, 1935). *The Record of the Court at Upland, in Pennsylvania, 1676 to 1681*, ed. E. Armstrong (Philadelphia, 1860). *Record of the Courts of Chester County, Pennsylvania, 1681-1699* (Philadelphia, 1910), a continuation of Upland court. The first extant volume of Sussex County, Delaware, court records, beginning 1681/2, is in the Historical Society of Pennsylvania at Philadelphia. Extracts from it are in C. H. B. Turner, *Some Records of Sussex County Delaware* (Philadelphia, 1909). The earliest minutes of Kent County, Delaware, and Bucks County, Pennsylvania, are now being edited for publication in the present series.

The laws enforced were naturally those of the mother country, modified as local circumstances might require. In New Sweden dictatorial powers were entrusted to the governor, he being instructed to judge according to Swedish law and custom as far as possible (Johnson, *Swedish Settlements*, II, 450, 499). The local enactments of the Dutch are collected in E. B. O'Callaghan, ed., *Laws and Ordinances of New Netherlands, 1638-1674* (Albany, 1868). Upon the English conquest in 1664 the Duke's representatives compiled a code, "the Duke of York's laws," but it was not applied to the Delaware settlements until 1676, and even then it took the New Castle magistrates two years more to get a copy (*N. C. Recs.*, pp. 6, 22, 66, 98, 100, 112, 232, 242, 323). The Duke's Laws were printed for the first time in *Charter . . . and Laws of . . . Pennsylvania, . . . preceded by Duke of York's Laws* (Harrisburg, 1879), and again in *The Colonial Laws of New York*, I (Albany, 1894).

²⁶ Israel Acrelius, *A History of New Sweden* (Philadelphia, 1874), p. 106.

²⁷ *N. C. Recs.*, p. 161; *Upland Rec.*, p. 80.

²⁸ Below, pp. 25-28.

ware to Lord John Berkeley and Sir George Carteret, June 24 1664.²⁹ This hasty gift was lamented by the Duke's servants, who, faithful to their master's interests, realized better than apparently he did the strategic disadvantage of driving a wedge, in the shape of New Jersey, between his main holdings in New York and the feeble but potentially important settlements on the western shore of the Delaware; and they did what they could to keep his original grant intact. Their efforts amounted to a delaying or rear-guard action which postponed, rather than prevented, the final surrender, but caused the West Jersey Quakers much embarrassment in the meantime. Another source of difficulty was the fact that the Duke's grant was limited, and to the Quakers seriously defective, in that, as was later contended, it conveyed the title to the land but no rights of government.³⁰ This was a point of law which was not apparent to the new proprietors, who thought their grant included governmental rights similar to those which other proprietors of colonies in America enjoyed. Otherwise the Quakers would never have undertaken the purchase, which was not merely a business venture but a prospective Quaker commonwealth where they would be free from the religious disabilities imposed upon them in the mother country.

Berkeley and Carteret proceeded to develop their new acquisition as if they had powers of government, issuing a "Concession and Agreement"³¹ which provided for representative government and dispatching a governor who took up his residence in the eastern part of the province in 1665. However, in March 1673/4 Berkeley sold his half interest in New Jersey to Major John Fenwick, an old Cromwellian soldier turned Friend,³² thus beginning the proprietorial interest of the Quakers in New Jersey,³³ and also necessitating the division of the province into two parts,³⁴ East Jersey, where English (including some Quaker) migration had already begun, and West Jersey, which

²⁹ Leaming and Spicer, 8. The story of this grant and the ensuing political complications in New Jersey's early history has been told many times. The latest analysis is in C. M. Andrews, *The Colonial Period of American History*, iii (New Haven, 1937), ch. 4. For greater detail see Tanner, *op. cit.*, and H. L. Osgood, *The American Colonies in the Seventeenth Century*, ii (New York, 1904), ch. 8. Samuel Smith, *A History of the Province of Nova-Caesaria or New-Jersey* (Burlington, 1765) is an important Quaker account. For the documents see *NJA*, i.

³⁰ "Technically speaking, he [the Duke] alone had governmental authority over the Jerseys and . . . could part with it only by consent of the crown"—which he never made any effort to obtain (Andrews, 140). However, the Quakers' practical problem was that the Duke's government in New York was exercising jurisdiction over them in West Jersey. When the Duke made his confirmatory grant in 1680 (below, p. xxxii) New York ceased its pretensions and the Quakers were free to run their own affairs. In other words, the grant of 1680 was accepted at its face value by the parties concerned.

³¹ Leaming and Spicer, pp. 12-27.

³² On Fenwick and his colony see F. H. Stewart, *Major John Fenwick* (Woodbury, 1939), which contains most of the old and some new material; R. G. Johnson, *An Historical Account of the First Settlement of Salem* (Philadelphia, 1839); Sickler, *op. cit.*

³³ The possibilities of a new world colony were weighed by the Friends as early as 1660. They were familiar with the territory here, for their founder, George Fox, had travelled extensively along the Atlantic seaboard, passing through New Jersey in 1672. See Jones, pp. 357-361, 418.

³⁴ By the so-called Quintipartite Deed of July 1 1676 (*NJA*, i, 205-219). The official names were East and West *New* Jersey, but except in official documents the "New" was dropped.

became the special goal of the Quaker emigrants. Before Berkeley's sale, however, the Dutch had made a short-lived reconquest of their former possession, which abrogated the royal grant to the Duke and the transfers following it, requiring a renewal or confirmation of all these instruments after the return of the territory to English possession. The Duke made the necessary grant to Carteret promptly (this time of the eastern half only), but kept the West Jersey Quakers waiting until 1680 before he finally signed an indenture "more firmly" conveying the territory to them.³⁵ Until that time, therefore, although the exodus of Quakers from the British Isles went on briskly, they had no better title to their new homeland than a deed from Berkeley to Fenwick which had been executed before the King issued his charter of renewal to the Duke, and so had no standing in law.³⁶

As if this were not enough trouble for the new venture, Fenwick's purchase became a subject of controversy among the Friends themselves. It was claimed that Fenwick had bought in trust for Edward Byllynge,³⁷ a prominent coreligionist of London, and when the two quarrelled over their respective rights in the new purchase, the dispute was submitted to arbitration, a normal procedure among Friends. The umpire, William Penn, awarded nine-tenths of West Jersey to Byllynge and only one-tenth to Fenwick, who, after strong pressure from Penn, accepted the award.³⁸ For what lay behind this one-sided division we have only an explanation which was current gossip in West Jersey. The story, as picked up and recorded by a Dutch traveller in 1679,³⁹ was that Byllynge was a "great friend" of Berkeley and other courtiers who frequented Byllynge's brewery. At a time when Byllynge was in financial straits,⁴⁰ Berkeley suggested that he could recover his fortune by buying "a tract of land which the king had given him." Byllynge raised the money from his friends but since his own affairs were involved acted through Fenwick, who was to

³⁵ Andrews, pp. 152-163; *NJA*, i, 324.

³⁶ Berkeley's deed was dated March 18 1673/4; the King's new grant, June 29 1674. Between 1677 and 1681 1400 went to New Jersey (Braithwaite, *Second Period*, 403).

³⁷ For this we have Penn's own published statement (Smith, p. 89). Byllynge is not mentioned in Berkeley's deed to Fenwick (as recorded in Salem No. 1, Sec. of State's office, Trenton), but it hardly would have been, under the circumstances. Fenwick later declared (Sickler, p. 43) that the purchase had been made with his own money—a statement not necessarily contradictory of Penn's, but rather indicating Fenwick's dissatisfaction with the amount he was awarded.

³⁸ See the correspondence between Penn and Fenwick, Jan.-Feb. 1674/5, in Stewart, pp. 24-25. References to "my two parts" and "the 8 p'tes added" hint that it may possibly have been intended at first to allot Fenwick only 2/100 instead of 1/10.

³⁹ *Journal of Jasper Danckaerts, 1679-1680*, ed. B. B. James and J. F. Jameson (New York, 1913), p. 154.

⁴⁰ Byllynge issued a statement March 22 1673/4 (four days after the date of the deed to Fenwick) repenting his and his late wife's running into debt, and hoping that no one would charge his "miscarriage upon the principal people of God called Quakers" (*Historical Manuscripts Commission, Report on the Pepys Manuscripts* (London, 1911), p. 268). This suggests that other Friends may already have taken Byllynge's financial involvements in hand, with an eye on the territory so providentially offered to them through his instrumentality.

Pepys knew Byllynge, mentioning him four times in the famous diary, and apparently respecting his shrewdness and perspicacity—"a cunning fellow I find him to be" (Oct. 31 1660).

have a tenth of the purchase for his trouble. Thus, if we may credit this narrative, by a sudden stroke of good fortune the Quakers, already interested in an overseas refuge, got an opportunity to acquire one at a bargain price through Byllynge's fortunate acquaintance with Lord Berkeley.⁴¹ Management of the affair was taken out of the hands of both Byllynge and Fenwick and lodged in a larger group, by a "tripartite indenture,"⁴² February 10 1674/5, in which Byllynge, claiming an equitable interest, and Fenwick, retaining ten "equal and undivided hundred parts," conveyed West Jersey to Penn, Gawen Lawrie, and Nicholas Lucas, all Quakers, as trustees for Byllynge's creditors.

The plans which Penn and his associates were formulating for the development of West Jersey were upset by Fenwick's insistence upon settling his share without waiting for anyone else. Having yielded up nine-tenths of the worm, he was determined to be an early bird for the fragment that remained to him. In a printed proposal dated 1 mo. (March) 8 1674/5⁴³ he offered land in West Jersey for £5 per thousand acres, and to non-purchasing emigrants, free land subject to an annual quitrent to him.⁴⁴ The London Quakers were unable to deter Fenwick, even by a printed broadside (July 1675) denying that "we as a people have advised Councelled and approved of the manner of his undertakings," and predicting that "the issue would prove Evil and Confused."⁴⁵ By that time Fenwick was ready to embark for America. Between February 25 and July 12 he had sold 150,000 acres in his colony.⁴⁶ Soon afterwards he set sail in the ship *Griffin* with 150 settlers on board. He arrived in the Dela-

⁴¹ The price paid was £1000 (Stewart, p. 16).

⁴² Recorded in Salem No. 1, Sec. of State's office, Trenton. Cf. *NJA*, xxi, 559.

⁴³ Reprinted in *Pa. Mag.*, vi, 86-90.

⁴⁴ Of 1d. per acre. Masters of families were to have 100 acres for each member over fourteen. Those carried at his or others' expense were to serve four years and have 100 acres each, besides the customary freedom dues.

⁴⁵ *A Testimony against John Fenwick, concerning his Proceeding about New-Cesaria or New Jersey* . . . dated July 6 1675 and signed "From the People of God, called Quakers, in London," reprinted in F. Mood, "English Publicity Broad-sides for West Jersey, 1675-6," in *New Jersey Historical Society, Proceedings*, liv (1936), 1-11. The broadside appends a letter by Fenwick "given by his own hand to Friends" in May, in which Fenwick profusely repents of some sin ("O! Wo is me; it is I that have Sinned Against Him;" "the Enemy blinded my Eyes, and deceived me," etc.) but omits to state what it was. Mood's assumption that Fenwick first published this letter himself is unwarranted. The ordinary way for a Quaker to make satisfaction to the group for a misdeed was to read or send a paper of self-condemnation to his "meeting," upon whose minutes it was then spread—but not published to the world at large. The fact that the London Quakers published Fenwick's letter shows how exasperated they were with him. They may also have been unfair. I suspect that this confession relates to the proceedings of about Jan. 1674/5, when Fenwick balked at giving up nine-tenths of West Jersey (he said later (Sickler, p. 43) that he did so more "for the sake of God's own blessed truth" than for reasons of law or equity), and not to the prospectus he published in March. For one thing, March to May would hardly have been time enough to extract a confession from him through proceedings in the monthly meeting; again, he gives no other evidence of having regretted going ahead with his own plans to colonize his tenth. Fenwick was a pious man. His public utterances abound in references to the Deity along with ex-coriations of his opponents. His and his associates' engagements of office in the Salem colony render fervent allegiance to the Supreme Ruler, before all earthly ones (see Salem Surveys, 1676, in Sec. of State's office, Trenton).

⁴⁶ See deeds calendared in *NJA*, xxi, 556-563; *Pennsylvania Archives*, i, 57.

ware in November and landed well to the south on the eastern shore, opposite from New Castle, where he established the town of Salem (originally New Salem)—the first Quaker settlement in West Jersey.⁴⁷

Unfortunately Fenwick was to find no peace in Salem. At his departure he had had some debts outstanding. Two of his Quaker creditors, John Edridge and Edmond Warner,⁴⁸ exacted from him before he sailed an indenture of "lease, bargain and sale" conveying to them for a thousand years the unsold part of his tenth, as security for his debts.⁴⁹ It is a fair assumption that this conveyance was extorted from Fenwick under the threat of arresting him for debt and thus preventing his sailing. He could now depart with the comforting thought that the debts he was leaving behind would be taken care of, even though the title to his new possession was also left behind. However, his expectations were not realized. At first Edridge and Warner claimed that they could not sell any land at the price agreed on, and asked for their money.⁵⁰ No doubt Fenwick could not have paid them, but it would have been well for him had he been able to, for they subsequently joined the Penn-Byllynge forces against him and conveyed their rights in his tenth to the three trustees.⁵¹ When he learned that Edridge and Warner had "confederated themselves together with certain persons" still unknown to him, and "gave out in speeches" that the conveyance was and was intended to be "an Absolute Lease and estate," he tendered them payment in full, August 1676, demanding the reconveyance of his property. When they refused to accept, he brought suit against them in the Court of Chancery in England, October 1676. But Chancery suits could be strung out for a long time, and Fenwick's resources were unequal to the luxury of protracted litigation. He had to act through the reluctant agency of his wife, and after two years of inconclusive proceedings he seems to have abandoned the effort to force a reconveyance from Edridge and Warner.⁵²

⁴⁷ Stewart, *Fenwick*, pp. 7-10, 33.

⁴⁸ Edridge was a tanner, of Middlesex; Warner, of London, "citizen and poulterer" (*N.J.*, xxi, 562).

⁴⁹ Including some, Fenwick later charged, that he gave them money to pay (Stewart, p. 43). The conveyance empowered Edridge and Warner to sell land to reimburse themselves with interest, made Fenwick responsible for payment if they were not so reimbursed within two years, and authorized but did not require them to pay certain other small debts of his, a schedule of which was annexed. When the two creditors were satisfied they were to reconvey the territory or part remaining unsold. This was dated July 17 1675. On the 19th Fenwick signed a release for the territory. These documents, a legal opinion on them, and Fenwick's subsequent suit in the Chancery court against Edridge and Warner are all in Stewart, pp. 12-22, 28-33. See also Fenwick's comments in his "Remonstrance," Sickler, p. 45.

⁵⁰ So Fenwick stated (Stewart, p. 31). "They sold not one foot" (Sickler, p. 45).

⁵¹ Leaming and Spicer, p. 414. "By a fraudulent deed," Fenwick says, "in consideration of twenty shillings, to cheat me" (Sickler, p. 45). But this was only a nominal transfer, for Edridge and Warner later sold their shares (below, p. xx).

⁵² The appeal and a résumé of the proceedings in Chancery are in Stewart, pp. 28-32. His wife in England was pessimistic about his suit ("I much fear thou wilt not get them to re-convey it") and urged him to end it, "though to thy loss." She was unwilling to use any more of her

Meanwhile, having delimited the bounds between their and Carteret's half of New Jersey, the trustees were ready to embark on their plan of colonization. With Byllynge cooperating, and now Edridge and Warner, they could make short shrift of Fenwick's opposition. They instructed their agents in New Jersey⁵³ "to get a meeting with John Fenwick, and the people that went with him, . . . read the deed of partition with George Carteret; also the transactions between William Penn, Nicholas Lucas, Gawen Lawrie, John Edridge and Edmond Warner, and shew . . . John Fenwick he hath no power to sell any land there, without the consent of John Edridge and Edmond Warner."⁵⁴ Fenwick and his people were to be invited to join in the new plan, "according to our and his agreement in England," and if they refused, "you may let the country know . . . that he hath no power over the persons or estates of any man or woman more than any other person." All this was true, of course, so long as the conveyance to Edridge and Warner stood. As has been stated, they had been giving out that the sale was absolute, and they may have persuaded themselves that it was.⁵⁵ The trustees adopted this interpretation too, at least in their public statements, which recite the fact of the conveyance without indicating that its meaning was in dispute.⁵⁶ But Fenwick defied the trustee group, acted as proprietor in his colony, and went on selling land.⁵⁷ Justice may have been on his side, but until he obtained a reconveyance of his tenth his legal titles were necessarily imperfect. No wonder that many settlers in his colony saw this and supported the other side. The *coup de grâce* was administered to his pretensions by the Duke of York's confirmatory grant of West Jersey in 1680.⁵⁸ Reciting merely that Fenwick had conveyed his tenth to Edridge and Warner, it left him out entirely, and the new grant was made to the three trustees and Byllynge, Edridge, and Warner. Thereafter the interest of the latter two rested not only on Fenwick's indenture but also on a direct grant from the original proprietor of New Jersey. Before his death Fenwick made his peace with Penn and designated him one of his executors. But he never forgave Edridge and Warner, "the cause of his trouble;" he stipulated in

own money and begged him to pay some poor men to whom he owed small sums (Johnson, pp. 50-51). She never came to America. Fenwick did not mention her in his will.

⁵³ In a letter signed by the trustees, Byllynge, Edridge, and Warner, Aug. 1676 (Smith, pp. 80-87).

⁵⁴ So far as the Salem deed records disclose, Fenwick sold no more land after he left England until the following spring, by which time probably he had got wind of what his two creditors were doing. He sold 1000 acres April 14 1676, 1000 on May 31, and numerous smaller lots during the summer and fall (*NJA*, xxi, 564-565).

⁵⁵ Mary Fenwick to John: "They both told me that they had the opinion of two counsellors, that they had an absolute estate in thy imposts; and though they can't for shame insist upon it now, they endeavor all they can to hinder thee from having any benefit by it" (Johnson, p. 51).

⁵⁶ See the *Proposals*, 1676, in N. J. H. S., *Proceedings*, liv, 8, and their letter in Smith, p. 88.

⁵⁷ *NJA*, xxi, 564-569.

⁵⁸ Leaming and Spicer, pp. 412-419.

his will (1683) that they be "Brought to an accompt in order to the Recovering of the Lease."⁵⁹

* * *

Like the other proprietors, Fenwick assumed that their acquisition of Berkeley's half of New Jersey included the right to govern as well as title to the land. This was a personal adventure with the Berkshire squire, not just a business proposition, as it apparently was with Byllynge, the bankrupt brewer of London. Fenwick planned to come over with his settlers and act as a "Lord or Chief Proprietor" in his little colony in person, not by proxy, just as Penn did later in his. Fenwick was so determined to come, in fact, that in order to get away he surrendered the title on which his authority rested. This fact seems to have made little difference to him.⁶⁰

Moreover, he seems to have given little thought to the problem of government. In comparison with the elaborate machinery devised by his fellow Quaker, William Penn, for Pennsylvania,⁶¹ and the "Concessions and Agreements" of 1676/7 which formed the basis of the government later instituted at Burlington,⁶² Fenwick's ideas were rudimentary. The proposal for his intended colony published March 8 1674/5 merely assured prospective "Proprietors" that they should "be made capable of Government," with a council of rotating membership.⁶³ In an agreement⁶⁴ made with his purchasers shortly before the embarkation of his colonizing expedition he was somewhat more specific. "The governor and magistrates shall be chosen each year by the advice and consent of the said proprietors and freeholders," and also a council of ten or twelve, half to be chosen annually, which should have

⁵⁹ Stewart, p. 43. A word on the subsequent history of Fenwick's claims. Both Edridge and Warner disposed of their interest in 1682. In July Edridge sold out to Warner, who in August sold this half interest to James Wasse, who in turn sold to Byllynge. After subsequent transfers to the Daniel Coxes, father and son, this half was finally acquired by Penn in 1707. In September 1682 Warner sold his own half to Penn. March 1682/3 Fenwick conveyed all his remaining interest in New Jersey to Penn, reserving 150,000 acres which he proposed to erect into a manor, with privilege of holding courts leet and baron (which, however, he probably never exercised—see *Pa. Mag.*, v, 327–328, and below, p. xxi). Thus Penn became the "chief proprietor" of Fenwick's colony, and all uncertainties of title to the land therein were removed.

⁶⁰ But it is characteristic of Fenwick—hot-headed, rather than clear-headed. His wife saw the difference. She wrote (1678/9): "I insist thou wouldst forbear to act as a lord proprietor, and to make orders and summon the people, till thou hast thy deed, and authority to it" (Johnson, p. 54).

⁶¹ *Charter and Laws of Pa.*, p. 90.

⁶² Leaming and Spicer, p. 382.

⁶³ "Whoever is minded to Purchase to them and their Heirs for ever, may for Five Pound have a Thousand Acres, and so Ten Thousand Acres; and thereby be made Proprietors or Freeholders . . .

"The Government is to be, by a Governor and 12 Council to be Chosen every year, 6 of the Council to go out, and 6 to come in; whereby every Proprietor may be made capable of Government, and know the Affairs of the Country, and Privileges of the People.

"The Government to stand upon these two Basis, or Leges, *viz.* 1. The Defence of the Royal Law of God, his Name and true Worship, which is in Spirit and in Truth. 2. The Good, Peace and Welfare, of every individual Person." See *Pa. Mag.*, vi, 86–88.

⁶⁴ Dated June 28 1675, signed by 32 purchasers (Stewart, p. 57).

"full power to make such laws and customs for the good of the colony and suppression of vice as to them shall seem most necessary and convenient." What further plans of government Fenwick had, if any (once later, he declared his intention "to call an assembly"), came to naught, through the hostility of the Duke of York's agents and his own fellow proprietors.⁶⁵

* * *

Sheriff Edmund Cantwell represented the Duke's authority in the Delaware River area, and he reported Fenwick's arrival "by a post" to the Duke's governor, Major (later Sir) Edmund Andros, at New York. That capable official acted with his characteristic forthrightness to protect his master's interests. The New York Council, observing that Fenwick had no "Order,"⁶⁶ and that if he had had, he should have brought it first to New York to be recorded, commanded that Fenwick "be used civilly" and that any of the newcomers who might "desire land to the westward" (as some of them later did) should be accommodated; but forbade any recognition of him "as Owner or Proprietor of any land whatsoever in Delaware" and required the existing duties on imports to be strictly collected.⁶⁷ Then ensued a spirited contest between the two resolute majors. Fenwick made the first move, in the summer following his arrival, when "the Proprietors, purchasers and freeholders now Resident in Fenwick's Coloney" chose him as their governor "for this present year 1676,"⁶⁸ and soon afterwards he took pledges of allegiance to himself from a number of the inhabitants, Swedes and Dutch as well as English.⁶⁹ Andros countered in September with a warrant to the Sheriff of Delaware to bring Fenwick to New York for trial before the Council.⁷⁰ Fenwick refused to obey the summons but was seized by a detachment of soldiers from New Castle and conveyed to New York, where he was tried January 1676/7 and convicted of having "Possessed himselfe of a large tract or Parcell of Land" within the Duke's patent "and assuming to himselfe to

⁶⁵ When Fenwick sold out to Penn he retained 150,000 acres which he proposed to erect into a manor in the feudal style, with courts leet and baron (see n. 59 above). To that end he commissioned Erick Yearnens of Finntown Hook as "reve or bailiff" for "the hundred and manor of West Fenwick" (Johnson, p. 66); but there is no evidence that Fenwick ever exercised such jurisdiction. Penn's agent warned him against the danger of allowing Fenwick to do so (*Pa. Arch.*, i, 55-56).

⁶⁶ "Hee acknowledges to have no originall deed or grant here butt was left in Engl." (*N. Y. Col. Docs.*, xii, 568).

⁶⁷ *N. Y. Col. Docs.*, xii, 542.

⁶⁸ Sickler, p. 34. His attestation of office is dated June 21.

⁶⁹ *NJA*, xxi, 555-558.

⁷⁰ Sickler, p. 34; *N. Y. Col. Docs.*, xii, 559; *NJA*, i, 186. The charge was "That Major John Fenwick, now living at the East side of Delaware River doth pretend and give himselfe out to bee Proprietor of that side of the River and hath presumed to act accordingly, graunted Land extravagantly, dispossessed persons in those parts, sold their land, arrogating to himselfe a power of judicature, and hath given out Lycences for distilling contrary to the order settled in the River; By which means hee hath inveigled some persons from other parts, and distracts the mindes of the inhabitants, thorow out the whole River and Bay, not having any Lawfull Power or Authority."

bee Lord Cheife Proprietour etc. of the same." A fine of £40 was imposed, which he declined to pay, and he was detained at New York. In the following August (1677) the *Kent* touched at New York with the first contingent of the Burlington emigrants on their way to West Jersey.⁷¹ Fenwick was released on parole to accompany them, on condition that he return by October 6, which he did. This time he was told by Andros to go back to Salem and "go about his lawful business."⁷²

Fenwick did not long remain idle. In May 1678 we find the New Castle court meeting to consider "some new alterations on the East syde of this River" that he had made. It seems that he had called a meeting of the inhabitants (April 30) at which he appointed a surveyor, a register, and other officials, read his title deeds, and demanded the "submission of the People" to his authority.⁷³ The Delaware Sheriff was an interested observer at this meeting and he challenged Fenwick's authority. When Cantwell reminded Fenwick of a "small Levy" laid by the New Castle court "upon the People on that syde,"⁷⁴ Fenwick answered that "the Court had no power to Lay no Levy on that syde." "Whoesoever did pay any Levy should forfeit their Lands and priviledges," and "the People should stand in their owne defence if any Boddy Came to demand itt." He further forbade "Mr. Fopp Out-hout," a resident of the eastern side and a justice of the New Castle court, who was also present, "to act any thing in the behalfe" of that court, on pain of forfeiting his estate. Fenwick declared that "he was subject to noe man but God and the King," and "that hee would doe or act nothing without the advyce of his Counsill which hee would nominate verry suddenly."⁷⁵ This he apparently did;⁷⁶ and if we may believe the New Castle justices, he not

⁷¹ See below, p. xxviii.

⁷² Sickler, pp. 34-36; *NJA*, i, 185-192; *N. Y. Col. Docs.*, xii, 545, 559, 565-569.

⁷³ Sickler, p. 38; *NJA*, xxi, 558; *N. C. Recs.*, pp. 206-208.

⁷⁴ This was a poll tax of 12½ guilders upon all "tydables" within the court's jurisdiction, laid in Nov. 1677. There were 307 such tithables, including 64 on the "Easterne Shore." Most of the latter were Swedes, but some of Fenwick's Quakers were included, Richard Guy, Edward Chamneys, John Pledger, and others (*N. C. Recs.*, pp. 158-161). At the same time the Upland court imposed a similar tax in its jurisdiction, which comprised the rest of the valley northward. The recently-arrived Quakers at Burlington, which was a considerable distance farther up the river, were not included in the Upland tax list, which had only ten persons from the eastern side (*Upland Rec.*, p. 80).

⁷⁵ *N. C. Recs.*, p. 207; *N. Y. Col. Docs.*, xii, 592.

⁷⁶ See, in Johnson, pp. 21-23, an order by "a council and consultation held at the town of New Salem, for Fenwick's colony," attended by Fenwick as "Lord or chief proprietor," Samuel Hedge, Surveyor General, James Nevill, Secretary, and John Smith, Edward Bradway, John Pledger, and William Malster, "four of the Council, besides the other two." This was May 16 1678. But Fenwick apparently allowed this council to lapse, perhaps because in October (as noted below) Andros took some of its members into camp by appointing them to a town court under his jurisdiction. At any rate we hear nothing further about Fenwick's council until March 1678/9, when he declared that he would assume his "lawful and absolute power and authority," and would "forthwith choose a council, and issue forth my precept (with their advyce) to call an assembly, to set within my colony" (*ibid.*, pp. 37-45; Sickler, pp. 43-46). The only other reference to a council in the Salem records (as calendared in *NJA*, xxi, 554) is Richard Guy's subscription,

only forbade payment of their levy but countered with a tax of his own.⁷⁷

The New York government thereupon ordered Fenwick again to "forbeare, the Assuming any power of Government . . . unlesse he can produce more Authentick power out of England than hee hath yett done;" if he refused, he was to be taken, by force if necessary, to New York. He went, though reluctantly, and was tried and convicted again. He was detained for a time, until Andros could take new steps to checkmate the stubborn Quaker.⁷⁸ Andros' next move was a shrewd and logical one. He set up, October 26 1678, a "Towne or Corporation" court for "Salem or Swamp Towne, and parts adjacent," to meet quarterly or oftener. Six of the English settlers, including Nevill, Fenwick's Secretary, and Bradway and Malster, members of Fenwick's own recently-appointed council, were made "Overseers, Select men or Commissioners" for the "new Commers" at Salem.⁷⁹ In case of any difference between them and the "Old Inhabitants of those parts," Fopp Outhout, an "antient Inhabitant there" and a justice of the New Castle court, was to be one of the court and to preside over it. The court could appoint one or more constables, lay out land, and determine all matters not extending to life or limb or exceeding £5, above which an appeal was to lie to the court at New Castle.⁸⁰

Thus Fenwick's colony was formally incorporated into the judicial and administrative system of the government of New York, not by coercion from Andros, but by the acceptance of the leading Quaker inhabitants themselves.⁸¹ In establishing this court Andros exhibited a practical statesmanship

June 21 1676, as one of the council. He was chosen by Fenwick and the proprietors, purchasers, and freeholders (Salem Surveys, 1676, in Sec. of State's office, Trenton, p. 1). The item following this, calendared as a minute of council, June 11, is actually an order by Fenwick, with the consent of all his purchasers and freeholders present (*ibid.*, p. 2).

⁷⁷ The court therefore desired "to know whether the People there shall pay any of the said tax, and how for the future this Court Shall act and behave them selves towards the said East syde" (*N. Y. Col. Docs.*, xii, 607).

⁷⁸ *N. Y. Col. Docs.*, xii, 594-607; *NJA*, i, 193-204; Johnson, p. 37; Sickler, p. 39.

⁷⁹ The others were William Penton, Richard Guy, and Edward "Ward" (Wade). All were selected from a list of a dozen names furnished by Malster. All but two of the nominees, Penton and Malster, have "quaker" after their names in this list (*N. Y. Col. Docs.*, xii, 608).

⁸⁰ At the same time the New Castle justices were instructed to take care that the east side people be not disturbed in their possessions by Fenwick or any others (*ibid.*, p. 610).

⁸¹ All of the new commissioners except Penton had come over with Fenwick (Sickler, p. 25). He charged that "James Wasse and Richard Guy began vigorously to seize upon my said colony, causing the same to be surveyed by Richard Hancock, (my sworn surveyor-general) without my knowledge," and that Guy, Wade, Bradway, and Nevill had "done what they could to promote the same (under the pretext of the Governor's [Andros'] commission)" (Sickler, p. 44; Johnson, pp. 39, 40, 46). All the commissioners except Penton and Nevill had bought land from Fenwick, from 1000 to 10,000 acres, before coming. Of the four whom Fenwick specially accused, Wade was a London clothworker, Nevill a weaver (he became interested in law and government here), Guy a cheesemonger, and Bradway a lighterman, the last three of Middlesex (*NJA*, xxi, 342, 549, 550-561). Their membership on Salem Friends Meeting committees to choose a site for a meeting house (1679) (see J. Clement, *Sketches of the First Emigrant Settlers in Newton Township* (Camden, 1877), p. 215) indicates that they had the confidence of the Quaker group and it is fair to assume that they were representative of current Quaker opinion on the Fenwick issue.

conspicuously lacking in his opponent. Andros acted, while Fenwick blustered. True, his harassments were enough to unnerve anyone; but the fact still remained that he had now been in Salem three years without setting up anything which could be called a systematic and continuing governmental organization beyond his own personal rule. Andros was master of the situation, and he demanded only recognition of the Duke's overlordship pending the final settlement of the question of sovereignty. He showed no disposition to interfere in the local concerns of the Quaker newcomers,⁸² save to protect the old Swedish property holders. From the Quaker settlers' viewpoint it was better to have a court of their own in Salem than to be subject to the direct rule of the New Castle court across the river. Under the circumstances they can hardly be condemned for finding it expedient, if not desirable, to submit to the authority of New York, as Burlington had already done.

James Nevill seems to have been the leader in cooperating with Andros against Fenwick.⁸³ The Salem court's commission was for a year, and when it was renewed⁸⁴ Nevill headed the commission instead of Penton, and Malster was replaced by Richard Hancock, Fenwick's Deputy Surveyor General, an original purchaser who had come to America with him.⁸⁵ However much it may have been opposed by Fenwick, the Salem court seems to have functioned as it was authorized to do, so far as can be determined from the scattered references to it, mostly about land matters, which have been preserved. In June 1679 the New Castle justices ordered a land dispute referred to "the Court att Salem, and that Justice outhout Endeauor to make an End of itt," which that magistrate failed to do, for the case came back to them from the Salem court in the following February.⁸⁶ In a Salem book of surveys the

Malster, "late of the City of Westminster, England, gentleman," though he furnished Andros with the list of names for commissioners, had the previous year been in England and testified in Fenwick's favor (*The State of the case between John Fenwick, Esqr and John Edridge and Edmund Warner*, in Stewart, pp. 32-33). He was dropped from the court in 1679. In 1680 Nevill reported to Andros that Malster and some others, hearing of a wrecked shallop, hastened to the scene and secretly conveyed away some of the gear to sell it "without being accountable to any" (*N. Y. Col. Docs.*, xii, 635, 650). Penton, the other non-Quaker commissioner, came with the first settlers of Burlington in 1677 (Smith, p. 99) but settled in Salem (*NJA*, xxi, 547). In 1678 he was appointed a churchwarden by the New Castle court, doubtless to uphold the dignity of the Church of England on the Quaker side of the river. He was illiterate, as were some others of the earliest settlers (*N. C. Recs.*, pp. 264, 363).

⁸² See *ibid.*, p. 318, where the New Castle court non-suited the plaintiff in a suit brought against Mahlon Stacy, Burlington County Quaker, by a purchaser of a share in "New Beverly" (Burlington) (1679).

⁸³ Just as he was with Penn a few years later. See his letters to Penn, 1 mo. 1682/3 and 3 mo. 1683, urging Penn to remove Fenwick to Pennsylvania and warning against his projected courts leet and baron (*Pa. Arch.*, i, 55).

⁸⁴ *N. Y. Col. Docs.*, xii, 635.

⁸⁵ Sickler, p. 25; *NJA*, xxi, 547, 561. Surveyor Hancock had been a Middlesex upholsterer and bought 500 acres.

⁸⁶ *N. C. Recs.*, pp. 336, 387. For another undated case in which Outhout officiated see *Pa. Arch.*, i, 37, the granting of 100 acres of land. Penton, Bradley, Wade, and Nevill were also present.

minutes are recorded of a "special Court," September 13 1680, Nevill, Penton, Guy, Bradway, and Wade, commissioners.⁸⁷ They ordered a warrant to Hancock to survey a tract of land, which he did,⁸⁸ and accepted an acknowledgement of some unnamed "fault" from John Adams, of New Salem, planter, and his wife (a daughter of Fenwick's), with promises of future good behavior. An award of the Salem court of October 11, in an action about land in "Cohansey Creeke," was appealed to the Court of Assizes at New York.⁸⁹ The Salem court was also entrusted with the responsibility of keeping the peace, and while its duties along that line were probably not onerous in a Quaker community, Nevill, as first commissioner, seems to have been a vigilant defender of law and order. In 1680 he wrote Andros of several runaway servants from Virginia who had landed in West Jersey in a stolen shallop. He said he had apprehended the runaways and also recovered some tackle taken from the boat by ex-Commissioner William Malster and several other men, and asked the Governor for further instructions.⁹⁰ Besides these duties, the services of the commissioners were also required occasionally in settling the estate of a decedent, usually in connection with the New Castle court.⁹¹ All in all, it appears, from the fragmentary information we have about it, that the court operated successfully under the New York-New Castle jurisdiction. With the prestige and power of the Duke's government behind them the magistrates may have found it difficult to be strictly impartial toward Fenwick's adherents; the hotter the fight, the less discrimination in the choice of weapons. But even Fenwick in his bitter quarrel with Edridge and Warner once forgot himself so far as to swear out a warrant in New York for the arrest of Edridge in New Jersey, in spite of his insistence that the Duke's government had no jurisdiction there.⁹²

THE BURLINGTON SETTLEMENT, 1677-1680

Thus Fenwick succeeded no better in his contest with Andros over government than with the Quaker proprietors over division of the land.

⁸⁷ *NJA*, xxi, 549, 550.

⁸⁸ After this defection he was dismissed by Fenwick, who charged that Guy, Nevill, and "his followers" threatened to send Richard Tindall, Fenwick's Surveyor General, to prison, "unless he would engage to act no more for me" (Johnson, p. 45).

⁸⁹ *N. C. Recs.*, p. 430. The land in controversy had been sold first, June 8 1675, by two Delaware men, acting as agents for Fenwick before his arrival in West Jersey; and afterwards, apparently, sold again by Fenwick to others.

⁹⁰ *N. Y. Col. Docs.*, xii, 650.

⁹¹ See a little volume entitled *Salem Wills, 1679*, in Sec. of State's office, Trenton, pp. 1-29. Nevill and Penton, commissioners, and Henry Jennings, "Counstable," took the inventory of the estate of Henry Salter, who died intestate in 1679. The Salem commissioners also recorded Richard Hunter's will. In both cases the proceedings were approved and recorded at New Castle (*N. C. Recs.*, pp. 346, 360). But in the death of William Hancock, 1680, the commissioners appointed an executrix and granted probate themselves.

⁹² O'Callaghan, *Calendar*, ii, 66: March 22 1678, "Warrant to Ed. Cantwell, sheriff of Delaware, to arrest John Edridge of West Jersey, for debt, at the suit of John Fenwyck."