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A

HISTORY
OF
PROPRIETARY GOVERNMENT
IN
PENNSYLVANIA

BY
WILLIAM ROBERT SHEPHERD, A. M.

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INTRODUCTION

THE English colonial governments were of three varieties: first, provincial establishments, the constitutions of which were outlined in the commissions and instructions given by the crown to the governors, and the assemblies of which, held under royal authority, had their share in making ordinances which were local in character and not repugnant to the laws of England; secondly, charter governments, which were in origin and nature civil corporations; thirdly, proprietary governments, which were essentially feudal principalities, upon the grantees of which were bestowed all the inferior regalities and subordinate powers of legislation which formerly belonged to the counts palatine, while provision was also made for the maintenance of sovereignty in the king, and for the realization of the objects of the grant.

From the reign of William I. dates the origin of the great palatine earldoms of England, the overlords of which exercised particular rights known as the *regalia minora*. They were the seigniorial lords of the county palatine. From this relation, according to the principles of the feudal system, arose the privileges of mines, wastes, and forests, escheat, forfeiture, wardship, and jurisdiction, both civil and military. More specifically, the *regalia minora* consisted of the right to hold courts of chancery, exchequer, admiralty, wards and liveries, and all varieties of pleas therein; to receive the entire profits of these

courts, to appoint chancellors, justices of the peace, sheriffs, coroners, escheators, and other officers, as the king did for the rest of the realm; to issue writs, precepts, and commissions in their own name, to have a mint and coin money, to levy taxes and subsidies, to grant charters for markets and fairs; to create a palatine nobility, and to hold councils in the nature of parliaments. In short, the counts palatine acted as independent princes, under the limitations of their oaths of homage and fealty to the king. At first established primarily to defend the borders, and, therefore, endowed with special power, they gradually became subject to direct royal control. This fact is evidenced by the statute 27 Henry VIII, chap. 24, which extended the power of the crown over Durham, providing that the king alone should pardon treason and felonies, appoint justices of oyer and terminer, of assize, of the peace, of jail delivery, and that all prerogative and judicial writs should be issued in his name, the form of indictment being changed from "contra pacem episcopi" to "contra pacem regis." Moreover, the crown was to receive all fines and forfeitures for the non-execution or insufficient return of writs and processes, and all officers of the palatinate should be amenable to the laws of the realm. These regulations greatly narrowed the judicial powers of the counts palatine. But the custom of holding councils in Durham continued till the time of Charles II, when burgesses from that county were admitted to parliament.¹

When the territorial and governmental system of Pennsylvania shall have been described, it will appear that that province was a huge fief bestowed on the proprietor by the Crown, and in form was a county palatine. The proprietor may thus be regarded as in possession of all the ancient rights of a count palatine, with the exception of those the exercise of which was otherwise provided for, or was specifically denied.

¹ Surtees, *History of Durham*, i, pp. xvi-lxix; Stubbs, *Constitutional History of England*, ed., 1880, i, p. 308; Sharswood, *Lectures before the Law Academy of Philadelphia*, 1855; Blackstone, *Commentaries*, i, p. 115.

Let us now examine briefly the nature of an English royal charter. An analysis will show that it consisted of the premises, the movent clause, the *habendum* and *tenendum* clauses, the warranty clause, the penal clause, and the datal clause. The first stated the name and title of the grantee, a description of the thing granted, and the reason or consideration for its bestowment. The second, though often included within the first, expressed the reasons for the grant. The third limited and defined the estate granted, and the tenure by which it was held. The warranty clause recapitulated the name of the grantee, the description of the thing, and the service or rent to be rendered. Lastly, the penal clause contained the punishment that would follow any attempt to infringe the privileges granted. More specifically, however, the colonial charters stated the names of the grantees, the territory and tenure, in the case of a corporation the organization of the council and the right to admit new members, the privilege to transport persons and goods, exemption from duties except under certain conditions, the provisions for the appointment of officers and the administering of oaths. Furthermore, provision was made for the organization of subordinate government in the colony, for the exercise of power through ordinance and instruction, the care for general defense and dependence, and the restriction that the laws of the colony should be conformable to reason and to the laws of England. Lastly, the charter should be interpreted in a way most favorable to the grantee.

To this general class of documents belonged the proprietary charter of Pennsylvania. Though issued by a Stuart king, it was drawn in plain and simple terms, agreeably to law and reason and with due regard to the rights of both crown and subject. The control of parliament was also more clearly recognized than in any earlier charter. But this is probably to be explained by the history of Massachusetts. The care taken to guard the supremacy of the home government was due to an anxiety to prevent a repetition of the disputes that had arisen