

THE LOYAL COMPANY  
AND RELATED CAUSES OF  
LAND TITLE DISPUTES  
IN SOUTHWEST VIRGINIA

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Big Stone Gap, Va.

Anyone who has grown up in the coal fields of Southwest Virginia has been exposed to colorful stories of land title disputes, usually between "squatters" and the large coal companies. Often rumored to have ended up in beatings or in murders, this was but the final chapter in the long history of clouded land title problems that began with the first efforts of settlement of the region. Title to much of the land in Southwest Virginia has long been the subject of dispute and of court battles, with the final decisions on ownership not having been settled till well into the twentieth century. The problem began in presettlement Indian times.

In the earliest recorded history, much of Southwest Virginia belonged to a branch of the Creek Confederacy, called the Xuala by the Cherokee. To the north lived the Iroquois Confederacy, with their allies, the Shawnee. The Shawnee held sway over the New River Valley, and the Xuala the Valleys of the Holston, the Clinch, and of the Powell. The Cherokee drove the Xuala out, only to run up against the expanding Iroquois. In the last half of the seventeenth century, the Iroquois, including the Shawnee, acquired by right of conquest from the Cherokee, all of Virginia west of the Blue Ridge Mountains. The Cherokee did not honor this ownership, especially in the Valleys of the Holston, Clinch, and Powell, and still considered it to be their land, even if neither they nor the Iroquois dared to live in it for fear of the other.

The thirteen original English colonies along the Atlantic seaboard were conceived of as being separate entities, and originally were not joined by any mechanism at all. Late in the colonial period the Crown did set up a secretary of its North American colonies, with this office being the only link among them. Policies, especially toward the Indians, were not coordinated among the colonies, much to the confusion of everyone, especially the Indians.

By the early eighteenth century settlement in Virginia had begun to spill over the Blue Ridge into the Valley of Virginia. The English Civil War, which had been fought from 1642 to 1651, had had the effect of leaving The Colony of Virginia to its own devices, and during this period and the Restoration which followed, Virginians had acquired a

sense of independence that caused tensions with the mother country that were to lead ultimately to the American Revolution. Before this epoch, the great landholders in Virginia had tended to have been well positioned Englishmen, but a class of ambitious Virginians eager to make themselves wealthy in western land began to develop. Among these were the Jeffersons, the Pattons, the Merriwethers, the Lewises, and the Walkers.

Even though the English Government tried to reassert its control over the Virginians in the period after the English Civil War, there was immediate tension over the issue of settlement of the western lands. The French claimed the Mississippi watershed, which included all of Virginia west of the Roanoke Valley. The English government had a policy of not provoking the French, and discouraged settlement in western Virginia. The French and Indian War broke out largely over the issue of ownership of the Mississippi Valley, which in Virginia meant the Valleys of the New, Holston, Clinch, and Powell Rivers. The Virginia Colonial Government took the bit in its teeth, and ran with it. It began issuing land patents in the west to influential Virginians without explicit permission from the Crown, and perhaps without its knowledge. James Patton, who had been a sea captain, secured a patent from the Virginia Governor's Council for 100,000 acres in the Roanoke Valley, and in 1743 asked the Council for a patent on Wood's River (The New River), and in April 1745 the Council awarded it to him, even as France and England fought a war on two continents from 1754 to 1763 for its possession .

July 12, 1749 "forty six gentlemen" , all well placed Virginians, formed the Loyal Company. Among them were Peter Jefferson (father of Thomas), James Maury, Joshua Fry, Dr. Thomas Walker, and Thomas Meriwether (Meriwether Lewis's grandfather). It is even said that the Royal Governor himself, sworn as he was to uphold the edicts of the King of England, was one of those gentlemen investors. One can only smile at the choice of name for the new company. With the active collusion of His Majesty's Royal Governor and his Council, Virginia awarded the company 800,000 acres of land between the border with North Carolina (which then included Tennessee) and the Ohio River and "running to the westward and to the north seas ...". Never mind that it was against the King's policy. Never mind that the French claimed the land. Never mind that they had already awarded much of it to James Patton, and never mind that they at the same time had awarded to the Ohio Company all the land in Virginia drained by the Ohio River. They did not seem to realize that the New River was a tributary of the Ohio. Thus began the official disputes over land title in western Virginia.

Dr. Thomas Walker, who like many of the other investors in the western

lands of Virginia, was from the Northern Neck. He was a leading physician and a botanist, and after moving to Castle Hill in Albemarle Co, he became neighbors with the Jeffersons, the Lewises, and the Merriwethers. He became the chief surveyor and agent for the Loyal Co., and was the major driving force behind it through out its history.

As chief surveyor for the Loyal Company, Walker proceeded to explore the lands to the west in order to see what part of it would be suitable to survey off as part of the grant to the company. In his Journal (contained in the appendix of Summer's History as well as in his Annals) he records, "I left my home on the 6th day of March, at 10 o'clock, 1749 -'50, in the company of Ambrose Powell, William Tomlinson, Colby Chew, Henry Lawless, & John Hughes". This sentence contains at least two items worthy of note; the first is the confusing notation of the date. This was the year that the English speaking world switched from the old calendar to the new. Under the old calendar the year ended at the end of March. Under this system, the Loyal Company had received its grant July 1749, Walker was commissioned to lead the journey of exploration in December 1749, and he embarked on that journey March 1749. However, April the First the new calendar came in and it became 1750, with the span of time from January 1st to March 31st reverting to the new calendar. Hence he refers to March 6th as being "1749 -'50". The second item of significance is Ambrose Powell, for whom Powell River is named, and who was the grandfather and namesake of Confederate General A. P. Hill.

The Walker Expedition traveled down the Valley of Virginia to near Rogersville, Tennessee. There they cut across to Cumberland Gap, then known as Cave Gap, and on to Pineville, Kentucky. There they built the first cabin in what is now that State, and then proceeded up the Cumberland River, cutting across to the New River, and then on back to Albemarle Co. They did not find the land unsettled, for there were already settlers living along the Great Warrior's Path from Big Lick (Roanoke) to Seven Mile Ford near the head waters of the Middle Fork of the Holston, all feeling no need to have procured title from anyone. The best known of these was Samuel Stalnacker (various spellings), who traded with the Cherokee at his cabin at Chilhowie.

Wasting no time after his return, Walker had surveyors at work in October 1750 in the Valleys of the Holston and Clinch. Soon the company was selling land in the New River Valley for three pounds per hundred acres.

The year 1752 saw the confusion over ownership of the New River Valley come to court. A three way suit was filed with James Patton, the Ohio Company, and the Loyal Company all suing each other. Patton, who in

truth had been given title to the land before the others, wrote the President of the Governor's Council, John Blair, in disgust, "I have been on the waters of the Mississippi, and on the head of Roanoke since my return from last General Court, where I design to spend most of my time until the end of May. The noise of Mr. Power's caveat has reached the ears of the people here who is very uneasy not knowing but they may have as many proprietors as many of them did in the Jersey's where they had paid six proprietors was obliged to pay a seventh and turned off in poverty at last."

On June 6, 1753 the Colonial government of Virginia decided the dispute by legalizing the claim of the Loyal Co. to the New River Valley, but there seems to have been a "sweet heart" aspect to the deal, as Patton became agent for that company in the process. By this means the original four year life of the patent was renewed, and at a later date was renewed again.

The process of titling the land in the New River Valley should have been resolved at this point, but the government of Virginia seems to have been unable to restrain itself from causing problems by continuing to grant conflicting titles to this land. In 1753 two hundred families settled the New River Valley, but not all of these settlers got their titles from the Loyal Company. For example Andrew Culbertson got the prime old Indian fields of what was to become known as Culbertson's Bottoms just to the North of Narrows at the mouth of the Bluestone River directly from the Virginia Land Office by claiming four hundred acres "by right of settlement" and another by "right of preemption". Even these titles are unclear, as they are mentioned only obliquely in correspondence, and are not listed in the Colonial patent records.

The "Right of Settlement" law in Colonial Virginia was the forerunner of the later National Homestead Act, and allowed a person to acquire title to land by building a house on it, and by planting corn on it. For each acre of corn planted, he was granted ten acres. The process was very informal, and the clearing of the fields was usually accomplished by cutting the bark off of a circle around the base of the trees, a process called "deadening". A few kernels of corn were planted without benefit of plow, and the process was complete. This law was commonly called "The Corn Right Law".

The "Right of Preemption" was even less formalized. The government, for whatever reasons it might have had, would just grant the land to a person totally outside any other lawful process.

Already we see all the seeds of land title disputes widely sown in Southwest Virginia, long before the Revolutionary War. We see

governmental arbitrariness, inconsistencies in policies between the London government and the colonial authorities, ignorance of geography, wars between both Indian and European nations over ownership, the sense of freedom from any legal restraints felt by the "squatting" settlers, and possibly greed and graft among the upper classes East of the Blue Ridge.

And then with the end of the French and Indian War in 1763 all of this hit the fan. Even though England had won that war, it was so severely emotionally scarred by the conflict that it was determined that it should not ever happen again. The cost of conducting the war had nearly bankrupted the Crown, and the London government viewed one of the root causes of that war to have been the encroachment upon Indian lands by settlers, who just happened to have mostly been non English. As a reward to the Iroquois and to the Cherokee for remaining allies of the British against the French and their Indians during this war, as part of the settlement of the war King George II on Oct. 7, 1763 issued "The Royal Proclamation". This edict outlawed all settlement west of the New River, and required all settlers who lived to its west to abandon their lands and to return to the east. Earlier, on May 25, 1763 the Loyal Company had requested another renewal on its patent. The Royal Proclamation voided this patent, and did so on the theories that the King of England was not responsible for the Virginia Colonial Government's having awarded those patents, as they had done so without his knowledge or consent. Besides, the King of England had no right to have granted title to these western lands to his subjects, as the lands belonged to the Indians.

The seeds of Revolution were sown at this point. The aspiring aristocracy of Eastern Virginia who had hoped to have become rich on these western lands were united with the settlers in their mutual outrage over this turn of events. The Crown was also determined to help pay for the war by taxing the Americans. The Stamp and Tea taxes were the direct result.

All of this scarcely slowed the Virginians in their drive to settle the lands to the west. If the King said that the land belonged to the Indians, then the Virginians would deal directly with them, and buy the land. The Loyal Company, with Dr. Walker as its agent, continued to advertise and to sell land under the original patent, notwithstanding its having been nullified by the King himself. Far from cracking down on this activity, the colonial governments with the active participation of the Crown soon formalized it by taking the lead in acquiring title to the western lands directly from the Indians by process of treaty. The settlers of the New River Valley and of the Holston and Clinch were already back in their homes by this time.

The Crown set up an administrative structure whereby the northern colonies' Indian affairs were conducted by one agent operating in New York, who was Sir William Johnson, who had been knighted for his efforts with the Iroquois during the French and Indian War; and the southern colonies' agent, which was John Stuart operating from South Carolina. It would seem that there was little if any coordination between these two departments this side of London.

Virginia was most desirous of opening up its western lands to settlement. The Crown took the position that the Iroquois owned the Valleys of the Holston, Clinch, and Powell, and on Nov. 5, 1768 at the Treaty of Fort Stanwix at Oswago, New York Sir William Johnson signed over the Crown's claim to the lands in western New York to the Iroquois in exchange for them ceding their claim to the land of western Virginia. At that treaty Dr. Thomas Walker acted as Virginia's representative, and signed the treaty in this capacity, thus promoting the interests of the Loyal Company, of which he was part owner and principal agent.

At the same time this was happening, John Stuart negotiated the Treaty of Hard Labor with the Cherokee on behalf of the Crown. On October 13, 1768. This treaty guaranteed forever title to the region west of the Lead Mines near Fort Chiswell (Wythville) all the way to Point Pleasant, where the New / Kanawha River flows into the Ohio. Imagine the consternation among the Cherokee, the Loyal Co., and the settlers when the contradictory terms of these two treaties became generally known.

Upset though he was, the intrepid Dr. Walker opened up a land office in the Spring of 1769 on behalf of the Loyal Land Company at Ingles Ferry (Radford) and sold land to such people as the Ingles, Robert Doak, Arthur Campbell, and directed William Preston to survey the land "between Culbertson's Bottom and Big Island on the Holston (Kingsport, Tennessee).

He was also anxious to open up the Valley of the Powell, and that same spring sat up a competition to accomplish this. He offered two men 21,000 acres to whichever of them would become the first settler in what is now Lee County. Joseph Martin was one of the men, and the second was a partnership of the Kirtley brothers, and a Captain Rucker. The first to arrive was to take all. Martin's group left March 1, 1769, and was the second to get away. Martin pushed relentlessly and after getting lost "in the cane break and laurel" between the valleys of the Holston and the Powell, and being "completely exhausted, weak from hunger, and very discouraged" Martin found the Hunter's Trace (Wilderness Trail) and arrived in Powell Valley March 26th. The other group did not arrive

till April 15th.

Martin's party quickly cleared land and built cabins on their claim, which was at present Rose Hill. Soon a band of Indians arrived, and a scuffle ensued, and fearful of reprisals, Martin and his party left for their homes in eastern Virginia. Nevertheless, this qualified Martin for the land grant, and for the honor of being Lee County's first settler.

In order to calm the Cherokee over the discrepancies between the Treaties of Fort Stanwix and of Hard Labor, and to promote the interests of the Loyal Company, the Crown through John Stuart signed the Treaty of Lochaber with the Cherokee on October 22, 1770. This treaty drew on the map a line, called Donelson's Indian Line, from Moccasin Gap to Point Pleasant and awarded all the land from the lead mines to the line to the Colony of Virginia.

By December 16, 1773 Walker had sold 201,554 acres out of the 800,000 granted.

In an inexplicable turn of events, the Crown then began anew to try to enforce the terms of the Royal Proclamation, and on Dec. 17, 1774 Royal Governor of Virginia, Lord Dunmore, received dispatches from the Earl of Dartmouth, Secretary of State For the Colonies, and dispatch #19 severely rebuked Dunmore for allowing settlement of the western lands in violation of the Royal Proclamation.

The situation became even more volatile when the settlers realized that the Treaty of Lochaber left the route of the Wilderness Road through Virginia in the hands of the Cherokee, thus cutting off settlement of the Loyal Company's lands in Lee County and in Kentucky.

To solve this problem, and totally without governmental support from either the Crown in London, or from the Colonial Government of Virginia, Col. Richard Henderson formed the Transylvania Co., and with Daniel Boone as his agent, March 17, 1775 bought from the Cherokee, Kentucky and the land in Virginia west of Donelson's Indian line. The Transylvania Co. began to sell land in Kentucky to settlers, in complete violation of the claims of the Loyal Co., and to the consternation of the Crown, who declared the treaty null and void.

By this time the Revolutionary War was in full swing, and not only was the outcome of that war in doubt, but it was uncertain in the newly independent State of Virginia which theory of land ownership the State would follow.

The settlers in Kentucky petitioned the Virginia General Assembly to declare the Transylvania Co.'s title null and void, in favor of the Loyal Company's rights, and in favor of the Virginia Corn Right Law. It is interesting to see that the Virginia General Assembly, then in rebellion against His Majesty King George III, chose to cite Colonial law in its decision in this matter. In 1778 the General Assembly declared the Henderson purchase to be null and void based on a law passed by the colonial government in 1705 which forbade the Indians from alienating their land to anyone outside their own tribe. At the same time they confirmed the grant of the Loyal Company and the subsequent sales of land from it, but canceled the company's rights to land not already sold.

This was the end of the Loyal Company, but its legacy of contested land titles lived on. Many settlers hedged their bets and reapplied to the Virginia Land Office for title to their Loyal Company land, and received title a second time by Settlement Right and the Corn Right Law. Litigation continued in Virginia's court system. The Court of Appeals heard the case in Richmond May 2, 1783, and affirmed the legality of the grants obtained through the Loyal Company. Legal activities directly involving the company continued until 1842.

Nor was this the end of it all. Just because the higher courts of Virginia had settled the conflicting title claims did not mean that all the deeds of all the tracts issued during this confusion were amended in all the county court records. Many deeds were left the way they were, and changed hands many times, until the land became suddenly extraordinarily highly valued.

When coal was discovered in far Southwest Virginia in the 1880's, the long forgotten title conflicts were resurrected by the newly formed coal companies, and world class land title lawyers, such as Patrick Hagan of Scott Co. litigated endlessly in favor of these companies. Thousands of acres changed hands as mountaineers, who honestly had bought or inherited their land through flawed titles going all the way back to the Loyal or Henderson Companies, watched helplessly as they were evicted.

Only coal lands worth the legal fight had their titles corrected by this process. There likely are other lands out there with potentially flawed titles, slumbering away in all innocence.



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