

In the Land of Peaceable Possession: Property Research in Southern Chester County

Tracing the history of any piece of property can be challenging at best and nearly impossible at worst. As the guide to [Researching Your Chester County Home](#) shows, there are multiple challenges when researching even the easiest of properties. One factor not addressed in the guide concerns the physical location of the property. Within Chester County there are regional variables that may complicate the process. While a formal process for claiming land existed, it was not always adhered to, especially among the Scots Irish who predominately settled in southern and western Chester County. Their reasons may have been varied but they were distinct among the other groups in Pennsylvania. Their experience in Ulster and their economic circumstances came to define their pattern of settlement and their interaction with their new government. Add to this a border dispute with Maryland and property research in this area becomes a complicated puzzle with many pieces missing.¹

The process by which prospective landowners in early Pennsylvania obtained unseated (unoccupied) property, on the surface, seems straight forward. First an individual would apply for a warrant from the Land Office located in Philadelphia. The warrant, which generally supplied the number of acres and general location of land under consideration, was the formal authorization from the Proprietary government to survey the land. The survey provided the metes and bounds of the property and the draft would be returned to the Land Office where it would be filed with the warrant. It would remain there until the buyer paid the full purchase price. Once paid, the purchaser would receive a patent, the first legal deed to that property.²

The Scots Irish

About the year 1732 Robert Caruther settled on a small tract of vacant land located on Blackburn Run in present-day East and West Nottingham Townships. He never applied for a warrant. For over 15 years Caruther farmed and improved the land, all while paying his taxes. The “neighborhood” left him undisturbed on the property and never challenged his claim to it. In 1744 he was joined by his niece Mary Douglas who built a house on a corner of Caruther’s property. According to later testimony, Caruther entered into an agreement with his niece whereby she could remain on the property “undisturbed” for the period of three years. About the year 1748, a year after the expiration of the agreement, Caruther sold the property at a public sale to James Caldwell and moved further west into Lancaster County. He left his niece behind with a tenuous claim to the land on which her home now stood.³

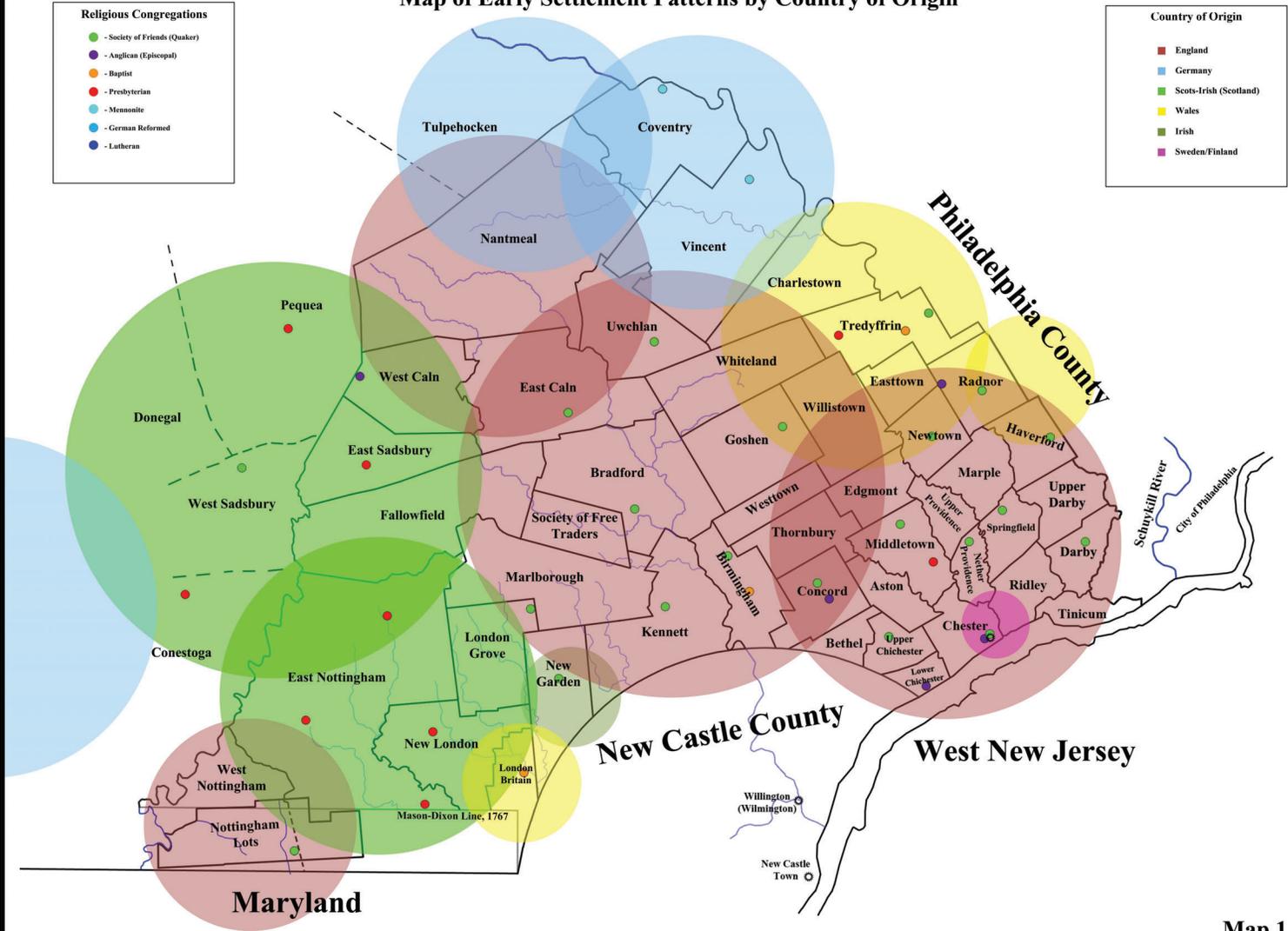
Mary Douglas was likely informed of the precarious nature of her position and finally made application for the warrant right to the land in her possession. On November 27, 1752 she received a warrant for 25

¹ For further reading on the Scots Irish and their history in Ulster and Pennsylvania, please see Patrick Griffin’s *The People With No Name* (2002); Judith A. Ridner’s *The Scots Irish in Early Pennsylvania: A Varied People* (2018).

² For further reading on this subject, see the Pennsylvania State Archives website [Land Records section](#).

³ Pennsylvania State Archives, *Copied Surveys D-36* pg. 160

Chester County Circa 1728 Map of Early Settlement Patterns by Country of Origin



Map 1

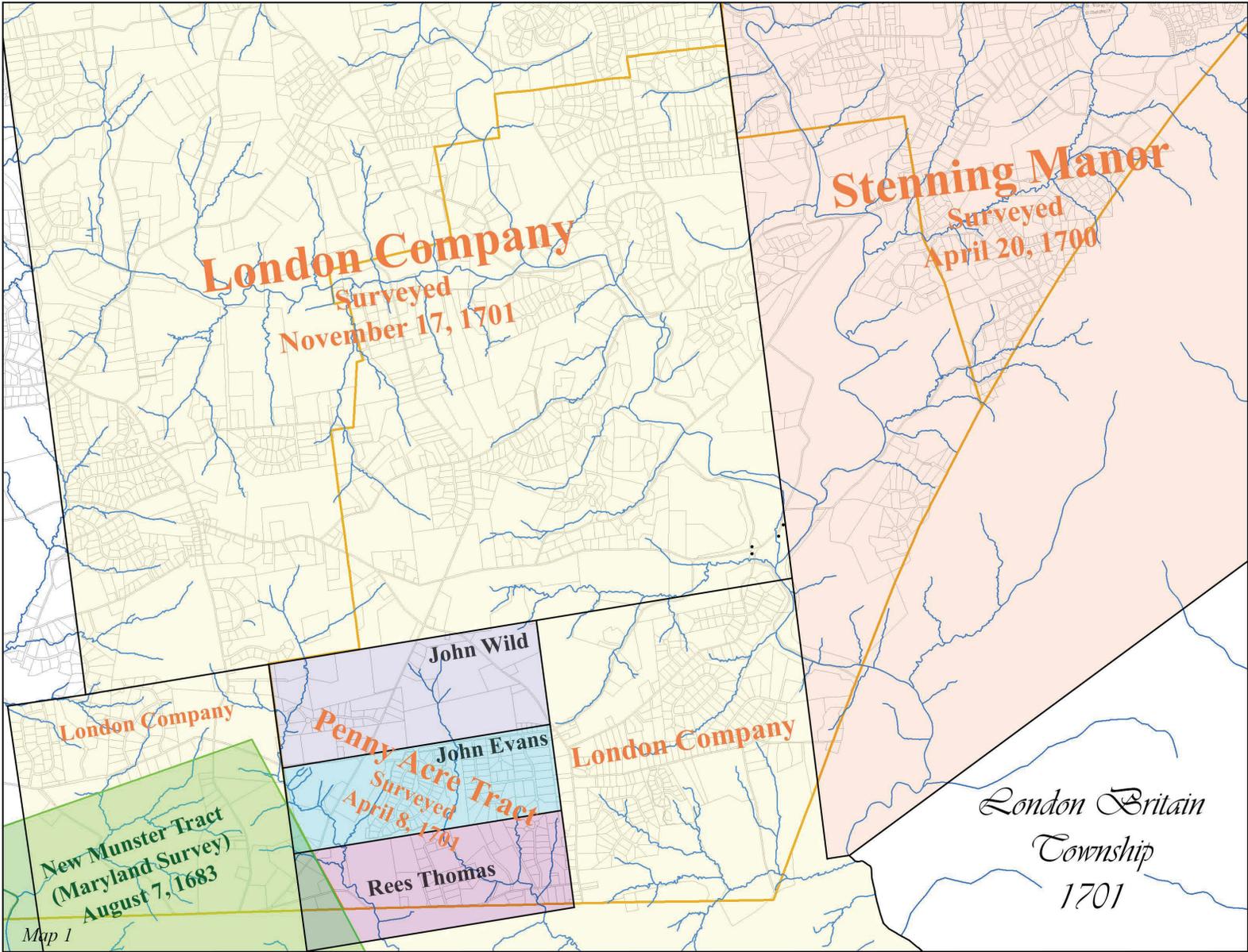
acres of land which was sent to the Chester County surveyor, George Churchman. Churchman held onto Mary's warrant and did not act on it immediately. Instead he surveyed the land for James Caldwell and encouraged her to sell her warrant to Caldwell "so that she might not be a Loser by it." Much to Churchman's chagrin, she "was not contented with that" and forced him to return the survey as "Land in Dispute." In the end, Mary won this dispute and acquired the warrant right to both the land on which her house stood and an adjoining tract of vacant land. She did not, however, finalize and pay for the patent on the land she continued to occupy. Both Douglas's and Caldwell's properties would pass through several more hands until 1785 when they were purchased by David Watt Jr. who finally paid the purchase price and the Land Office issued Watt's patent, for land that had already been seated for over 50 years.

If Mary Douglas's house was still standing today, researching the property through typical means would miss most of this pre-patent history. In many instances reaching the patent would lead the researcher back to the first warrant holder. But David Caruther did not hold the warrant. What is more, Douglas's warrant did not include her house; the survey which includes the history related here is found on the adjoining tract, James Caldwell's, which lost the piece with Mary's house to her claim.

While this situation may seem atypical, it was not, especially among the early Scots Irish settlers. Beginning in 1718, thousands of Ulster Scots poured into Pennsylvania. They were encouraged to settle in the remote regions of the colony, along its western borders and along its contested southern boundary with Maryland. As a group, they were poorer than the earlier waves of Quaker immigrants, and most settled in areas far from the seats of provincial and county government and in areas where Pennsylvania's land ownership claims were tenuous at best. In addition, they had existed mostly as renters and tenants in Ulster, and their mistrust of landlords was transferred to their new landlords, the Proprietors.

In the earliest years, the lack of roads and the Scots Irish limited financial resources likely played a larger role in their inability or unwillingness to apply for warrants, patent their property, or even record their deeds and other legal instruments. However, this lack of compliance with the patent process was carried through on many parcels well into the nineteenth century. When constructing a chain of title, if the researcher arrives at a patent in the nineteenth or late eighteenth century, the land was likely held under a "warrant right" for decades or even a century before it was finally patented, and discovering that pre-patent history can be challenging. This practice of non-compliance was not limited to the patent process. In many cases, the deed from the sale of land, patented or otherwise, never made it to the recorder of deeds. This can leave large segments of the property's history blank with no real options to fill in the missing information.⁴

⁴ This behavior was not limited to the Scots Irish. Other groups, like the Welsh Baptist in London Britain, were known to do the same thing, though to a lesser degree. Even among family groups, a demonstrated lack of recording of legal instruments can be found.



1 inch = 2,928 feet

Maryland Patents

Around 1765, the Mason-Dixon Line finally settled the long running boundary dispute between Maryland and Pennsylvania, but before then both colonies' land offices issued patents above and below the famous line. While many people have heard of the Nottingham Lots, Maryland issued its own patents in areas that are now part of Chester County. Maryland's patents were given tract names, often referred to in the early deeds of the region but largely forgotten today. The highest concentrations of these patents were located in present-day Elk (Snow Hill, Hail Hill, Hodgson's Choice, Society, Mount Hope, Pilgrim's Land), New London (Pleasant Garden), Franklin and London Britain Townships (Pleasant Mount, New Munster).

In the spring of 1701, Pennsylvania surveyed a 600-acre tract, known as the Penny Acre Tract, in what is now London Britain Township. This first attempt to stake the Proprietors' claim to the contested area was soon followed by an additional 1,100-acre tract surveyed for the London Company, which in turn was followed by the Nottingham Lots in 1702. Unfortunately, both the London Company land and the Penny Acre Tract overlapped an existing 6,000-acre tract granted to Edwin O'Dwire by Maryland in 1683 known as the New Munster Tract.

After the boundary dispute was settled with the Mason-Dixon Line, most of the landowners appear to have settled the overlapping claims without much dispute. In the Penny Acre Tract, the pieces that overlapped the Maryland claim were given to the Maryland claimants. In other instances, such as Hodgson's Choice in Elk Township, parts that overlapped Pennsylvania surveys were given to the Pennsylvania claimant but a large portion of the original Maryland Patent was left to the then owner. It is also interesting to note that after the first overlapping claims in the first decades of the eighteenth century, few new surveys overlapped in the run-up to the final settlement. It was likely that while the Proprietors were in a rush to prove a point, those on the ground were neighbors who wanted to avoid unnecessary legal disputes, thereby only claiming land considered vacant by both governments on both sides of the border.

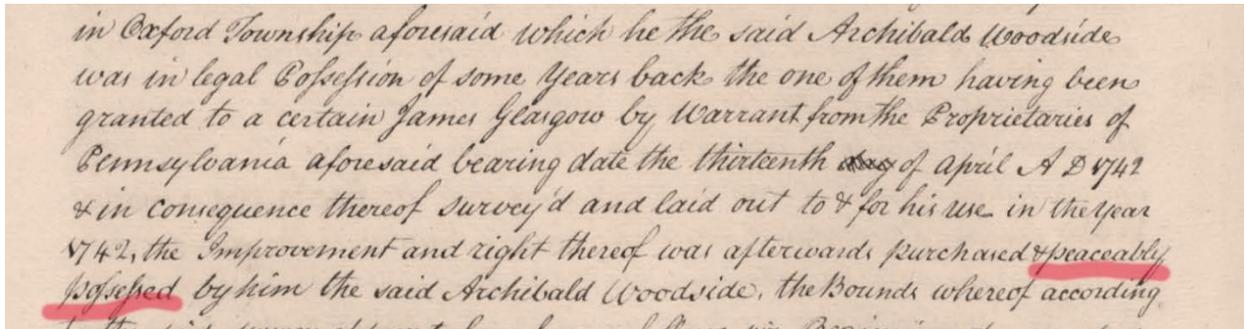
The overlapping claims make for a confusing property history and, unfortunately, an incomplete one. Discovering where some of the paper work is filed is one concern. On properties that straddle the border with Maryland, any recorded document may be filed in one of four places. For land office records, the respective state archives hold these documents. For deeds recorded in Cecil County, online access is provided through the state of [Maryland](#); Chester County deeds recorded before 1918 are maintained by the [Chester County Archives](#). Another issue is that unlike most Chester County deeds, many Cecil County deeds do not always provide detailed recital clauses. Couple this with the fact that the majority of the original settlers were of Scots Irish origin in this area, constructing a full history on some of these parcels isn't always possible.

How to Spot Unpatented Property

There are many phrases used in deeds to indicate that the property being transferred has not been patented. Below are some examples of what to look for.

“Peaceable Possession”

In 1792 Archibald Woodside sold a parcel of land on Muddy Run in present-day Upper Oxford Township. At some point Woodside acquired James Glasgow’s 1742 warrant right to the property being “peaceably possessed” by him, the said “Archibald Woodside.” Note that it cannot be assumed that Woodside purchased the right directly from Glasgow. The property was likely passed through several hands before it came to him. The property was not officially patented until 1810, nearly 70 years after the warrant was granted. The term “peaceable possession” is a legal term which indicates that there are no adverse or disputed claims on the property.

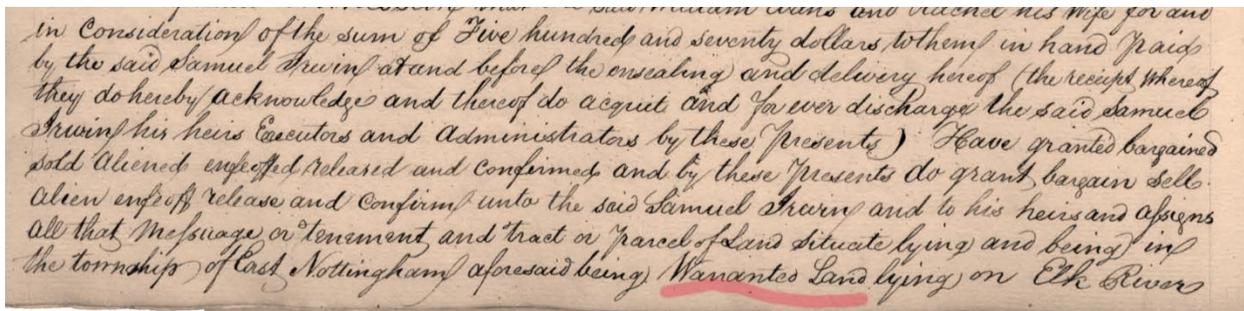


in Oxford Township aforesaid which he the said Archibald Woodside was in legal Possession of some Years back the one of them having been granted to a certain James Glasgow by Warrant from the Proprietaries of Pennsylvania aforesaid bearing date the thirteenth day of April A D 1742 & in consequence thereof survey'd and laid out to & for his use in the year 1742, the Improvement and right thereof was afterwards purchased & peaceably possessed by him the said Archibald Woodside, the Bounds whereof according

Figure 1 Chester County Deed Book H-2 pg. 302

“Warrant Right/Warranted Land”

A warrant right is just what it sounds like. The grantor (seller) in the current deed has acquired the original warrant granted to someone else for land not yet patented. In 1818, William Evans sold a tract of land in present-day Elk Township on the Elk River to Samuel Irwin. Even at this late date, the land was still identified as “warranted land,” and “unpatented” land.



in Consideration of the sum of Five hundred and seventy dollars to them in hand paid by the said Samuel Irwin at and before the sealing and delivery hereof (the receipt whereof they do hereby acknowledge and thereof do acquit and forever discharge the said Samuel Irwin his heirs Executors and Administrators by these presents) Have granted bargained sold Aliened enfeoffed Released and Confirmed and by these presents do grant bargain sell Alien enfeoff release and Confirm unto the said Samuel Irwin and to his heirs and assigns all that Messuage or tenement and tract or parcel of Land situate lying and being in the townships of East Nottingham aforesaid being Warranted Land lying on Elk River

Figure 2 Chester County Deed Book Q-3 pg. 202

These phrases can also be found in other documents, such as wills. Henry McCormick’s property located in present-day Elk Township was warranted to David Long in 1753 but not patented until 1815 by William Williams.

When Valued as app^r or cannot secure the Other Heirs the Pay-
ment of their Respective Shares, my Will is & I Do Order all my
Lands & Appurtenances to be Publickly sold to the Highest & best
Bidder, & Do hereby Impower my Executrix & Executor to make
sufficient conveyance of Warrant Right for the same, or one of
them & Price Thereof, or the Money Arising from the Sale There-
of to be Divided Equally Among my Seven Children (viz)

Figure 3 Chester County Wills & Administrations #4475

Note the passages of this deed that are underlined. Clearly the lawyer who drew up this instrument thought it important to point out that Samuel Maxwell, now deceased, received the warrant right in 1745 and the survey was “ordered to be returned.” This emphasis clearly fell on deaf ears. Parts of this tract located in present-day Upper Oxford Township were not patented until 1883 and 1899.

and assign a certain Messuage or Tract of Land situate lying-
or being in Oxford Township aforesaid Being part of a Greater ^{or}
Tract formerly Granted to a certain Samuel Maxwell, deceased,
late of the Township, County and State aforesaid and surveyed to him
^{Inter?} by warrant right and ordered to be returned in his name ^{Interline?} and the
said Samuel Maxwelle by his last will and Testament Bearing
date the fourteenth day of September in the Year done and

Figure 4 Chester County Deed Book H-2 pg. 276

“Claim of the Commonwealth Excepted”

The earlier language in this deed makes clear that “ownership” of this property is based on a warrant right. A closer look at what is typically boiler plate legal language also makes clear that the land is still subject to a claim of ownership from the Commonwealth of Pennsylvania indicating, again, that it is unpatented. This 1823 deed between the heirs of David Pollack for land in East Nottingham Township is based on a warrant issued to Morris Rees in 1733 and not patented until 1836 by Jonathan Millard, over a century later.

conveys to the said John Pollock all their right title and interest in and to the above
described tract of Land against all and every other person or persons, well warr out
and forever defend the claim of the Commonwealth only Excepted In Witness
whereof the said William Hunting and Elizabeth his wife, Christopher Bhesting
and Margaret his wife have hereunto set their hands and seals the day and year

Figure 5 Chester County Deed Book T-3 pg. 347

“Conveyed to”

While not every deed recorded provides a full recital clause, most do. One of the telltale signs that a piece of property is being sold by warrant right is the use of a rundown of transactions, usually with the phrase “conveyed to,” not just the last transaction. This deed between David Drew and John Irwin for property in present-day Lower Oxford makes clear that the legal claim on this property might be tenuous. The land having “some improvement or Settlement having been thereon made Fifty years ago and upwards the right of Which was transferd from hand to Hand to the several Purchasers thereof.”

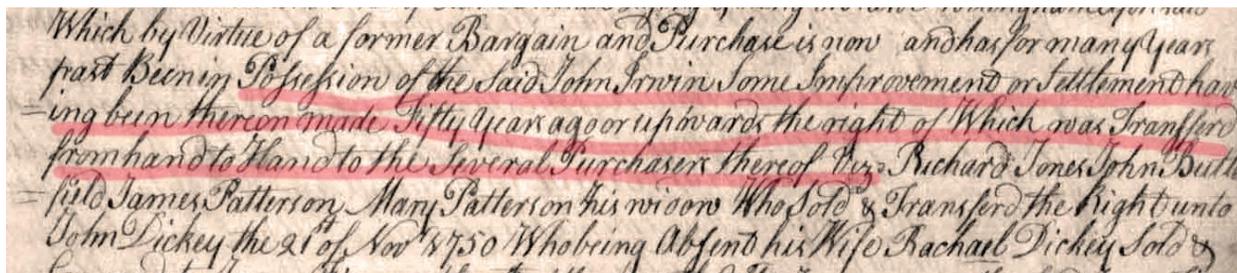


Figure 6 Chester County Deed Book X pg. 80

Conclusion

There are several practical steps that can be taken to work around these issues. Once the patent is reached, especially those in the nineteenth and late eighteenth century, it is important to obtain a copy of the original patent. Patents are housed at the Pennsylvania State Archives and the Maryland State Archives. The patent, at the very least, will lead you to the warrant holder. Occasionally the patent, much like a deed, may clear title back to the original warrant holder, listing those who sold the warrant right down to the person now patenting the property. You can also discover the warrant holder in the patent index found on the Pennsylvania State Archives website.

The next step will be to determine if the person who patented the property recorded their purchase of the warrant right in the deed index. If the patent did not occur until the nineteenth century, this is a much more likely path. If it occurred earlier, in the eighteenth century, a recorded warrant right transaction is less likely for the reasons described above. However, with the completion of the 1777 Chester County Atlas, clues may readily be found in the property owner key. An attempt has been made to supply as much information as possible for the complicated properties found during the research process. It will also help indicate if there was any information to be found.

It should be kept in mind, especially in the first half of the eighteenth century, that it was unlikely that the settlers on these properties were building substantial structures, such as a stone or brick dwelling. With all the factors aligned against the Scots Irish—limited means, remoteness, and a tenuous hold on their land—they were likely encouraged to adopt the common log dwellings that dominated Chester County’s landscape well into the nineteenth century.