Land Entry and Warrants

The first step in acquiring ownership of previously unowned land was to make an ***entry*** onto the land, i.e. to occupy it with a ***warrant*** in hand for a certain number of acres; usually warrants were issued in units of 50a and the amount of land one claimed wasn't supposed to exceed the total for which one had a warrant, but I've seen any number of cases where it did.

During most of the colonial period, warrants could be obtained only by exercising "headrights" earned by importing persons to Virginia (at the rate of 50a per person), but by the time the 1700s were well underway, warrants could simply be purchased through the land office at the rate of 5 shillings per 50a: these were called "treasury warrants". In addition, men who served as regular soldiers or volunteers in the French & Indian, or the Revolutionary War, were also incentivized with "bounty warrants" that entitled them to various quantities of land, depending on their rank and length of service.

Many of these warrants of all types were never used by their original acquirers. Instead they were discounted and sold to speculators or other individuals who were ready to embark on the process of converting them to land, and this process was not trivial, as it required actual occupation, symbolized by clearing a few acres and erecting some sort of a dwelling structure, however primitive. A warrant could be conveyed to another simply by "assignment"—endorsing the reverse of the document over to the other party, and many warrants were endorsed many times; in fact in the early colonial days when specie money was scarce, warrants, like tobacco, were used as currency. Under the circumstances, conveyances of warrants were informal, and took place outside the cognizance of the law; thus the documents were valuable in themselves, like currency notes.

To make an entry good legally, the warranted occupier of unowned land had to stake out his land at least in an informal way, bring his warrant into court, and assert that he had occupied a particular number of acres in a general area (typically defined simply with reference to the nearest watercourse), and thus obtain official registration of his entry in a book of land entries. The description and location of the entered land in the book was too vague to be legally meaningful, and an occupier was obliged to maintain a presence on his land to effectively defend his limited title to it, on the hoary but dubious legal theory that "possession is nine tenths of the law".

The Survey Process

The warrant and entry created only provisional title. Technically a registered warrant was a warrant to obtain an official ***survey*** of the land: the county surveyor would come out and record the lengths and angles of the marked "metes and bounds" of the tract, creating from this a plat drawn to scale that was then registered in its own right in a county book of surveys. Land owned by right of survey could likewise be conveyed by informal assignment to another, and surveyed land had much better protection under the law because the exact bounds of the tract had been registered. Surveyed land was therefore more valuable, and also because it incorporated the fees and inconvenience of obtaining the survey. However, as with the assignment of a warrant, the law took no cognizance of land conveyances by assignment of survey, and legal recourse in the event the transaction went bad, was limited.

Land Patents and Grants

The final step in perfecting title to the land ws to apply for a ***patent*** or ***grant*** to the land by presenting a copy of the survey at the land office in the capital (Williamsburg until the Revolution, then Richmond) and paying an additional fee. We speak of land "patents" during the colonial period, and land "grants" once the Virginia Commonwealth got going administratively, about 1779-1780.

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Once land had been formally patented or granted (and a record of the transaction entered into the central series of books of patents and grants), it could thenceforth be conveyed at the county level by deed, and the conveyance acknowledged in court by the grantor (or proved by the deed's witnesses), approved by the grantor's wife if he had one through her dower release, registered, and copied into the county deed books.

The process of registering deeds was somewhat inconvenient and involved a fee, but it was voluntary, and sometimes a deed was simply assigned informally or ***delivered*** by the grantor to the new owner (or grantee) of the property, but registration afforded significant legal protection to a an owner who might have suffered the loss of the original documents that proved the conveyance and his present title. Thus, sooner or later in the chain of conveyances, the new owner was bound to insist that any earlier deeds be proved and registered, so one sometimes finds a couple of deeds to the same property registered successively years later at the same point in the deed book series. But this was the exception, and in fact, the legal protection afforded at the county level, where most legal business was transacted, was generally considered so valuable that occasionally even the holders of grants from the central authorities were willing to pay to have their grants registered and copied into the county books.

Theoretically, the land office was supposed to maintain a record (a set of collated surveys) of all patents/grants to ensure that there was no geographical overlap in the tracts, but this function wasn't always performed competently or in a timely manner, and numerous mistakes were made, giving rise to legal difficulties. In extenuation, keeping track of a constant stream of conveyances of original patents (in whole or in part), or of the many lapses of title when title the occupational requirements weren't satisfied by absentee owners, or when the annual quit rents or other land taxes were too far in arrears, was far from an easy task.

The problems that arose in land patent/grant registration grew acute when the land grant system was applied to the far western lands that later became Kentucky. The problem there was that the colonial and early American authorities of Virginia failed to open up a land office in far flung Kentucky, and only wealthy speculators could afford to hire agents to convey the documents back to the capital and supervise the grant process. As a result many of the pioneer settlers who had cleared and improved the land lost their title to it. The same inconvenience and difficulties also affected to a lesser extent settlers in western Virginia beyond the mountains, and since so much of this transmontane land was first taken up in the 1700s by a population that was inherently footloose, many settlers owned their land only by right of warrant or survey, and probably not a few simply squatted..

Throughout the history of land granting in Virginia, many prudent land acquirers commissioned re-surveys of their holdings. It seems that most of the surveys originally tendered to the land office have been lost and we have only the patent/grant books, and these are rife with errors of both omission and commission—errors that have typically and mindlessly been replicated in a whole succession of deeds predicated on copies of these original grant documents, not on the surveys on which they in turn were based. Where the surveys have been preserved at the county level, we can generally correct such errors, but re-surveying land, particularly when an original tract had been divided one or more times, or when several tracts were combined, has generally been a good idea.

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