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 calculating the areas of the complex plots that the prospective land owners often staked off challenged the mathematical skills of the early surveyors, and as long as the acreage appeared to be within about 10% of the amount warranted, the official surveyor was willing to accept his client's nominal estimate of the acreage and include that in his plot..

During most of the colonial period, warrants could be obtained 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 taking possession of the land and converting it into good title. But this process was not trivial, as it required actual occupation, represented by clearing a few acres and erecting some sort of a dwelling structure, however primitive.

Alternatively, a warrant could be conveyed to another, outside the cognizance of the authorities, simply by "assignment"—by endorsing the reverse of the document over to another party. And many warrants were thus endorsed repeatedly; in fact in the early colonial days when specie money was scarce, land warrants, like "tobacco in cask", were used as currency.

Registering the land entry

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: one of the official county surveyors would come out and record the lengths and angles of the marked "metes and bounds" of the tract, then create from his notes a plat drawn to scale; he made several copies of this plat, including one or two for his client, and also entered it into the county book of surveys making it official.

Land owned by right of official survey, like land owned by registered entry, could 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 more valuable on that account, 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.

Once land had been formally patented or granted (and a record of the transaction entered into the central government's series of books of patents and grants), it could thenceforth be conveyed at the county level by deed, although to be registered the deed to be either acknowledged in court by the grantor or proved by two of its witnesses, and if the grantor was married at the time, his wife either had to join him as grantor or come into court and relinquish her dower right to a third of her husband's land in the event of his predecease.

The process of registering deeds was thus somewhat inconvenient and involved a fee, but it was voluntary, and sometimes duly witnessed and executed deeds weren't finally registered for years after their dates, or even *delivered* to their new owners or, as a convenience, to their agents. In these cases of deferred delivery, an annotation was often made in the margin of the deed book copy of the deed indicating the date of delivery and the person to whom the deed was delivered, and sometimes the person to whom the deed was delivered wasn't just the agent of the grantee, he might instead be the legal inheritor of the property. It also appears that sometimes, when the person to whom delivery was made was not the grantor, or his agent, or his heir, that he might have been a new owner to whom the original grantee had conveyed his property, either formally by deed, or informally, perhpas incident to a mortgage—a type of transaction that was often made off the books.

However, even though a deed wasn't promptly registered and copied into the books, sooner or later in the chain of conveyances, the new owner was bound to insist that any earlier deeds in the chain of title 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 patentees or grantees 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 the early surveying methods were much cruder than those evolved later, and it is my assumption that over time most of this Virginia land has been re-surveyed, especially when, as s the case for most of the original large grants, it has been since divided many times.

Leases and Mortgages (Deeds of Trust)

Once a deed had been registered and copied into the books, the land could then be legally leased to another for a specified term, or conveyed conditionally through a deed of trust to a second party to hold on behalf of a third party who was thereby entitled either to benefit from its use, or to acquire full ownership of the property under certain conditions. Deeds of trust most often amounted to mortgages, collateral for a loan, and they could involve personal (moveable) property as well as land.

In frontier areas during the colonial period the parties involved seldom bothered with the paperwork and the fees involved with registering leases, and the vast majority of loans, collateralized or otherwise, were handled off the books: this is evident not only from the paucity of such deeds, but also from the frequency of suits for debt in the county courts, most of which were lodged against owners of land and other substantial property; those without, simple didn't get loans.