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**The History of New Castle, Delaware.**

The Penn Title to New Castle, and the "Twelve Mile Circle,"  
And Its Validity -- 1682

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Note. --this is a sequel to the article published in the Sunday Star of February 4 and 11, 1906. It is divided into several parts, this being Part V, in continuation of the general history. --A. B. C.

Part V

The Penn Title

The most authentic and reliable writers of the history of the United States agree that Henry Hudson, the great English navigator, was the original and first civilized discoverer of the Delaware bay. He had been engaged by a company of wealthy and influential London merchants, to ascertain and locate, if possible, a northwestern passage to India. After two fruitless and unsuccessful attempts he abandoned it and went to Holland. While there he entered into an agreement with the Dutch East India Company to ascertain for it a more convenient and nearer route to China through the northern waters. Just prior to his leaving Holland, however, Captain John Smith of Virginia, who had

heard of his failures, wrote to him that there was a passageway a little north of Virginia, which he thought led to the Pacific Ocean. He started on his way, but had not proceeded far when he was again doomed to disappointment. His crew became mutinous and insisted upon returning home. This he obstinately opposed. He told them that he was willing to abandon the enterprise he had undertaken,--the search for the passageway to China. He thought favorably of Smith's suggestion and insisted that instead of returning home in humiliation and disgrace for his repeated failures, that he and his crew should sail southward and explore the southerly and easterly coasts of America, and by making some new discoveries thereby redeem themselves from the opprobrium of their past failures. Much discussion with his crew and persistent persuasion on his part followed. He spoke to them of his purpose in glowing words. He told them of his encouraging letter from Captain Smith, that they would beyond doubt discover large and unsettled tracts of land which they could take up, occupy and settle for themselves, that the hope of conquest and riches was his leading motive, and that they would all share alike. These appeals were too strong for them to withstand. They finally determined to accede to his wishes. With the prospect of much profit and wealth they turned the bow of their vessel southward. Hudson went as far as the mouth of the Chesapeake Bay, but having knowledge that some Spanish colonists had already settled there, and that the English had possession of the neighboring territory of Virginia, he did not enter it. His log book speaks of it as "the place of the English settlements." He knew of no further settlements to the north, consequently he made his course in that direction. On August 28, 1609, in his vessel, the "Crescent," more commonly called the Half-Moon," of about 80 tons burden, and with 18 to 20 Dutch and English Sailors, he entered the

waters of what is now called the Delaware Bay, a short distance above Cape Henlopen. He said he could readily see Cape May on the other side of the bay. He remained there a day or two without landing, for upon sounding the depth of the water he came to the conclusion that they were too shoal to repay or justify him in making any further exploration of the bay.

The mate, Robert Juet, made an entry in the log book as they approached the bay. They were then evidently on the "Hen and Chicken Shoals," a little south of the mouth of the bay. "On a sudden we came into three fathoms, then we bore up and had but ten feet of water and joined to the point." The rapidly rising flood tide took them off and they were soon in deep water. They entered the bay, Juet says, which "we found shoal and had sight of beaches and dry sand." They probably encountered the other shoals just within the bay. Juet's last entry was: "he that will thoroughly discover this great bay must have a small pinnacle that will draw but four or five foot water to sound before him." With a feeling of surprise and disgust they raised anchor and stood out to sea. On September 3, he passed what is now called Sandy Hook, in the State of New Jersey, and on the eleventh day of the same month came to anchor off Manhattan Island, N. Y. On September 14 he sailed up the Hudson River, so named in his honor. He never returned to the Delaware, but on October 4, 1609, he returned to Holland and submitted to the company by which he had been engaged, a full and interesting chart and account of his adventures and discoveries. This chart, it is authoritatively stated, still remains among the valuable records in the archives of Holland. Subsequently, in June 1612, in a mutiny and disaster at James bay, (the most southern portion of the great Hudson Bay) Henry Hudson lost his life. That this is the true story and history of the discovery of

the Delaware bay seems too well authenticated to be successfully controverted or denied. Some writers, however have attempted to do so, but their reasons are too idle and futile to demand any recognition. Some of the English writers claim that it was discovered by Lord de la Warre from whom it derived its name in 1610. They seem to draw their conclusions from some such statements as this:

“Lord de la Warre touched the Delaware in 1610,” a year after Hudson came. Besides this, as learned historians say, “it is extremely doubtful that Lord de la Warre ever saw the waters of the Delaware. He certainly never entered them.” He never set foot on Delaware soil, nor did he ever see it. His nearest approach was when he sailed by it, “far out at sea,” in June, 1610, on his way to Virginia, with his “five hundred new colonists and ample supplies.” He had no business in the waters of the Delaware. He was in no wise connected with them. He was on his way for the sole object and purpose of filling his appointment as Governor for life, “in that part of America called Virginia.” As such he had no jurisdiction over the waters or land in Delaware, and never attempted to exercise any.

Lord de la Warre died on ship board in making his second trip or voyage to Virginia, “in these regions, at or near the mouth of the bay,” (Delaware) in the beginning of the year's 1619. Upon such loose and disjointed facts rests the only claim that he was the discoverer, notwithstanding their dates are all subsequent to the date of Hudson's discovery. It may be asserted in all truth and justice that to Henry Hudson alone belongs all the honor attached to and justly due the discoverer of the Delaware Bay and causing it eventually to be known and opened to civilization and commerce. His own journal now in the archives of Holland is conclusive. He achieved nothing himself however beyond the bare yet important fact of the discovery and

making it known to those who subsequently profited by it. It has also been stated by some writers that prior to Hudson's discovery it was discovered by the celebrated Captain John Smith of Pocahontas notoriety. This assertion is based entirely upon an old map of the Delaware bay and river said to have been made by him. It is a very curious looking map. The shorelines are very inaccurately laid down and largely filled in on either side, as one writer says with the "signs and hieroglyphics of ignorance." The better opinion seems to be that Captain Smith never saw the waters of the Delaware at all, but had been told of them by the Indians of Delaware bay. It had never been explored, save by the mythical explorations of the Spanish in the early part of the sixteenth century. Captain Smith presumed that it was the long sought passage-way to China. There was no settlement on the western shore of the bay until 1631 when the celebrated De Vries expedition settled at or near Lewes in Sussex County. It was almost immediately and entirely exterminated by the killing of them by the Indians. The next settlement on the westerly side of the river was in 1638 by the Swedes on the Christina river near the present city of Wilmington. Then the Dutch came in 1651 and settled at the present city of New Castle. In 1655 the Swedes were entirely expelled from our shores by the Dutch. Then came the expulsion of the Dutch by the English under the Duke of York in October 1664. The English, for many years prior thereto had asserted a title to the entire country by discovery through John and Sebastian Cabot. The driving away of the Dutch in 1664 gave them in addition a title by conquest and occupancy which was considered good in law.

King Charles II, then King of England, and properly claiming title in the crown, on March 12, 1664, granted letters patent to his brother James, Duke of York, of all lands, inter alia, "from the west side of the

Connecticut river to the east side of Delaware bay," to have full and lawful jurisdiction thereover and to ordain and establish all laws, etc. Under this grant the Duke of York took possession of New Amsterdam (N. Y.) and its independent Colonies on the south (Delaware) river, with the erroneous idea that this deed included both Pennsylvania and Delaware. It was erroneous because the deed in terms limited the western boundary "to the east side of the Delaware bay and river. But it was argued that "it was a very large and extensive grant of several large tracts and territories in America, and passed, as we say, all lands appertaining or adjacent to those extensive tracts." This was an absurd argument for by the deed nothing whatever passed west of "the east side" of the river, and neither Penn nor the Duke of York made any serious contention to the contrary. Sydney George Fisher in his interesting book, entitled "The Making of Pennsylvania," says "when Penn, after obtaining his charter for Pennsylvania, decided to buy Delaware as an additional piece of territory; he bought it, it is true, from the Duke, but not until the Duke had obtained a special grant of it from the crown, which shows very conclusively that that both parties considered the old deed of 1664 worthless, so far as concerned any land west of the Delaware. "When Penn," (Fisher goes on to say) "got his charter for Pennsylvania, he took a release from the Duke of any rights he might have in that territory". But this was evidently a measure of abundant precaution to guard against any claims of the duke by reason of his occupancy. It can hardly be called a recognition of the validity of the old deed of 1664, as to land within the present limits of Pennsylvania. Any occupancy the Duke had of Pennsylvania was very slight. The Swedes, Dutch and English, over whom he ruled, were nearly all within the present limits of Delaware. New Castle, the headquarters of his colony, was a Delaware town.

Some of the settlers were scattered north of Delaware along the river as far up as the present site of Philadelphia, but they were comparatively few.

In 1673 the Dutch regained temporary possession, for a few months when the territory was again surrendered to King Charles II, and in order to affirm and establish the validity of his grant of March 12, 1664, by letters patent dated June 29, 1674, he again granted the same lands to his brother James, Duke of York, to wit: from New England "to the east side of the Delaware River." The Duke of York thus being in rightful and legal possession of the territory north and east of the eastern side of the Delaware River, did by lease, dated June 23, 1664, and by release dated June 24, 1664, grant, release and confirm to Lord John Berkeley and Sir George Carteret, all that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east by the main sea and part by Hudson river and hath upon the west Delaware bay or river, extending south as far as Cape May and to the northernmost branch of the said Delaware river, which is forty-one degrees and forty minutes of latitude, etc. This tract was to be called by the name of New Caesarea or New Jersey, and to be held by said Berkeley and Carteret in fee simple, thus leaving the Delaware River from its easterly side, as well as the islands in it, the sub aqueous soil and the territory of Delaware still in the lawful possession and ownership of the Duke of York, from whom the title to the lands in New Jersey to the easterly side of the river Delaware begins, insofar at least as the English title is concerned. On March 4, 1681, and published by royal proclamation on April 2, 1681, King Charles II, by his letters patent, granted on to William Penn for and upon the considerations heretofore mentioned, his heirs and assigns, the State of Pennsylvania, ("that

extensive forest lying twelve miles northward of New Castle on the western side of the Delaware), the southerly boundary of which was a circle drawn twelve miles distant from New Castle northwards and westwards. The said territory of Pennsylvania was made a province and placed under the government and control of William Penn and his heirs. Following this, and in order to further assure the title unto Penn and his heirs, on August 21, 1682, James Duke of York, after reciting that King Charles II had signified and declared his assent thereto and had granted the same by letters patent to William Penn and his heirs, did grant to William Penn the same lands to wit, the territory or province of Pennsylvania. On August 21, 1682, being the same day, by a deed signed and sealed but not witnessed James, Duke of York, did demise and grant to Penn the town of New Castle, otherwise called Delaware, and all that tract of land lying within a circle of twelve miles about the same, situate, lying and being upon the Delaware river in America, and all islands in the said river Delaware and the said river and soil thereof, lying north of the southernmost part of the said compass or circle of twelve miles about the town, for ten thousand years from the day before the date thereof. On August 24, 1682, James, Duke of York, by deed duly sealed and delivered in the presence of witnesses, did demise, grant, bargain and sell to William Penn, Esq., son and heir of Sir William Penn, knight, deceased, "out of a special regard to the memory of and many faithful and eminent services heretofore performed by the said Sir William Penn, to his said majesty and royal highness and for the good will which his said Royal Highness hath and brought to said William Penn, and for and in consideration of the sum of ten shillings to him in hand paid by the said William Penn," and to his the said Penn's heirs and assigns forever. "All that the town of New Castle, otherwise called Delaware,



and all that tract of land lying within the compass or circle of twelve miles about the same, situate lying and being upon the river Delaware, in America; and all islands in the said river Delaware, and the said river and soil thereof, lying north of the southernmost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises, duties, jurisdictions, liberties and privileges thereunto belonging; and all the estate, right, title and interest, powers, property, claim and demand whatsoever of his said Royal Highness of, in or to the same or any part or parcel thereof. Saving always and reserving to his Royal Highness, his agents and servants, free use of all ports, ways and passages into through and out of the bargained premises and every part and parcel thereof. To have and to hold the said town and circle of twelve miles of land about the same, islands and all other of the before mentioned or intended to be hereby bargained premises, with their appurtenances unto the said William Penn, his heirs and assigns, to the only use and behoof of him, the said William Penn, his heirs and assigns forever."

Covenants for further assurances in the law during the space of seven years were included in the provisions of this deed. John Moll, of New Castle, and Ephraim Herman, of New Castle, jointly, and either of them severally were therein appointed the Duke's lawful attorneys, with full power to enter upon said lands and afterwards "to deliver quiet and peaceable possession and seisin thereof or of any part or parcel thereof in the name of the whole to the said William Penn, his heirs and assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to have the quiet and peaceable possession thereof, according to the true intent and meaning of these presents. And his said Royal Highness doth hereby allow of, ratify and confirm whatsoever the said

John Moll and Ephraim Herman, his said attorneys, shall lawfully do or cause to be done in and about the premises, by virtue of these presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof." This deed was signed and sealed "James (L S.)", and was "sealed and delivered in presence of J. Werden, George Mann."

It may be interesting here to pause and, with a slight digression, consider for a moment the history of this "Twelve mile circle about New Castle," which has taken such a prominent and famous part in American history. What was the occasion that gave rise to it? What was its purpose? Where did it extend, and where was its central or starting point? Although it will be again referred to in another connection, when the disputes and contests over the validity of Penn's title come to be considered in their proper and chronological place. The primary purpose of the beginning of the circle was to establish amicably that part of the southern boundary line of Pennsylvania. Lord Baltimore, under his grant of June 20, 1632, claimed that his northern boundary extended to the fortieth degree of north latitude. It was thought by Penn and others of that day that a point twelve miles north of New Castle would reach that latitude, (Although as a matter of fact it was much further north, and extended through the northerly part of Bridesburg, in the Twenty-fifth ward of Philadelphia). New Castle was the seat of government, and the most important, indeed, only well known town at the time within Penn's possessions. He therefore fixed a point as the proper point from which to calculate the southern boundary of Pennsylvania. It was the only town or location well and accurately known in England. It was therefore inserted in the deed as the given point around which to run the circle. The Duke of

York reckoned a town as the unit of geographical division. Penn made the county the unit, (although he also established the townships in Pennsylvania and the hundreds in the three lower counties).

In early times, Virginia, Maryland, Delaware, and Pennsylvania "hundreds" existed but Delaware is the only State which still retains them. The counties in Delaware were called the three lower counties in contradistinction to the three upper counties of Pennsylvania. There were then but three counties in that state, to wit, Bucks, Philadelphia and Chester. The provision in the grant did not state the precise center of the circle. It was simply to be twelve miles north of New Castle. Therefore Penn issued a warrant to commissioners to fix and ascertain the division line between New Castle and Chester counties. The following report of the commissioners speaks for itself, and is given in full as a most interesting document, notwithstanding the starting point afterwards was adjudged to be wrong by the High Court of Chancery in England:

"By virtue of a warrant from William Penn, Proprietor and Governor of the Province of Pennsylvania and the counties annexed, bearing date ye 28th 8br, 1701, authorizing us to accompany ye magistrates of ye Countys of New Castle and Chester, or any three of them, within ye space of forty days after ye said date, to admeasure and survey from the town of New Castle, ye distance of twelve miles in a right line up ye river and from ye said distance to divide between ye said countys by a circular line, extending according to the King's letter patent and deeds of feoffment from the Duke of York; and ye said circular line to be well marked two thirds parts of the semicircle. These are to certify, that on ye 25th 9br, 1701, we met at New Castle with Cornelius Empson, Richard Hallowell and John Richardson, Justices of ye county of New Castle, and Caleb Pusey, Phillip Roman

and Robert Pyle, justices of ye county of Chester, who did unanimously conclude that the Beginning should be at ye end of ye Horse dyke next ye said town of New Castle, and from thence to measure due north, ye said distance of 12 miles, and at ye extent thereof, to run the circular line, first eastward down to the river, and then to return to ye said extent of 12 miles north and run ye said circle westward, said two-thirds part of ye said semicircle. And accordingly ye 26th day of ye said month, we did begin in ye presence of ye said justices at ye said end of ye Horse dyke and measured due north 12 miles to a white oak, marked with 12 notches standing on the west side of Brandywine Creek, in ye land of Israel Helm, and from said white oak, we run eastward circularly, changing our course from east southward one degree at the end of 67 perches, which is the cord of one degree to a 12 mile radius, at ye end of 43 chords, we came to Delaware River, on ye upper side of Nathaniel Lamplugh's old house at Chichester; and then we returned to the said white oak in Israel Helm's land, and by thence ran westward, changing our course from ye west southward, if at the end of every 67 perches as before until we had extended 77 chords (which being added to 43 chords), making a two-thirds part of a semi-circle to a 12 mile radius; all of which said circular line being well marked with three notches on each side of ye trees, to a marked hickory standing near the western branch of Christiana creek.

Surveyed ye 4th X br, 1701 By Isaac Taylor, Thomas Pearson.

Signed also after some further certification by

Cornelius Empson,

Caleb Pusey,

John Richardson,

Philip Roman,

Robert Pyle."

It is evident that there are some slight mistakes in the calculations made by the surveyors, but none sufficient from their standpoint to make any very substantial or material errors. There is much of historical interest surrounding the laying out of the boundary lines between the states of Pennsylvania and Maryland and western line of Delaware, and also much confusion in ascertaining them but they are so far removed from the purpose of the writer to wit: to confine himself closely to the history of the town of New Castle, that he omits any further reference thereto, except to say that in the celebrated case of Penn vs. Baltimore, begun in 1735 and practically decided in Penn's favor in 1750, (to settle the difficulties between Penn and Baltimore as to some of these lines), Lord Hardwicke in the High Court of Chancery of England decided that the center of the circle should be as near the center of the town of New Castle as could be, and he fixed the courthouse as such central point. After some further annoying disputes and contentions by Baltimore as to the extent of Lord Hardwicke's decision, in 1760 an agreement was entered into by Frederick, then Lord Baltimore, and the Penn heirs. Under it the Governor of Pennsylvania appointed the following commissioners to make and fix the boundary line: James Hamilton, Richard Peters, Rev. Dr. Ewing, William Allen, William Coleman, Thomas Willing, Benjamin Chew and Edward Shippen. No better men could have been selected for ability and honesty of purpose. The twelve mile circle around New Castle was drawn and surveyed from the courthouse of that town first by David Rittenhouse, a man peculiarly suited for the purpose. He was a mathematical genius, and ranked in scientific attainments next to Franklin. After spending three years in making the entire line between Maryland and Pennsylvania (including the circle) and it still being unfinished the proprietors thought the commissioners were slow and

became dissatisfied. So in 1763 Charles Mason and Jeremiah Dixon, noted for their accuracy in surveying, were called upon to inspect what had been done to see whether it was correct, and also to complete the unfinished part of the line. They resurveyed the circle and the tangent drawn to it for Delaware's western boundary. The result was that their survey did not vary an inch from the survey of Rittenhouse and the commissioners. Thus comprehensively, although perhaps crudely stated, is the history of the "12 mile circle about New Castle," which, through loss of monuments and other data, it would be difficult and perhaps impossible now to trace with any degree of accuracy, although there have been several attempts so to do, notably the attempt made in pursuance of an Act of Assembly of the State of Delaware passed at Dover, April 25, 1889, volume 18, Laws of Delaware, page 547, by virtue of which commissioners of Delaware and also of Pennsylvania, ran a new line, which is now recorded with their report in the recorder's office at Wilmington. But how far it conforms to or is in accordance with the line run by Rittenhouse and Mason and Dixon is unknown and ever will be. The real Mason and Dixon line does not include the circle, but runs from an arc of it westerly between Maryland and Pennsylvania, although in order to find the arc from which they had to run they were also obliged to survey the circle.

By another deed dated the same day as the last one referred to, to wit: August 24, 1682, the Duke of York bargained and sold on adequate consideration, to Penn in fee simple, all the remaining tract of land comprising the Delaware Territory, beginning twelve miles south from the town of New Castle otherwise called Delaware, and extending south to the Whorekills otherwise called Cape Henlopen. The provisions of this deed, except in the description of the property, were similar in all respects to the other deed. These two deeds made

up his paper title to the whole of the territory of Delaware. The possession or livery of seisin of the same, according to said deeds was duly given to Penn on October 28, 1682 at the town of New Castle by John Moll and Ephraim Herman or one of them by delivering to the said William Penn the "fort at New Castle, and of turf and twig and of water and soil of the river Delaware."

It is said by some that John Moll, being in Maryland was not present at the ceremony of delivery, and that it was made by Ephraim Herman alone. But the better opinion seems to be that they were both present. That Moll being absent on the 27th, the ceremony was adjourned until he returned on the 28th. Penn, for this reason, did not land until the 28th. But as the deeds provided that it might be done by both or either one of them, his presence or absence is immaterial. Upon the same day, and after the conclusion of the formal ceremony, the inhabitants of the town having heard the deeds read and witnessed the livery of seisin whereby they became subjects under the King to the said William Penn, "did in the presence of God solemnly promise to yield to him the said William Penn all just obedience and to live quietly and peaceably under his government." All of which proceedings are a matter of record which still remains to this day.

Shortly after this, in November, 1682, a proclamation was issued by the authority of the Duke of York to the justices of the peace, magistrates and other officers at New Castle, St. Jones, Deale, alias Whorekill at Delaware, which recited the deeds of August 24, 1682, and that the commander in chief and council at New York, being thereby fully satisfied of the said William Penn's right to the possession and enjoyment of the premises. The said proclamation also set forth that the said commander-in-chief and council therefore thought fit and necessary to signify and declare the foregoing to the persons to whom

said proclamation was addressed, to prevent any doubt or trouble that might arise or accrue, and to give them their thanks for their good services done in their several offices and stations during the time they remained under his Royal Highness's government; the proclamation then concluded, "excepting no further account than that you readily submit and yield all due obedience and conformity to the powers granted to the said William Penn in and by said indentures in the performance and enjoyment of which we wish you all happiness."

Under the covenants for further assurance in said deeds mentioned, the Duke of York within the time specified,--indeed within seven months thereafter, made application to King Charles II for an express grant under the great seal of England of the lands mentioned in the two deeds dated August 24, 1682. In granting this application King Charles II on or about March 22, 1683, did by his, letters patent grant unto the Duke of York, his heirs and assigns, all of the lands described in said deeds, and all of the King's estate, right, title and interest therein in fee to be held in free and common socage and not in capite or by knight service, the considerations for said grant being "four beaver skins a year, when the same shall be demanded, or within 90 days after such demand." It also gave the Duke of York full power of government over said territory under the King, etc. These letters patent provided that it is the King's will and pleasure to make the title of the Duke of York good and effectual in law, notwithstanding the not well or true reciting or mentioning of the premises or any part thereof, or of any former or other letters patent or grants whatsoever made or granted of the premises or any part thereof, by the King or any of his progenitors unto any person or persons whatsoever, bodies politic or corporation, or by other law or restraint, "incertainty," or imperfection whatsoever to the contrary in any wise notwithstanding,



etc. The Duke of York for the purpose of further assuring the title to Penn, deliver the said letters patent of the King into his (Penn's) possession. So that, even if there had been any defect in Penn's title under the deeds of August 24, 1682, this additional grant and delivery of the title papers to Penn for the purposes stated would cure it, both at law and in equity. First, under the principle of law which governs the conveyance of after-acquired property, or second, by creating a trust in favor of Penn as cestui que trust, and the Duke of York his trustee. But be this as it may, under these grants Penn took title and possession and remained in possession (except for a short period during the reign of William III, King of England, when he was removed from the government of his territories lest they might fall into the hands of France or Spain, but he was soon after fully and completely restored thereto "as Proprietor of New Castle and the territories depending thereon,") through himself and his heirs until the year 1776 at the beginning of the American revolution. Some writers have inadvertently stated that Penn's removal and restoration were made by Queen Anne. This error probably grew out of the fact that Lord Baltimore in 1708 presented a petition to Queen Anne, stating that the previous order of King William III, restoring Penn, was secretly and unfairly obtained and should be revoked. The Queen, however, dismissed the petition almost immediately upon its presentation. On December 10, 1682, at Chester, alias Upland, in the State of Pennsylvania, Penn as the Proprietor and Governor of the Province of Pennsylvania and the territory of Delaware, then known as the three lower counties, enacted a law called the Act of Union annexing the counties of New Castle, Jones and Whorekill, otherwise called New Dale, to the Province of Pennsylvania, as part of the territory thereof;

and also enacting that the people in the annexed territory should be governed by the same laws as the people of Pennsylvania.