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# AN ORIGINAL PAPER

UPON

# EARLY RECORDS

IN

# CAYUGA COUNTY CLERK'S OFFICE

PREPARED BY REQUEST
AND READ BEFORE THE

## CAYUGA COUNTY HISTORICAL SOCIETY

BY

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# Early Records in Cayuga County Clerk's Office.

BY GEORGE W. BENHAM.

In opening our sketch of the early records in the Cayuga county clerk's office, it might not be out of place nor irrelevant to refer, briefly, to the history of the office of county clerk and its abiding place since it has been the depository of all files and records which are found there today. The county clerk, during the colonial period, was constituted by his commission, clerk of the Court of Common Pleas, clerk of the Peace and clerk of the Sessions of the Peace in his county.

Under the laws of the Duke of York, promulgated March 1, 1665, for the government of the Colony of New York, it was provided that no sale of houses and lands within the Colony should be "holden good in law," (using the language of the law), unless the conveyance be made in writing under hand and seal and possession given on the part of the seller or, where possession was not given, the deed must be acknowledged and recorded. Recording at that time, involved simply the entry of such instruments, in abstract form, by the clerk of the Court of Sessions, who was also county clerk, giving grantor, grantee, date and brief description of land. This was the law in the colonies until 1710 when, owing to the fact that titles became very much complicated and that many deeds and writings relating to real estate were destroyed or lost before being entered for record, a law entitled "An act for the better settlement and using of lands in this Colony," was passed, which provided that every person, corporation, etc., who by themselves, tenants, servants, heirs or assigns had been seized or had taken the rents, issues and profits of any real property in the Colony for the term of ten years and should continue to so hold without any reverse claim being entered or presented, until Sept. 1, 1713, should from that day, be adjudged to be the true and lawful owner of said lands or estate.

This act was not to operate against minors, incompetents, or those imprisoned, provided any of this class should bring suit within three years after becoming legally competent. So we find that the law making the county clerk the custodian of the records affecting real property and requiring such instruments to be acknowledged before being recorded, emanated from minds living and participating in law-making over two hundred years ago.

Under our first state constitution the office was continued with the same duties as before. It was an appointive office, the appointive power being in the Council of Appointment. Under the constitution of 1821 it was made elective.

I do not find that the duties of county clerk were changed in any material respect from the colonial times, except in the designation of his office as a repository for additional files and records provided for by legislation from time to time, except in 1796, when an act was passed abolishing the office of clerk of the Circuit Court and Courts of Oyer and Terminer, which until this time, had been a separate and distinct office, and imposing the duties of the office upon the county clerk, who was made *ex-officio* clerk of all the courts of record, except the Surrogate's Court, in the county. The late clerks of said courts were directed to deliver all court records to the county clerk. The record delivered to the county clerk of Onondaga, of which Cayuga was then a part, is now in our clerk's office and is the first book in the series of court records.

Previously to bringing the county records to the village of Auburn there had been considerable strife and agitation over the question of locating the county seat where all county records should be kept, courts should be held and all of the county business should be transacted; the need of which had become quite imperative in view of the fact that the courts were being held at Scipio and Cayuga, while the jail was located at Cayuga, the clerk's office at Aurora, and the general business of the county, because of convenience to its scattered population, was being performed in various widely separated places. But when Seneca county was detached from Cayuga, March 27, 1804, this changed the geographical condition in our county so as to render this system inconvenient and impracticable.

The discussion became animated and the rivalry for the site became interesting and spirited. Aurora, Sherwood, Cayuga, Levanna and Hardenburgh Corners were aspirants. The promoters of the claims of Sherwood by a strategic movement succeeded in having inserted in the act dividing the counties above referred to, a provision for the appropriation of $1,500 for building a court house and jail and appointing a commission of three members to superintend the work and directing that the structures should be erected on the Poplar Ridge road and within one mile of the south end of lot 46 in the town of Scipio (now Venice). The commission had discretion within this radius only and decided upon a site near the present postoffice of Sherwood. This law and the selection of this site proved so unpopular

and adverse to the will of the people that the commission never proceeded to fully execute its trust, and an act was passed March 16, 1805, repealing the measure and appointing a commission of three disinterested persons, consisting of Edward Savage, James Burt and James Hildreth, with power to locate a county seat. During this same year these commissioners agreed upon the Bostwick lot at Hardenburgh Corners as the site, but owing to dissatisfaction on the part of those who were interested in the selection of other places the supervisors refused to appropriate money with which to erect the necessary buildings, and the commissioners, after selecting the site, abandoned further operations. The citizens, anxious lest delay might jeopardize the maintenance of the county seat at Hardenburgh Corners, raised funds among themselves and commenced the buildings on the site of the present court house, which was then the property of William Bostwick. The subscription soon became exhausted, however, and the need of the appropriation of public money became apparent.

Assemblyman Elijah Price introduced a bill in the state legislature in 1808, repealing so much of the act of 1805 as named the commissioners and providing for the appropriation of necessary funds. John Grover, Stephen Close and Noah Olmsted were appointed commissioners to superintend the completion of the buildings which had been commenced by the people. They were directed to finish the building and obtain title to one acre of land and to reimburse the private citizens who had contributed to the fund. The conveyance was to be made to the Board of Supervisors in trust, and the deed was to be deposited in the county clerk's office for safe keeping. Pursuant to the above act, William Bostwick and Hannah, his wife, conveyed to the supervisors of the county, in trust, one acre upon which the present county buildings now stand. The deed was dated May 7, 1806, was executed in the presence of E. T. Throop and Hackaliah Burt as witnesses, acknowledged before Elijah Miller, master in chancery, and was recorded by Peter Hughes, county clerk. The original deed is still in the office and is retained there, for safe keeping, pursuant to the provisions of said act.

During the controversy over the site for the court house and jail, the county clerk's records remained at Aurora where they had been directed to be kept from 1794, when Onondaga county was separated from Herkimer.

There was no provision in the acts providing for court house and jail, for the erection of a clerk's office, and when the records were brought to Auburn in 1807, they were kept at the house of Peter Hughes, the county clerk, who resided upon the present site of the postoffice.

In 1807 an act was passed authorizing the building of the first clerk's

office. This act appropriated $800, but the amount was insufficient and another appropriation was made in 1814 to complete the structure. The records were then moved from Mr. Hughes's residence to the new clerk's office. The building stood near Genesee street in front of the present clerk's building. That it was not built in an exceedingly substantial manner is deduced from the fact that in 1830 the supervisors of our county in a petition to the legislature stated that at their last annual meeting they had examined the clerk's office and had found it in such a ruinous condition that in their judgment it had become necessary to erect a new office. In connection with this petition the legislature enacted a law in the winter of 1830, appropriating $1,000 to build a new fire-proof clerk's building upon the court house lot in the village of Auburn, and appointing Nathaniel Garrow and Walter Weed as a commission to superintend the work of building. The outcome of this statute was the erection of a small stone building which served as our clerk's office until the records were again removed into our present and more commodious building, January 1, 1883.

The office, as we find it today, is filled almost to overflowing with records and files of various instruments and legal documents that represent the accumulation of a century and ten years; a determination of those that would be of the most interest and value to you has been a matter of no little consideration. Each paper filed and every instrument recorded has the authority for its presence in the clerk's office in the statutes and laws of our state.

Among the principal records are deeds, mortgages and judgments. These are all arranged in numbered volumes and are indexed in alphabetical and chronological order. The deeds, at the present time, are divided and indexed into three divisions, viz.: Military deeds, city deeds and reservation deeds, or deeds of land on the Indian reservation located on the east side of Cayuga lake.

A short review of the history of the origin of these different divisions of records may not prove uninteresting. On September 16, 1776, congress passed resolutions for the enlistment of soldiers to serve during the Revolutionary war and resolved that each state was to furnish its respective quotas, and that congress should make provision for granting lands to the officers and soldiers who should thus engage in the service and continue therein to the close of the war, or until discharged by congress, and to the representative of such officers and soldiers as should be slain by the enemy. The expenses of said lands were to be borne by the states in the same proportion as other expenses of the war, and were to be granted in the following proportion: To a colonel, 500 acres; lieutenant-colonel, 400 acres;

major, 400 acres; captain, 300 acres; lieutenant, 200 acres; ensign 150 acres; each non-commissioned officer and soldier, 100 acres.

Later, in August, 1780, congress further provided that a major-general should have 1,100 acres, and a brigadier-general should have 850 acres.

By resolution passed in the state legislature March 27, 1783, it was resolved to discharge the obligation of congress, and in addition, as a gratuity to the said line and to evince the just sense the legislature entertained of the patriotism and virtue of the troops of this state, to grant to each non-commissioned officer and private, 500 acres; a captain, 1,500 acres, and a proportionately larger amount to each officer of higher rank. This land was to be located in the western and central part of the state in the district reserved for the use of the troops of this state, which is now known as the military tract and embraces all and parts of the following counties: All of Onondaga, Cayuga, Seneca and Cortland and parts of Tompkins, Oswego, Schuyler and Wayne.

By an act passed May 11, 1784, the governor, lieutenant-governor and other state officers were constituted and appointed commissioners for granting the lands promised as bounty and gratuity lands, and by a law enacted February 28, 1789, these commissioners were authorized to direct the surveyor-general to lay out as many townships in the military tract as would contain land sufficient to satisfy the claims of all such persons as were or should be entitled to grants of bounty land; which township should respectively contain 60,000 acres of land, to be laid out as nearly in a square form as circumstances would permit, and be numbered from one progressively. The commissioners of the land office were authorized to designate the several townships by such name as they should deem proper, and no part of said townships was to interfere with or be laid out on the part of the lands reserved by the Onondaga or Cayuga Indians for their own use in the cessions or grants made by them to the people of this state. This reservation included what is known as the East Cayuga reservation on the east side of Cayuga lake in this county.

The surveyor-general was directed to make a map of each township, and divide such township into 100 lots, each lot to contain 600 acres, and immediately after filing such map in the office of the secretary of state the commissioners of the land office were to advertise six weeks, requiring all persons entitled to grant or bounty or gratuity lands who had not by themselves or their legal representative already exhibited their claims, to exhibit the same on or before January 1, 1791.

The surveyor-general, not completing his survey of the lots provided for in this act, and a general delay following, due to lack of funds to pay for the services of surveyors, a law was passed April 6, 1790, which provided that fifty acres in one corner of the respective lots to be laid out should be subjected to the payment of the sum of forty-eight shillings to the surveyor-general for compensation in full for his services and the expense of marking, numbering and surveying each of the lots. This reservation is recognized by those who are familiar with the records of the county clerk's office as "Survey Fifty," and is referred to very frequently in the descriptions to titles.

Under the provisions of this act the commissioners were directed to cause 100 ballots to be made and numbered from 1 to 100 and marked with the words "Township No. 1," and also a like number of ballots made and numbered for "Township No. 2," and so on until ballots were made and numbered for each of the townships. After having caused the ballots or tickets to be rolled up they should then require the whole of said ballots or tickets to be put into a box and whenever they had declared or determined, from the evidence before them, who were entitled to bounty or gratuity lands, they should cause one ballot to be drawn from said box, or as many ballots to be drawn as such persons so drawing should be entitled to shares of 600 acres, each ballot representing 600 acres, and the lots in each township so drawn should be the separate and distinct shares of such person, his heirs and assigns.

After the completion of the balloting, letters patent were to be issued to each of those entitled to the grants of land; such letters were to contain a reservation to the people of this state, of all gold and silver mines found upon premises so conveyed.

Six lots were reserved in each township for the following purposes: One for promoting the gospel, and a public school or schools; one for promoting literature in this state, and the remaining four lots to satisfy surplus share of commissioned officers and compensation for such persons as should by chance draw any lot or lots, the greater part of which might be covered with water.

The said commissioners were further directed that whenever it should appear that any persons applying for bounty or gratuity lands had not received from the United States the bounty promised to such persons by congress, or in case the said commissioners should not be able to procure the assignment, from a soldier, of land to which he was entitled under the provisions of congress, 100 acres were reserved in each lot to the people of

the state, which was laid down in the southeast corner of said lots, and is referred to in our records as States Hundred Acres. For example: A private soldier was entitled to 100 acres from the United States, by an act of congress, and 500 acres by an act of the state legislature; the townships were divided into 600 acre lots, and when a private drew 600 acres this covered what he was entitled to receive from both the general government and the state, but he might have received the equivalent to his bounty of 100 acres before, in which event he would not be entitled to 600 acres; or if he had not received his bounty under the act of congress, the state, in giving him 600 acres covered both claims, but required of him an assignment of his claim against the government as a voucher that they had performed their part of the obligation under the act of congress providing for bounty, which was paid by the state.

At a meeting of the commissioners of the land office held July 3, 1790, the names of the first twenty-five townships were agreed upon. It is unnecessary to name them as they are quite familiar to you all, particularly those in our county. It is apparent, however, that the names of some of the famous Roman generals and statesmen were intended to be perpetuated in our townships. Several lots were drawn, and by the proceedings of different meetings of the commissioners, we find that the twenty-five townships were exhausted and it became necessary to survey three additional, to wit: Junius, Galen and Sterling; Sterling in our own county being the last township to complete the twenty-eight townships known in the state of New York as the "Military Tract."

Under the provisions of different acts providing for the appropriation and distribution of bounty or gratuity lands, the commissioners of the land office were required to keep two books, in which were entered accurately a complete record of the drawings of the lots. One of these books was filed in the office of the secretary of state and the other in the office of the county clerk of Montgomery county, of which Cayuga was then a part. The original ballot book is still in the office of the secretary of state at Albany, and there is filed in our own office a certified copy, which was published and filed in 1825. It contains the official return of New York regiments in the Revolution, and gives the name of the soldier who drew each lot, and also the name of the patentee. Of local interest we find that Alexander McCoy, a private, drew lot No. 46; John Doughty, a captain, drew lot No. 47; Nicholas Avery, a private, drew lot No. 56; Peter Gansevort, a colonel, drew lot No, 57, four lots of the original township of Aurelius and which now form the major part of the city of Auburn.

In order to designate which of the six lots reserved in each town were to be the gospel and literature lots, respectively, the supervisors of the several towns in our county were enjoined by an act passed April 11, 1796, to designate at their next annual meeting which lot in each of said towns should be appropriated to the support of the gospel and schools and to take the same action in relation to the lots for the promotion of literature, and to make three lists of the same to be filed with the surveyor-general, secretary of state and county clerk respectively. The original list or designation made by the supervisors, pursuant to this act, is now in our clerk's office.

By subsequent legislation the lots so reserved were placed in charge of the supervisor, together with commissioners appointed for that purpose in each of the towns. Some of those that went for the support of literature were conveyed by the state to the trustees of Union College of Schenectady, with provisions that should any of them be sold by said college the proceeds were to be invested and the revenue appropriated to the support of the president and professors of the college. Lot No. 88, Sterling, which was reserved for literature, was granted to the Auburn academy in 1825, but was re-conveyed to the state in 1827 in consideration of $2,000 as appropriated at that time for the use of the academy. Others were sold by the state and the proceeds formed a permanent fund for the support of common schools. Many of the gospel and school lots remain unsold and are held under lease in charge of the supervisor of the town, the proceeds of which were formerly equally divided for the benefit of gospel and schools, respectively, but are now entirely applied and apportioned for the benefit of schools in the several school districts in the towns.

On February 16, 1791, the county of Herkimer, which then embraced, with other lands, our own county, was separated from Montgomery.

After the act providing for grants of bounty and gratuity lands to the Revolutionary soldiers had been passed, the soldiers became vested with a prospective claim to real estate and the scarcity of money rendered them easy prey for speculators. For a merely nominal consideration many sold their interest in such lots as might be drawn by them. For example: The soldier who drew lot 48, Aurelius, a part of which embraces a portion of land in the eastern part of Auburn, sold his interest for £6, 10s. True, it was a lottery to buy before the soldiers had balloted, but judging from the consideration in most of the assignments, sufficient care was taken by the purchaser to insure a good investment, regardless of the fate of the ballot. Many of the soldiers executed assignments of their interests in such lands to other per-

sons, before they had been discharged from the service or the lots had been secured by ballot. After they had received their patents, pursuant to ballot, other transfers of different nature were made, but were not recorded.

Many frauds were perpetrated respecting the titles to property, by forging and antedating conveyances and by conveying the same lands to different persons, so that it became very difficult to know in whom the legal title to some of the lands was vested. For a remedy, therefore, and in order to detect frauds and prevent them in the future, an act for registering deeds and conveyances relating to the military lands was passed January 8, 1794. This act is the authority for the first record of deeds in our county clerk's office. It provided that all deeds and conveyances theretofore made and executed, or purporting to be made, whereby any of said lands might be in any way affected, should on or before the first day of May, 1794, be delivered to and deposited with the clerk of the city and county of Albany, and that all deeds and conveyances theretofore made and executed, which should not be so delivered and deposited on or before that day should be adjudged fraudulent and void, as against any subsequent purchaser or mortgagee for valuable consideration. The clerk in the presence of the person delivering the deed was required to register the name of every person whose name appeared in the instrument, the date of the deed and the name of the person to whom it was granted, for which service he was to receive a fee of sixpence. The deeds or conveyances were then to be filed in packages, marked in alphabetical order, and were open to the inspection of any person desiring to examine them. The clerk of Albany county was directed to deliver, on or before the 1st day of June, 1794, all of these deeds and conveyances deposited in his office, to the clerk of the county of Herkimer.

The act further provided that all deeds and conveyances thereafter to be made and executed whereby any of these military lands might in any way be affected, should be recorded by the clerk of the county of Herkimer, in books provided by him for that particular purpose and in which no other matters were to be entered, and that every deed and conveyance, excepting mortgages duly registered, thereafter to be made and executed, should be adjudged fraudulent and void against any subsequent purchaser or mortgagee unless recorded, as by this act directed, before recording the deed or conveyance under which any subsequent purchaser or mortgagee should claim. No such deed or conveyance could be recorded unless it had been duly acknowledged according to law, and all were to be recorded in order as of the time when delivered for that purpose; and a certificate should be endorsed on every such deed and conveyance showing the day, hour of its

receipt and the book and page in which it was recorded, which certificate should be signed by the county clerk. The need of establishing some systematic and safe method in protecting the title of real estate from frauds is demonstrated in the fact that this law adjudged any person who should forge such certificate or endorsement of the county clerk as guilty of felony, punishable by death as a felon. The books as provided in this act were never delivered by the clerk of Albany to the clerk of Herkimer county, owing to the fact that two months later, to wit: March 5, 1794, all that tract of land called the military tract was separated from Herkimer county and was called and known by the name of Onondaga, and the provisions of the act in relation to the registering and recording of deeds affected only the military lands, none of which remained a part of Herkimer county.

After Onondaga was established and for the further reason that the inadequate and crude means of publishing the law had prevented many interested persons from becoming informed as to their duty in relation to title of lands, an act was passed March 27, 1794, extending the time limit for depositing such conveyance for one year, and the time for the clerk of Albany county to deposit such papers in the county of Herkimer was also extended one year and the papers and records were ordered filed with the clerk of Onondaga county instead of Herkimer. The clerk of Herkimer county, however, had commenced the record which he was required to keep under the provisions of the law of January 8, 1794, and had recorded six deeds dated subsequent to that date, when Onondaga was set off, and he delivered the book to Benjamin Ledyard, the first clerk of Onondaga county, who also, at the same time, received the filed papers from the Albany county clerk, which said clerk was directed to deliver to him. But Clerk Ledyard did not continue the book brought from Herkimer county for the same purpose; he used it for recording such deeds as were dated prior to January 8, 1794, and had been filed with the Albany county clerk, that were executed and paid for according to law. This book is known as "Herkimer A, Miscellaneous Records, Onondaga." It is called Herkimer, because of the fact that the lands conveyed by deeds recorded therein were part of Herkimer county at the time of the execution of these deeds. This book also contains sundry miscellaneous records, such as powers of attorney, appointments, articles of incorporation, etc. The papers were delivered by the Albany county clerk to County Clerk Ledyard at Aurora and are still in packages, labeled and stored away in the vaults of the present clerk's office. They afford a very interesting subject of research. Many of them are in excellent condition and well preserved; a large number are on parchment and bear date as early as 1783.

Prior to February 5, 1798, it was deemed essential to the validity of certain proceedings in Supreme Court, and also of certain legal documents generally, that they should be engrossed on parchment.

At this time an act was passed legalizing the use of paper instead of parchment in all proceedings in Supreme Court and in connection with other legal papers, except the processes of said court. It was also a custom in colonial times, and for some years prior, in executing agreements, conveyances and other instruments of importance, to execute the same in duplicate, upon one sheet of parchment or paper, and then separate the same by cutting in an irregular manner, or by indentation, so that each party interested in the agreement should have a copy, and in the event of any question arising as to the legality or validity of either, it should be tested by matching the two parts. From this custom the word "indenture," which is now used in our forms of deeds and mortgages, had its origin. These packages contain many old papers which are executed on indentured paper. There were also soldiers' discharges, upon which appears the original signature of George Washington, which formed the foundation to the title of many tracts of land in our county, and in many instances assignments by soldiers who had received their discharge, are executed on the back. There are also the original patents from the state, signed by different governors, appended to many of which is the first great seal of the state of New York, which was a pendant seal, impressed in wax, about three and a half inches in diameter attached to the instrument by ribbon, upon one side of which were the motto "Excelsior" and the legend "The Great Seal of the State of New York, and on the reverse a rock in the ocean, with the legend "Frustra."

The register, made by the Albany county clerk, of deeds deposited pursuant to the acts of January 8 and March 27, 1794, was delivered by him to County Clerk Ledyard in the year 1794, and is now among the records of the clerk's office, and in a good state of preservation.

Only a few of the old papers were recorded in the Herkimer book, as many of them were not executed according to the law entitling them to be recorded, and in others the parties did not care to pay the fee for recording. Such as were not recorded remained so until 1855, when an act was passed directing the clerk of the county of Cayuga to record all of such filed papers as had not been recorded. In pursuance to this act the same were recorded, and they now comprise volumes A, B, and C of filed deeds. The disputes and litigations regarding the title to lands continued to occupy the attention of the courts, the filing of conveyances of title, provided for by the act of 1794, disclosing the fact that there were many persons claiming

title to the same land, consequently a convention of delegates from a number of towns in the military tract presented a petition to the state legislature for a law authorizing a speedy and equitable mode of settling these disputes. Therefore, on March 24, 1797, an act was passed appointing Robert Yates, James Kent and Vincent Matthews, commissioners, with full power to hear, examine, award and determine according to law, all disputes and controversies respecting the titles and all claims whatsoever to any of said lands. They assembled for their first meeting at Aurora, then in the county of Onondaga, and from time to time at such other places as they saw fit, and proceeded to execute the trust reposed in them, and caused their awards or determinations to be entered in a book provided for that purpose, which, after the expiration of two years from the making thereof, become binding and conclusive to all persons, except such as should, within two years, give notice and file their dissent therefrom; and when they had executed all the trusts and duties committed to them, the commissioners were to deposit the book in the office of the clerk of the county of Onondaga, there to remain as a record of their proceedings. When dissent to their adjudication was so filed, the question of title was to be tried out by the courts. The book containing the determination of the commissioners and notice of dissent, etc., was filed in our clerk's office, pursuant to said act, and is known as the "Book of Awards."

On the 8th day of March, 1799, Cayuga county was set apart from Onondaga. By the provision of this act all the records, files, papers, etc., which were in the clerk's office at Aurora were retained by the first clerk of Cayuga county, Benjamin Ledyard, who had also been the first clerk of Onondaga county. By an act passed April 4, 1800, the office of the clerk of Cayuga county was declared to be the proper office for the recording of deeds, instruments and papers then deposited in that office, and of all deeds, instruments and papers bearing date prior to January 8, 1794, notwithstanding the land to which said deeds, instruments and papers related might be within the county of Onondaga. None of these early records affecting property in the present county of Onondaga were filed with the Onondaga county clerk until 1847, when an act was passed directing the clerk to transcribe such records and files of deeds, mortgages, and other papers in Cayuga county clerk's office as related to, or affected lands in the present county of Onondaga.

The act of January 8, 1794, authorizing the first record of deeds required that nothing but deeds of land on the military tract should be recorded in these books and required a series of records and indices devoted entirely to

this purpose. The first of this series, which contained deeds dated subsequently to said act, is called "Onondaga A." There are seven volumes of deeds under this title, lettered progressively, until Cayuga was separated from Onondaga; when began the system of "Cayuga deeds," beginning with Volume A.

In obtaining title to the military tract by treaty with the Indians, there was reserved to them one hundred square miles of land lying on either side of Cayuga lake, which is now known as the Cayuga reservation. When this reservation was made, at the request of the Cayuga Indians, a grant of several hundred acres was made to Peter Ryckman, who was on friendly terms with them. This grant is known as the "Ryckman reservation." Other small reservations and grants were made which were afterward obtained by the state and subdivided and sold, the record of all the sales of these lands being merged into the general reservation.

In 1794 the Cayuga reservation was ceded to the state of New York by the Indians, with the exception of a tract two miles square near the village of Union Springs, which was reserved by the Indians for their residence, and which was called the "Residence reservation." This was also finally ceded to the state of New York, and, together with all of the lands of the original reservations for the purpose of a system of record, is known as the Cayuga reservation. The portion of the large reservation so reserved on the east side of Cayuga lake was surveyed and plotted into 150 lots of 250 acres each, under an act passed in 1795, which provided that a copy of said map and one of the original Field books should be filed in the county clerk's office and also with the secretary of state. The Field book and map were filed June 27, 1796, and are still in the clerk's office. The Field books contain the original notes of the surveyor, giving direction and distance of each course of the several lots, and reference is made in the description of each lot to the condition of the land and the nature of timber. The correctness of the survey is sworn to by Joseph Annin and John I. Cantine, the surveyors.

After completing the title to the reservation, grants were then made of this property by the state, which were required to be recorded as other deeds. But in view of the provisions of law requiring that none but military deeds should be recorded in the books then in use, a system of books for recording reservation deeds was inaugurated by the county clerk. The first reservation deeds were recorded in the book known as "Miscellaneous Record A, Cayuga." This book was also used to record powers of attorney, mortgages, and also miscellaneous records, including articles of incorporation, appointments, etc. Of local interest the article of incorporation of

St. Peter's church, dated May 17, 1806, appears in this record, in which it is shown that among the incorporators were William Bostwick, Dr. Hackaliah Burt, Ebenezer Phelps and others.

The first instrument recorded in this book is a power of attorney from Aaron Burr to Benjamin Ledyard, dated November 12, 1794, authorizing the latter to sell and convey any real property in the then Onondaga county belonging to Burr. This system of Miscellaneous and Reservation deed records thus commenced was continued through Liber C. M. R., which is interpreted "Miscellaneous Cayuga Records B;" Liber M. R. W. C., which means "Miscellaneous Record, Reservation and Wolcott Deeds C," and Liber M. R. W. D., which signifies, "Liber D, Miscellaneous Record, Reservation and Wolcott Deeds." From this time the series was wholly devoted to Reservation deeds, and a new series of miscellaneous records was commenced under the title of "Miscellaneous Records A." Both of these are continued today under the system inaugurated at that time. The occasion for recording Wolcott deeds in separate volumes from other military land books in Cayuga county clerk's office, has been a matter of considerable conjecture for some time; but the theory of Gen. John S. Clark is no doubt the correct explanation. He says that when the claim of Massachusetts for a large portion of the western part of our state was pressed against us, it finally resulted in a compromise, by which Massachusetts was given the right of pre-emption over a territory including all of the state west of a line to be drawn due north and south across the state, from the 82nd milestone in the line between New York and Pennsylvania. This line passed west of Geneva, and became the west boundary of the military tract, and was surveyed and granted to the soldiers of the Revolutionary army of this state. Massachusetts held the fee of all land in this state west of that line, the state of New York retaining sovereignty and political jurisdiction. A few years later it became evident that the line was run incorrectly, at least, if not fraudulently, and a new line was established from the same 82nd mile-stone, which passed some three or four miles east of Geneva. The strip between the two lines was called "The Gore," and Charles Williamson, through certain *mesne* conveyances, became the owner of the fee of this strip.

This condition of affairs was very embarrassing, and after due consideration the state proposed to Williamson a grant of a tract of land in the present Wayne county containing 56,682 acres, within the military tract, which had not been granted as bounty lands, as a compensation for his interest in "The Gore." Williamson accepted the proposition, and a deed, under the authority of law, was duly made and delivered. Then arose a difficulty.

The county clerk was prohibited by law from recording in the regular deed books of the military tract any conveyances other than those emanating from soldiers' rights and other rights. The original deed to Williamson was recorded in the Albany office, and when deeds from Williamson were filed for record in the Cayuga county clerk's office they were recorded in the Book of Miscellaneous Records with Reservation deeds and other miscellaneous papers. The township granted to Williamson was named Wolcott. The record of these deeds discloses the fact that the title to the land in the town of Wolcott has been connected quite closely to the Royalty of Great Britain, this property having been sold to Sir William Pulteney of Scotland, whose former name was Johnstone, and who married a daughter of the cousin of William Pulteney, Earl of Bath, and upon inheriting the property of the Earl, changed his name to that of his benefactor.

The last Sir William Pulteney died in May, 1805, after which the property descended to his daughter, Henrietta Laura Pulteney; she died in 1808, and Sir John Lowther Johnstone, her cousin, became the owner; he died in 1811, devising all his lands in America, including the Wolcott tract, to Ernest Augustus, Duke of Cumberland, fifth son of George III and King of Hanover, Charles Herbert Pierrepoint, called Viscount Newark, and others of less prominence, and from this title the property has been conveyed to various persons in our state.

On January 1, 1867, a series of books was commenced for the record of deeds of property in the city of Auburn, from which time, for the purpose of convenience, all such deeds have been recorded and indexed in separate volumes, from deeds of military and reservation lands outside of the city.

Prior to 1827 there were no general indices to the records of deeds or mortgages, and an investigation for a particular deed or mortgage required the examination of each individual volume.

By chapter 204 of the laws of 1827, the clerks of all the counties in the military tracts and Cayuga and Onondaga reservations, were directed to make and keep a numerical index of military and reservation deeds, which should contain, under number of the lot, a reference to all deeds registered or recorded affecting such lot, specifying book and page in which they were recorded, and also a like index for all mortgages recorded. This method of indexing was continued until 1863 when it became so cumbersome and inconvenient that the legislature authorized the clerk to make a general alphabetical index of both grantor and grantee of deeds. These indices were used until 1879, when the present system, known as the Campbell index, was adopted.

## MORTGAGES.

The record of mortgages extends to 1794. They were not recorded in full at that time. The act of February 26, 1788, required simply that an abstract of the mortgage be registered and that when any dispute or doubt arose concerning the priority of mortgages given to different persons upon the same property, the mortgage first registered should be declared a prior lien, provided it was made for valuable consideration and in good faith. Since 1822, the mortgages have all been recorded in full. There is one Onondaga county mortgage book designated "Book A." The series of Cayuga records begins with "Book A," and progresses to "Z," and continuing with No. 27, embraces 142 volumes.

## ACKNOWLEDGMENTS.

From the time of the laws of the Duke of York, it has always been a prerequisite to the registry or recording of deeds and mortgages in this state, that they should be acknowledged. The records disclose, however, a variety of forms of acknowledgment. The first ones were simply an acknowledgment of signature. February 26, 1788, an act was passed which required that a wife joining with her husband in a deed should be examined separate and apart from her husband, and must acknowledge that she executed such deed without any fear or compulsion on the part of her husband. This was the law for some time, but the ascendancy and business development of the alleged weaker sex which has been so marked in latter years, rendered this precaution unnecessary, and the requirement has been eliminated from the statutes, and the married woman today joins in a contract or conveyance with her husband without the inference of subjugation to husband's will or influence against her own judgment. Her intelligence and independence is placed upon a par with her husband so far as the forms and requirements are concerned, and the insinuation that they were not to be trusted to act for themselves has been removed, no doubt, permanently. The only change likely to be suggested with the evolution of time and events may be the necessity of throwing this same safeguard against undue influence, around the men, and require their private acknowledgment to test the freedom and validity of their acts.

The requirements of acknowledgments were still deficient; many forgeries and frauds were committed by persons who impersonated the rightful owners of the property by executing a conveyance and going before an officer authorized to take acknowledgments, and attesting the signature attached as the one of the rightful owner. An officer was not bound to know the

person presenting himself for the purpose of acknowledgment, but in 1797, to prevent such fraud and forgery, the additional requirement was provided, that no officer should take the acknowledgment of a person executing conveyances of real property, unless he should know or have satisfactory evidence that the person making such acknowledgment was the person described in and who executed such instrument, and no such instrument should be recorded unless proved and acknowledged in this manner. Officers violating this law were liable to treble damage to every person injured thereby; but owing to the limited and dilatory means of publishing the law in those days, many deeds and conveyances were illegally executed and recorded before the existence of the law became known, and many clerks and other officers became liable to damages under its provisions. In February, 1798, the legislature passed an act legalizing these papers and absolving the officers from the penalty thus incurred. Eliminating the separate examination feature, which was dispensed with by the laws of 1880, the requirements of the acknowledgment at the present time are practically the same as they were in 1797.

The form and manner of taking oaths in connection with conveyances of real property, and also in the courts, has varied in some respects from the early times. Under colonial laws every citizen took the oath required by law by laying hands on and kissing the Bible or the Holy Evangelists of Almighty God. In 1734, the colonial legislature passed an act which permitted Quakers to declare and affirm, and in 1798, this privilege was extended to the Shaking Quakers and a religious sect called "The Universal Friends." In 1775 an act entitled "An Act for an indulgence to persons of scrupulous consciences in the manner of administering oaths," was passed, which permitted such persons as were of the religious persuasions distinguished by the name of the "Associate Presbyteries" and "Synods" to swear with the uplifted right hand. After several subsequent acts regulating oaths and affirmations, the option which exists today, was extended to every person to make oath on the Bible or with uplifted hand, or to declare and affirm, as he saw fit.

In the spring of 1795, at the annual town meeting, held in and for the town of Aurelius, which then embraced the city of Auburn, it was voted that a book be purchased with the town money, for the use of said town. Pursuant to this authority, John L. Hardenburgh, who was then the town clerk, purchased a book which is now known as the "Aurelius Town Record" and which is deposited in the county clerk's office. It contains the town records from 1795 to 1828, inclusive. This record is one of considerable

interest and importance. Many of the surveys of the old highways of the town, which includes several streets of our city, are recorded therein, and it is frequently consulted in determining streets and road lines.

At the annual town meetings many matters relating to the general interest and management of the town were discussed and submitted to a vote of the electors. The result of such determinations appears as part of the town records. For illustration: It appears at the meeting held on the first Tuesday in April, 1797, it was voted that swine be allowed Free Commons, which provision permitted swine to run at large, on any road or land that was dedicated to the public as Commons, without subjecting the owner to liability which would accrue from the same practice on the part of animals not enjoying this privilege by vote of the town. It was also voted at this meeting, that any person producing the head of a wolf taken in the town, to a justice of the peace, should receive a reward of £3.

At a special town meeting, held January 4, 1803, for the purpose of considering the question of dividing the county, it was voted that it was the opinion of the meeting that no division be made and that if one was made, it should be by an east and west line. This protest, duly sent to the legislature, failed in effect as the county was divided in 1804 by a north and south line, Seneca being erected at this time.

In March, 1803, it was voted that horses should not run at large, and that sheep be Free Commoners; that Benoni Warn be allowed $15 for attendance on a person at his house with smallpox.

Under the different laws on the question of slavery passed prior to 1801, the importation of slaves into this state was prohibited; but any person removing to this state from another was permitted to bring his slaves with him, provided he made satisfactory proof before a judge that he had resided out of the state for one year previous to such entry into it, and that during such period said slaves had been in his actual possession. A certificate of such proof from the judge should be filed in the town or county clerk's office. Also that any owner of slaves could manumit or set free any slaves held by him, but in the event of such slave being over 50 years of age or for any reason incapable to care or provide for himself, the owner was liable to the people for support and maintenance during his life, unless a certificate was obtained from the overseer of the poor, certifying that the slave was apparently under 50 years of age, and able to provide and care for himself at the time of his discharge. Many of these certificates are filed in the clerk's office and a large number appear recorded in the Town Book. Among other papers relating to slaves as recorded in this book, is an instrument signed

by John L. Hardenburgh, April 14, 1803, liberating a colored slave for the sum of $300 which was paid by the negro.

For the purpose of identification of cattle, horses, sheep, etc., owners were required to adopt a mark to be applied to one of the ears of the animals, and file a copy of it in the town clerk's office and after it was so filed and recorded, any animal found at large so marked or branded was declared to be the property of the person filing such mark, and he was also declared liable for any damage done by such animals.

These marks were filed as early as April, 1794, and appear in this book. They were of various forms and descriptions, such as a hole in the left ear; one-half penny under side of right ear; a hollow cross in the end of right ear; a swallow's tail in the right ear. John L. Hardenburgh's mark was a smooth cross in each ear and a half penny out of under part of right ear.

## COURTS.

By the act separating Onondaga county from Herkimer in 1794, it was provided that the courts should be held alternately at the house of Reuben Patterson, in the town of Manlius, and at the house of Seth Phelps, in the town of Scipio. In conformity with the provisions of this act, a term of the court of the general sessions of the peace was held at the dwelling house of Seth Phelps, in Scipio, on the 4th Tuesday in December, 1794. Seth Phelps was presiding judge and John Harris was sheriff. Also a term of the court of oyer and terminer was held at the same place September 7, 1795, at which John Lansing, Jr., justice of the supreme court, presided. The courts were held at Manlius, Scipio and Ovid until 1799, when Cayuga county was erected; after which, the first court held for Cayuga county convened at Cayuga Ferry, with Judge Seth Phelps presiding. The courts were then held alternately between Cayuga Ferry and Aurora until Hardenburgh Corners was agreed upon as the county seat, after which they were held at this place.

The records of the early courts indicate that, practically, the same procedure was practiced in those days as now. There are the records of many interesting and prominent trials, among which was that of John, a Delaware Indian, otherwise known and called "Delaware John." On June 27, 1804, at a term of the oyer and terminer, held at the academy in Aurora, the grand jury presented an indictment against this Indian for murder. The original indictment is filed, and charges in the following language: "That John, a Delaware Indian, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the 12th

day of December, 1803, with a certain rifle gun, of the value of $15, then and there loaded and charged with gunpowder and one leaden bullet, did inflict a mortal wound of the depth of six inches, upon the person of Ezekiel Crane, of which said wound said Ezekiel Crane died on the 17th day of December, 1803."

The history of the case is doubtless familiar to you all. It appears from a description of the crime found in the history of Cayuga county as written by Elliot G. Storke and James K. Smith, that the Indian killed Ezekiel Crane by mistake, supposing him to be another man. Delaware John had been involved in some difficulty with a settler named Phadoc, over the killing of some game. He planned Phadoc's murder. The Indian secreted himself near the cabin of his intended victim, and when he came to his house he fired upon him. The bullet missed doing any serious harm, and Phadoc fled to give the alarm. Meanwhile Crane, ignorant of what had happened, approached the cabin for some purpose, and the Indian, supposing Crane to be Phadoc returning home, pierced him with a ball, proving fatal a few days afterward. Upon being brought to trial, the prisoner pleaded guilty to the indictment and was sentenced to be hanged by the neck until he was dead, by the sheriff of the county, which sentence was duly executed.

A synopsis of the various other entries of interest in these records, including the trials of David Williams, the second person charged with murder in Cayuga county, and William Freeman, who was defended by William H. Seward, together with a history of the early courts, has been faithfully and ably presented to your society by Judge Woolsey R. Hopkins in his paper on The Courts of Cayuga County, which was read January 8, 1895.

There are various other records and files of a miscellaneous nature, a perusal of which would, no doubt, prove profitable and interesting; but a further imposition upon your patience now and a scarcity of available time to devote to its preparation, necessitate bringing this paper to a close at this period, with due apology for its length.