## COLONIAL POLICY TOWARD THE INDIANS

### THE POLICY IN GENERAL

In treating of the policy and methods adopted by the different colonies in their dealings with the Indians in regard to their lands, one object constantly kept in view will be to limit the investigation strictly to this subject. No attempt, therefore, will be made to enter into the general Indian history of colonial days, nor to discuss the rights or wrongs of settlers or Indians. As heretofore stated, the scope of the present work does not embrace the moral element in the numerous transactions referred to, nor the policy adopted; it is limited as strictly as possible to the facts seen from the legal point of view and to the usual custom of the nation or colony.

As the policy of the different colonies in the respect now treated of was seldom, if ever, expressed at the outset, it must, to a large extent, be ascertained from their practical dealings with the natives in regard to their lands and their titles thereto. Reference will be made, therefore, to some of the more important purchases, cessions, grants, etc, by which possession of the lands of the different colonies was obtained and to the laws enacted; but no attempt to give a systematic list of the various cessions to or by the colonies, or of all the laws relating to the subject, will be made. The only object in view in presenting such as will be given is to furnish data by which to judge of the method of treating with the Indians and the policy adopted. Even where historians have clearly defined the policy of a colony in this respect, the data are still furnished that the reader may be enabled to form his own opinion, for historians are often more or less influenced by the point of view from which they write.

It may be remarked here in regard to the lands purchased of the natives in the early days, that in many cases the bounds mentioned in the deeds are so indefinite that it is impossible to define them on a map. In some instances the limits actually adopted have been preserved by tradition, but in many others they were so indefinite that one purchase overlapped or duplicated or even triplicated, in part, another. As examples of this class, the purchases by the settlers of Connecticut may be referred to. This uncertainty hangs about almost every one of the earlier colonial purchases. Even those by William Penn, so lauded in history as examples of sturdy Quaker honesty, must be included in this category, as their bounds and extent are poorly defined and in some instances depend entirely on tradition. The extent, in some cases, was decided by a day's travel on foot or horseback, while some of the grants overlapped one another.

A loose custom prevailed in some of the colonies of allowing individuals to purchase from the Indians without sufficient strictness as to the authoritative acknowledgment or recording of such deeds of purchase. Many of these are known only traditionally, others only through law-

suits which arose out of these claims. It is next to impossible at this day to ascertain all these individual purchases; moreover, it is not apparent that it would serve any good purpose in this connection to give them were it possible to do so.

It has been stated repeatedly that the policy of the colonies was the same as that afterward adopted by the United States. While this may be true in a broad sense, there were differences in method which had important bearings on the history of the different provinces. In fact, the theory in regard to the Indian tenure was not precisely the same throughout, as will become evident from a perusal of what is presented. It will also be seen that the idea on which the authorities based their proceedings was not always the same, those of one colony looking chiefly to meeting the claims of the Indians, while the main object in other cases was to obtain as much land as possible, thus differing, though dealing fairly.

## VIRGINIA

Although the letters patent of James I to Sir Thomas Gage and others for "two several colonies," dated April 10, 1606, and his second charter, May 23, 1609, to "the Treasurer and Company of Adventurers and Planters of the City of London for the first Colony of Virginia," granted full and complete right in the land, "in free and common socage," yet neither contains any allusion to the rights or title of the natives. The third charter, granted the last-named company March 12, 1611–12, also fails to make any allusion to the title of the Indians or to the mode of dealing with them.

The "instructions" given by the council of the London Virginia Company to the first adventurers (1606) contains the following very slight indication of the policy to be adopted in dealing with the Indians: "In all your passages you must have great care not to offend the naturals, if you can eschew it; and employ some few of your company to trade with them for corn and all other lasting victuals if you (*they?*) have any: and this you must do before that they perceive you mean to plant among them."[1]

Burk,[2] speaking of the London Company and the nature of its government, summarizes its dealings with the Indians as follows:

> At the coming of the English, the Indians naturally enjoyed the best and most convenient stations for fishing, and the most fertile lands: But in proportion as new settlers came in, they rapidly lost those advantages. In some cases the colonists claimed by the right of conquest, and the imaginary title conferred by the king's charter. In general however, they acted on better principles, and purchased from the heads of tribes, the right of soil, in a fair and (as far as was practicable) in a legal manner. In the treaty entered into between sir G. Yeardley and Opechancanough, we find a sweeping clause, granting to the English permission to reside and inhabit at such places on the banks of certain rivers, which were not already occupied by

[1] E. D. Neill, History of the London Virginia Company, p. 8; Smith's Works, Arber's edition, The English Scholar's Library, No. 16, p. xxxv.

[2] History of Virginia (1804), vol., I, p. 312, appendix.

the natives. 'Tis true, the circumstances of the parties admitted not a fair and legal purchase; and after the massacre, the Indians were stripped of their inheritance without the shadow of justice.

The special items, however, upon which this verdict appears to have been founded are brief and unsatisfactory. It is only after the dissolution of the company in 1624 and the records of the general assembly are reached, that the policy of Virginia in regard to the Indian title is clearly set forth.

According to Stith,[1] Powhatan's "hereditary countries were only Powhatan, Arrohatock, about twelve miles down, which hath since been corrupted to Haddihaddocks, Appamatock, Youghtanund, Pamunkey, and Mattapony, to which may be added, Werowocomoco and Kiskiack, or as it hath since been called Cheesecake, between Williamsburg and York. All the rest were his Conquests; and they were bounded on the South by James river, with all its Branches, from the Mouth to the Falls, and so across the Country, nearly as high as the Falls of all the great Rivers over Patowmack even to Patuxen in Maryland. And some Nations also on the Eastern Shore owned Subjection to him."

In 1609 Smith purchased of Powhatan the place called Powhatan, which had formerly been this chief's residence. The conditions of this agreement, as given by Stith (page 104), were as follows: "That the English should defend him against the Manakins; that he [Powhatan] should resign to them the fort and the houses, with all that country, for a proportion of copper," etc. The extent of territory included under "all that country" is unknown.

It also appears from Stith (page 140) that in 1616 the Indians, being much straitened for food, applied, through their chief, to Sir Thomas Dale, then governor of the English colony, for corn.

Sir Thomas Dale, among the many Praises, justly due to his Administration, had been particularly careful of the Supplies of Life; and had, accordingly, always caused so much Corn to be planted, that the Colony lived in great Plenty and Abundance. Nay, whereas they had formerly been constrained, to buy Corn of the Indians Yearly, which exposed them to much Scorn and Difficulty, the Case was so much altered under his Management, that the Indians sometimes applied to the English, and would sell the very Skins from their Shoulders for Corn. And to some of their petty Kings, Sir Thomas lent four or five hundred Bushels; for Repayment whereof the next Year, he took a Mortgage of their whole countries.

Whether the Indians' claim that this was repaid was conceded, or was true, is not known. Nothing further than an application for corn by Mr Yeardly and a refusal by the Indians to furnish it is recorded.

In 1618 a party of Chickahominy killed a number of persons, and complaint was made to Opechancanough, who was their chief. In reply he sent a basket of earth to the governor as an evidence that the town of the aggressors was given to the English.

It appears incidentally from Burk's History that a treaty was concluded with the Indians in 1636, fixing their boundary line, but no par-

[1] History of Virginia, Sabin's reprint, pp. 53–54.

ticulars are given nor does he say anything more in regard to it. In 1639–40 the Indians became restless and dissatisfied because of the encroachments made upon their lands by the vast and indiscriminate grants made by Hervey. These encroachments were on the lands secured to the Indians by the treaty of 1636, and led to a war with Opechancanough.[1] However, it seems that at some time between 1640 and 1642 peace was concluded through the general assembly. In this case, according to Burk, it was made separately with the heads of the tribes and in a spirit of humanity. It was attained "by mutual capitulations and articles agreed and concluded on in writing." But these do not appear in any of the published records, therefore it is impossible to state what reference was made to lands or boundaries.

By an act of the "Grand Assembly," October 10, 1649, it was ordered as follows:[2]

Act. 1. Art. 2. That it shall be free for the said Necotowance ["King" of the Indians] and his people, to inhabit and hunt on the north side of Yorke River, without any interruption from the English. Provided that if hereafter, It shall be thought fitt by the Governor and Council to permitt any English to inhabitt from Poropotanke downewards, that first Necotowance be acquainted therewith.

Art. 3. That Necotowance and his people leave free that tract of land between Yorke river and James river, from the falls of both the rivers to Kequotan, to the English to inhabitt on, and that neither he the said Necotowance nor any Indians do repaire to or make any abode vpon the said tract of land, vpon pain of death.

An act was passed July 5, 1653, securing such lands on York river as he should make choice of to Totopotomoy, the successor of Opechancanough, as follows:

The order of the last Assembly in the busines relateing to land in York River desired by Tottopottomoy, as information by some perticular members of this Assembly is now represented, is ordered to be and remaine in force as formerly, Provided he lives on the same; but if he leaves it then to devolve to Coll. William Clayborne, according to former orders which gave him libertie to make his choice, whether he would have Ramomak, or the land where now he is seated, and that he appear in person before the Governor and Council to make his choice the next quarter courte which of the two seates he will hold, and Capt. John West, and Mr. William Hockaday are enabled to give a safe conduct to the said Tottopottomoy and his Indians for their coming to towne, and his returne home. And the commissioners of York are required that such persons as are seated vpon the land of Pamunkey or Chickahominy Indians be removed according to a late act of Assembly made to that purpose, And Coll. John Fludd to go to Tottopottomoy to examine the proceedings of business and to deliver it vpon his oath.[3]

At the same time the commissioners of Gloster (the statute says Gloster but Burk says York) and Lancaster counties were directed "to proportion the Indians inhabiting the said counties their several tracts of land . . . and to set and assign them such places and bounds to hunt in as may be convenient both for the inhabitants and Indians."

By act 4 of the same assembly the commissioners of Northampton county were empowered "to take acknowledgment of the Indians in

[1] Burk, History of Virginia, vol. III, p. 53.
[2] Hening's Statutes at Large, vol. I (1823), pp. 323–324.
[3] Ibid., p. 380.

their county for sale of their lands." But this was to be done only on condition that a majority of the Indians desired it, and that the terms were just. This policy of granting to county commissioners the right to purchase Indian lands was soon found to lead to fraud and injustice, hence the passage of the following laws relating to the sales by Indians.[1]

The first declaration of general policy in respect to Indian lands is found in the act of March 10, 1655, which is as follows:

Act. 1. What lands the Indians shall be possessed of by order of this or other ensueing Assemblyes, such land shall not be alienable by them the Indians to any man de futuro, for this will putt vs to a continuall necessity of allotting them new lands and possessions and they will be allwaies in feare of what they hold not being able to distinquish between our desires to buy or inforcement to have, in case their grants and sales be desired; Therefore be it enacted, that for the future no such alienations or bargaines and sales be valid without the assent of Assembly. This act not to prejudice any Christian who hath land allready granted by pattent.[2]

The following acts of the same general tenor are extracted from Hening's Statutes, and need no comment:

[March 13th, 1657–8. Act. 51. *Enacted:*] That there be no grants of land to any Englishman whatsoever (de futuro) vntil the Indians be first served with the proportion of ffiftie acres of land for each bowman; and the proportion for each perticular towne to lie together, and to be surveyed as well woodland as cleered ground, and to be layd out before pattented, with libertie of all waste and vnfenced land for hunting for the Indians. *Further enacted,* that where the land of any Indian or Indians bee found to be included in any pattent allreadie granted for land at Rappahannock or the parts adjacent, such pattentee shall either purchase the said land of the Indians or relinquish the same, and be therefore allowed satisfaction by the English inhabitants of the said places.[3]

[Act 72, same assembly:] All the Indians of this collonie shall and may hold and keep those seates of land which they now have, and that no person or persons whatsoever be suffered to entrench or plant vpon such places as the said Indians claime or desire vntil full leave from the Governour and Councill or com'rs. for the place; Yet this act not to be extended to prejudice those English which are now seated with the Indians' former consent vnles vpon further examination before the Grand Assemblie cause shall be found for so doeing . . . *Further enacted.* That the Indians as either now or hereafter shall want seates to live on, or shall desire to remove to any places void or vntaken vp, they shall be assisted therein, and order granted them, for confirmation thereof, And no Indians to sell their lands but at quarter courtes, And that those English which are lately gone to seate neare the Pamunkies and the Chichominyes on the north side of Pamunkie river shall be recalled and such English to choose other seates else where, and that the Indians as by a former act was granted them, shall have free liberty of hunting in the woods without the English fenced plantations, these places excepted between Yorke river and James river and between the Black water and the Manakin towne and James river, and noe pattent shall be adjudged valid which hath lately passed or shall pass contrary to the sense of this act, Nor none to be of force which shall intrench vppon the Indians' lands to their discontent without expresse order for the same.[4]

The act of March 13, 1658, same assembly, ratifies the grant of the "Wiccacomoco Indians" of certain lands belonging to them in Northumberland county to the "honourable Samuel Mathewes," governor.

[1] Burk, History of Virginia, vol. II, p. 102.
[2] Hening's Statutes at Large, vol. I, p. 396.
[3] Ibid., p. 456–457.
[4] Ibid., p. 467.

The act of October 11, 1660, authorizes the governor to have surveyed and laid off for the "Accomacke" Indians, on the east side of the bay, "such a proportion of land as shall be sufficient for their maintenance, with hunting and fishing excluded." This land was to be secured to the Indians, but they were to have no power to alienate it to the English.

An act passed March 23, 1661, brings to view the difficulty sometimes encountered by private purchases which were made before the passage of the act of March 10, 1655, or in disregard of it. It is as follows:

Upon the petition of Harquip the Maugai of the Chickahomini Indians to have all the lands from Mr. Malorys bounds to the head of Mattaponi river & into the woods to the Pamaunkes *It is accordingly ordered* that the said land be confirmed to the said Indians by pattent, and that no Englishman shall upon any pretence disturbe them in their said bounds nor purchase it of them unles the major part of the great men shall freely and voluntarily declare their consent in the quarter court or assembly.

*Whereas* a certaine grant hath been made to the Chickahomini Indians of certaine lands in which tract Major Gennerall Manwaring Hamond claimeth a devident of 2,000 acres granted him by pattent, It is ordered, that the same Major Gennerall Hamond be desired to purchase the same of the Indians or to procure their consent for the preservation of the countreys honour and reputation.[1]

Numerous disputes having arisen between the English and the Indians in regard to land purchases, and frequent complaints having been made by the latter of encroachments upon their territory, the following act was passed in 1660:

Act 138. Whereas the mutuall discontents, complaints, jealousies and ffeares of English and Indians proceed chiefly from the violent intrusions of diverse English made into their lands, The governor, councell and burgesses . . . enact, ordaine and confirme that for the future noe Indian king or other shall upon any pretence alien and sell, nor noe English for any cause or consideration whatsoever purchase or buy any tract or parcell of land now justly claymed or actually possest by any Indian or Indians whatsoever; all such bargaines and sales hereafter made or pretended to be made being hereby declared to be invalid, voyd and null, any acknowledgement, surrender, law or custome formerly used to the contrary notwithstanding.[2]

This is probably the act referred to by Charles Campbell[3] where he makes the following statement:

The numerous acts relating to the Indians were reduced into one; prohibiting the English from purchasing Indian lands; securing their persons and property; preventing encroachments on their territory; ordering the English seated near to assist them in fencing their corn-fields; licensing them to oyster, fish, hunt and gather the natural fruits of the country; prohibiting trade with them without license, or imprisonment of an Indian king without special warrant; bounds to be annually defined; badges of silver and copper plate to be furnished to Indian kings; no Indian to enter the English confines without a badge, under penalty of imprisonment, till ransomed by one hundred arms length of roanoke (Indian shell money); Indian kings, tributary to the English, to give alarm of approach of hostile Indians; Indians not to be sold as slaves, &c.

[1] Hening's Statutes at Large, vol. II, p. 34.

[2] Ibid., p. 138.

[3] History of the Colony and Ancient Dominion of Virginia (1847), p. 77

By the act of October 10, 1665, the bounds of the Indians on the south side of James river were fixed as follows: "From the heads of the southern branches of the blackwater to the Appomatuck Indians, and thence to the Manokin Town." This boundary was more accurately fixed in 1691, as will later be shown.

After the death of Opechancanough, no chief of sufficient prestige and authority to hold the Indians in confederation having arisen, a long peace followed. Several of the tribes retired westward and those which remained, reduced in numbers and wanting concert, lingered on the frontiers, and exchanged with the settlers their superfluous products at stated marts. This peace, however, was broken in 1675. The Indians at the head of Chesapeake bay and tribes farther south made sudden and furious inroads upon the frontier settlements "marked by devastation and blood."[1] On the 6th of June, 1676, during the war which ensued, the following act was passed:

Act 3. Whereas this country is now engaged in a warr against the Indians, and will thereby inevitably be at great cost and charges in prosecuting the same, and whereas at or about the last conclusion of peace with the Indians, certain great quantities of land was assigned and sett apart, for them, which lands were they sold for the use of the country would in some measure help to defray the publique charge aforesaid, . . . Therefore enacted and ordained by governour, council and burgesses of this grand assembly, and by the authority of the same, that all lands whatsoever sett apart for Indians in the last conclusion of peace with them and other Indian lands as now are, or hereafter shall be by them deserted, bee not granted away by pattent to any perticuler person or persons, but that the same be reserved, and by due forme of law vested on the country, and dispose to the use of the publique towards defraying the charge of this warr. Provided alwaies that this act nor any thing therein contained shall prejudice any legall grants heretofore made to any person or persons whatsoever of any part or parcell of the said lands, and all such Indian lands as have bin pattented since the peace aforesaid, and before such desertion shall be held and deemed to be illegally pattented.[2]

The act of April 16, 1691, above referred to as determining the boundary of the Indian territory south of James river, is as follows:

Forasmuch as by a clause of the 8th act of assembly made at James Citty October the tenth, 1665, it is enacted that the bounds of the Indians on the south side James river, be from the heads of the Southern branches of the Black water to the Appomatuck Indians, and thence to the Manokin Town, for the better explaining and ascertaining the bounds betwixt the English and Indians on the south side of James River, *Be it enacted* . . . That a line from the head of the cheife or principal branch of the black water, to the upper part of the old Appamattocks Indian Town feild, and thence to the upper end of Manokin Town be judged, deemed, held and taken, to be the said bounds, and that the right honourable the lieutenant governour, with the advice of the councell bee requested to appoint some surveyor or surveyors to lay out, ascertain and plainly marke the said lines, and that all pattents or other grants of any lands laying without the said bounds be, and hereby are declared void and null to all intents and purposes as if the same had never been granted.[3]

In 1722 Governor Spotswood concluded a treaty with the Six Nations by which they agreed never to appear to the east of the Blue ridge nor

[1] Burk, History of Virginia, vol. II, pp. 155–157. [2] Hening's Statutes at Large, vol. II, p. 351.
[3] Hening's Statutes at Large, vol. III, p. 84.

south of the Potomac. But this boundary line was not sufficient to arrest the westward progress of English settlement, for it was not long before hardy pioneers had located themselves west of the dividing ridge. This, as a natural consequence, angered the Indians, and collisions ensued.

However, on July 31, 1743, a treaty of peace was concluded at Lancaster, Pennsylvania, between Virginia, Maryland, and Pennsylvania on the one hand and the Six Nations on the other, in which, among other agreements, was one by which these Indians, for the consideration of four hundred pounds, reluctantly relinquished the country lying westward from the frontier of Virginia to Ohio river.

## MARYLAND

The charter granted June 20, 1632, by Charles II to Cecilius Calvert, Baron of Baltimore, contains no reference to the Indians. By section 18, however, full and absolute power is given to the Baron of Baltimore, his heirs and assigns, to—

> . . . assign, alien, grant, demise or enfeoff such and proportionate parts and parcels of the premises, to any person or persons willing to purchase the same as they shall think convenient, to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns in fee simple, or fee-tail, or for term of life, lives or years; to hold of the aforesaid now Baron of Baltimore, his heirs and assigns, by so many, such and so great services, customs and rents of this kind, as to the same now Baron of Baltimore, his heirs and assigns, shall seem fit and agreeable, and not immediately of us our heirs or successors.

The King's right of granting lands in the province being thereby fully and completely transferred to Lord Baltimore, his heirs and assigns, without any reservation or exception in regard to the natives, gave him full authority to deal with them in his own way in reference to their title to and possession of the lands.

The policy to be pursued was made evident first by action, several years having elapsed after the first settlement before it was announced in an official manner or enacted into a law.

The first settlers under Leonard Calvert, brother of the Baron, as leader and governor, landed on the 27th of March, 1634, on the north bank of the Potomac and planted themselves in the Indian town of *Yoamaco* (probably Wicomoco), which they named St Mary's. This was done, however, with the consent of and by agreement with the Indians. In order to pave the way to a peaceable admission into the country, the governor presented to the chief and principal men of the Yoamacoes "some English cloth, axes, hoes, and knives," which they accepted with pleasure. They also agreed to leave the whole town to the English as soon as their corn was gathered, which agreement was faithfully carried out. It is supposed that this agreement was facilitated by an anticipated attack by the Susquehanocks, whom they feared.

That this was considered a purchase is asserted by Chalmers,[1] who

[1] Annals, p. 207.

says that Calvert "purchased the rights of the aborigines for a consideration which seems to have given them satisfaction . . . and lived with them on terms of perfect amity till it was interrupted by Clayborne." It does not appear, however, that the extent of territory was indicated or that any metes and bounds were designated.

It will perhaps not be considered out of place to insert here the somewhat strong defense of Maryland's justice and humanity in dealing with the Indians, presented by her historian, Bozman.[1] It is given partly because of its bearing on a question which will be alluded to in speaking of the Pennsylvania policy:

As philanthropists have been excessively clamorous in the praises of William Penn for his ostentatious purchase of the lands of the aborigines, particularly at the time of his supposed treaty with the Indians under the great elm at Shackamaxon, (so brilliantly illustrated by the pencil of his Britannic majesty's historical painter,) it is here thought, that the conduct of Leonard Calvert, on a similar occasion will not shrink from a comparison with that of William Penn. It will not be fully admitted, that William Penn, or any other European colonist, or even the United States at this day, can with perfect honesty and integrity *purchase* the lands of the aboriginal natives of America; for several reasons;—first, it is not a clear proposition, that *savages* can, for *any consideration*, enter into a contract obligatory upon them. They stand by the laws of nations, when trafficking with the civilized part of mankind, in the situation of *infants*, incapable of entering into contracts, especially *for the sale of their country*. Should this be denied, it may be then asserted, that no *monarch* of a nation, (that is no *sachem*, chief, or headmen, or assemblage of sachems, &c.) has a power to transfer by sale the country, that is, the soil, of the nation over which they rule. But neither did William Penn, make, nor has any other European since made, a purchase of lands from any tribe or nation of Indians through the agency of any others than their sachems or headmen; who certainly could have no more right to sell their country, than any European monarch has to sell theirs. But should it be contended, that savages are capable of entering into contracts, and that their sachems have a power to transfer by sale the country of the people over whom they rule, it may be safely asked,—what could William Penn, or at least what did he give, which could be considered, in any point of view, as a consideration or compensation to those poor ignorant aborigines for their lands? If we are to follow Mr. West's *imagination*, (in his celebrated picture of "Penn's treaty with the Indians;") for, history recognizes no such treaty, and the late biographer of William Penn, (Clarkson,) fairly acknowledges, that "in no historian could he find any account of it;" but from "traditions in Quaker families," and "relations in Indian speeches," it might be inferred, that there was such a treaty; if then, the pencil of the artist is correctly warranted by "tradition," William Penn gave nothing more than some English *broad cloth*, or perhaps some beads or other trinkets, which might have been contained in the trunk displayed in the fore ground of the picture, for all the lands, on which he built his city, including also a large portion of his province; and this he seems to have been induced to do, not from his own original perception of the justice of the thing, but, as he acknowledges in his letter to the lords of the council composing the committee of Plantations, dated August 14th, 1683, "that he might exactly follow the *bishop of London's* counsel, by buying, and not taking away, the native's land." (See this letter at length in Chalmers's Annals, ch. XXI. note 38.) Now, the presents of Leonard Calvert really seem to have been of greater value; for, besides *broad cloth*, history says, that he gave them "axes and hoes;" thereby endeavoring to introduce among them, as it were the first rudiments of civilization—the implements of agriculture. With this, it seems, they were as well satisfied to give

[1] History of Maryland (1837), vol. II, pp. 569–79.

up the lands of St. Mary's, as the Indians of Shackamaxon were to give up those where Philadelphia stands.

The foregoing remarks would, perhaps, not have been made, had they not been drawn forth by a part of a speech, which the before-mentioned biographer of William Penn has dressed up for him, on the occasion of this celebrated treaty, entirely from "tradition," as he acknowledges, in which he makes him to say to the Indians;—"that he would not do as the *Marylanders* did, that is, call them children or brothers only; for, often parents were apt to whip their children too severely, and brothers sometimes would differ: but he should consider them as the same flesh and blood with the Christians, and the same as if one man's body were to be divided into two parts."

By section 3 of the act of March 19, 1638,[1] it was decreed that—

No subject of his majesty's the king of England, or of any other foreign prince or state shall obtain, procure, or accept of any land within this province from any foreign prince or state, or from any person whatsoever, (the natives owners of the land excepted,) other than from the lord proprietary or his heirs or some person claiming under him or them.—Neither shall he obtain, procure, or accept of any land within this province from any Indian to his own or the use of any other than of "the lord proprietary or his heirs, nor shall hold or possess any land within this province by virtue of such grant, upon pain that every person offending to the contrary hereof shall forfeit and lose to the lord proprietary and his heirs all such lands so accepted or held without grant of the lord proprietary or under him."

It is probable that this law was enacted at this time because of the fact that Lord Baltimore's title to some of the lands of the province was disputed by William Clayborne and those who claimed under him. This claim was based upon a royal license he had obtained to trade with the Indians and an alleged purchase from the Indians (Susquehanocks?) of the Island of Kent. As it does not appear that the Indian title to this island was subsequently purchased or extinguished by the Maryland government, the inference is that, although the lords commissioners of the plantations decided the dispute in Lord Baltimore's favor, the purchase by Clayborne was accepted as an extinguishment of the Indian title. This is confirmed by the fact that in the treaty with the Susquehanocks in 1652 (mentioned below) it is expressly stated that "the Isle of Kent and Palmer's Island belong to Captain Clayborne."

On April 21, 1649, an act entitled "An act concerning purchasing lands from the Indians" was passed, which Bozman says was, as to principle, a law of general utility even up to his day. The substance of this law as given in Bacon's Collection (unpaged) is as follows:

Whereas divers Persons have heretofore purchased or accepted of lands, &c. from the *Indians*, and made use of and possesed the same, without any lawful Title and Authority derived from the Lord Proprietary, neglecting also to take out Grants from his Lordship, under the Great Seal, for such Lands as have been due to them by virtue of his Lordship's Conditions of Plantations, or other Warrant from his Lordship, which Proceedings are not only very great Contempts and Prejudice to his Lordship's Dignity and Rights, but also of such dangerous Consequence, if not timely prevented, that they may hereafter bring a great Confusion in the Government and public Peace of this Province. *Be it therefore Enacted* etc.

[1] Bozman, History of Maryland (1837), vol. II, pp. 112–113.

(1) All Purchases or Acquisitions whatsoever, of any Lands, &c. within this Province, made or to be made, from any Person whatsoever, not deriving at the same Time a lawful Title thereto, by, from, or under, his Lordship or his Heirs, under the Great Seal, shall be void and null.

(2) It shall be lawful for his Lordship to enter upon, seize, possess and dispose of, any such Lands, &c. so purchased or acquired from, any *Indian* or other, at his Will and Pleasure, unless such Purchaser, at the Time of such Purchase or Acquisition, have some lawful right or Title to such Lands, &c. by some Grant from his Lordship, &c. under the Great Seal.

(Confirmed among the perpetual Laws, 1676, ch. 2.)

In regard to this law the author above mentioned remarks, in addition to what has been noted, that "The principle upon which it was founded seems to have been adopted by the United States in the disposition of all the territories conquered or purchased by them from the Indians."

It is worthy of notice that the lords commissioners for plantations, in the decision between Clayborne and Lord Baltimore, declared that the principle enacted in the above law held good even against the King. "Their lordships having resolved and declared as abovesaid the right and title to the Isle of Kent and other places in question to be absolutely belonging to the said Lord Baltimore; and that no plantation or trade with the Indians ought to be within the precincts of his patent without license from him; did therefore think fit and declare that no grant from His Majesty should pass to the said Clayborne or any others, of the said Isle of Kent or other places within the said patent."[1]

On the 5th of July, 1652, a treaty was made with the Susquehanocks, the first article of which contained the following cession of land to the English:

First, that the English nation shall have, hould, and enjoy to them their heires and assigns for ever, all the land lying from Patuxent river unto Palmer's island on the westerne side of the baye of Chesepiake, and from Choptank river to the north east branch which lyes to the northward of Elke river on the eastern side of the said bay with all the islands, rivers, creeks, . . . fish, fowle, deer, elke, and whatsoever else to the same belonging, excepting the isle of Kent and Palmer's island which belongs to captain Clayborne, But nevertheless it shall be lawful for the aforesaid English or Indians to build a howse or ffort for trade or any such like use or occasion at any tyme upon Palmer's island.[2]

Bozman thinks that Patuxent river, the southern (or southwestern) limit, on the west side of the bay, of territory assigned by this treaty, was the extent of the Susquehanock's claim in this direction, as Powhatan claimed from James river to the Patuxent. It does not appear, however, how far west the granted territory extended.

As nothing appears after this date to show that other cessions were obtained from Indians in this part of the state, it was probably assumed that this grant covered all the territory on the eastern side of the bay north of Dorchester county, and on the western side all east and north

[1] Bozman, History of Maryland, vol. II, pp. 584–585; Hazard, Collections, vol. I, p. 130; Chalmers, Annals, ch. IX, note 25.

[2] Bozman, ibid., p. 682.

of Patuxent river. It is also probable that it was assumed that the purchase from the Yoamacoes embraced all the territory west of Patuxent river and north of the Potomac as far westward as no other claim intervened. There is nothing on record, so far as the writer has been able to find, showing any purchase of land from the Indians, or any treaty with them in regard to any lands west of Monocacy river.

That such was the construction in reference to the latter purchase seems to be indicated by the following fact:

By 1651 the white population in that part of Maryland comprehending St Mary's county and part of Charles county, had increased to such a degree as to expel most of the aborigines thereof from their lands. These Indians were driven out and forced to find homes in the more interior portions of the province. They consisted of the following tribes: The Mattapanians, the Wicomocons, Patuxents, Lamasconsons, Highawixons, and the Chapticons, probably divisions or bands of the Piscataway or Conoy. Lord Baltimore, being informed of their distress and their willingness to form a settlement by themselves under his protection and government, directed his lieutenant-governor to cause a grant to be made to them under his great seal "of a certain tract of land in the head of Wicomoco river, called Chaptico" (in Charles county), containing about 8,000 or 10,000 acres. He further ordered that the land so granted should be erected into a manor, to be called the Calverton Manor, and that a thousand acres thereof should be set apart as the demesnes thereof, to be reserved for his own use, as was usual in his grants of other manors. He also appointed Robert Clark to be the steward of said manor—

". . . and in his name to keep court baron and court leet, as occasion should require, in and for the said manor; and on his behalf to grant, by copy or copies of court roll, copyhold estates, for one, two, or three lives, of any part of the said manor, except the *demesnes* thereof, to any Indian or Indians that should desire the same, and as he the said steward, with the approbation of the governor, should think fit; provided, that no one copyhold exceed fifty acres, unless it be to the Werowance or chief head of every of the said six nations respectively; and not to any of them above two hundred acres a piece; and that upon every copy so to be granted there be reserved a rent of one shilling sterling, or the value thereof, to be paid yearly to Lord Baltimore and his heirs for every fifty acres of land respectively to be granted as aforesaid, and so proportionally for a lesser or a greater quantity of land."[1]

As the acts of the assembly contain all the subsequent history of the state relating to Indian lands of any importance in this connection, and within the scope of this work, the substance of these acts is given here as found in Bacon and Kilty's (unpaged) Collections.

The first of these, after those already given, following the date, is the act of May 8, 1669—"An act for the continuation of peace with and protection of our neighbors and confederates, Indians on Choptank river."

This act, because of the fidelity of the Choptank Indians in delivering up certain murderers, etc, settles upon them and their heirs for-

[1] Bozman, ibid., p. 422.

ever "All that land on the south side of Choptank river, bounded westerly by the free-hold now in possession of William Darrington, and easterly with Secretary Sewall's creek for breadth, and for length three miles into the woods. To be held of his Lordship under the yearly rent of six Beaver-skins."

This is confirmed among the perpetual laws by the act of 1676 (ch. 2). By the act of 1721 (ch. 12) commissioners were appointed for ascertaining the bounds of these lands, and the same lands are confirmed to them by the act of 1723 (ch. 18).

The next in order of date is an act passed November 12, 1698, "for ascertaining the bounds of a certain tract of land set apart to the use of the Nanticoke Indians, so long as they shall occupy and live upon the same." This act falls under the general repeal of 1704 (ch. 77), and a new act in the very same words (the enacting clause excepted) was made in 1704; and by the act of 1723 the bounds ascertained in this act (which are the same verbatim with those described in the aforesaid act of 1704, ch. 58) are confirmed.

October 3, 1704. This is the act above referred to under that of November 12, 1698. The bounds of the Nanticoke tract as set forth in it are as follows:

That all the Land, lying and being in *Dorchester* County, and on the North Side of *Nanticoke* River, butted and bounded as followeth; (beginning at the Mouth of *Chickawan* Creek, and running up the said Creek, bounded therewith to the Head of the main Branch of the same, and from the Head of the said main Branch, with a Line drawn to the Head of a Branch issuing out of the North West Fork of *Nanticoke*, known by the name of *Francis Anderton's* Branch, and from the Head of the said Branch, down the said *Anderton's* Branch, bounded therewith, to the Mouth of the same, where it falls into the said North West Fork: And from thence down the aforesaid North West Fork, bounded therewith, to the main River: And so down the main River to the Mouth of the aforesaid *Chickawan* Creek;) shall be confirmed and assured, and, by virtue of this Act, is confirmed and assured unto *Panquash* and *Annotoughquan*, and the People under their Government, or Charge, and their Heirs and Successors for ever; any Law, Usage, Custom, or Grant, to the contrary in any wise notwithstanding: To be held of the Lord Proprietary, and his Heirs, Lord Proprietary or Lords Proprietaries of this Province, under the yearly rent of one Beaver Skin, to be paid to his said Lordship and his Heirs, as other Rents in this Province by the English used to be paid.[1]

By an act passed November 3, 1711, commissioners were appointed to set aside 3,000 acres on Broad creek, Somerset county, where the Nanticokes were then residing, for their use so long as they should occupy the same. The rights acquired by white settlers on these lands were purchased by the province. Instead of vesting the title in the Indians, it was conveyed by this act to certain trustees for their use, with the proviso that when abandoned by these Indians it should revert to the province.

By the act of October 26, 1723, "for quieting the possessions of the Indians inhabiting on Nanticoke and Choptank rivers," their right to the lands heretofore granted them was reaffirmed as follows: "That

[1] Bacon's Laws of Maryland, 1765, chap. 58, under October 3, 1704.

the Nanticoke Indians and their descendants shall have, hold, occupy, possess, and enjoy a free, peaceable, and uninterrupted possession of all that tract or parcel of land lying between the northwest fork of Nanticoke river and Chicucone creek, for and during such space of time as they or any of them shall think fit to use, and shall not wholly and totally desert and quit claim to the same, according as the same is butted and bounded." To the Choptank Indians, with the same provisions, was granted "that tract of land lying in Dorchester county, on Choptank river, according to the metes and bounds thereof" as surveyed by the commissioners.

The act of June 22, 1768, authorized the payment of $666\frac{2}{3}$ to the Nanticokes for "three certain tracts of land and also 3,000 acres lying on Broad creek, all in the county of Summerset," which the said Indians agreed to accept as full payment therefor.

By section 4 of the act of March 12, 1786, authority was given to the governor to purchase the Indian lands in Dorchester county. As this was an important act, and specifies somewhat particularly the steps to be adopted in dealing with the Indians in this instance, a copy of the section is given here.

SEC. 4. And be it enacted, That the governor and the council be authorized and requested to appoint some fit and proper person to treat with the Indians entitled, under any act of assembly, to any lands in Dorchester County, for the purchasing the said lands, or any part thereof, on behalf of this state, and to agree with them on the terms of said purchase for a certain annual sum to be paid to the said Indians as long as any of them shall remain, and to take a deed to the state expressing the conditions, which said deed shall be acknowledged before the general court of the eastern shore, or the court of Dorchester county, in open court, at the election of the said Indians; and if such purchase be made, the person so appointed shall sell the same, at auction, for current money, in such lots or parcels as will probably bring the best price, on a credit of one third of the purchase money annually until the whole is paid, with interest annually on the several sums, or the governor and the council may, in their discretion, direct a sale of the said lands for state or continental government securities, and eight weeks notice shall be given previous to the sale in the Maryland, Pennsylvania, Virginia and New York papers.[1]

A similar act, providing for the purchase of a part of the lands of the Choptank Indians and for limiting their reservation, was passed January 18, 1799. The reservation was limited to one hundred acres to be laid off so as to include their settlements.

## NEW YORK

The discussion of the policy of New York while a colony must of necessity begin with the Dutch settlement at the mouth of the Hudson known as New Netherland. The exact date of the first white settlement of the area now embraced by New York city does not appear to be known. It is stated by the "Report of the Board of Accounts on New Netherland," made in 1644, that "In the years 1622 and 1623, the West India Company took possession, by virtue of their charter, of the said country, and conveyed thither, in their ship, the New Netherland,

[1] William Kilty, Laws of Maryland (unpaged).

divers Colonists under the direction of Cornelis Jacobsz. Mey, and Adriaen Jorissz. Tienpoint, which Directors, in the year 1624, built Fort Orange on the North River, and Fort Nassau on the South River, and after that, in 1626, Fort Amsterdam on the Manhattes."[1] However, it appears to have been subsequent to 1623 and previous to June, 1626. On November 5, 1626, Pieter J. Schagen, deputy of the West India Company, reported to the States general of Holland as follows: "Yesterday, arrived here the Ship the Arms of Amsterdam, which sailed from New Netherland, out of the River Mauritius, on the 23rd September. They report that our people are in good heart and live in peace there; the Women also have borne some children there. They have purchased the Island Manhattes from the Indians for the value of 60 guilders; 'tis 11,000 morgens in size. They had all their grain sowed by the middle of May, and reaped by the middle of August," etc.[2] The West India Company had instructed Peter Minuet to treat with the Indians for their hunting grounds before he took any steps toward the erection of buildings. According to Martha J. Lamb[3] the purchase was made the 6th of May, 1626. The price paid, it is true, was very small (but little more than one dollar for a thousand acres), yet we are told the simple natives accepted the terms with unfeigned delight.

The patent issued to Kiliaen Van Rensselaer, August 13, 1630, was based on a purchase from the Indians, acknowledged before the director and council by them at the time it was issued:

We, the Director and Council of New Netherlands, residing on the Island Manhatas and in Fort Amsterdam, under the authority of their High Mightinesses the Lords States General of the United Netherlands and the Incorporated West India Company, Chamber at Amsterdam, do hereby acknowledge and declare, that on this day, the date under written, before us appeared and presented themselves in their proper persons: Kottomack, Nawanemit, Albantzeene, Sagiskwa and Kanaomack, owners and proprietors of their respective parcels of land, extending up the River, South and North, from said Fort unto a little south of Moeneminnes Castle, to the aforesaid proprietors, belonging jointly and in common, and the aforesaid Nawanemit's particular land called Semesseerse, lying on the East Bank opposite Castle Island off unto the abovementioned Fort; Item, from Petanock, the Millstream, away North to Negagonse, in extent about three miles,[4] and declared freely and advisedly for and on account of certain parcels of Cargoes, which they acknowledge to have received in their hands and power before the execution hereof, and, by virtue and bill of sale, to hereby transport, convey and make over to the Mr. Kiliaen van Rensselaer, absent, and for whom We, ex officio and with due stipulation, accept the same; namely: the respective parcels of land hereinbefore specified, with the timber, appendencies and dependencies thereof, together with all the action, right and jurisdiction to them the grantors conjointly or severally belonging, constituting and surrogating the said Mr. Rensselaer in their stead, state and right, real and actual possession thereof, and at the same time giving him full, absolute and irrevocable power, authority and special command to hold, in quiet possession, cultivation, occupancy and use, tanquam actor et procurator in rem suam ac propriam, the land aforesaid, acquired by said Mr. Van Rensselaer, or those who may hereafter acquire his interest; also, to dispose of, do with and alienate it, as he or others should

[1] New York Colonial Documents, vol. I, p. 149.
[2] Ibid., p. 37.
[3] History of the City of New York, p. 53.
[4] Three Dutch miles equal 12 English miles.

or might do with his other and own Lands and domains acquired by good and lawful title, without the grantors therein retaining, reserving or holding any, the smallest part, right, action or authority whether of property, command or jurisdiction, but rather, hereby, desisting, retiring and renouncing therefrom forever, for the behoof aforesaid.[1]

In the undated "New Project of Freedoms and Exemptions,"[2] but probably drawn up in 1629, the patroons are required by article 27 to purchase the lands from the Indians: "The Patroons of New Netherland, shall be bound to purchase from the Lords Sachems in New Netherland, the soil where they propose to plant their colonies, and shall acquire such right thereunto as they will agree for with the said Sachems." By article 33 "All private and poor [unauthorized] people (*onvermogen personen*) are excluded from these Exemptions Privileges and Freedoms, and are not allowed to purchase any lands or grounds from the Sachems or Indians in New Netherland, but must repair under the jurisdiction of the respective Lords Patroons." This, however, was modified in 1640 so that "In the selections of lands, those who shall have first notified and presented themselves to the Company, whether Patroons or private colonists, shall be preferred to others who may follow."[3]

It would seem from these facts that the colony commenced its dealings with the Indians on the just policy of purchasing from them the land they wished to settle. It was the boast of one of the early governors, in his correspondence with the New England authorities, that the Dutch had not planted a colony with a desire to seize the land of the natives or grasp their territory unjustly, but that whatever land they obtained was and would be fairly and honorably purchased to the satisfaction of both parties. Nor does this boast appear to have been without justification. Their dealings with and treatment of the Indians in other respects may have been in some, possibly many, instances far from proper or honorable, yet their method of extinguishing the Indian title to lands appears, as a rule, to have been just.

In their attempts to plant colonies on the banks of Connecticut river and on Delaware bay they purchased the desired sites from the Indians.

The patroons, in their communication to the States General, refer more than once to the fact that they obtained their lands from the Indians by purchase. For example, in that of June, 1634, they say, "The Patroons proceeding on daily, notwithstanding, bought and paid for, not only the grounds belonging to the chiefs and natives of the lands in New Netherland, but also their rights of sovereignty and such others as they exercised within the limits of the Patroons' purchased territories." And again, October 25, 1634, that they have purchased not only lands on "the said river" but likewise on "the South river and others lying to the east of the aforesaid North river." And again, in 1651,

[1] New York Colonial Documents, vol. I, p. 44. [2] Ibid., vol. II, pp. 96–100. [3] Ibid., p. 119.

it is asserted that "Immediately after obtaining the Charter, the Hon^ble. Directors sent divers ships to New Netherland with people and cattle, which people, being for the most part servants of the aforesaid Company, purchased many and various lands; among others, on the North (alias Maurice) river, Staten island, Pavonia, Hoboocken, Nut Island and the Island of Manhattans with many other lands thereabouts. . . . A very extensive tract of country was also purchased from the Natives, being Mahikanders, 36 leagues up the North river, where Fort Orange was founded."

It is stated by James Macauley[1] that—

> Both the English and the Dutch on Long Island, respected the rights of the Indians, and no land was taken up by the several towns, or by individuals, until it had been fairly purchased of the chiefs, of the tribe who claimed it. The consideration given for the land was inconsiderable in value, and usually consisted of different articles of clothing, implements of hunting and fishing, domestic utensils, and personal ornaments; but appears to have been such in all cases, as was deemed satisfactory by the Indians.

The same author also remarks[2] that—

> In the Dutch towns it seems that the lands were generally purchased by the governor, and were by him granted to individuals. In the English towns in the Dutch territory, the lands were generally purchased of the natives by the settlers, with the consent of the Dutch governor; and in the towns under the English, the lands were purchased of the natives by the settlers, originally with the consent of the agent of the Earl of Sterling; and, after his death, the purchases of the Indians were made by the people of the several towns for their common benefit.

It will be observed from this that the method of obtaining the Indian title was not uniform and systematic, nor kept as strictly under control of the chief colonial authority as it should have been. The practice of permitting individuals, or companies other than municipal authorities acting on behalf of towns, etc, to purchase lands of the natives, even with the consent of the governor or other proper officer, was calculated to, and did afterward, become the cause of much discontent and dispute in New York.

The first action of the English on this question after coming into possession is shown by permits to purchase granted by Colonel Richard Nicolls. The following are a few examples, though the lands are not all embraced in the present bounds of the state of New York:[3]

License to purchase Indian Lands at the Nevesinks.

> Upon the request of Wm. Goldinge, James Grover and John Browne, in behalf of themselves and their associates, I do hereby authorize them to treate and conclude with the several Sachims of the Nevisans or any others concerned, about the purchase of a parcel of lands lyeing and being on the maine extending from Chawgoranissa near the mouth of the Raritans River unto Pontopecke for the doeing whereof this shall be their warrant. Given under my hand at fort James in New Yorke on Manhattans island this 17^th day of October 1664.
>
> R. NICOLLS.

[1] History of the State of New York (1829), vol. II, p. 260.
[2] Ibid., vol. II, p. 320.
[3] Colonial Documents of New York, vol. XIII, pp. 395 et seq.

Upon the Petition of Philipp Pietersen Schuyler That hee may have Liberty to Purchase a certaine Parcell of Land of the Natives, lying and being near ffort Albany, as in the said Petition is exprest; I do hereby grant Liberty unto the said Philips Pietersen Schuyler so to do of which when hee shall bring a due Certificate unto mee, hee shall have a Patent for the said Lands by Authority from his Royale Highnesse the Duke of Yorke for the farther Confirmation thereof. Given under my hand at ffort James in New Yorke on Manhatans Island this 30th day of March 1665.

RICH. NICOLLS.

Upon the petiçon of Johannes Clute and Jan Hendrick Bruyns, That they may have leave and Liberty to Purchase of the Indyans, a certaine parcell of Land lying and being on the west side of ye North River and against Clave Rack near ffort Albany, as in their Petiçon is exprest and that they may likewise Plant the same, I do hereby Grant leave and Liberty unto the said Johannes Clute and Jan Hendrick Bruyns to make Purchase, thereof and to Plant it Accordingly, as is desired, of which, when they shall bring unto mee a due certificate, They shall have a patent for the said Lands by Authority from his Royall Highnesse the Duke of Yorke for their farther Confirmaçon therein. Given under my hand at ffort James in New Yorke this 1st day of April 1665.

RICHD. NICOLLS.

Whereas Jan Cloet, Jan Hendricksen Bruyn and Jurian Teunissen have produced before the Court of Albany the consent given to their petition, of his Honour the Governour of New York, to purchase from the Indians a certain parcel of land situate on the west side of the North river opposite to the Claverrack near Fort Albany.

Therefore appeared before me, the undersigned Secretary of Albany, five savages, named Sachamoes, Mawinata, also called Schermerhoorn, Keesie Wey, Papenua, Maweha, owners and proprietors of the said land, representing the other co-owners, who declared in the presence of the undersigned witnesses, that they have sold, ceded and transferred, as they herewith cede and transfer the same to the real and actual possession of and for the benefit of the aforesaid Jan Cloet and Jan Hendricksen Bruyn, to wit, the land called Caniskek, which stretches along the river from the land of Pieter Bronk down to the valley, lying near the point of the main land behind the Baeren Island, called Machawameck, and runs into the woods both at the North and South ends to the Katskil road. The price for it is a certain sum to be paid in merchandise, which they, the sellers, acknowledge to have received from the purchasers to their full satisfaction; they therefore renounce their former claims and declare Jan Cloet and Jan Hendricksen Bruyn to be the lawful owners of the land, promising, etc.

Thus done at Albany in the presence of Harmen Bastiansen and Hendrick Gerritsen, called in as witnesses, the 20th of April 1665 Old Style.

In another case Colonel Nicolls, acting as "Governor under his Royall Highnesse the Duke of York," purchased a tract of the "Sachems and people called the Sapes Indyans."

It is perhaps proper to notice a statement by Macauley[1] alluding to an earlier transaction not relating directly to the colony, which, however, shows the disposition of the Dutch to purchase such lands as they wished to settle or occupy: "Between the years 1616 and 1620, about twenty persons belonging to the [Dutch East India] Company went from the fort on Dunn's island, below Albany, to Ohnowalagantle, now Schenectady, where they entered into a compact with the Mohawks, from whom they bought some land on which they erected a trading house."

[1] Op. cit., p. 284.

There is but little on record by which to judge of the policy adopted in relation to the dealings of New York with the Indians in reference to their lands, from the close of Dutch control up to the middle of the eighteenth century. A few items noticed are presented here as having some bearing upon the question.

By the instructions to the Earl of Bellomont, August 31, 1697, he is directed to call before him the Five Nations, and upon their renewing their submission to His Majesty's government he is to assure them that he will protect them as subjects against the French King; and when an opportunity offered for purchasing "great tracts of land for His Majty from the Indians for small sums," he was to use his discretion therein as he judged for the convenience of or advantage to His Majesty. This was a clear recognition of the Indians' possessory right and an indication of an intention not to disregard it. However, it appears that under the preceding governor (Fletcher) large grants had been made to individuals with little regard to the Indians' rights, or unauthorized or pretended purchases from the Indians. For example, a considerable portion of the Mohawks' land was obtained by fraudulent and unauthorized purchases, and the grants, notwithstanding the protests of the Indians, were confirmed by Governor Fletcher.[1]

One of these grants was to Colonel Nicholas Bayard, a member of the council, for a tract on both sides of Schoharie creek, some 24 to 30 miles in length. Another to Godfrey Dellius, 70 miles in length from Battenkill, Washington county, to Vergennes, in Vermont. One to Colonel Henry Beckman, for 16 miles square in Dutchess county; and another on Hudson river, 20 miles in length by 8 in width. One to William Smith, a member of the council, on the island of Nassau, containing about 50 square miles. One to Captain Evans, 40 miles in length by 20 in width, embracing parts of Ulster, Orange, and Rockland counties, etc.

However, it should be remarked that Governor Fletcher, in his reply to the charges made against him, stated that one of the instructions received from the King was "that when any opportunity should offer for purchasing great tracts of land for him from the Indians for small sums he was to use his discretion therein, as he should judge for the convenience or advantage which might arise to His Majesty by the same," and that the parties to whom the grants were made had presented evidence of their purchases from the Indians. It will be observed, however, that these purchases do not appear to have been made for or on behalf of the King, but solely for the individuals named.

On July 19, 1701, the deed presented above, under the section relating to the English policy, by the Five Nations to their "Beaver Hunting Ground" was executed. As this has already been referred to, it is unnecessary to add anything concerning it, except to say that it

[1] New York Colonial Documents, vol. IV, pp. 345, 346.

had no lasting effect nor formed the basis of land claims save in regard to some two or three grants made by the governor of New York under an erroneous construction. It was, in fact, a step on the part of the Iroquois tribes in the effort to bring themselves more directly under the sovereignty and protection of the English and induce them to take more active measures against the French.

In regard to this effort Sir William Johnson remarks as follows:

In this Situation therefore the 5 Nations, who were at the head of a Confederacy of almost all the Northern Nations, and in whom all their interests were united, did in 1701, resolve upon a measure the most wise and prudent with regard to their own interests, and the most advantageous with regard to Ours, that could have been framed; they delineated upon paper in the most precise manner the Limits of what they called their hunting grounds, comprehending the great Lakes of Ontario and Erie, and all the circumjacent Lands for the distance of Sixty miles around them, The sole and absolute property of this Country they desired might be secured to them; and as a proof of perpetual Alliance, and to support Our Rights against any Claims which the French might make, founded on the vague and uncertain pretence of unlimited Grants or accidental local discovery, they declared themselves willing to yield to Great Britain, the Sovereignty and absolute dominion of it, to be secured and protected by Forts to be erected whenever it should be thought proper.

A Treaty was accordingly entered into and concluded upon these terms by Mr Nanfan then Lieut Governor of New York; and a Deed of surrender of the Lands, expressing the Terms and Conditions, executed by the Indians.

The advantages of such a concession on the part of the Indians were greater than our most sanguine hopes could have expected; and had the Judgment, Zeal and Integrity of those, whose Duty it was faithfully to execute the Conditions of the Engagement, been equal to those of him who made it, the Indians might have been forever secured in Our Interest and all disputes with France about American Territory prevented; but by neglect of Government on one hand, and the enormous abuses of Individuals in the purchase of Lands on the other hand, all the solid advantages of this Treaty and concession were lost, and with them the memory even of the Transaction itself; The Indians were disobliged and disgusted, and many of them joined with the Enemy in the War which followed this Treaty, and disturbed our Settlements, whilst the French, to whom this Transaction pointed out what their plan should be, took every measure to get possession of the Country by Forts and Military Establishments; and altho' they were compelled at the Treaty of Utrecht to acknowledge in express terms our Sovereignty over the Six Nations, yet finding We took no Steps to avail Ourselves of such a favourable declaration either by a renewal of Our Engagement with the Indians, or taking measures to support Our sovereignty by forts erected in proper parts of the Country, they ceased not to pursue that Plan, in which they had already made so considerable a progress, and it was not 'till the year 1725, when they had by their Establishment at Niagara, secured to themselves the possession of Lake Ontario, that We saw too late our Error in neglecting the advantages which might have been derived from the Treaty of 1701.[1]

As referring to the same subject, and as being confirmatory of what is said above in regard to the want of a settled policy, the following remark from the same authority is added:

The Experience We had had of the mischiefs, which followed from a want of a proper regard and attention to our engagement in 1701, increased by the danger which now threatened Our Colonies from the daily and enormous encroachments of

[1] Documentary History of New York, vol. II, p. 778.

the French, ought to have been a Lesson to Us to have been now more carefull of Our Interests, but Yet the same avidity after Possession of Indian Lands, aggravated by many other Abuses, still remain'd unchecked and uncontroll'd by any permanent Plan.[1]

The change of policy about the middle of the eighteenth century, by which the control of Indian affairs was brought more immediately under the English government, has been referred to in the section relating to the English policy, and need not be repeated here. One additional item, however, may be cited, as it mentions some of the special grants which were the cause of much complaint on the part of the Indians, and served to induce the government to introduce this change.

In a communication from the Lords of Trade to Justice De Lancey, March 19, 1756, is the following statement:

We have lately had under our consideration the present State of Indian Affairs, and as it appears clearly to us, that the Patents of Lands commonly called the Kayoderosseras, Conojohary and that at the Oneida carrying place, which have been made at different times, upon pretence of purchases from the Indians, is one of the principal causes of the decline of our Interest amongst them, and that they can never be induced heartily and zealously to join in the just and necessary measures, His Majesty has been compelled to take, for the recovery of his undoubted Rights, until full satisfaction is given them with respect to these grievances, they have so long and so justly complained of; We have thought it our duty, to recommend this matter to Sir Chas Hardy's serious attention, and to desire he will lay it fully before the Council and Assembly to the end that proper measures may be taken for vacating and annulling these exorbitant grants, as were done upon a former occasion of the like kind in 1699.—The many difficulties which will attend the doing this by a legal proces in the Courts are so many and so great, as leave us little room to hope for success from such a measure; and we see no remedy to this great evil, but from the interposition of the Legislature by passing a Law for this purpose, which we have directed the Govr, earnestly to recommend to them, as a measure which will be for His Majtys service, for their honour and Interest, and for the advantage, security and welfare of their constituents in general.[2]

Numerous protests against the Kayoderosseras purchase were presented by the Indians, and the matter was a subject of controversy for a number of years. This is described as "beginning at the half Moon and so up along Hudson's river to the third Fall and thence to the Cacknawaga or Canada creek which is 4 or 5 miles above the Mohawks." A more exact description has doubtless been published, but is not at present at hand; but it is not essential for the present purpose. The tract was a large one, and the regularity of the purchase was disputed by the Indians. However, in 1768 the patentees produced the original Indian deed, and having had the boundaries surveyed, the Indians, on receiving "a handsome sum of money were at length prevailed on to yeild their Claim to the Patentees."

It was about the time of the above-mentioned communication that Governor Morris stated to the Five Nations that "he found by woeful experience that making purchases of lands was the cause of much blood being shed; he was determined, therefore, to buy no more."

[1] Documentary History of New York, vol. II, p. 780.
[2] New York Colonial Documents, vol. VII, p. 78.

In a "Review of the trade and affairs of the Indians in the northern district of America," written about this period by Sir William Johnson, he remarks as follows on the subject of Indian lands:

Whilst the Indian Trade was in this State at the Posts and Frontiers, the inhabitants were not idle; the reduction of Canada raised the value of Lands, and those who thought they had not enough (who may be presumed to amount to a very large number), now took every step & employed every low Agent, who understood a little of the Indian language to obtain Tracts for them;—on this head I need not be particular, having so oftain explained their conduct and pointed out its consequences; however their avidity in pursuit of grants, and these in the most alarming places, the irregular steps which they took to obtain them, the removal [renewal?] of dormant titles, and the several greater strides, which were taken as herein before is mentioned, concerned the Indians so nearly, that a general uneasiness took place and spread itself throughout them all.[1]

Although Johnson speaks more than once in this review of the improper methods—"though forbade by the royal proclamation and express interposition of the Government"—to obtain grants from the Indians, yet he does not inform us how these were perfected. However, as the power of granting lands to individuals remained in the governor of the state, they must have been perfected, so far as this was accomplished, through him. It is proper to add, however, that Cadwallader Colden, writing to the Lords of Trade in 1764, seems to differ somewhat from Johnson:

As to that part of the plan, which respects the purchasing of Land from the Indians, I think it necessary to observe, that the regulations which have been established, and constantly followed in this province, for upwards of twenty years, appears to have been effectual and convenient, no complaints having been made by Indians, or others, on any purchases made by authority of this Gov$^{nt}$ since that time. By these regulations all lands purchased of the Indians, are previously to be surveyed by the King's surveyor General of Lands, or his Deputy, in the presence of some Indians deputed for that purpose, by the Nation from whom the purchase is made. Of late years the Deputy Surveyors are not only sworn, but give Bonds, to the Surveyor General, for the due and faithful execution of their work. By this means the employing of persons, who have not sufficient skill, or of whose integrity one can not be so well assured, is prevented, and the Surveyor Gen$^{l}$ is enabled, to compleat a general Map of the Province and to locate the several grants precisely, which cannot be done, if Surveyors, not under the Direction of the Surveyor General, be employed. The Surveyor General in this Province, makes a return of the Survey, upon every Indian purchase, into the Secretaries Office.[2]

This relates apparently to the officially authorized purchases, and not to those which Johnson alludes to as obtained by fraud. However, as the evidence shows, and as a remedy was applied, it is presumable that Johnson's statement is correct.

A close of this ill-advised and unfortunate course was at last at hand. Orders, proclamations, and instructions, as already shown, had been promulgated by the English government for the purpose of remedying this, but a practical and satisfactory method of solution was not reached until 1765. It was then proposed that a fixed and well-defined

[1] New York Colonial Documents, vol. VII, p. 961. [2] Ibid., p. 670.

boundary or dividing line between the whites and the Indians should be marked out, and that the whites should be absolutely prohibited from settling beyond it under any pretense. This agreement was perfected at the treaty of Fort Stanwix in 1768. The line agreed upon at this treaty with the Six Nations was as follows:

We the said Indians HAVE for us and our Heirs and Successors granted bargained sold released and confirmed and by these presents do Grant bargain sell release and confirm unto our said Sovereign Lord King George the third, All that Tract of Land situate in North America at the Back of the British Settlements bounded by a Line which we have now agreed upon and do hereby establish as the Boundary between us and the British Colonies in America beginning at the Mouth of Cherokee or Hogohege River where it emptys into the River Ohio and running from thence upwards along the South side of said River to Kittaning which is above Fort Pitt from thence by a direct Line to the nearest Fork of the west branch of Susquehanna thence through the Allegany Mountains along the South side of the said West Branch untill it comes opposite to the mouth of a Creek callek (*sic*) Tiadaghton thence across the West Branch and along the South Side of that Creek and along the North Side of Burnetts Hills to a Creek called Awandāe thence down the same to the East Branch of Susquehanna and across the same and up the East side of that River to Oswegy from thence East to Delawar River and up that River to opposite where Tianaderha falls into Susquehanna thence to Tianaderha and up the West side of its West Branch to the head thereof and thence by a direct Line to Canada Creek where it emptys into the wood Creek at the West of the Carrying Place beyond Fort Stanwix and extending Eastward from every part of the said Line as far as the Lands formerly purchased so as to comprehend the whole of the Lands between the said Line and the purchased Lands or settlements, except what is within the Province of Pensilvania.[1]

But it was provided "that the lands occupied by the Mohocks around their villages, as well as by any other nation affected by this cession, may effectually remain to them and to their posterity."

As the Indian titles subsequent to this date were obtained by treaties on the part of the state government or the United States, it is unnecessary to allude to them, especially as most of them are mentioned by Mr Royce in the Schedule. The policy pursued by the United States had now been fully adopted, and the Indian titles, with some minor reserves, were finally extinguished in accordance therewith.

This policy was incorporated in the state constitution of 1777, as shown by the following clause:

And whereas, it is of great importance to the safety of this State, that peace and amity with the Indians within the same be at all times supported and maintained: And whereas, the frauds too often practised towards the said Indians, in contracts made for their lands, have in divers instances, been productive of dangerous discontents and animosities:

*Be it ordained*, That no purchase or contracts for the sale of lands made since the fourteenth day of October, in the year of our Lord, one thousand seven hundred and seventy-five, or which may hereafter be made with any of the said Indians, within the limits of this State, shall be binding on the said Indians, or deemed valid, unless made under the authority, and with the consent, of the Legislature of this State.[2]

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[1] New York Colonial Documents, vol. VIII, p. 136.

[2] Laws of Colonial and State Governments in Regard to Indian Affairs, 1832, p. 61.

It will be observed that the state acknowledged, in the most solemn manner possible, the frauds practiced on the Indians in regard to their lands.

Numerous acts were subsequently passed by the legislature in regard to Indian lands, but one only of these, which is general in its scope, is here noticed. This act, which was passed in 1788, is as follows:

AN ACT to punish infractions of that article of the Constitution of this State, prohibiting purchases of lands from the Indians, without the authority and consent of the Legislature, and more effectually to provide against intrusions on the unappropriated lands of this State.

Whereas, by the thirty-seventh section of the Constitution of this State, reciting that it is of great importance to the safety of this State, that peace and amity with the Indians within the same be at all times supported and maintained; and that the frauds too often practiced towards the said Indians, in contracts made for their lands, have, in divers instances, been productive of dangerous discontents and animosities; it is ordained, that no purchases or contracts for the sale of lands, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which might thereafter be made with, or of the said Indians within the limits of this State, shall be binding on the said Indians, or deemed valid, unless made under the authority, and with the consent of the Legislature of this State. In order, therefore, more effectually to provide against infractions of the Constitution in this respect,

1. *Be it enacted by the people of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if any person shall hereafter, unless under the authority, and with the consent of the Legislature of this State, in any manner or form, or any terms whatsoever, purchase any lands within the limits of this State, or make contracts for the sale of lands within the limits of this State, with any Indian or Indians residing within the limits of this State, every person so purchasing, or so making a contract, shall be deemed to have offended against the people of this State, and shall, on conviction, forfeit one hundred pounds to the people of this State, and shall be further punished by fine and imprisonment, in the discretion of the court.

2. *And be it further enacted by the authority aforesaid,* That every person who shall hereafter give, convey, sell, demise, or otherwise dispose of or offer to give, convey, sell, demise, or otherwise dispose of any lands within the limits of this State, or any right, interest, part or share, of or in any lands within the limits of this State, to intrude, or enter on, or take possession of, or settle on any lands within the limits of this State, pretending or claiming any right, title, or interest in such lands by virtue, under colour, or in consequence of any purchase from, or contract for the sale of lands made with any such Indian or Indians as aforesaid, at any time since the fourteenth day of October, one thousand seven hundred and seventy-five, and not under the authority, and with the consent of the Legislature of this State, every such person shall be deemed to have offended against the people of this State, and shall on conviction, forfeit the sum of one hundred pounds to the people of this State, and be further punished by fine and imprisonment, in the discretion of the court.

*And be it further enacted by the authority aforesaid,* That if any persons other than Indians, shall, after the passing of this act, take possession of, or intrude or settle on any of the waste or ungranted lands of this State, lying eastward of the lands ceded by this State to the Commonwealth of Massachusetts, and westward of the line or lines commonly called the Line of Property, agreed on between the Indians and the Superintendent of Indian affairs, in the year one thousand seven hundred and sixty-eight, every person so taking possession of, or intruding or settling on any such waste or ungranted lands, within the limits aforesaid, shall be deemed as holding such lands by a foreign title, against the right and sovereignty of the people of this State; and it shall and may be lawful for the person administering the government of this State for the time being, and it is hereby declared to be his duty to remove,

or cause to be removed, from time to time, by such means, and in such manner as he shall judge proper, all persons other than Indians who shall so take possession of or settle or intrude on any of the waste or ungranted lands of this State, within the limits aforesaid, and to cause the buildings or other improvements of such intruders on such lands, to be destroyed; and for that purpose, in his discretion, to order out any proportion of the militia from any part of this State, and such an occasion to be deemed an emergency, intended in the second section of the act entitled "An act to regulate the militia," passed the fourth day of April, 1786. And the detachments so from time to time to be ordered out, shall receive the same pay and rations, and be subject to the same rules and regulations, as is provided in the said section of the said act.[1]

Before closing this section, the following remarks by Yates and Moulton[2] in regard to the policy of the State of New York in this respect are presented, in order that they may be considered in connection with the facts which have been given:

In New York, prior to the confederacy of the Union, the same principle as that which was confirmed in Virginia was adopted as an article (37) of the constitution of 1777, and reincorporated in that of 1822 (article 7, section 12). It rendered contracts made with the Indians void unless sanctioned by the legislature. Before and since the adoption of the constitution of the United States various legislative provisions have been made relative to the different Indian tribes and nations within the State. Judicial decisions have also followed some of which were deemed to run counter to the broad principle as settled in the last case by the courts, and were therefore reversed directly or virtually. But it had been early settled that possession of Indians did not invalidate a patent from the State, and that sales by Indians were void made to the whites without legislative sanction. But in the final decision of the Court of Errors, it was considered, that from the constitutional provisions of the State, from the object and policy of the act relative to the different tribes and nations within this State, declaring such purchases (without legislative sanction) a penal offence; from the construction in *pari materia* of the whole code of Indian statute law, from the special act of 1778 to that of 1810; from a review of the history of the Six nations from their first alliance with the Dutch until the surrender of the colony to the English, and from the time when they placed themselves under the protection of the latter to the present period, having for more than a century been under their and our protection; from the resolutions of Congress and our public treaties, all combining to elucidate the principle of pre-eminent claim, and from the whole scope and policy of these constitutional and legislative provisions originating in the cautious and parental policy of government to protect the Indians in the possession of their lands from the frauds and imposition, superior cunning, and sagacity of the whites; they were to be deemed as incapable of aliening as *inoper concilii*, and therefore, that, although they are regarded not as citizens, but as independent allies, or alien communities, still continuing under the protection of government, and exempt from the civil municipal laws which regulate citizens, (though not from the operation of our criminal code for crimes committed within our jurisdictional limits, though among themselves) nevertheless, all contracts for lands, whether from a tribe or nation—from Indians or from an individual Indian, whether such individual be an Indian heir deriving from a military grant from government, (which though presumed from lapse of time to have issued lawfully, must be construed as a grant to the Indian and his Indian heirs and assigns) yet such is their total incapacity to convey to whites, that all contracts for lands are not only void, but reciprocally inoperative, except such individual sales as shall first receive, pursuant to the act of the legislature, the approval of the Surveyor General of the State, to be indorsed on the deed from such Indian.

[1] Laws of Colonial and State Governments in Regard to Indian Affairs, pp. 63–65.
[2] History of New York (1824), vol. I, pp. 308–10.

Such being the principles of international law, as sanctioned before and since our revolution, such the municipal regulations of our general and State governments since, and such the foundation to the domain of this State; no title derived from the grant of any Indians, unless received immediately from our government, can be recognized in our courts of justice so long as all title is vested in, and must emanate from the United States, or a State, under whichsoever jurisdiction the land may be a part of its sovereignty.

This is undoubtedly a correct statement of the law and theory of the United States as already noticed, and is also applicable to New York subsequent to the treaty of Fort Stanwix in 1768, but the facts as given above, which might be greatly multiplied, do not indicate such a regular, systematic, and just policy prior to this date as that portrayed by Yates and Moulton.

## NEW JERSEY

It may be stated at the outset that, as a general rule, the policy adopted by the proprietors and settlers of the province of New Jersey, in dealing with the Indians in regard to their lands, was just and equitable, though passing, in the course of its history, under different governments. Occasional injustice was done, and complaints were made by the natives, but a disposition was generally manifested on the part of the authorities to amend the error. During the contests between the Dutch and the Swedes, it is probable that the rights of natives were not as strictly observed as they should have been; nevertheless, the contending claims were all to some degree based on purchases or pretended purchases from them.

The Dutch, as has been shown in the section relating to New York, usually purchased of the Indians the lands they wished to occupy. Whether this rule was observed in taking possession in 1623 (or 1624) of the land on which Fort Nassau (near Gloucester) was built, does not appear from any records examined.

In 1627 (according to some authors, later according to others) the Swedes made their appearance in this region, and soon thereafter purchased of "some Indians (but whether of such as had the proper right to convey is not said) the land from Cape Inlopen to the Falls of Delaware, on both sides the river, which they called New-Swedeland stream; and made presents to the Indian chiefs, to obtain peaceable possession of the land so purchased."[1]

There is, however, considerable doubt as to the correctness of this statement, as George Smith[2] asserts that the Swedes made no settlements on the Delaware until after 1631.

It appears that during the contest between the Dutch and the Swedes, each party decided to pursue the policy of obtaining additional grants of lands from the Indians as the one most likely to strengthen its claim upon the river. There is evidence that both parties conceded the

[1] Samuel Smith, History of the Colony of Nova-Cæsaria, or New-Jersey (reprint), p. 22.
[2] History of Delaware county, Pennsylvania.

possessory right to be in the natives, and, although using it for selfish purposes, respected it. As the policy of the Dutch, who gained and held control of the province until it was acquired by the English in 1664, has been referred to under New York, it is unnecessary to add further evidence on this point.

The province having been granted to Lord Berkeley and Sir George Carteret, they appointed Philip Carteret as governor. Although there was no provision in the concessions for bargaining with the Indians, Governor Carteret, on his arrival, thought it prudent to purchase their rights. He ordered that all settlers were either to purchase of the Indians themselves, or if the lands had been purchased before, they were to pay their proportions. In 1672 particular instructions were given that the governor and council should purchase all lands from the Indians, and be reimbursed by the settlers as they obtained grants or made purchases from the proprietors. This course had the effect to render the Indians, as a general rule, quiet and peaceable neighbors during the early days of the colony. By "The concessions and agreements of the proprietors, freeholders and inhabitants," March 3, 1676, which was substantially a constitution, it is agreed (chap. XXVI):

> When any lands is to be taken up for settlements of towns, or otherways, before it be surveyed, the commissioners or the major part of them, are to appoint some persons to go to the chief of the natives concerned in that land, so intended to be taken up, to acquaint the natives of their intentions, and to give the natives what present they shall agree upon, for their good will or consent; and take a grant of the same in writing, under their hands and seals, or some other publick way used in those parts of the world: Which grant is to be registered in the publick register, allowing also the natives (if they please) a copy thereof; and that no person or persons take up any land, but by order from the commissioners, for the time being.[1]

In a memorial by the proprietors of East New Jersey, addressed to the Lords of Trade in 1699, they ask, among other things, that "the proprietors shall have the sole privilege—as always hath been practiced—of purchasing from the Indians, all such land lying within East Jersey, as yet remain unpurchased from them." This request was granted. The same request was repeated in 1701 by East Jersey and West Jersey jointly.

In 1677 commissioners were sent by the proprietors of West Jersey with power to buy lands of the natives; to inspect the rights of such as claimed property, etc. On September 10 of the same year they made a purchase of the lands from Timber creek to Rankokas creek; on September 27, from Oldman's creek to Timber creek, and on October 10, from Rankokas creek to Assunpink. In 1703 another purchase was made by the council of West Jersey of land lying above the falls of the Delaware; another at the head of Rankokas river, and several purchases afterward, including the whole of the lands worth taking up, except a few plantations reserved to the Indians.[2] Previous to this, in 1693, Jeremiah Bass, attorney for the West Jersey

[1] Smith's History of New Jersey, p. 533.

[2] Ibid., pp. 94, 95.

Society, made a purchase on their behalf of the lands between Cohansick creek and Morris river. Other purchases, not necessary to be mentioned here, were made before and afterward.

The two divisions having been united into one province in 1702, by order of Queen Anne, Lord Cornbury was appointed governor. One of the numerous instructions given him is as follows: "You shall not permit any other person or persons besides the said general proprietors or their agents to purchase any land whatsoever from the Indians within the limits of their grant."

In 1703 the following act was passed:

AN ACT for regulating the purchasing of land from the Indians.

Whereas, several ill disposed persons within this province have formerly presumed to enter into treaties with the Indians or natives thereof, and have purchased lands from them, such person or persons deriving no title to any part of the soil thereof under the Crown of England, or any person or persons claiming by, from or under the same, endeavoring thereby to subvest her Majesty's dominions in this country.

SEC. 1. *Be it therefore enacted by the Governor, Council and General Assembly, now met and assembled, and by authority of the same,* That no person or persons whatsoever, forever hereafter, shall presume to buy, take a gift of, purchase in fee, take a mortgage, or lease for life or number of years, from any Indians or natives for any tract or tracts of lands within this province, after the first day of December, 1703, without first obtaining a certificate under the hand of the proprietor's recorder for the time being, certifying such person hath a right, and stands entitled to a propriety, or share in a propriety, such person or persons shall produce such certificate to the governor for the time being, in order to obtain a license to purchase such quantities of land or number of acres from the Indians or natives aforesaid, as such certificate mentions.

SEC. 2. *Be it further enacted by the authority aforesaid,* That if any person or persons shall presume to buy, purchase, take gift, or mortgage, or lease of any land, contrary to this present act, he or they so offending shall forfeit *forty shillings*, money of this province for each acre of land so obtained, to be recovered by any person or persons who shall prosecute the same to effect, by action of debt, in any court of record within this province, one half to the use of her Majesty, her heirs and successors, towards the support of the government, and the other to the prosecutor: *Provided always*. That such purchasers, their heirs and assigns shall forever hereafter be incapable to hold plea for the said land in any court of common law or equity.[1]

The Indian troubles in Pennsylvania having caused fear among the people of New Jersey in regard to the disposition of the natives of this colony, and some complaints having been made by them in reference to certain lands, the legislature, in 1756, appointed commissioners to examine into the treatment the Indians had received. In 1757 an act was passed to remedy the grievances by laying a penalty upon persons selling strong drink to them, and declaring all Indian sales or pawns for drink void; that no Indian should be imprisoned for debt; that no traps of larger weight than 3½ pounds should be set, and that all sales or leases of lands by the Indians, except in accordance with said act, should be void.

As the Indians specified quite a number of tracts which had been

[1] Laws of Colonial and State Governments in Regard to Indian Affairs (1832), p. 133.

purchased, and others which had not been properly obtained, the commissioners, by the following act, passed in 1758, were authorized to purchase and settle these claims:

AN ACT to empower certain persons to purchase the claims of the Indians to land in this colony.

Whereas, it is the inclination of the legislature of this colony to settle and establish a good agreement and understanding with the Indians who do and have inhabited the same. And as the satisfying their just and reasonable demands will be a necessary step thereto; and as a strict and minute inquiry into their several claims will be attended with great difficulty expense and delay.

SEC. 1. Be it enacted by the Governor, Council and General Assembly, and it is hereby enacted by the authority of the same. That it shall and may be lawful to and for the treasurers of this colony, or either of them, to pay unto the honorable Andrew Johnston, Richard Salter, esquires, Charles Read, John Stevens, William Foster and Jacob Spicer, esquires, who are hereby appointed commissioners on the part of New Jersey for this purpose, or any three of them, out of any money in their hands, which now is or hereafter shall be made current for the service of the present war, such sum and sums of money as they may find necessary to purchase the right and claim of all or any of the Indian natives of this colony, to and for the use of the freeholders in this colony, their heirs and assigns forever, so that the sum expended in the whole exceed not sixteen hundred pounds, proclamation money, and that the sum expended in the purchase of the claims of the Delaware Indians, now inhabiting near Cranberry, and to the southward of Raritan river, shall not exceed one half of the said sum: And the receipts of the said commissioners, or any three of them, when produced, shall discharge them, the said treasurers, or either of them, their executors and administrators, for so much as they, or either of them, shall pay out of the treasury by virtue of this act.

2. And whereas, the Indians south of Raritan river, have represented their inclination to have part of the sum allowed them laid out in land whereon they may settle and raise their necessary subsistence: In order that they may be gratified in that particular, and that they may have always in their view a lasting monument of the justice and tenderness of this colony towards them:

*Be it enacted by the authority aforesaid,* That the commissioners aforesaid, or any three of them, with the approbation and consent of his excellency the governor, or the governor or commander in chief for the time being, shall purchase some convenient tract of land for their settlement, and shall take a deed or deeds in the name of his said excellency or commander in chief of this colony for the time being, and of the commissioners and their heirs, in trust, for the use of the said Indian natives who have or do reside in this colony, south of Raritan, and their successors forever: *Provided nevertheless,* That it shall not be in the power of the said Indians, or their successors, or any part of them to lease or sell to any person or persons any part thereof. And if any person or persons, Indians excepted, shall attempt to settle on the said tract or tracts, it shall and may be lawful for any justice of the peace to issue his warrant to remove any such person or persons from the land. And if any person or persons Indians excepted, shall fell, cut up, or cart off, any cedar, pine or oak trees, such person or persons shall forfeit and pay, for each tree so felled cut up or carted off, the sum of forty shillings, to be recovered before any justice of the peace in this colony, or other court where the same is cognizable, one half to and for the use of his Majesty, his heirs and successors to and for the support of government of this colony, and the other half to such persons as shall prosecute the same to effect.[1]

In pursuance of this act, the commissioners did obtain releases and grants from the Indians fully extinguishing, as is stated by different authorities, their claims to all lands in the colony.

[1] Laws of Colonial and State Governments in Regard to Indian Affairs (1832), p. 135.

From the facts set forth above, nearly all of which are matters of official record, it is apparent that the policy adopted and carried out by this colony was just and honorable. Not only were all the lands purchased from the native occupants, but in cases of subsequent disputes and claims the wiser course of yielding in part and buying out these claims was adopted. As a consequence, the people of New Jersey, as a general rule, dwelt in peace and safety when Indian wars were raging in the contiguous colonies.

## PENNSYLVANIA

The task of writing up in general terms the policy of Pennsylvania during its colonial history is a pleasant one, first, because it seldom varied, so far as it related to its lands, from that consistent with honor and justice; and, second, because it was so uniform that a comparatively brief statement will suffice to present all that is necessary to be said.

The Dutch claim of land on the Schuylkill purchased in 1633 by Arent Corsen of "Amettehooren Alibakinne, Sinques, sachems over the district of country called Armenveruis," may be dismissed as doubtful. Nevertheless, it is consistent with their general rule of basing claims to land on purchases from the Indians.

If the statement by Smith, given above (under New Jersey), that the Swedes in 1627 "purchased of some Indians the land from Cape Inlopen to the Falls of the Delaware" be correct, this is the first purchase of land in Pennsylvania. It is denied, however, that the Swedes made any settlements on the Delaware until after 1633, and the fact that the Dutch based their claim on the above-mentioned purchase in 1633 would agree with the latter opinion. This, however, is a question of no importance in the present discussion.

In 1638 Minuet, who had gone over from the Dutch to the Swedes, landed with colonists near the mouth of Minquas creek, where, after having purchased the land from the Indians, he erected a fort, or trading house, which he named Christina.

At the same time Minuet purchased from the Indians the whole western shore of the Delaware to the falls near the present site of Trenton. Acrelius, speaking of this transaction, says[1] that immediately land was bought from the Indians, a deed was given, written in Low Dutch (as no Swede could yet interpret the Indian). By this agreement the Swedes obtained all the western land on the river from Cape Henlopen to the falls of Trenton, then called by the Indians Santican, and as much inward from it, in breadth, as they might want. It is more than probable that this is really the transaction referred to by Smith,[2] which has been antedated and made to include "both sides of the Delaware."

[1] Pennsylvania Magazine, Hist. Soc. Penn., vol. III, p. 280.
[2] History of New Jersey, p. 22.

The following remarks, by George Smith,[1] in reference to this purchase, are worthy of quotation:

It was the first effort of civilized man to extinguish the Indian title to the district of country that is to claim our particular attention. It will be seen that it embraced Swanendael, for which the Dutch had already acquired the Indian title, and also the lands about the Schuylkill to which, on account of prior purchase, they set up a rather doubtful claim. The lands within the limits of our county were free from any counter claim on this account; and it follows, that to the wise policy of the Swedes we are really indebted for the extinguishment of the Indian title to our lands,—a policy first introduced by the Dutch as a matter of expediency, and subsequently adopted by William Penn on the score of strict justice to the natives.

But it cannot be contended, that in accordance with national law, this purchase from the natives, gave to the Swedish government any *legal* claim to the country. They had no *legal right* to make purchases from the Indians. To the Dutch, as discoverers of the river, belonged the right of preemption, or if any doubt existed on this point, it would be in favor of the English. As against the Swedes, the Dutch claim rested not only on discovery, but the exercise of preemption and occupancy.

On the 25th day of September, 1646, the Dutch purchased some land which included a portion of the grounds now occupied by Philadelphia, "as it also certainly did some of the lands that had been purchased by the Swedes."

As the policy of the Dutch and the Swedes, in their dealings with the Indians regarding the lands of the latter, has been fully shown in the sections relating to New York and New Jersey, it is unnecessary to dwell further on it. It may, however, be repeated that throughout the disputes and contentions of these two parties, both in Pennsylvania and New Jersey, both recognized fully the possessory right of the natives, and considered no claim valid unless based on a purchase from them.

William Penn, having obtained from Charles II in 1681 a charter for the province, sent in advance his relative, Colonel William Markham, who was his secretary. He was accompanied by several commissioners, who were to confer with the Indians respecting their lands, and to endeavor to make with them a league of permanent peace. They were enjoined by Penn to treat them with all possible candor, justice, and humanity.[2] However, it does not appear that these commissioners were associated with Markham in the single purchase he made of the Indians prior to Penn's arrival. This was the large purchase on the Delaware above Shackamaxon.

The deed, as given in the "Pennsylvania Archives"[3] (though of somewhat doubtful authenticity), is as follows:

*First Indian Deed to Wm. Penn, 1682.*

THIS INDENTURE, made the 15th day of July, in the yeare of o$^{r}$ Lord, according to English Accompt, one Thousand Six Hundred Eightye Two, Between Idquahon, Ieanottowe, Idquoquequon, Sahoppe for himselfe and Okonikon, Merkekowon Orecton for Nannacussey, Shaurwawghon, Swanpisse, Nahoosey, Tomakhickon, Westkekitt

[1] History of Delaware County, Pennsylvania, pp. 24–25.
[2] Clarkson, Memoirs of William Penn (1827), p. 112.
[3] Vol. I, pp. 47, 48.

& Tohawsis, Indyan Sachamakers of y^e^ one pte, And William Penn, Esq^r^, Chief Proprieto^r^ of the Province of Pennsylvania of the other pte: Witnesseth that for and in Consideracon of the sumes and particulers of Goods, merchandizes, and vtensills herein after mentioned and expressed, (That is to say,) Three Hundred and ffifty ffathams of Wampam, Twenty white Blankits, Twenty ffathams of Strawd waters, Sixty ffathams of Duffields, Twenty Kettles, ffower whereof large, Twenty Gunns, Twenty Coates, fforty Shirts, fforty payre of Stockings, fforty Howes, fforty Axes, Two Barrels of Powder, Two Hundred Barres of Lead, Two Hundred Knives, Two Hundred small Glasses, Twelve payre of Shooes, fforty Copper Boxes, fforty Tobacco Tonngs, Two small Barrells of Pipes, fforty payre of Sissers, fforty Combes, Twenty ffower pounds of Red Lead, one Hundred Aules, Two handfulls of ffish-hooks, Two handfulls of needles, fforty pounds of Shott, Tenne Bundles of Beades, Tenne small Saws, Twelve drawing knives, ffower anchers of Tobacco, Two anchers of Rumme, Two anchers of Syder, Two anchers of Beere, And Three Hundred Gilders, by the said William Penn, his Agents or Assigns, to the said Indyan Sachamakers, for the use of them and their People, at and before Sealeing and delivery hereof in hand paid and delivered, whereof and wherewith they the said Sachemakers doe hereby acknowledge themselves fully satisfyed Contented and paid. The said Indyan Sachamakers, (parties to these presents,) as well for and on the behalfe of themselves as for and on the behalfe of their Respective Indyans or People for whom they are concerned, Have Granted, Bargained, sold and delivered, And by these presents doe fully, clearley and absolutely Grant, bargayne, sell and deliver vnto the sayd William Penn, his Heirs and Assignes forever, All that or Those Tract or Tracts of Land lyeing and being in the Province of Pennsylvania aforesaid, Beginning at a certaine white oake in the Land now in the tenure of John Wood, and by him called the Gray Stones over against the ffalls of Dellaware River, And soe from thence up by the River side to a corner marked Spruce Tree with the letter P at the ffoot of a mountayne, And from the sayd corner marked Spruce Tree along by the Ledge or ffoot of the mountaines west north west to a Corner white oake, marked with the letter P, standing by the Indyan path that Leads to an Indyan Towne called Playwickey, and near the head of a Creek called Towsissinck, And from thence westward to the Creek called Neshammonys Creek, And along by the sayd Neshammonyes Creek unto the River Dellaware, alias Makeriskhickon; And soe bounded by the sayd mayne River to the sayd ffirst mentioned white oake in John Wood's Land; And all those Islands called or knowne by the severall names of Mattinicunk Island, Sepassincks Island, and Orecktons Island, lying or being in the sayd River Dellaware, Togeather alsoe with all and singular Isles, Islands, Rivers, Rivoletts, Creeks, Waters, Ponds, Lakes, Plaines, Hills, Mountaynes, Meadows, Marrishes, Swamps, Trees, Woods, Mynes, mineralls and Appurtennces whatsoever to the sayd Tract or Tracts of Land belonging or in any wise Apperteyning; And the reverson and reversons, Remaindr. and Remaindrs. thereof, And all the Estate, Right, Tytle, Interest, vse, pperty, Clayme and demand whatsoever, as well of them the sayd Indyan Sackamakers (Ptyes to these presents) as of all and every other the Indyans Concerned therein or in any pte. or Pcel. thereof. To HAVE AND TO HOLD the sayd Tract or Tracts of Land, Islands, and all and every other the sayd Granted premises, with their and every of their Appurtennces vnto the sayd William Penn, his Heires and Assignes forever, To the only pper vse & behoofe of the sayd William Penn, his Heires and Assignes forevermore. And the sayd Indyan Sachamakers and their Heires and successors, and every of them, the sayd Tract or Tracts of Land, Islands, and all and every other the sayd Granted pmisses, with their and every of their Appurtennces unto the sayd William Penn, his Heires and Assignes forever, against them the sayd Indyan Sachamakers, their Heirs and successors, and against all and every Indyan and Indyans and their Heires and successors, Clayming or to Clayme, any Right, Tytle or Estate, into or out of the sayd Granted premises, or any pte. or pcel. thereof, shall and will warrant and forever defend by these presents; In witness whereof the said Prtyes. to these present Indentures Interchangeably have sett their hands and seales.

The following supplementary article was signed August 1, 1682:

WEE, whose names are underwritten, for our Selves and in name and behalfe of the rest of the within mentioned Shackamachers, in respect of a mistake in the first bargaine betwixt us and the within named Wm. Penn, of the number of tenn gunns more than are mentioned in the within deed when we should then have received, doe now acknowledge the receipt of the saide tenn gunns from the said Wm. Penn; And whereas in the said deed there is certaine mention made of three hundred and fifte fathom of Wampum, not expressing the quality thereof, Wee yrfore for our Selves, and in behalfe also do declare the same to be one halfe whyt wampum and the other halfe black wampum; And we, Peperappamand, Pyterhay and Eytepamatpetts, Indian Shachamakers, who were the first owners of ye Land called Soepassincks, & of ye island of ye same name, and who did not formerlie Sign and Seal ye within deed, nor were present when the same was done, doe now by signing and sealling hereof, Ratefie, approve and confirm ye within named deed and the ye partition of ye Lands within mentioned writen and confirm thereof in all ye points, clauses, and articles of ye same, and doe declare our now sealing hereof to be as valid, effectual and sufficient for ye conveyance of ye whole Lands, and of here within named to ye sd. Wm. Penn, his heirs and assigns for evermore, as if we had their with the other within named Shachamakers signed and sealed in ye same.

As there was no change of policy in this respect during the colonial history of Pennsylvania, a brief reference to some of the more important purchases, and a few of the laws bearing on the subject, will suffice for the purpose at present in view.

As remarked by Smith in a note to his Collection of the Laws of Pennsylvania,[1] "The early Indian deeds are vague and undefined as to their boundaries and the stations can not be precisely ascertained at this day." This is true of the one given above, and is certainly true of some of those mentioned below. However, according to the same authority, "the deed of September 17th 1718 seems to define pretty clearly, the extent and limits of the lands acquired by the several purchases to that period."

The lands granted by the deed of June 23, 1683, were those "lying betwixt Pemmapecka and Neshemineh creeks, and all along upon Neshemineh creek, and backward of the same, and to run two days journey with an horse up into the country, as the said river doth go." By another deed of the same date, two sachems who had not joined in the first, released to Penn the same territory, omitting the "two day's journey." "The extent of this purchase," says Smith, "would be considerable, and greatly beyond the limits of the subsequent deed of Sept. 1718."

Another deed by a single sachem, one Wingebone, dated June 25 of the same year, grants "all my lands lying on ye west side of ye Skolkill river beginning from ye first Falls of ye same all along upon ye sd river and backward of ye same as farr as my right goeth."

July 14, 1683, two "Indian Shackamakers" claiming to be the right owners thereof, granted to Penn the lands lying between Manaiunk (Schuylkill) and Macopanackhan (Chester) rivers, "beginning on the

[1] Vol, II (1810), pp. 106–124, footnote.

west side of Manaiunk [obliteration] called Consohockhan [obliteration], and from thence by a westerly line to the said river Macopanackhan."

On the same day four "Shackamakers and right owners of ye lands lying between Manaiunk als [alias] Schulkill and Pemmapecka creeks," granted all their rights to said lands as far as the hill called Consohockan on Manaiunk river, and from thence by a northwest line to Pemmapecka river. In his note on this purchase, Smith says, "What was the true situation of the Conshohockan hill can not, perhaps, be now ascertained. That it could not be very high up the Schuylkill is apparent; otherwise a 'northwest line' from it, as mentioned in the deed last recited, would never strike Pennepack creek, nor would the line mentioned in deed of July, 1685, hereafter cited, touch the Chester and Pennepack creeks."

September 10, 1683, grant from Kekelappan of Opasiskunk, for his half of all his land betwixt Susquehanna and Delaware, which lay on the Susquehanna side, with a promise to sell the remainder next spring.

October 18, 1683, Machaloha, claiming to be owner of the lands from Delaware river to Chesapeake bay, and up to the falls of the Susquehanna, conveys his right to Penn.

June 3, 1684, deed from Manghougsin for all his land on Pahkehoma (now Perkioming).

June 7, 1684, Richard Mettamicont, calling himself owner of the land on both sides of Pemmapecka creek, on Delaware river, sells to Penn.

July 30, 1685, deed from four "Sakemakers" for lands between Macopanackan (Chester) creek and Pemapecka (Dublin) creek; "Beginning at the hill called Conshohockin on the river Manaiunk or Skoolkill; from thence extends in a parallel line to the said Macopanackan als Chester creek by a southwesterly course, and from the said Conshohocken hill up to ye aforesaid Pemapecka, als Dublin creek, by ye said parallel line northeasterly, and so up along the sd Pemapecka creek so far as the creek extends, and so from thence northwesterly back into ye woods to make up two full daies journey, as far as a man can go in two dayes from the said station of ye sd parallel line at Pemapecka; also beginning at the sd parallel at Macopanackan (als Chester) creek, and so from thence up the sd creek as far as it extends; and from thence northwesterly back into the woods to make up two full dayes journey, as far as a man can go in two dayes from the sd station of the sd parallel line at ye sd Macopanackan (als Chester) creek."

As it may be desirable to know the consideration paid for some of these purchases, the items mentioned in this case are given here, to wit: 200 fathoms wampum; 30 fathoms duffels; 30 guns; 60 fathoms Stroud-waters; 30 kettles; 30 shirts; 20 gimlets; 12 pairs shoes; 30 pairs stockings; 30 pairs scissors; 30 combs; 30 axes; 30 knives; 31 tobacco tongs; 30 bars lead; 30 pounds powder; 30 awls; 30 glasses; 30 tobacco boxes; 3 papers beads; 44 pounds red lead; 30 pairs hawk bells; 6 drawing knives; 6 caps; 12 hoes.

October 2, 1685, a deed from twelve "Indian kings, shackamakers"[1] to all the lands from Quing Quingus (or Duck) creek unto Upland (Chester) creek, all along by the west side of Delaware river, and so between said creeks backward as far as a man can ride in two days with a horse.

June 15, 1692, deed from four "kings" to the land "lying between Neshamina and Poquessing" upon the Delaware and extending backward to the utmost bounds of the province.

In his note on this purchase, Smith remarks that "these limits on the Deleware, are precisely defined. The Poquessing, a name still retained (as is Neshaminey), is the original boundary between the counties of Philadelphia and Bucks, as ascertained in 1685."

July 5, 1697, deed from the great sachem Taminy, his brother and sons, to the lands between Pemmopeck and Neshaminey creeks, extending in length from the Delaware "so farr as a horse can travel in two summer dayes, and to carry its breadth according as the several courses of the said two creeks will admit. And when the said creeks do so branch that the main branches or bodies thereof cannot be discovered, then the tract of land hereby granted shall stretch forth unto a direct course on each side and so carry on the ffull breadth to the extent of the length thereof."

September 13, 1700, deed from "Widaagh alias Orytyagh and Andaggy-junk-quagh kings or Sachems of the Susquehannagh Indians," for the Susquehanna river and all the islands therein, and all the lands on both sides thereof and "next adjoining to ye same, extending to the utmost confines of the lands which are, or formerly were the right of the people or nation called the Susquehannagh Indians, or by what name soever they were called or known thereof." As this embraced the same lands that Penn had purchased in 1696 of Colonel Dongan, who claimed to have purchased it of the Indians, a clause confirming that sale was added in the deed. Penn was very anxious to secure an undisputed right to Susquehanna river and the immediate lands along its course through the province, therefore no opportunity was lost to bring this title to the notice of the Indians in his dealings with them. The claim of the Five Nations was finally extinguished by the treaty at Philadelphia in 1736.

"About this period," says Smith, "the Indian purchases become more important, and the boundaries more certain and defined, and principles were established, and acquired the force of settled law, of deep interest to landholders; and which have been since uniformly recognized, and at this moment govern and control our judicial tribunals."

By a deed of September 17, 1718, from sundry Delaware chiefs, all the lands between the Delaware and Susquehanna rivers from Duck creek to the mountains on this side of Lechay [Lehigh] were granted, and all former deeds for lands in these bounds were confirmed. By

[1] It is deemed unnecessary to give the names of these Indians.

this agreement all the preceding deeds, westward "two days' journey," etc, which would extend far beyond the Lehigh hills, were restricted to those hills.

It is apparent from these deeds, which will suffice to show clearly the policy adopted by Penn, that, though just and humane, his method was somewhat peculiar. His chief object appears to have been to extinguish claims, and to give satisfaction to the natives for their possessory rights, rather than to fix definite and accurate boundaries of the lands purchased. It seems from the wording of the deeds and the bounds and extent indicated, that the intention was to cover all possible claims of those making the grants. Hence it was an item of little importance to the proprietor of the province that these deeds often overlapped and included areas obtained from other claimants.

As the policy adopted in this colony is clearly shown from what has been stated, it is unnecessary to refer to more than two or three of the general laws on the subject.

By the act of October 14, 1700, it was declared "that if any person presumed to buy any land of the natives within the limits of this Province and Territories, without leave from the Proprietary thereof, every such bargain or purchase shall be void and of no effect."

This, however, failing to prevent individuals from surreptitious efforts to obtain possession of Indian lands, an additional and more stringent act was passed October 14, 1729, as follows:

A Supplementary Act to an Act of Assembly of this Province, intituled, An Act against buying Land of the Natives.

Whereas divers Laws have, from Time to Time, been acted in this Province, for preserving Peace, and cultivating a good understanding with the Indian Natives thereof: And whereas, notwithstanding the Provision made by the said former Act, against purchasing Land of the said Natives, without Leave from the Proprietary, the Peace of the Public has been and may further be endangered by the Proceedings of some persons, who, to elude the said Act now in Force against such Practices, do, contrary to the Intention thereof, pretend to take Land of the Natives, on Lease, or for Term of Years, or to bargain with the *Indians* for the Herbage, or for the Timber or Trees, Mines, or Waters thereof: and others, who, without any Authority, have settled upon and taken Possession of vacant Lands, as well to the manifest Contravention of the Royal Grant of the Soil of this Province from the Crown to the Proprietary and his Heirs, and the apparent Damage of such Persons who have Right to take up Lands heretofore granted to them within this Province, as to the laying a Foundation for Disputes, Misunderstandings and Breaches with the said Natives and others: For the Prevention whereof, Be it enacted by the Honorable Patrick Gordon, Esq; Lieutenant Governor of the Province of Pennsylvania, &c. by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That no Person or Persons, Bodies Politic or Corporate whatsoever, shall at any Time hereafter, for any Cause or Consideration, or on any Pretence whatsoever, presume to purchase, bargain, contract, for, have or take, of or from any *Indian*, Native or Natives, by any Manner of Gift, Grant, Bargain or Sale, in Fee-simple, or for Life, Lives, Terms of Years, or any Estate whatsoever, any Lands, Tenements, or Hereditaments, within the Limits of this Province, or any Manner of Right, Title, Interest or Claim, in or to any such Lands, Tenements or Hereditaments, or in or to any Herbage, Trees, Fishings,

Rivers, Waters, Mines, Minerals, Quarries, Rights, Liberties or Privileges, of or belonging unto any such Lands, Tenements or Hereditaments, without the Order or Direction of the Proprietary or Proprietaries of this Province, or of his or their Proprietary Commissioners or Deputies, authorised and appointed, or to be authorised and appointed for the Management of the Proprietary Affairs of this Province, for and in Behalf of the Proprietary or Proprietaries thereof for the Time being; and that every Gift, Grant, Bargain, Sale, written or verbal Contract or Agreement, and every pretended Conveyance, Lease, Demise, and every other Assurance made, or that shall be hereafter made, with any of the said *Indian* Natives, for any such Lands, Tenements or Hereditaments, Herbage, Trees, Rivers, Waters, Fishings, Mines, Minerals, Quarries, Rights, Liberties or Privileges whatsoever, within the Limits of this Province, without the Order and Direction of the Proprietary or his Commissioners as aforesaid, shall be and is hereby declared and enacted to be null, void, and of none effect, to all Intents, Constructions and Purposes in the Law whatsoever. And that as well the Grantee, Bargainee, Lessee, Purchaser, or Person pretending to bargain, or to have bargained or agreed with any *Indian* Native as aforesaid, contrary to the the true Intent and Meaning of this Act, as all and every Person or Persons entering into and taking Possession of any Lands within the Province of *Pennsylvania*, not located or surveyed by some Warrant or Order from the Proprietary or Proprietaries, his or their Agents or Commissioners as aforesaid, to the Person or Persons possessing said Lands, or to some Person or Persons under whom they claim, and upon reasonable Notice and Request, refusing to remove, deliver up the Possession, or to make Satisfaction, for such Lands, shall and may be proceeded against in such Manner as is prescribed by the several Statuets of that Part of the Kingdom of *Great Britain*, called *England*, made against forcible Entries and Detainers; and that no Length of Possession shall be a Plea against such Prosecution.[1]

In April, 1760, an act was passed "to prevent the hunting of deer and other wild beasts beyond the limits of the lands purchased of the Indians by the Proprietaries of this Province, and against killing deer out of season."

Trouble having been brought upon the colony by the encroachments on the Indians' lands, and war from other causes having been carried on against the western settlements of the province by the Delawares and Shawnees, soon after peace was restored the following law was passed, October 14, 1768:

AN ACT to prevent Persons from settling on the Lands, within the Boundaries of this Province, not purchased of the *Indians*.

Whereas many disorderly Persons have presumed to settle upon Lands not purchased of the *Indians*, which has occasioned great Uneasiness and Dissatisfaction on the Part of the said *Indians*, and have been attended with dangerous Consequences to the Peace and Safety of this Province; For Remedy of which Mischief in future, Be it Enacted by the Honorable John Penn, Esq; Lieutenant Governor, under the Honorable Thomas Penn, and Richard Penn, Esquires, true and absolute Proprietors of the Province of Pennsylvania, and Counties of New Castle, Kent and Sussex upon Delaware, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same. That if any Person or Persons, after the Publication of this Act, either singly or in Companies, shall presume to settle upon any Lands, within the Boundaries of this Province, not purchased of the *Indians*, or shall make or cause any Survey to be made, of any Part thereof, or mark or cut down any Trees thereon, with Design to settle or appropriate the same to his own, or the use of any other

[1] Acts of Assembly of the Province of Pennsylvania, Philadelphia, 1775, pp. 157-158.

Person or Persons whatsoever, every such Person or Persons so offending, being legally convicted thereof in any Court of Quarter Sessions of the County where such Offenders shall be apprehended (in which said Court the Offences are hereby made Cognizable) shall forfeit and pay, for every such Offence, the Sum of *Five Hundred Pounds*, and suffer Twelve Months Imprisonment, without Bail or Mainprize; and shall, moreover, find Surety for his good Behavior during the Space of Twelve Months from and after the Expiration of the Term of such Imprisonment; one Moiety of the said Sum of Money to the Prosecutor, and the other Moiety to the Overseers of the Poor of the City or Township where such Offender shall be apprehended, to the Use of the Poor thereof.[1]

By the close of the eighteenth century, or at least before the year 1810, all the land within the bounds of Pennsylvania, including the addition forming Erie county, had been purchased from the Indians. There was other legislation relating to the subject, but as it is of the same tenor as that given it is unnecessary to quote it here.

That the policy of this colony, inaugurated by William Penn, was just and honorable must be conceded from the evidence given above, and that it was so considered by the Indians is a matter of history. The method pursued in making purchases from the Indians, however, was peculiar, as is apparent from the deeds which have been preserved, some of which have been noticed. The object, as remarked above, seems to have been to extinguish claims rather than to purchase definite bodies of land. The consequence was that the grants often overlapped one another and tracts had to be purchased twice or three times where there were conflicting claims, as in case of the valley of the Susquehanna. Part of the payment for the first deed, as will be seen by reference to the copy given above, consisted of rum. This, however, appears to have been the only one for which intoxicants formed part of the payment.

## MASSACHUSETTS

It is probably not going too far to agree with Reverend Dr George E. Ellis[2] that the problems of the Massachusetts colonies, especially of Massachusetts Bay, have not even yet been fully and clearly worked out by modern historians. There remains in the mind of him who has searched the numerous histories, lectures, and essays relating to the early days of New England rather a confused idea of conflicting views, lights of various tints, and opinions of various hues than a clear, comprehensive idea of the views, motives, and purposes of the hardy pioneers who sought a refuge on the rugged shores of Massachusetts bay. There is generally close agreement as to details, even to minute particulars, for the data, except on a few lines, are more than usually full; hence he who would solve the problems to his own satisfaction must study the records for himself and draw his own conclusion. Unfortunately for the present investigation, the subject under

[1] Acts of Assembly of the Province of Pennsylvania, Philadelphia, 1775, p. 355.
[2] Aims and Purposes of the Massachusetts Colony.

consideration is one of the few lines forming the exceptions alluded to, at least so far as appears from the published data.

The theory upon which the policy and acts of the Plymouth colony and several other settlements were based is sufficiently clear, but that of Massachusetts Bay is not so well defined and is not given precisely the same in all the histories in which allusion to it is made. Moreover, the records are somewhat deficient in the data bearing on the question. Further reference, however, will be made to the subject a little later.

A side light may be thrown on the method of acquiring title from the Indians usually followed in Massachusetts, and, in fact, in most of New England, by reference to the following passage from Doyle:[1]

> Of the various rights of the New England township the most important perhaps were the territorial. In Virginia the Governor and his Council, as the representatives of the Crown, made over a tract of land to an individual as a tenant for life, paying a quitrent. In Maryland or Carolina the same process took place, except that the grant was made, not by the Crown, but by the Proprietors. But in New England the soil was granted by the government of the colony not to an individual, but to a corporation. It was from the corporation that each occupant derived his rights. Nor was this corporate claim to the land a legal technicality, like the doctrine that the soil of England belongs to the Crown, and that all estates in land are derived thence. The New England township was a landholder, using its position for the corporate good, and watching jealously over the origin and extension of individual rights. At the same time the colonial government did not wholly abandon its rights over the territory. For example, we find the General Court of Plymouth in part revoking a grant of lands at Mattacheese, or, as it was afterwards called, Yarmouth, on the ground that the territory in question had not been fully occupied. It was accordingly enacted that those settlers who had actually taken up lands should continue to enjoy them, but that the township should not be allowed to make any further distribution.
>
> As we have already seen, the territorial system of the New England town took almost spontaneously a form closely resembling the manor. Part of the land was granted in lots, part was left in joint pasture, part was to be tilled in common. Though this was cultivated on a uniform system, yet apparently it was cut up into strips which were allotted, not in annual rotation, but in permanence, to the different holders.

It would follow, as a natural consequence of this custom, that purchases of lands from Indians were usually by and on behalf of the towns.

Plymouth colony commenced its settlement under favorable circumstances, so far as the right of entry was concerned. Notwithstanding what is stated hereafter in regard to purchases, it appears that the land they fixed upon as the site of their town was without inhabitants or claimants. The following, from the "Preface to the Plymouth Laws," as given in Holmes' Annals, shows that this was the understanding of the first settlers:

> The new Plymouth associates, by the favor of the Almighty, began the colony in New England, at a place called by the natives, Apaum, alias Patuxet; all the lands being void of inhabitants, we the said John Carver, William Bradford, Edward

[1] Puritan Colonies, vol. II, pp. 12–13.

Winslow, William Brewster, Isaac Allerton, and the rest of our associates, entering into a league of peace with Massasoit, since called Woosamequin, Prince or Sachem of those parts: he, the said Massasoit, freely gave them all the lands adjacent to them, and their heirs forever.[1]

In the "Journal of a Plantation," first printed in 1622, and abbreviated in Purchas' Pilgrimes,[2] occurs the following passage, which accounts for the absence of natives at this time and place:

He [Samoset] told us the place where we now live is called Patuxet, and that about four years ago all the inhabitants died of an extraordinary plague, and there is neither man, woman, or child remaining as indeed we have found none; so as there is none to hinder our possession, or lay claim to it.

It would seem from the evidence furnished by the old records that as this colony began to increase, it adopted the just policy of purchasing from the natives the lands they desired to obtain. "It is a consoling fact," says Dr Holmes, "that our ancestors purchased of the natives their land for an equivalent consideration, as appears by a letter from the pious governor Winslow, dated at Marshfield, May 1st, 1676, as follows: 'I think I can clearly say, that before these present troubles broke out, the English did not possess one foot of land in this colony but what was fairly obtained by honest purchase of the Indian proprietors. We first made a law that none should purchase or receive of gift any land of the Indians, without the knowledge of our court. And lest they should be straitened, we ordered that Mount Hope, Pocasset, and several other necks of the best land in the colony, because most suitable and convenient for them, should never be bought out of their hands.'"[3]

This letter brings out two important facts: First, that the people of Plymouth recognized the Indian occupants as the proprietors; second, that they adopted at an early day the rule that no purchases of land should be made without the consent of the court. It is to be noticed that Peter Oliver,[4] in his severe charge against the Puritans of overlooking the Indians' rights, does not include Plymouth. However, it may not be amiss to add Bancroft's comment on the last clause of Winslow's letter: "Repeated sales had narrowed their [the Indians'] domains, and the English had artfully crowded them into the tongues of land as 'most suitable and convenient for them.' There they could be more easily watched, for the frontiers of the narrow peninsulas were inconsiderable." This, after all, is but a sample on a small scale of what has been done on a much grander plan during the march of civilization over the territory of the United States.

As indicated above, the theory held by the colonists of Massachusetts in regard to the Indian title to the land was not the same as that held by the people of other colonies. This theory as given by one, though

[1] Thacher, History of Plymouth, p. 38, note.
[2] Book 10, chapter 4.
[3] Thacher, History of Plymouth, p. 145.
[4] Puritan Commonwealth.

a New Englander, who writes as a strong opponent of Puritanism, is as follows:[1]

"They deemed themselves commissioned, like Joshua of old, to a work of blood;" and they sought an excuse for their uniform harshness to the Indians in those dreadful tragedies which were enacted, far back in primeval ages, on the shores of the Red Sea and the fertile plains of Palestine, and in which Almighty Wisdom saw fit to make the descendants of Israel the instruments of his wrath. So early as 1632, the Indians "began to quarrel with the English about the bounds of their land;" for the Puritan Pilgrims, maintaining that "the whole earth is the Lord's garden," and, therefore, the peculiar property of his saints, admitted the natural right of the aborigines to so much soil only as they could occupy and improve. In 1633, this principle was made to assume the shape of law; and, "for settling the Indians' title to lands in the jurisdiction," the general court ordered, that "what lands any of the Indians have *possessed and improved, by subduing the same,* they have just right unto, according to that in Genesis, ch. i, 28, and ch. ix, 1." Thus the argument used was *vacuum domicilium cedit occupanti:* and, by an application of the customs of civilization to the wilderness, it was held, that all land not occupied by the Indians as agriculturists, "lay open to any that could or would improve it."

* * * * * * *

It has been the fashion, of late, to assert for the Puritans that they regarded European right, resting on discovery, to be a Popish doctrine, derived from Alexander VI., and that they recognized the justice of the Indian claims. But this position cannot be maintained. The rude garden, which surrounded the savage wigwam, was alone considered as savage property. The boundless landscape, with its forests, fields, and waters, he was despoiled of, on the harsh plea of Christian right. In this way, Charlestown, Boston, Dorchester, Salem, Hingham, and other places, were intruded into by the Puritan Pilgrims, without condescending to any inquiry concerning the Indian title. They were seized and settled, because they were not waving with fields of yellow corn duly fenced in with square-cut hawthorne.

Although this is harshly expressed by one evidently prejudiced, and is not fully warranted, it sets forth the Puritan theory of the Indian title correctly. The act of 1633, alluded to as given by Thomas and Homans,[2] is as follows:

*It is declared and ordered by this Court and authority thereof,* That what lands any of the Indians in this jurisdiction have possessed and improved, by subduing the same, they have just right unto, according to that in Gen. 1. 28, and Chap. 9. 1, and Psal. 115, 16.

And for the further encouragement of the hopeful work amongst them, for the civilizing and helping them forward to Christianity, if any of the Indians shall be brought to civility, and shall come among the English to inhabit, in any of their plantations, and shall there live civily and orderly, that such Indians shall have allotments amongst the English, according to the custom of the English in like case.

*Further it is ordered,* That if, upon good experience, there shall be a competent number of the Indians brought on to civility, so as to be capable of a township upon their request to the General Court, they shall have grant of lands undisposed of, for a plantation, as the English have.

*And further it is ordered by this Court and the authority thereof, and be it hereby enacted,* That all the tract of land within this jurisdiction, whether already granted to any English plantations or persons, or to be granted by this Court (not being

[1] Peter Oliver, Puritan Commonwealth, pp. 101–103.

[2] Laws of Colonial and State Governments (1832), pp. 9–10.

under the qualifications of *right* to the Indians) is, and shall be accounted the just *right* of such English as already have, or hereafter shall have grant of lands from this Court, and the authority thereof, from that of Gen. 1. 28, and the invitation of the Indians.

SEC. 2. *And it is ordered,* That no person whatsoever shall henceforth buy land of any Indian, without license first had and obtained of the General Court; and if any offend herein, such land so bought shall be forfeited to the country.

Subsequently (1665) the court, in explanation of the last clause of this act, declared as follows:

This Court doth declare the prohibition there exprest, referring to the purchase of Indian land without license from this Court is to be understood, as well grants for term of years, as forever, and that under the same penalty as in the said law is exprest.

The first clause of this act certainly accords with the theory of restricted rights as above set forth. However, the words "and the invitation of the Indians," in the fourth clause, are significant, especially in view of the fact that the settlement at Charlestown was made by "consent" of the chief, Sagamore John.

In a paper bearing the title, "General considerations for the plantation in New England, with an answer to several objections," written by Winthrop, according to the copy in the Massachusetts State Papers, answers the objection, "But what warrant have we to take that land which is and hath been of long tyme possessed of other sons of Adam?"[1] Thus—

That which is common to all is proper to none. This savage people ruleth over many lands without title or property; for they inclose no ground, neither have they cattell to maintayne it, but remove their dwellings as they have occasion, or as they can prevail against their neighbors. And why may not christians have liberty to go and dwell amongst them in their waste lands and woods (leaving them such places as they have manured for their corne) as lawfully as Abraham did among the Sodomites? For God hath given to the sons of men a two-fould right to the earth; there is a naturall right and a civil right. The first right was naturall when men held the earth in common, every man sowing and feeding where he pleased; Then, as men and cattell increased, they appropriated some parcells of ground by enclosing and peculiar manurance, and this in tyme got them a civil right. Such was the right which Ephron the Hittite had to the field of Machpelah, wherein Abraham could not bury a dead corpse without leave, though for the out parts of the country which lay common, he dwelt upon them and tooke the fruite of them at his pleasure. This appears also in Jacob and his sons, who fedd their flocks as bouldly in the Canaanites land, for he is said to be lord of the country; and at Dotham and all other places men accounted nothing their owne, but that which they had appropriated by their own industry, as appears plainly by Abimelech's servants, who in their own countrey did often contend with Isaac's servants about wells which they had digged; but never about the lands which they occupied. So likewise betweene Jacob and Laban; he would not take a kidd of Laban's without special contract; but he makes no bargaine with him for the land where he fedd. And it is probable that if the countrey had not been as free for Jacob as for Laban, that covetous wretch would have made his advantage of him, and have upbraided Jacob with it as he did with the rest. 2dly, There is more than enough for them and us. 3dly,

[1] Pages 30–31.

God hath consumed the natives with a miraculous plague, whereby the greater part of the countrey is left voide of inhabitants. 4thly, We shall come in with the good leave of the natives.[1]

We are informed that the colony in the first year of its existence made an order that no person should trade with the Indians or hire one as a servant without license. But it is doubtful whether this would have been construed as referring to land purchases, as colonial laws prohibiting "trade" or "traffic" were not generally understood as relating to lands, though doubtless a trade in land would have been considered a violation of the law. But the point made here is that the colonists, in making this law, did not have land purchases in view, and that no inference can be drawn from it that purchases of land had taken place.

The following are some of the transactions with the Indians in reference to lands, mentioned by the old records which have been published. However, the towns referred to by Mr Oliver as having disregarded the Indian title are not all thereby cleared from this charge. How far this charge holds good as to "other places" can only be inferred from what is hereafter presented. The records of Dorchester, one of the towns mentioned, contains the following entry:

Whereas there was a plantation given by the town of Dorchester unto the Indians at Ponkipog it was voted at a general town meeting the seventh of December, 1657, that the Indians shall not alienate or sell their plantation, or any part thereof, unto any English upon the loss or forfeiture of the plantation.

The same day it was voted that the honored Major Atherton, Lieutenant Clap, Ensign Foster, and William Summer, are desired and empowered to lay out the Indian plantation at Ponkipog, not exceeding six thousand acres of land.

It is stated by Reverend T. M. Harris, in his account of Dorchester,[2] that the first settlers were kindly received by the aborigines, who granted them liberty to settle; "but at the same time they were careful to purchase the territory of the Indians;" also that "for a valuable consideration they bought a tract of land from what is now called Roxbury brook on the west to Neponset river on the south, and on the other sides bounded by the sea." A deed was also obtained from Kitchmakin, "sachem of Massachusetts," for an addition as far as the "Great Blue Hill." In 1637 the general court made a second grant to the town "extending to the Plymouth line," called "the New Grant," but the purchase from the Indians was not completed until 1666, and deed obtained in 1671. The amount paid for this last purchase was $140 (£28). If this writer, who adds, "These are pleasing evidences of the precaution used by the early settlers to make regular purchases

[1] There is considerable difference between the various copies of this paper. The second paragraph, as given in the "Old South Leaflets," (12th series, number 3) is as follows: "We shall come in wth the good leave of the Natives, who finde benefitt already by our neighbourhood & learne of us to improve pt to more use, then before they could doe the whole, & by this meanes wee come in by valuable purchase: for they hav of us that wch will yeild them more benefitt then all the land wch wee have from them." In the copy given above, this is found in the fourth paragraph, abbreviated thus: "We shall come in with the good leave of the natives."

[2] Collections Massachusetts Historical Society, vol. IX, first series, pp. 159, 160.

of the natives," be correct, then Mr Oliver is mistaken so far as his charge against this town is concerned.

In regard to Salem, however, Mr Oliver's charge is not so clearly refuted. William Bentley, in his "Description of Salem,"[1] makes a weak apology for the town, as follows:

> An inquiry into the settlement of Salem will not necessarily lead to examine the authority of the royal patent, granted to the Plymouth company, or to the dispute respecting its extent. The right of possession, in regard to particular natives of America, may be as unnecessary an inquiry, in regard to the matter of fact. The Indian deed, or, as it might be called, quitclaim, granted, at so late a year as 1686, to John Higginson, from the Indians of Chelmsford and Natick, and for a small consideration, could be nothing but an attempt to prevent future trouble, and must satisfy us that no proper settlement had been made by the consent of the Indians. For Salem there is an apology which is sufficient: The natives had forsaken this spot, before the English had reached it. On the soil, they found no natives, of whom we have any record. No natives ever claimed it, and the possession was uninterrupted. Reverend John Higginson reports from tradition, that there had been an Indian town in North-fields, but no particular settlement, about the time of the infancy of the colony, appears. On several points of land, convenient for fishing, several graves have been found, which indicate the visits of the fishing Indians. But these are too few to agree with any settlements. Mr. Williams, who came to Salem, and settled within two years after Winthrop arrived, and who has given us the most early and best history of the Indians, does not mention them near Salem, and Gookin does not find them upon this spot. Williams speaks, as if the Indians, known to him, buried their dead, laying in their graves; but all the graves, which have been opened, shew that the dead were buried sitting at Neumkeage. No where have Indian names obtained, but English names were immediately adopted. These facts are sufficient to satisfy that no Indian claims were regarded, in the first settlement of Salem.

This apology, based on the idea that there were no Indian claimants, does not accord exactly with the fact that John Higginson obtained a deed "to prevent trouble," nevertheless it is possible that both statements may be correct.

*Barnstable.*—No account of the first settlement of this town, called by the Indians *Mattacheeset*, appears to be on record. The Reverend Mr Mellen, in his "Topographical Description," says "there is reason to think that no part of the town was settled without purchase or consent of the natives; for though no record remains of any considerable tract on the north side being purchased of the Indians, yet it appears by several votes and agreements of the town, extracted from the first town book and preserved in the second, that all the south side of the town was amicably purchased of Wianne and several other sachems about the year 1650."

*Nantucket.*—The whole of the island was purchased piecemeal, beginning at the western end.

The land about Sandwich and Marshpee was purchased about 1660 from Quachatisset and others, but, strange to say, for the use and benefit of other Indians.

[1] Collections Massachusetts Historical Society (1800), vol. VI, pp. 230–231.

In 1697 purchases of land from the Indians were made by the town of Truro, as appears from an old book of records kept by the town.[1]

The principal part of the town of Hopkinton was purchased from the natives by Mr Leverett, then president of Harvard College, for the purpose, it is said, of perpetuating the legacy of Edward Hopkins to the college.

In 1644 the following lands were purchased: "A tract of land called Pochet, with two islands, lying before Potanumaquut, with a beach and small island upon it; also all the land called Namskeket, extending northward to the bounds of the territory belonging to George, the sachem excepting a small island (Pochet). They bought at the same time all the lands belonging to Aspinet." The inhabitants of Eastham also, in 1646, purchased "the neck of land lying at the mouth of the harbor, the island Pochet, and the tract" extending from the northern limits of Nauset to a little brook named by the Indians Sapokonisk and by the English Bound brook.

The Indian deed for the lands purchased of them for the town of Haverhill is as follows:

KNOW ALL MEN BY THESE PRESENTS; that wee Passaquo and Saggahew, with the consent of Passaconnaway have sold unto the inhabitants of Pentuckett all the land we have in Pentuckett; that is eight miles in length from the little river in Pentuckett westward, six miles in length from the aforesaid river northward, and six miles in length from the aforesaid river eastward, with the islands and the river that the islands stand in as far in length as the land lyes, as formerly expressed, that is fourteene myles in length; and we the said Passaquo and Saggahew with the consent of Passaconnaway have sold unto the said inhabbittants all the right that wee or any of us have in the said ground, and islands and river; and do warrant it against all or any other Indians whatsoever unto the said inhabbittants of Pentuckett and to their heirs and assigns forever. Dated the fifteenth day of November: Anno Dom: 1642:

Witness our hands and seals to this bargayne of sale the day and yeare above written (in the presents of us). Wee the said Passaquo and Saggahew have received in hand, for and in consideration of the same, three pounds and ten shillings.[2]

Zaccheus Macy, in his account of Nantucket,[3] throws a little light on the subject of Indian deeds, where he says: "I have observed also, that some of our old deeds from the Indian sachems were examined by Peter Folger, and he would write something at the bottom of the deed and sign it, in addition to the signature of the justice; for he understood and could speak the Indian tongue." In what capacity Folger signed these deeds does not appear. He was one of the commissioners appointed to lay out lots in Nantucket, but this had no relation to purchases from the Indians. However, it appears that the magistrate's signature was necessary. This would indicate, as stated above, that the authority governing these purchases remained practically in the towns, and that reference to the general court was made only in

[1] Collections Massachusetts Historical Society, vol. III.

[2] Op. cit., vol. IV (1816), pp. 169–170.

[3] Collections Massachusetts Historical Society, vol. III, first series, p. 159.

unusual or extraordinary cases, or in disputed cases which could not otherwise be settled.

Reverend Peres Forbes, in his description of the town of Raynham (1793), says that lands (8 by 4½ miles) originally known by the name Cohanat, "in the colony of New Plymouth," were purchased of Massasoit by Elizabeth Pool and her associates.

According to Drake,[1] the following purchases were made of King Philip: "In 1665, he sold the country about Acushena (now New Bedford,) and Coaxet, (now in Compton.) Philip's father having previously sold some of the same, £10 was now given him to prevent any claim from him, and to pay for his marking out the same." In 1662 Wrentham was purchased of him by the English of Dedham. In 1669 an additional purchase was made by Dedham. In 1667 he sold to Constant Southworth and others all the meadow lands "from Dartmouth to Matapoisett;" also to Thomas Willet and others "all that tract of land lying between the Riuer Wanascottaquett and Cawatoquissett, being two miles long and one broad."

He sold and quitclaimed several other tracts, viz, "eight miles square," including the town of Rehoboth; an island near Nokatay; "a considerable tract of land in Middleborough;" land lying "near Acashewah in Dartmouth;" a tract "twelve miles square" south of Taunton, and a few days later "four miles square more."

These examples are sufficient to show that to some extent at least the lands as occupied by the colonists were purchased from the Indians; yet the lack of evidence, absence of records, and even want of tradition in regard to some of the towns lead to the inference that possession of the lands was otherwise gained, as at Boston, Salem, and other places.

In 1643 an act was passed by the Plymouth colony prohibiting all traffic in land with the Indians; and in 1657 and 1662 the general court took measures to protect the natives' fields and grounds from the stray cattle and swine of the English.

Among the articles of the confederation or alliance of 1643 between the four colonies—Massachusetts, Plymouth, Connecticut, and New Haven—was the following:

> It is also by these confederates agreed, that the charge of all just wars, whether offensive or defensive, (upon what part or member of this confederation soever they shall fall,) shall both in men and provisions, and all other disbursements, be borne by all the parts of this confederation, in different proportions, according to their different abilities, in manner following, viz. That the commissioners for each jurisdiction, from time to time, as there shall be occasion, bring account and number of all the males in each plantation, or any way belonging to or under their several jurisdictions, of what quality or condition soever they be, from sixteen years old to sixty, being inhabitants there; and that according to the different numbers, which from time to time shall be found in each jurisdiction, upon a true and just account, the service of men, and all charges of the war be borne by the poll. Each jurisdic-

[1] Indians of North America (1833), bk. 3, chap. 2, p. 14.

tion or plantation being left to their own just course or custom of rating themselves and people, according to their different estates, with due respect to their qualities and exemptions among themselves; though the confederates take no notice of any such privilege, and that according to the different charge of each jurisdiction and plantation, the whole advantage of the war, (if it pleased God so to bless their endeavors,) whether it be in land, goods, or persons, shall be proportionably divided amongst the said confederates.[1]

As "offensive" as well as "defensive" wars are alluded to, and the "advantages gained in lands, goods, or persons" were to be divided proportionately, Mr Oliver declares this "must have had reference to an absorption of the whole territory of New England." Though the provisions are curious and seem to embrace somewhat covertly the right under certain conditions to wage an offensive war and appropriate the territory thereby gained, Mr Oliver's inference is not fully justified. Moreover, it seems to be forbidden by the ninth article of the agreement.

The only reference in this agreement to the treatment of the Indians is the following brief paragraph in article 8: That the commissioners appointed are to see "how all the jurisdictions may carry it toward the Indians, that they neither grow insolent nor be injured without due satisfaction, lest war break in upon the confederates through miscarriages."[2] These references are given as furnishing some indication of the theory of the colonists of Massachusetts in regard to the rights and title of the natives, for it must be understood that this agreement was in truth the expression of Massachusetts Bay, Rhode Island being refused admittance and Connecticut being virtually a silent factor.

Another episode in which the question of primary title was brought forward was that caused by the abrogation of the charter and the course of Governor Andros. The history is too well known to need repetition here. It is necessary only to say the theory accepted by the Crown was that, in consequence of the abrogation of the charter, no claim based on a grant from the Massachusetts Company or on a purchase from the Indians was valid, and that no New England settler had ever acquired a legal title to his lands. The real object of this bold move appears to have been to force contributions from the people by compelling them to pay for new grants and new confirmations of their purchases. Indian deeds were declared to be "worth no more than the scratch of a bear's paw."

These items are sufficient to give a general idea of the policy and methods of dealing with the Indians in regard to their lands, adopted and practiced by the colonists of Massachusetts in the early days of their history while under Puritan control. In closing this brief examination of the period of Massachusetts history alluded to, the decision given by Doyle, who appears to be a fair and unbiased authority, may be adopted if the words "New Englanders" are limited to Massachu-

[1] Collections Massachusetts Historical Society, vol. v, 2d ser., p. 469.
[2] Hubbard, General History, chap. 52.

setts: "Whatever may have been the failings of the Puritan settlers, they cannot be charged with wanton and purposeless cruelty. Greed in despoiling the natives of their land, unreasonable and unjust suspicion in anticipating attacks, harshness in punishing them, of none of these can we acquit the New Englanders."

As the province of Maine was abandoned by Gorges in 1651, and by consent of the people taken under control of Massachusetts in 1652 and made a part of that colony by the new charter of 1691, a brief reference to some dealings with the Indians in regard to the lands of that province is made here.

The following items are from the Collections and Proceedings of the Maine Historical Society.

In a letter by Governor Shuts to the Lords Commissioners for Trade and Plantations, March 13, 1721, it is stated that—

> Those lands which the French Government calls the Indians' land, are lands which the English have long since purchased of the Indians, and have good deeds to produce for the same, and have also erected some Forts thereupon. And that the said lands have been at several gen[l]. meetings of the Indians and English confirmed to them, and once since my being Governour of these Provinces; as will appear by the inclosed treaty of the 19[th] August 1717.

In another letter to Marques de Vaudreil (1722) he says: "Arowsick is a small island at the mouth of one of our chief rivers, purchased by good deeds from the natives near seventy years agone, and settled with a good English village about fifty years since." The following important item relating to one point in the method of treating with the Indians in this eastern province is also contained in the same letter: "Now it is notorious that, at all times when this government accepted the submission of, or treated with these eastern Indians, their delegates or some of their chiefs were present and produced their powers or credentials from the tribe."

In a letter from Governor Dummer to the same party it is stated that "the Penobscot Indians, Norridgewalk Indians, and many other tribes had in the year 1693 at a treaty of Sir William Phipps governor of this Province, not only submitted themselves as subjects to the crown of England, but also renounced the French interest and quitted claim to the lands bought and possessed by the English."

In volume IV, second series, page 303, of the collections cited occurs this remark: "Levett's probity was as marked as his sagacity, and instead of seizing upon the land by virtue of his English patent, he procured from Cogawesco, the sagamore of Casco, and his wife, permission to occupy it, recognizing them as inhabitants of the country, and as having 'a natural right of inheritance therein.' This is in marked contrast to most other patentees of lands in New England."

These items, to which others of similar import might be added, indicate a just policy in regard to that part of the territory which came under the authority of Massachusetts. They are sufficient to show

that the people of this district recognized the Indian title of occupancy and respected it.

It seems that after the close of Puritan control and the grant of the new charter, the authorities gradually drifted into the theory and policy held by most of the other colonies and adopted subsequently by the United States. Brief reference to some items indicating this fact is all that is necessary here.

In the plan of a proposed union of the several colonies, drawn up in 1754, in which Massachusetts took part, is the following section:

That the President-General, with the Grand Council, summoned and assembled for that purpose, or a quorum of them as aforesaid, shall hold and direct all Indian treaties, in which the general interest or welfare of these colonies may be concerned; and make peace or declare war with Indian nations; that they make such rules and orders, with pains and punishments annexed thereto, as they judge necessary, for regulating all Indian trade; that they direct and order the ways and means, necessary and beneficial to support and maintain the safety and interests of these colonies, against all their common enemies; that they make all purchases from Indians, for the Crown, of lands not now within the bounds of particular colonies, or that shall not be within their bounds, when the extension of some of them are rendered more certain.[1]

Here is a clear recognition of the Indian title and the necessity for extinguishing it by purchase.

In 1758 the following act was passed by the governor, council, and house of representatives:

That there be three proper persons appointed for the future by this Court, near to every Indian plantation in this province, guardians to the said Indians in their respective plantations, who are hereby empowered from and after the twenty-third day of June, A. D. 1758, to take into their hands the said Indians' lands, and allot to the several Indians of the several plantations, such parts of the said lands and meadows as shall be sufficient for their particular improvement from time to time, during the continuance of this act; and the remainder, if any there be, shall be let out by the guardians of the said respective plantations, to suitable persons, for a term not exceeding the continuance of this act; and such part of the income thereof as is necessary, shall be applied for the support of such of the proprietors in their respective plantations as may be sick or unable to support themselves; and the surplusage thereof, if any there be, distributed amongst them according to their respective rights or interest, for providing necessaries for themselves and families, and for the payment of their just debts, at the descretion of their said guardians; and that the respective guardians aforesaid be hereby empowered and enabled, in their own names, and in their capacities as guardians, to bring forward and maintain any action or actions for any trespass or trespasses that may be committed on the said Indian land; and that any liberty or pretended liberty obtained from any Indian or Indians for cutting off any timber wood, or hay, milking pine trees, carrying off any ore or grain, or planting or improving said lands, shall not be any bar to said guardians in their said action or actions: *Provided*, That nothing in this act shall be understood to bar any person or persons from letting creatures run upon the said Indians' unimproved lands that lie common and contiguous to other towns or proprietors.

*And be it further enacted*, That from and after the twenty-third day of June aforesaid, no Indian or Indians shall sell or lease out to any other Indian or Indians any of his or her lands without the consent of the guardians, or a major part of the guardians

[1] Massachusetts Historical Society Collections, vol. VII (1801), p. 205.

of the Indians of the plantation wherein such lands do lie; and all sales or leases of land for any term or terms of years that shall at any time hereafter during the continuance of this act, be made by any Indian or Indians to any other Indian or Indians, shall be utterly void and of none effect, unless the same be made by and with license of the respective guardians as aforesaid.[1]

In 1780 an act was passed appointing commissioners to examine all sales of lands previously made by any of the Indians of the Moheakunnuk tribe residing in Stockbridge which had not been legally confirmed, and to confirm those for which payment had justly been made.

Another act was passed confirming the agreement with the Penobscot Indians, by which said Indians released their claims to all lands on the west side of Penobscot river, "from the head of the tide up to the river Pasquatequis being about forty-three miles; and all their claims and interest on the east side of the river from the head of the tide aforesaid up to the river Mantawomkeektook being about eighty-five miles, reserving only to themselves the island on which the old town stands and those islands on which they now have actual improvement."

As the records show purchases of but a comparatively small portion of the territory of the state, and no assertions are found in any of the numerous histories that the lands, except in the bounds of Plymouth colony, were generally purchased, the reasonable inference is that they were not, or at least that a large portion of them was otherwise obtained. This conclusion appears to be confirmed by statements which have been quoted above. That Massachusetts made an earnest effort to christianize the Indians is certainly true, but it must be admitted that the treatment of these natives by the Puritans of Massachusetts Bay in regard to their lands will not compare in the sense of justice, equity, and humanity with the policy of Connecticut, Rhode Island, or Pennsylvania.

## CONNECTICUT

The policy of the settlers of Connecticut in their dealings with the natives regarding their lands forms one of the brightest chapters, in this respect, of the early history of our country. It is perhaps not without justification that the author of one of the histories of the state[2] makes the following statement:

The planters of Connecticut proved by their conduct that they did not seek to obtain undue advantage over the Indians. Even the Pequod war was not undertaken for the purpose of increasing their territory, but only in self-defense; for they did not need their lands, nor did they use them for a considerable time. If they had wished for them, they would have preferred to pay several times their value. They allowed the other tribes all the land they claimed after the destruction of the Pequods, and took none without paying a satisfactory price. Indeed, in most cases they bought the land in large tracts, and afterward paid for it again in smaller ones, when they wished to occupy it. In some instances, they thus purchased land thrice, and, with the repeated presents made to the sachems, the sums they spent

[1] Laws of Colonial and State Governments Relating to Indian Affairs (1832), p. 16.

[2] Theodore Dwight, jr., The History of Connecticut from the First Settlement to the Present Time (1841), p. 89.

were very large. It was admitted by good judges at the time, that they paid more than the land was worth, even after the improvements were made; and large estates were expended by some of the settlers in buying land at such prices as should prevent any dissatisfaction among the natives. At the same time, they allowed them the right of hunting and fishing on the ground they had sold, as freely as the English, and to dwell and cut wood on it for more than a century; and required the towns, by law, to reserve proper tracts for the Indians to cultivate. Laws were made to protect them from injury and insult.

As it is apparent from this statement, which is in accord with the earlier histories and original documents so far as preserved, that the attempt to unravel the various purchases would be an almost hopeless undertaking, no effort to do this will be made here. All that is necessary to the object of this article is that sufficient data be presented to show clearly the policy adopted and the practical treatment of the Indians by the colonists in regard to their lands.

The first attempt on the part of the people of Plymouth colony to settle Connecticut was made in 1633 by William Holmes, who fixed upon the site of the present city of Windsor, but no buildings were erected or permanent settlement made until the ground had been purchased from the Indians. The extent of this purchase is not given. The title, however, was not obtained from the Pequods, who had driven the original owners from the territory and claimed it by conquest. Holmes, probably aware of this fact, brought back the original owners, and, having placed them again in possession, purchased of them the lands he wished to obtain. This proceeding on his part greatly incensed the Pequods and was one of the complaints on which they based their subsequent war against the colonists.

About the same time, or perhaps a little prior to the date that Holmes fixed his trading post at Windsor, the Dutch of New York made a purchase from Nepuquash, a Pequod sachem, of 20 acres at Hartford.

Macauley[1] says that, according to the author of "The New Netherlands," printed in Amsterdam in 1651, the Dutch, in 1632, purchased from the natives the lands on both sides of Connecticut river. However, as they failed to establish their claim to this region as against the English, their purchases were disregarded by the latter.

In order that a somewhat clearer idea may be given of the subsequent purchases mentioned, Trumbull's statement[2] in regard to the location of the different tribes of Connecticut at this early day is quoted:

From the accounts given of the Connecticut Indians, they cannot be estimated at less than twelve or sixteen thousand. They might possibly amount to twenty. They could muster, at least, three or four thousand warriors. It was supposed, in 1633, that the river Indians only could bring this number into the field. These were principally included within the ancient limits of Windsor, Hartford, Weathersfield, and Middletown. Within the town of Windsor only, there were ten distinct tribes, or sovereignties. About the year 1670, their bowmen were reckoned at two thousand.

[1] History of New York (1829), vol. II, p. 304.

[2] History of Connecticut (1818), vol. I, pp. 40-43.

At that time, it was the general opinion, that there were nineteen Indians, in that town, to one Englishman. There was a great body of them in the center of the town. They had a large fort a little north of the plat on which the first meeting-house was erected. On the east side of the river, on the upper branches of the Podunk, they were very numerous. There were also a great number in Hartford. Besides those on the west side of the river, there was a distinct tribe in East-Hartford. These were principally situated upon the Podunk, from the northern boundary of Hartford to its mouth, where it empties into Connecticut river. Totanimo, their first sachem with whom the English had any acquaintance, commanded two hundred bowmen. These were called the Podunk Indians.

At Mattabesick, now Middletown, was the great sachem Sowheag. His fort, or castle, was on the high ground, facing the river, and the adjacent country, on both sides of the river, was his sachemdom. This was extensive, comprehending the ancient boundaries of Weathersfield, then called Pyquaug, as well as Middletown. Sequin was sagamore at Pyquaug, under Sowheag, when the English began their settlements. On the east side of the river, in the tract since called Chatham, was a considerable clan, called the Wongung Indians. At Machemoodus, now called East-Haddam, was a numerous tribe, famous for their pawaws, and worshipping of evil spirits. South of these, in the easternmost part of Lyme, were the western Nehanticks. These were confederate with the Pequots. South and east of them, from Connecticut river to the eastern boundary line of the colony, and north-east or north, to its northern boundary line, lay the Pequot and Moheagan country. This tract was nearly thirty miles square, including the counties of New-London, Windham, and the principal part of the county of Tolland.

Historians have treated of the Pequots and Moheagans, as two distinct tribes, and have described the Pequot country as lying principally within the three towns of New-London, Groton, and Stonington. All the tract above this, as far north and east as has been described, they have represented as the Moheagan country. Most of the towns in this tract, if not all of them, hold their lands by virtue of deeds from Uncas, or his successors, the Moheagan sachems. It is, however, much to be doubted, whether the Moheagans were a distinct nation from the Pequots. They appear to have been a part of the same nation, named from the place of their situation. . . .

The Pequots were, by far, the most warlike nation in Connecticut, or even in New-England. The tradition is, that they were, originally, an inland tribe, but, by their prowess, came down and settled themselves, in that fine country along the seacoast, from Nehantick to Narraganset bay. . . . The chief seat of these Indians, was at New-London and Groton. New-London was their principal harbor, and called Pequot harbor. They had another small harbor at the mouth of Mystic river. Their principal fort was on a commanding and most beautiful eminence, in the town of Groton, a few miles south-easterly from fort Griswold. It commanded one of the finest prospects of the sound and the adjacent country, which is to be found upon the coast. This was the royal fortress, where the chief sachem had his residence. He had another fort near Mystic river, a few miles to the eastward of this, called Mystic fort. This was also erected upon a beautiful hill, or eminence, gradually descending towards the south and south-east. . . .

West of Connecticut river and the towns upon it, there were not only scattering families in almost every part, but, in several places, great bodies of Indians. At Simsbury and New-Hartford they were numerous; and upon those fine meadows, formed by the meanders of the little river, at Tunxis, now Farmington, and the lands adjacent, was another very large clan. There was a small tribe at Guilford, under the sachem squaw, or queen, of Menunkatuck. At Branford and East-Haven there was another. They had a famous burying ground at East-Haven, which they visited and kept up, with much ceremony, for many years after the settlement of New-Haven.

At Milford, Derby, Stratford, Norwalk, Stamford, and Greenwich, their numbers were formidable.

At Milford, the Indian name of which was Wopowage, there were great numbers; not only in the center of the town, but south of it, at Milford point. . . . They had a strong fortress, with flankers at the four corners, about half a mile north of Stratford ferry. This was built as a defense against the Mohawks. At Turkey hill, in the north-west part of Milford, there was another large settlement.

In Derby, there were two large clans. There was one at Paugusset. This clan erected a strong fort against the Mohawks, situated on the bank of the river, nearly a mile above Derby ferry. At the falls of Naugatuck river, four or five miles above, was another tribe.

At Stratford, the Indians were equally, if not more numerous. In that part of the town only, which is comprised within the limits of Huntington, their warriors, after the English had knowledge of them, were estimated at three hundred; and, before this time, they had been much wasted by the Mohawks.

The Indians at Stamford and Greenwich, and in that vicinity, probably, were not inferior in numbers to those at Stratford. There were two or three tribes of Indians in Stamford, when the English began the settlement of the town. In Norwalk were two petty sachemdoms; so that within these towns, there was a large and dangerous body of savages. These, with the natives between them and Hudson's river, gave extreme trouble to the Dutch. The Norwalk and Stamford Indians gave great alarm, and occasioned much expense to the English, after they made settlements in that part of the colony.

In the town of Woodbury there were also great numbers of Indians. The most numerous body of them was in that part of the town since named South Britain: . . .

On the northeasterly and northern part of the colony were the Nipmuck Indians. Their principal seat was about the great ponds in Oxford, in Massachusetts, but their territory extended southward into Connecticut, more than twenty miles. This was called the Wabbequasset and Whetstone country; and sometimes, the Moheagan conquered country, as Uncas had conquered and added it to his sachemdom.

On the 24th of November, 1638, Theophilus Eaton, Mr Davenport, and other English planters entered into the following agreement with Momauguin, sachem of Quinnipiack:[1]

That Momauguin is the sole sachem of Quinnipiack, and had an absolute power to aliene and dispose of the same: That, in consequence of the protection which he had tasted, by the English, from the Pequots and Mohawks, he yielded up all his right, title, and interest to all the land, rivers, ponds, and trees, with all the liberties and appurtenances belonging to the same, unto Theophilus Eaton, John Davenport, and others, their heirs and assigns, forever. He covenanted, that neither he, nor his Indians, would terrify, nor disturb the English, nor injure them in any of their interests; but that, in every respect, they would keep true faith with them.

The English covenanted to protect Momauguin and his Indians, when unreasonably assaulted and terrified by other Indians; and that they should always have a sufficient quantity of land to plant on, upon the east side of the harbour, between that and Saybrook fort. They also covenanted, that by way of free and thankful retribution, they gave unto the said sachem, and his council and company, twelve coats of English cloth, twelve alchymy spoons, twelve hatchets, twelve hoes, two dozen of knives, twelve porringers, and four cases of French knives and scissors.

In December following they purchased of Montowese another large tract which lay principally north of the former. This tract was 10 miles in length north and south, and 13 in breadth. It extended 8

[1] Trumbull, History of Connecticut, vol. I, pp. 98, 99.

miles east of Quinnipiak river and 5 miles west of it, and included all the lands in the ancient limits of the old towns of New Haven, Branford, and Wallingford, "and almost the whole contained in the present [1818] limits of those towns and of the towns of East-Haven, Woodbridge, Cheshire, Hamden, and North-Haven"[1]

Wopowage and Menunkatuck (Milford and Guilford) were purchased in 1639. These lands, as also those in New Haven, were purchased by the principal men, in trust, for all the inhabitants of the respective towns. Every planter, after paying his proportionate part of the expenses, drew a lot, or lots of land in proportion to the amount he had expended in the general purchase. Most of the principal settlers were from Weathersfield. "They first purchased of the Indians all that tract which lies between New Haven and Stratford river, and between the sound on the south and a stream line between Milford and Derby. This tract comprised all the lands within the old town of Milford and a small part of the town of Woodbridge. The planters made other purchases which included a large tract on the west side of Stratford river, principally in the town of Huntington."

The purchasers of Guilford required the Indians to move off the lands they had obtained from them; which agreement they carried out in good faith.

Mr Ludlow and others who settled Fairfield purchased a large tract of the natives.

"Settlements," says Trumbull, "commenced the same year at Cupheag and Pughquonnuck, since named Stratford. That part which contains the town plat, and lies upon the river, was called Cupheag, and the western part bordering upon Fairfield Pughquonnuck." He says the whole township was purchased of the natives, but at first Cupheag and Pughquonnuck only, the purchase of the township not being completed until 1672.

The following general statement by the same authority[2] indicates very clearly the just and humane policy of the settlers of this colony:

> After the conquest of the Pequots, in consequence of the covenant made with Uncas, in 1638, and the gift of a hundred Pequots to him, he became important. A considerable number of Indians collected to him, so that he became one of the principal sachems in Connecticut, and even in New-England. At some times he was able to raise four or five hundred warriors. As the Pequots were now conquered, and as he assisted in the conquest, and was a Pequot himself, he laid claim to all that extensive tract called the Moheagan or Pequot country. Indeed, it seems he claimed, and was allowed to sell some part of that tract which was the principal seat of the Pequots. The sachems in other parts of Connecticut, who had been conquered by the Pequots, and made their allies, or tributaries, considered themselves, by the conquest of this haughty nation, as restored to their former rights. They claimed to be independent sovereigns, and to have a title to all the lands which they had at any time before possessed. The planters therefore, to show their justice to the heathen, and to maintain the peace of the country, from time to time, purchased of the respective sachems and their Indians, all the lands which they settled, excepting

[1] Trumbull, History of Connecticut, vol. I, , p. 99.

[2] Vol. I, pp. 116, 117.

the towns of New-London, Groton, and Stonington, which were considered as the peculiar seat of the Pequot nation. The inhabitants of Windsor, Hartford, and Weathersfield, either at the time of their settlement or soon after, bought all those extensive tracts, which they settled, of the native, original proprietors of the country. Indeed, Connecticut planters generally made repeated purchases of their lands. The colony not only bought the Moheagan country of Uncas, but afterwards all the particular towns were purchased again, either of him or his successors, when the settlements in them commenced. Besides, the colony was often obliged to renew its leagues with Uncas and his successors, the Moheagan sachems; and to make new presents and take new deeds, to keep friendship with the Indians and preserve the peace of the country. The colony was obliged to defend Uncas from his enemies, which was an occasion of no small trouble and expense. The laws obliged the inhabitants of the several towns to reserve unto the natives a sufficient quantity of planting ground. They were allowed to hunt and fish upon all the lands no less than the English.

He also mentions in the same connection the following purchases:

Connecticut made presents to Uncas, the Moheagan sachem, to his satisfaction, and on the 1st of September, 1640, obtained of him a clear and ample deed of all his lands in Connecticut, except the lands which were then planted. These he reserved for himself and the Moheagans.

The same year, Governor Haynes, in behalf of Hartford, made a purchase of Tunxis, including the towns of Farmington and Southington, and extending westward as far as the Mohawk country.

The people of Connecticut, about the same time, purchased Waranoke and soon began a plantation there, since called Westfield. Governor Hopkins erected a trading house and had a considerable interest in the plantation.

Mr. Ludlow made a purchase of the eastern part of Norwalk, between Saugatuck and Norwalk rivers. Captain Patrick bought the middle part of the town. A few familes seemed to have planted themselves in the town about the time of these purchases, but it was not properly settled until about the year 1651. The planters then made a purchase of the western part of the town.

About the same time Robert Feaks and Daniel Patrick bought Greenwich. The purchase was made in behalf of New-Haven, but through the intrigue of the Dutch governor, and the treachery of the purchasers, the first inhabitants revolted to the Dutch. They were incorporated and vested with town privileges by Peter Stuyvesant, governor of New-Netherlands. The inhabitants were driven off by the Indians, in their war with the Dutch; and made no great progress in the settlement until after Connecticut obtained the charter, and they were taken under the jurisdiction of this colony.

Captain Howe and other Englishmen, in behalf of Connecticut, purchased a large tract of the Indians, the original proprietors, on Long-Island. This tract extended from the eastern part of Oyster bay to the western part of Howe's or Holmes's bay to the middle of the great plain. It lay on the northern part of the island and extended southward about half its breadth. Settlements were immediately begun upon the lands, and by the year 1642, had made considerable advancement.

New-Haven made a purchase of all the lands at Rippowams. This purchase was made of Ponus and Toquamske, the two sachems of that tract, which contained the whole town of Stamford. A reservation of planting ground was made for the Indians. (The purchase was made by Captain Nathaniel Turner, agent for New-Haven. It cost about thirty pounds sterling.)

In 1640 laws were enacted by both Connecticut and New Haven prohibiting all purchases from the Indians by private persons or companies without the consent of their respective general courts. These were to authorize and direct the manner of every purchase.

The Pequots having petitioned the English to take them under their protection, this request was granted in 1655. Places of residence were appointed for them by the general court of Connecticut "about Pawcatuck and Mystic rivers," and they were allowed to hunt on the lands west of the latter. They were collected in these two places and an "Indian governor" appointed over them in each place. General laws were also made for their government.

In June, 1659, Uncas, with his two sons, Owaneco and Attawanhood, by a formal and authentic deed, made over to Leffingwell, Mason, and others (35 in all) "the whole township of Norwich, which is about 9 miles square."[1]

Other purchases were made, of which the following may be mentioned:

A township of land called "Thirty miles island," at or near East Haddam.

Massacoe or Symsbury.

Lands adjoining or near Milford were purchased of the sagamores Wetanamow, Raskenute, and Okenuck, between 1657 and 1671.

The purchase from the Mohegans of a large tract, including most of the Pequod country. This tract, however, was claimed by Mason and his associates. A long and expensive controversy ensued, but after several years had passed in contesting the adverse claims, judgment was finally rendered in favor of the colony. The bounds of this tract are given as follows: "Commencing on the south at a large rock in Connecticut river, near Eight mile island, in the bounds of Lyme, eastward through Lyme, New London, and Groton to Ah-yo-sup-suck, a pond in the northeast part of Stonington; on the east, from this pond northward to Mah-man-suck, another pond; thence to Egunk-sank-a-pong, Whetstone hills; from thence to Man-hum-squeeg, the Whetstone country. From this boundary the line ran a few miles to Acquiunk, the upper falls in Quinnibaug river. Thence the line ran a little north of west, through Pomfert, Ashford, Willington, and Tolland to Moshenup-suck, the notch of the mountain, now known to be the notch in Bolton mountain. From thence the line ran southerly through Bolton, Hebron, and East Haddam" to the place of beginning.

It appears that the colonists, by repeated purchases and "ample deeds," had already obtained title to most of this land, but to prevent trouble and to satisfy the Mohegans, they offered the latter a further sum of money, which was accepted as a full, complete, and satisfactory payment. In addition to this the colonists reserved for the Indians between 4,000 and 5,000 acres of land between New London and Norwich, and granted them the privilege of hunting and fishing everywhere, and of building wigwams and cutting wood in all uninclosed lands.

It appears from the "East Hampton Book of Laws"[2] that the people

[1] Trumbull, History of Connecticut., vol. I, p. 236. [2] New York Historical Collections, vol. I.

of this settlement made a rule, about 1663, against private purchases of land from Indians—

No purchase of lands from the Indians after the first day of March 1664 shall be esteemed a good title without leave first had and obtained from the Governour, and after leave so obtained, the purchasers shall bring the Sachem and right owner of such lands before the Governour to acknowledge satisfaction and payment for the said lands, whereupon they shall have a grant from the Governour and the purchase so made and prosecuted is to be entered upon record in the office and from that time to be valid to all intents and purposes.

Had the colonists but added the Canadian (English) custom of requiring the members of the tribe or tribes to name the sachems or men authorized to make the sale, the plan would have been about as nearly perfect as the case would have admitted of at that time.

In 1708 John Belden and others purchased a large tract between Norwalk and Danbury.

These examples are sufficient to show the policy adopted by the settlers of Connecticut in dealing with the Indians for their lands and their practical methods in this respect. It is clear that they conceded the right of possession to be in the natives, and that a just and humane policy required them to purchase this possession before they converted the lands to their own use. Although purchases were made at first by individuals or companies, these were in most cases for or on behalf of settlements and not for the sole benefit and advantage of the person making the purchase. To what extent and in what manner these early purchases were confirmed by competent authority is not entirely clear. It is presumed, however, from the fact that laws were passed by both Connecticut and New Haven (1640), before their union, prohibiting purchases without the consent of their general courts, that abuses had occurred from this loose method.

The following act "concerning purchases of native rights to land" was passed in May, 1717:

That all Lands in this Government are Holden of the King of Great Britain, as Lord of the Fee: And that no Title to any Lands in this Colony can accrew by any purchase made of *Indians*, on Pretence of their being Native Proprietors thereof without the Allowance, or Approbation of this Assembly.

*And it is hereby Resolved.* That no Conveyance of Native Right, or Indian Title without the Allowance, or approbation of this Assembly aforesaid, shall be given in Evidence of any Man's Title, or Pleadable in any Court.[1]

Another act of the same tenor, entitled "An Act for preventing Trespass on the Lands of this Colony, by Illegal Purchase thereof from the Indians," was passed October 11, 1722, as follows:

That whosoever shall presume to purchase any Lands within the Bounds of this Colony, of any *Indians* whatsoever, without the Leave of this Assembly hereafter first had, and obtained, under colour, or pretence of such Indians being the Proprietors of said Lands by a Native Right; or shall having Purchased of any *Indians* Lands in such manner, without Leave of this Assembly afterwards first had, or the

[1] Statutes of Connecticut (1750), p. 110.

Confirmation of this Assembly afterwards obtained, presume to make any Sale of, or any Settlements upon any Lands so Purchased, every Person who shall in any such Manner Transgress, and be thereof Convicted in the County Court, or in the Superior Court of that County where such Lands shall lye, shall incur the Penalty of *Fifty Pounds* to the Treasury of this Colony.

And whatsoever Person, or Persons shall suffer any Wrong by means of such Sale or Settlement, as aforesaid, shall Recover in either of the said Courts, upon Proof of such Wrong, by him suffered, Treble Damages against the Person, or Persons so Wronging of him.[1]

A few years later (1750?) even more stringent provisions were enacted against unauthorized purchases from Indians, namely—

SEC. 10. *And be it further enacted,* That no person or persons in this State, whether inhabitants or other, shall buy, hire or receive a gift or mortgage of any parcel of land or lands of any Indian, for the future, except he or they do buy or receive the same for the use of the State, or for some plantation or village, and with the allowance of the General Assembly of this State.

SEC. 11. And if any person or persons shall purchase or receive any lands of any Indian or Indians, contrary to the intent of this act, the person or persons so offending, shall forfeit to the public treasury of this State the treble value of the lands so purchased or received; and no interest or estate in any lands in this State shall accrue to any such person or persons, by force or virtue of such illegal bargain, purchase, or receipt.

SEC. 12. *It is further enacted.* That when, and so often as any suit shall be brought by any Indian or Indians, for the recovery of lands reserved by the Indians for themselves, or sequestered for the use and benefit of the Indians, by order of this Assembly, or by any town, agreeable to the laws of this State, that the defendent or tenant shall not be admitted to plead in his defence his possession, or any way take benefit of the law; entitled "An Act for the quieting men's estates, and avoiding of suits," made May the eighteenth, one thousand six hundred and eighty-four.[2]

## RHODE ISLAND

When, in the spring of 1636, Roger Williams and his twelve companions, sad, weary, and hungry, succeeded in passing beyond the boundary of the Plymouth colony, they found themselves in the country of the Narragansett Indians. Here the simple story of their unhappy condition excited the pity of Canonicus, chief of the tribe, who granted them "all that neck of land lying between the mouths of Pawtucket and Moshasuck rivers, that they might sit down in peace upon it and enjoy it forever." Here, as Williams observed to his companions, "The Providence of God had found out a place for them among savages, where they might peaceably worship God according to their consciences; a privilege which had been denied them in all the Christian countries they had ever been in."

As Williams denied the right of the King to the lands, but believed it to be in the Indian occupants, and that the proper course to obtain it was by just and honorable purchase from them, the policy adopted was one of justice and equity.

It appears from certain statements in the "Confirmatory deed of

[1] Statutes of Connecticut (1750), p. 114.

[2] Laws of Colonial and State Governments (1832), pp. 50–51.

Roger Williams and his wife" to his associates, December 20, 1638, that he had arranged for purchase of lands from the Indians one or two years in advance of his arrival in the territory. As an examination of this deed is necessary to a clear understanding of Williams' first steps in this direction, it is given here:

*Be it known unto all men* by these presents, that I, Roger Williams, of the Towne of Providence, in the Narragansett Bay, in New England, having in the yeare one thousand six hundred and thirty-foure, and in the yeare one thousand six hundred and thirty-five, had severall treaties with Conanicusse and Miantonome, the chief sachems of the Narragansetts, and in the end purchased of them the lands and meadows upon the two ffresh rivers called Mooshassick and Wanasquatucket; the two said sachems having by a deed under their hands two yeares after the sale thereof established and confirmed the boundes of these landes from the river and ffields of Pawtuckqut and the great hill of Neotaconconitt on the northwest, and the towne of Mashapauge on the west, notwithstanding I had the frequent promise of Miantenomy my kind friend, that it should not be land that I should want about these bounds mentioned, provided that I satisfied the Indians there inhabiting, I having made covenantes of peaceable neighborhood with all the sachems and natives round about us. And having in a sense of God's mercifull providence unto me in my distresse, called the place Providence, I desired it might be for a shelter for persons distressed of conscience; I then, considering the condition of divers of my distressed countrymen, I communicated my said purchase unto my loving ffriends John Throckmorton, William Arnold, William Harris, Stukely Westcott, John Greene, senior, Thomas Olney, senior, Richard Waterman and others who then desired to take shelter here with me, and in succession unto so many others as we should receive into the fellowship and societye enjoying and disposing of the said purchase; and besides the ffirst that were admitted, our towne records declare that afterwards wee received Chad Brown, William ffeild, Thomas Harris, sen'r, William Wickenden, Robert Williams, Gregory Dexter and others, as our towne booke declares. And whereas, by God's mercifull assistance, I was the procurer of the purchase, not by monies nor payment, the natives being so shy and jealous, that monies could not doe it; but by that language, acquaintance, and favour with the natives and other advantages which it pleased God to give me, and also bore the charges and venture of all the gratuetyes which I gave to the great sachems, and other sachems and natives round and about us, and lay ingaged for a loving and peaceable neighbourhood with them all to my great charge and travell. It was, therefore, thought by some loveing ffriends, that I should receive some loving consideration and gratuitye; and it was agreed between us, that every person that should be admitted into the ffellowship of injoying landes and disposing of the purchase, should pay thirtye shillinges into the public stock; and ffirst about thirtye poundes should be paid unto myselfe by thirty shillings a person, as they were admitted. This sum I received in love to my ffriends; and with respect to a towne and place of succor for the distressed as aforesaid, I doe acknowledge the said sum and payment as ffull satisffaction. And whereas in the year one thousand six hundred and thirtye seaven, so called, I delivered the deed subscribed by the two aforesaid chiefe sachems, so much thereof as concerneth the aforementioned landes ffrom myselfe and my heirs unto the whole number of the purchasers, with all my poweres right and title therein, reserving only unto myselfe one single share equall unto any of the rest of that number, I now againe in a more fformal way, under my hand and seal, confirm my fformer resignation of that deed of the landes aforesaid, and bind myselfe, my heirs, my executors, my administrators and assignes never to molest any of the said persons already received or hereafter to be received into the societye of purchasers as aforesaid, but they, theire heires, executors, administrators and assignes, shall at all times quietly and peaceably injoy the premises and every part thereof.[1]

[1] Rhode Island Colonial Records, vol. I, pp. 22–24.

The confirmation by Canonicus and Miantonomi, March 24, 1637, is as follows:

At Nanhiggansick, the 24th of the first month, commonly called March, in ye second yeare of our plantation or planting at Mooshausick or Providence.

Memorandum, that we Cannaunicus and Miantunomi, the two chief sachems of Nanhiggansick, having two yeares since sold vnto Roger Williams, ye lands and meadowes vpon the two fresh rivers, called Mooshausick and Wanasqutucket, doe now by these presents, establish and confirme ye bounds of those lands, from ye river and fields at Pautuckqut, ye great hill of Notquonckanet, on ye northwest, and the town of Maushapogue on ye west.

As also, in consideration of the many kindnesses and services he hath continually done for us, both with our friends at Massachusetts, as also at Quinickicutt and Apaum or Plymouth, we doe freely give unto him all that land from those rivers reaching to Pawtuxet river; as also the grass and meadowes upon ye said Pawtuxet river.[1]

It was a fortunate circumstance for this feeble colony that Canonicus was chief sachem of the district when the wanderers reached it, and that his life was spared to old age. Truly did he say, "I have never suffered any wrong to be offered to the English since they landed; nor never will." Winthrop and Williams recognized the fact that during the latter part of his life he kept the peace of New England. He alone of the several New England sachems seemed to comprehend the fact that a new age was coming in; that there was a power behind the few English settlers which would conquer in the end. Philip may have seen the danger which threatened his race, but had not the sagacity to adopt the course best for his people. His chief object was revenge, and all his energies were bent to this end, regardless of the result, which a shrewder chief would have foreseen. In some respects Canonicus showed greater foresight than Williams. But it is unnecessary to extend these remarks, which have been made simply to emphasize the fact that the policy and peace of the colony was due to these two persons. It may be added here, however, that Williams' enthusiasm and confidence in his own integrity caused him to anticipate results that were not to be obtained, and made him, in his latter years, look upon the Indians with far less favor than when he first made his home among them.

Subsequently to the first deed above mentioned, Williams purchased the principal part of the county of Providence. Of the deeds of purchase of land from the Indians in the colony, the following may be cited as examples:

*Deed from Ousamequin (Massasoit). 1646.*

This testifyeth, that I Ousamequin chiefe Sachem of Paukanawket, for and in consideration of full satisfaction in wampum, cloth and other commodities received at present; doe give, grant, sell and make over unto Roger Williams and Gregory Dexter, inhabitants of Providence, together with all those inhabitants of Providence that hath or shall joyne in this purchase, with all my right and interest of all that parcell or tract of land which lies betweene Pawtuckqut and Loqusquscit, with all the meadowes, trees and appurtenances thereof, and after the . . .

[1] Rhode Island Colonial Records, vol. I, p. 18.

And I doe hereby bind myself, my heires and successors, to maintaine all and every of their peaceable enjoyment of the foresaid lands from any other claime or bargaine whatsoever. And I do hereby authorize Saunkussecit alias Tom of Wauchimoqut to marke trees and set the bounds of the land aforesaid . . . . . in case that great meadow at or about Loqusqusitt fall not within the bounds aforesaid, yet it shall be for them to enjoye the said medow forever.[1]

*Deed from the successors of Canonicus and Miantonomi, 1659.*

This be known to all that it may concerne, in all ages to come, that I Caujaniquaunte, sachem of the Narragansetts, ratify and confirme to the men of Providence, and to the men of Pawtuxcette, their landes, and deed, that my brother Meantonomeah made over and disposed to them, namely, all the landes, between Pawtuckette river and Pawtuxcette river, up the streams without limit for their use of cattle.[2]

This was acknowledged and confirmed by the other sachems interested.

*Deed to the Island of Aquedneck (Rhode Island), March 24, 1637.*

MEMORANDUM. That we Cannonnicus and Miantunnomu y^e^ two chiefe Sachems of the Nauhiggansitts, by vertue of our generall command of this Bay, as allso the perticular subjectinge of the dead Sachims of Acquednecke and Kitackamuckqutt, themselves and land unto us, have sold unto Mr. Coddington and his friends united unto him, the great Island of Acquednecke lyinge from hence Eastward in this Bay, as allso the marsh or grasse upon Quinunicutt and the rest of the Islands in the Bay (exceptinge Chibachuwesa formerly sould unto Mr. Winthrop, the now Governour of the Massachusetts and Mr. Williams of Providence).[3]

January 12, 1642, Miantonomi sold to the inhabitants of Shawomot (Warwick): "Lands lyinge uppon the west syde of that part of the sea called Sowhomes Bay, from Copassanatuxett, over against a little island in the sayd bay, being the north bounds, and the utmost point of that neck of land called Shawhomett; being the South bounds ffrom the sea shoare of each boundary uppon a straight lyne westward twentie miles."

As the same system of dealing with the Indians prevailed in the Rhode Island as in the Providence settlement, and also in the colony after the union of the two, the above examples will suffice to show the practical methods adopted in carrying out their policy. This method of obtaining the Indians' right was carried on until practically all the lands included in the state as at present bounded were obtained.

It would seem from some laws which were passed at a comparatively early date, that the vicious practice of individual purchases began to make its appearance in the otherwise prudent and commendable policy. These orders or laws were passed for the purpose of putting a stop to this practice.

The first of these found on the record was passed in 1651, and is as follows:

Ordered; That no purchase shall be made of any Land of y^e^ natives for a plantation without the consent of this State, except it bee for the clearinge of the Indians

[1] Rhode Island Colonial Records, vol. I, pp. 31-32. [2] Ibid., p. 35. [3] Ibid., p. 45.

from some particular plantations already sett down upon; and if any shall so purchase, they shall forfeit the Land so purchased to the Collonie, as also the President is to grant forth prohibition against any that shall purchase as aforesayd.[1]

This proving insufficient to put an end to the practice, an additional act (or "order") was passed in 1658, as follows:

Whereas, there hath beine severall purchases of land made from the Indians by men within the precincts of this Collony, which, for want of a law thereaboute in the collony, cannot be now made voyde or hindered, as namely, the purchase of Quononagutt Island, and the island called Dutch Island, which hath beine made by William Coddington and Benedict Arnold, and many others joyned by covinants with them thereabouts cannot now bee made voyde, but must bee and are alowed and confirmed as lawfull as purchased from the Indians if it were not bought before; as also any other purchases made by others as aforesayd formerly. Yett to prevent the licke purchasings hereafter from the Indians; it is ordered, by the authority of this present Assembly, that noe person, strainger or other, shall make any further purchases of lands or Islands from the Indians within the precincts of this Collony, butt such only as are soe alowed to doe, and ordered therein by an express order of a court of commissioners, upon penalty of forfeitinge all such purchassed lands or Islands to the Collony, and to pay besides, a fine of twenty pound to the collony in case of transgressinge this order.[2]

As examples of the orders granting permission to purchase under the aforesaid acts, the following are taken from the proceedings of 1657:

Whereas, we have a law in our collony, dated November the 2d, 1658, that noe person within the precincts of this collony shall buy or purchass any land of the Indians without licence of this Generall Court; and whereas, there is a place for a plantation in the bownds of this Collony, aboute a place so called Nyantecutt: It is ordered, that the Court apoynt one man in each Towne of this Collony to purchass the foresayd land of Ninecraft, who are, viz.: Mr. Ben: Arnold, Mr. Arthur Fenner, Mr. William Baulston, and Capt. Randall Houlden, and that it be dispossed to such as have need of each towne of this collony; they payinge suffitiantly for it to such as are apoynted to purchass it, or otherwise to be ordered, as each towne apoynt.

It is ordered, that Providence shall have liberty to buy out and cleare off Indians within the bowndes of Providence, as expressed in their towne evidence, and to purchass a little more in case they wish to add, seeinge they are straytened, not exceedinge three thousand acres joyninge to their township.[3]

Also June 17, 1662:

The Court doe grant free liberty and leave to the petitioners and their sayd associates to make purchase of the natives within this jurisdiction, and to buy of them that are true owners, a tract of land lying together, and not exceeding fower thousand ackers; always provided, it bee such land as is not already granted, or annexed to any of the townshipes of the Collony by purchase or other lawfull meanes, nor that it be land already purchased and justly claimed by any other perticular persons, freemen of the Collony or ther successors.[4]

In 1696 an act was passed to prevent intrusion upon the lands of the Narragansetts. It provided "that all possessions of any lands in the Narragansett country obtained by intrusion, without the consent and approbation of the general assembly, be deemed and adjudged illegal and void in law." The Indians were made wards of the legislature,

[1] Rhode Island Colonial Records, vol. I, p. 236. [2] Ibid., pp. 403–404. [3] Ibid., p. 418. [4] Ibid., p. 484.

and their lands wholly subject to its control. From 1709 onward the assembly was frequently called upon to exercise its authority for their protection and relief. Commissioners were from time to time appointed to oversee and lease their lands. As time went on there was some change in the mode of management; laws prohibiting the purchase of lands were repeated, and the guardianship of the legislature was kindly exercised for these natives as their numbers continued to dwindle.

Evidences of the method followed by the people of this colony might be multiplied, but what has been given is sufficient to show that the policy was a just and humane one, that was seldom if ever marred by official acts of injustice in this respect.

## NORTH CAROLINA

History does not make clear the policy of the North Carolina colony in dealing with the Indians in regard to their lands; in truth, it does not appear that any official policy was adopted until near the close of its colonial existence.

As a general rule, which had but few interruptions, the relations existing between the settlers and natives were friendly and peaceful up to the year 1711. The editor of the Colonial Records expresses some doubt on this point in his "prefatory notes," but the evidence appears to sustain the statement of historians. After the conquest of the Tuskarora there was no other tribe, except the Cherokee, on their western frontier which the colonists deemed worthy of consideration. It may also be added that during the first half of its existence the colony was without any stable government, its political affairs being interrupted more than once by rebellion, and once or twice reduced almost to a chaotic condition. Add to these considerations the fact that the Albemarle or first settlement was made on territory claimed to be within the jurisdiction of Virginia, and the reason why no settled policy was adopted by the North Carolina colony in regard to its dealings with Indians for their lands will readily be understood.

Notwithstanding these serious drawbacks, individual enterprise, energy, and patriotism were sufficient for the emergencies, and succeeded at length in bringing order and system out of misrule. As might be expected, the transactions with the natives in regard to lands during this period were chiefly by individuals, the only exceptions being where attempts were made to found separate colonies.

As above stated, the first settlement within the bounds of the state was about Albemarle sound, a region believed to be within the limits of the Virginia charter, and was made by emigrants from that colony, who were in search of rich and unoccupied lands. The first purchase of land made from the Indians of this region, of which history makes any mention, appears to have been by Francis Yeardly, son of Sir George

Yeardly. The only mention of this is in a letter by the younger Yeardly to John Ferrar, esq. The paragraphs referred to are as follows:[1]

In September last, a young man, a trader for beavers, being bound out to the adjacent parts to trade, by accident his sloop left him; and he, supposing she had been gone to Roanoke, hired a small boat, and, with one of his company left with him, came to crave my license to go to look after his sloop, and sought some relief of provisions of me; the which granting, he set forth with three more in company, one being of my family, the others were my neighbors. They entered in at Caratoke, ten leagues to the southward of Cape Henry, and so went to Rhoanoke Island; where, or near thereabouts they found the great Commander of those parts with his Indians a-hunting, who received them civilly, and showed them the ruins of Sir Walter Raleigh's fort, from whence I received a sure token of their being there. . . . Immediately I dispatched away a boat with six hands, one being a carpenter, to build the King an English house, my promise, at his coming first, being to comply in that matter. I sent £200 sterling in trust to purchase and pay for what land they should like, the which in little time they effected and purchased, and paid for three great rivers, and also all such others as they should like of, southerly; and in solemn manner took possession of the country, in the name, and on the behalf of the Commonwealth of England; and actual possession was solemnly given to them by the great Commander, and all the great men of the rest of the provinces, in delivering them a turf of the earth with an arrow shot into it; and so the Indians totally left the lands and rivers to us, retiring to a new habitation, where our people built the great Commander a fair house, the which I am to furnish with English utensils and chattels.

Although no boundaries are mentioned, the territory embraced must have been of considerable extent, as it is said "they purchased and paid for three great rivers, and also such others as they should like of, southerly."

The next purchase mentioned, and the earliest one of which a record has been preserved, was from the chief of the Yeopim (Weopemeoc) Indians. This grant was made March 1, 1661, to George Durant for a tract of land then called Wecocomicke, lying on Perquimans river and Roanoke sound. The place is now known as "Durant's Neck." This, as given in the Colonial Records and purporting to be a copy of the record in Perquimans county, is as follows:

Know All men by these presents that I, Kilcacenen, King of Yeopim have for a valeiable consideration of satisfaction received with the consent of my people sold, and made over and to George Durant a Parcell of land lying and being on Roneoke Sound and on a River called by the name of Perquimans which. Issueth out of the North Side of the aforesaid Sound which Land at present bears the name of Wecocomicke, begining at a marked Oak Tree, which divides this land from the land I formily sold to Saml Pricklove and extending westerly up the said Sound to a Point or Turning of the aforesaid Perquimans River and so up the eastward side of the said River to a creek called by the name of Awoseake, to-wit;—All the Land betwixt the aforesaid Bounds of Samuel Pricklove and the said Creek; thence to the Head thereof. And thence through the Woods to the first Bounds.[2]

To have and to hold the quiet possession of the same to him and his heirs forever, with All Rights and Priviledges thereunto forever from me or any Person or Persons whatsoever. As witness my hand this first day of March 1661.[3]

[1] Colonial Records, vol. I, p. 18. [2] Ibid., p. 19. [3] Ibid., p. 19.

It must be confessed that the orthography and language have a rather modern look, indicating, if genuine, that it is given in substance rather than as an exact copy. There is, however, an additional item of evidence tending to confirm the correctness of this record. It appears from the same record book that one Catchmang or Catchmany, having received a grant from the governor of Virginia, including this tract, conceded Durant's right thereto and transferred to him all claim derived from the governor's patent.

It appears from the reference in Durant's deed to a previous sale that a former grant had been obtained from the Indians, though no record of it has been preserved.

These appear, however, to be only the first of a series of like individual purchases. As early as 1662 purchases made directly from the Indians had become such an evil in the sight of the government that it was resolved to recognize them no longer. The "instructions" to Sir William Berkeley (1663), relating to the settlement of "The Province of Carolina," contains the following passage:

> If those men which have purchased shall for the better moddelling and secureing the plantations parte with there Interest bought of the Indians which they must doe the next possessor ought to pay him what he leyed out with some small advantage for his disburse, and if the party in possession have cleaned and planted (or either) more than his proportion of Grownd in bredth he ought to be compounded with for his charge of which the Governor and Councill to be Judge.[1]

The following statement occurs in a letter to the same person, dated September 8, 1663:

> By our instructions and proposealls you will see what proportions of lande we intend for each master and sarvant and in what manner to be allotted, but we understand that the people that are there have bought great tracts of land from the Indians, which if they shall injoye will weaken the plantation.[2]

The Lords Proprietors more than once recognized the fact that lands had been purchased from the Indians before the date of their charter.

The settlements made on lower Cape Fear river were based on purchases. It is expressly stated that the New Englanders, who were the first to attempt a settlement here, "purchased of the Indian chiefs a title to the soil."

The Barbadoes colony, which, encouraged and directed by Sir John Yeamans, began a settlement a few years later (1665) near the locality the New Englanders had abandoned, did so upon lands first purchased from the Indians. The planters who wished to remove thither, first dispatched an agent to find a suitable locality. This was found on Cape Fear river, not far from the locality the New England settlers had occupied, and a purchase of 32 miles square made, or, as the agent reported, "We made a purchase of the river and land of Cape Fair of Watcoosa and such other Indians as appeared to us to be the chief of those parts."

Although none of the Carolina charters refer to the rights of the

[1] Colonial Records, vol. I, p. 51. [2] Ibid., p. 53.

natives or concede in any manner their claims to the lands, yet, as we have seen, the "instructions" to Governor Berkeley indicate considerable opposition to the indiscriminate individual purchases. On the other hand, the same Lords Proprietors seemed to be content with allowing these individual transactions, provided the land was first obtained from them. In "An Answer to certine Demands and Proposealls made by severall Gentlemen" of Barbadoes they say in reply to the third request: "To the 3d demand wee consent that the Governor and Counsell shal be amply and fully impowered from us to graunte such proportions of land to all that shall come to plant in quantity and according to the Meth-hood and under that acknowledgement and noe more, as in our declarations and proposealls is set forth for which they may contract and compound with the Indians; if they see fitt."

It would seem from this that the Indian title was considered of little importance by the Lords Proprietors. However, it is a slight acknowledgment of that title, but its extinguishment was left to the individual grantees—an ill-advised policy, which, as has been shown, prevailed to some extent in New York during the early history of that colony.

The following clauses in the "Fundamental Constitutions," drawn up by John Locke, are the only ones therein bearing on this subject:

50th. The grand council, etc., shall have power . . . to make peace and war, leagues, treaties, etc., with any of the neighbour Indians.

112th. No person whatever shall hold, or claim any land in Carolina by purchase, or gift, or otherwise from the natives or any other whatsoever; but merely from and under the Lords Proprietors, upon pain of forfeiture of all his estate, moveable or immoveable, and perpetual banishment.

But the "Fundamental Constitutions" were in truth a dead letter from the first. Although adopted in 1669 they were never practically in force.

It may be added here that Graffenried, in his manuscript account of the incidents attending the settlement of his colony at Newbern, asserts that he paid the Indians for the lands where he first settled, on which Newbern was built.

For forty years subsequent to the date given above the records of North Carolina, so far as the subject now under consideration is concerned, present a complete blank. In fact, as Doyle ("English Colonies in America") has truly remarked, "For the next forty years the annals of North Carolina became more meager than those of any [other one] of our American colonies."

In 1711 the bloody Indian war broke out, which, but for the timely aid of South Carolina, would have resulted in the destruction of the northern settlement. This was carried on chiefly by the Tuskarora, who, at this time, as it is stated, numbered 1,200 warriors, the other neighboring tribes having migrated or dwindled, through contact with civilization, until they were no longer a source of alarm to the colonists. The real cause of this outbreak does not appear to be clearly stated—that mentioned by Graffenried not furnishing a full explanation.

Hitherto, as a general rule, the relations between the settlers and the natives had been peaceful, and for the greater part friendly. It appears that as early as 1703 there had been some petty disputes concerning lands and trade, and it is probable that the war grew out of some dissatisfaction on this account, as intimated by Graffenried. This seems apparent from the wording of an act passed by the general assembly in 1715, "For restraining the Indians from molesting or injuring the inhabitants of this government and for securing to the Indians the right and property of their own lands." The fourth section of this act is as follows:

> And whereas there is great reason to believe that disputes concerning land has already been of fatal consequence to the peace and welfare of this colony, *Be it further enacted, by the authority aforesaid,* That no white man shall, for any consideration whatsoever, purchase or buy any tract or parcel of land claimed, or actually in possession of any Indian, without special liberty for so doing from the Governor and Council first had and obtained, under the penalty of twenty pounds for every hundred acres of land so bargained for and purchased, one half to the informer and other half to him or them that shall sue for the same: to be recovered by bill, plaint or information, in any court of record within this government; wherein no ession, protection, injunction, or wager of law, shall be allowed or admitted of.[1]

After this the only natives of any consequence with whom the colonists had to contend were the Cherokee, who dwelt on their western frontier. The Tuskarora, who had remained at peace during the conflict, were removed in 1717 to a reservation on the northern bank of Roanoke river, in what is now Bertie county; the remnant of the hostiles abandoned the country and joined the Iroquois. There is another fact which should not be overlooked in this connection, namely, that a considerable portion of the state was absolutely uninhabited. This will be apparent to anyone who will follow Lawson[2] closely in his travels through the two Carolinas. He also remarks that "it must be confessed that the most noble and sweetest part of this country is not inhabited by any but savages; and a great deal of the richest part thereof, has no inhabitants but the beasts of the wilderness; for the Indians are not inclinable to settle on the richest land because the timbers are too large for them to cut down, and too much burthened with wood for their laborers to make plantations of."

In 1748 an act was passed "for ascertaining the bounds of a certain tract of land formerly laid out by treaty to the use of the Tuskarora Indians, so long as they, or any of them, shall occupy and live upon the same; and to prevent any person or persons taking up lands, or settling within the said bounds." As parts of this act are of historical importance in this connection, they are quoted here:

> Whereas complaints are made by the Tuskarora Indians, of divers incroachments made by the English on their lands, and it being but just that the ancient inhabitants of this province shall have and enjoy a quiet and convenient dwelling place in this their native country; wherefore,

[1] Laws of Colonial and State Governments Relating to Indian Affairs (1832), p. 162.
[2] John Lawson, History of Upper South Carolina.

II. We pray that it may be enacted, and be it enacted, by his Excellency Governor Gabriel Johnston, Esq; Governor, by and with the advice and consent of his Majesty's Council and General Assembly of this province, and it is hereby enacted by the authority of the same, That the lands formerly allotted the Tuskerora Indians, by solemn treaty, lying on Morattock river, in Bertie county, being the same whereon they now dwell, butted and bounded as follows, viz. beginning at the mouth of Quitsnoy swamp, running up the said swamp four hundred and thirty pole, to a scrubby-oak near the head of said swamp, by a great spring; then North ten degrees east, eight hundred and fifty-pole to a persimon tree on Raquis swamp; then along the swamp and Pocosion main course, North fifty-seven degrees West, two thousand six hundred and forty pole, to a hickory on the east side of the falling run or deep creek, and down the various courses of the said run to Morattock river, then down the river to the first station; shall be confirmed and assured, and by virtue of this act is confirmed and assured, unto James Blount, chief of the Tuskarora nation, and the people under his charge, their heirs and successors, for ever; any law, usage, custom or grant to the contrary notwithstanding.

* * * * * * *

*And be it* further enacted by the authority aforesaid, That no person, for any consideration whatsoever, shall purchase or buy any tract or parcel of land, claimed, or in possession of any Indian or Indians, but all such bargains and sale shall be, and hereby are declared to be null and void, and of none effect; and the person or persons so purchasing or buying any land of any Indian or Indians, shall further forfeit the sum of ten pounds proclaimation money, for every hundred acres by him purchased and bought; one half to the use of the public, the other half to him or them that shall sue for the same; to be recovered by action of debt, bill plaint or information, in any court of record within this government wherein no ession, protection, injunction or wager of law, shall be allowed or admitted of.[1]

In 1761 the British government issued instructions to the governors of the several American colonies, including North Carolina, South Carolina, and Georgia, and "the agent for Indian affairs in the southern department" (given above under New York), forbidding purchases of land from the Indians without first having obtained license to this effect.

As the only other dealings of importance by North Carolina with the Indians were with the Cherokee, which have been set forth by Mr Royce in his paper in the Fifth Annual Report of the Bureau of Ethnology, it is only necessary to mention the more important and refer the reader to the memoir cited.

In 1730 Sir Alexander Cumming was commissioned by the authorities of North Carolina to conclude a treaty with these Indians. Although it included no cession of lands, the tribe agreed to submit to the sovereignty of the King and his successors, and to permit no whites except the English to build forts or cabins or plant corn among them.

In 1762 a grant to one Captain Patrick Jack was signed by Governor Dobbs and Little Carpenter for certain lands in eastern Tennessee, which it seems had been purchased by Jack of the Cherokee in 1757.

Lands on Watauga and Nolachucky rivers (at that time, 1772–1775 in North Carolina, now in Tennessee) were purchased of the Indians by the pioneers who had pushed their way over the mountains into the valleys of these streams.

[1] Public Acts, General Assembly N. C., by James Iredell (1804), pp. 23–35.

In 1777 a treaty was concluded between Virginia and North Carolina on the one part, and the Cherokee on the other, by which the boundary and prohibitions as set forth in the act of the legislature of North Carolina are as follows:

No person shall enter or survey any lands within the Indian hunting grounds, or without the limits heretofore ceded by them, which limits westward are declared to be as follows: Begin at a point on the dividing line which hath been agreed upon between the Cherokees and the colony of Virginia, where the line between that Commonwealth and this State (hereafter to be extended) shall intersect the same; running thence a right line to the mouth of Cloud's Creek, being the second creek below the Warrior's Ford, at the mouth of Carter's Valley; thence a right line to the highest point of Chimney Top Mountain or High Rock; thence a right line to the mouth of Camp or McNamee's Creek, on south bank of Nolichucky, about ten miles below the mouth of Big Limestone; from the mouth of Camp Creek a southeast course to the top of Great Iron Mountain, being the same which divides the hunting grounds of the Overhill Cherokees from the hunting grounds of the middle settlements; and from the top of Iron Mountain a south course to the dividing ridge between the waters of French Broad, and Nolichucky Rivers; thence a southwesterly course along the ridge to the great ridge of the Appalachian Mountains, which divide the eastern and western waters; thence with said dividing ridge to the line that divides the State of South Carolina from this State.[1]

The subsequent treaties with these Indians were made by the United States and are given in Mr Royce's schedule.

It would seem from these records, though incomplete and fragmentary, that but a comparatively small portion of the territory of North Carolina was purchased from the Indians, and, as above stated, that until near the close of the colonial era the province had adopted no fixed policy in regard to this subject. There were, in fact, no tribes in the middle portions that were deemed worthy of the attention of the colonists when the demand for their lands arose. Mr James Mooney, of the Bureau of American Ethnology, who has made a careful study of the natives of this section, remarks[2]—

The tribes between the mountains and the sea were of but small importance politically; no sustained mission work was ever attempted among them, and there were but few literary men to take an interest in them. War, pestilence, whisky and systematic slave hunts had nearly exterminated the aboriginal occupants of the Carolinas before anybody had thought them of sufficient importance to ask who they were, how they lived, or what were their beliefs and opinions.

## SOUTH CAROLINA

The first settlement of this state, which was destined to form part of the real history thereof, was made in 1670 at or near Port Royal. Dissatisfied with the location, the settlers moved to the banks of Ashley river, where they began what was to become the city of Charleston. Whether the particular lands taken possession of for these settlements were purchased at the time such settlements were made is unknown; at least, history has left the inquiry unanswered. However, it is

[1] Fifth Annual Report Bureau of Ethnology, 1883-84, p. 150.
[2] The Siouan Tribes of the East (1894), p. 6.

known that for the purpose of affording room for the expansion of the colony which had settled at the junction of Ashley and Cooper rivers, land was purchased from the natives.

Mills[1] says the first public deed of conveyance found on record is dated March 10, 1675. This was probably while the settlers were still occupying the site first selected on the western bank of Ashley river and before the removal to Oyster point. The deed as given by Mills is as follows:

To all manner of people. Know ye, that we the cassiques, natural born heirs and sole owners and proprietors of greater and lesser Casor, lying on the river of Kyewaw, the river of Stono, and the fresher of the river Edistoh, doe, for us, ourselves and subjects and vassels, demise, sell, grant, and forever quit and resign, the whole parcels of land called by the name and names of great and little Casor with all the timber of said land or lands, and all manner of the appurtenances any way belonging to any part or parts of the said land or lands, unto the Right Honorable Anthony Earle of Shaftsbury, Lord Baron Ashley of Winboon, St. Gyles's, Lord Cooper of Pawlett, and to the rest of the lords proprietors of Carolina for and in consideration of a valuable parcel of cloth, hatchets, beads, and other goods and manufactures, now received at the hands of Andrew Percivall, Gent. in full satisfaction of and for these our territories, lands, and royalties, with all manner the appurtenances, privileges, and dignities, any manner of way to us, ourselves or vassals belonging. In confirmation whereof we the said cassiques have hereunto set our hands, and affixed our seals, this tenth day of March, in the year of our Lord God one thousand six-hundred seventie and five, and in the twenty-eighth year of the reign of Charles the second of Great Britain, France and Ireland, King, defender of the faith etc.

By another deed, dated February 28, 1683, the chief or "cassique" of Wimbee (or Wimbee Indians) cedes "a strip of country between the Combahee and Broad river extending back to the mountains."

Another deed, dated February 13, 1684, is a conveyance by the "Cassique of Stono." Another of the same date is by the "Cassique of Combahee;" and another also of the same date is by "the Queen of St Helena;" and also of the same date is one by the "Cassique of Kissah." On the same day "all these cassiques joined to make a general deed conveying all the lands which they before conveyed separately to the lords proprietors."

It would seem from these facts that the South Carolina colony adopted at the outset a correct, just, and humane policy in treating with the Indians for their lands. Not only was the territory purchased, but the grants were made to the properly constituted authorities, the Lords Proprietors. And yet this was at a time when there was constant friction between the people and the rulers. "The continued struggles with the proprietaries hastened the emancipation of the people from their rule; but the praise of having been always in the right can not be awarded to the colonists. The latter claimed the right of weakening the neighboring Indian tribes by a partisan warfare, and a sale of the captives into West India bondage; their antagonists demanded that the treaty of peace with the natives should be preserved."[2]

[1] Statistics of South Carolina (1826), p. 106. [2] Bancroft, History of the United States, vol. II.

The dark blot on South Carolina's Indian history is her encouragement of Indian enslavement. On this point it is sufficient to quote the following remarks by Doyle,[1] which are based on the report of Governor Johnson, made to the proprietors in 1708.

> In another way, too, the settlers had placed a weapon in the hands of their enemies. The Spaniards were but little to be dreaded, unless strengthened by an Indian alliance. The English colonists themselves increased this danger by too faithful an imitation of Spanish usages. In both the other colonies with which we have dealt, the troubles with the Indians were mostly due to those collisions which must inevitably occur between civilized and savage races. But from the first settlement of Carolina the colony was tainted with a vice which imperiled its relations with the Indians. . . . In Virginia and Maryland there are but few traces of any attempt to enslave the Indians. In Carolina the negro must always have been the cheaper, more docile, and more efficient instrument, and in time the African race furnished the whole supply of servile labor. But in the early days of the colony the negro had no such monopoly of suffering. The Indian was kidnapped and sold, sometimes to work on what had once been his own soil, sometimes to end his days as an exile and bondsman in the West Indies. As late as 1708 the native population furnished a quarter of the whole body of slaves.

We are informed by Logan[2] that "as early as 1707 the exciting abuses of the trade, the rapid profits of which had allured into the Indian nations many irresponsible men of the most despicable character, induced the passage of an act by the assembly by which a board of commissioners was instituted to manage and direct everything relating to the traffic with the Indians, and all traders were compelled, under heavy penalties, to take out a license as their authority in the nation."

The same act, which furnishes some important items of history, provides further:

> Whereas, the greater number of those persons that trade among the Indians in amity with this government, do generally lead loose, vicious lives, to the scandal of the Christian religion, and do likewise oppress the people among whom they live, by their unjust and illegal actions, which, if not prevented, may in time tend to the destruction of this province; therefore, be it enacted, that after the first day of October next, every trader that shall live and deal with any Indians, except the Itawans, Sewees, Santees, Stonoes, Kiawas, Kussoes, Edistoes, and St. Helenas, for the purpose of trading in furs, skins, slaves, or any other commodity, shall first have a license under the hand and seal of the Commissioners hereafter to be named; for which he shall pay the public receiver the full sum of eight pounds current money. The license shall continue in force one year and no longer, and he shall give a surety of one hundred pounds currency.[3]

On November 25 of the same year an act was passed to limit the bounds of the "Yamasse settlement," to prevent persons from disturbing them with their stock, and to remove such as are settled within the limitations mentioned. But these Indians, together with other tribes, having engaged in 1715 in bloody war with the colonists, were at length completely conquered and the remnant driven from the province. Having deserted their lands and forfeited their right to them, these by act

[1] English Colonies in America, vol. I, p. 359. [2] History of Upper South Carolina, p. 170.
[3] Ibid., pp. 170-171.

of June 13, 1716, (number 373,) were appropriated to other uses.[1] This act was declared null and void by the Lords Proprietors.

In 1712 there was passed "An act for settling the Island called Palawana, upon the Cusaboe Indians now living in Granville County and upon their Posterity forever." The first section of this act is as follows:

Whereas the *Cusaboe* Indians of *Granville* County, are the native and ancient Inhabitants of the Sea Coasts of this Province, and kindly entertained the first *English* who arrived in the same, and are useful to the Government for Watching and Discovering Enemies, and finding Shipwreck'd People; And whereas the Island called *Palawana* near the Island of *St. Helena*, upon which most of the Plantations of the said *Cusaboes* now are, was formerly by Inadvertancy granted by the Right Honorable the Lords Proprietors of this Province, to *Matthew Smallwood*, and by him sold and transferred to *James Cockram*, whose Property and Possession it is at present; Be it Enacted by the most noble Prince *Henry* Duke of *Beauford*, Palatine, and the Rest of the Right Honorable the true and absolute Lords and Proprietors of *Carolina*, together with the Advice and Consent of the Members of the General Assembly now met at *Charles-Town* for the South West Part of this Province, That from and after the Ratification of this Act, the Island of *Palawana*, lying nigh the Island of *St. Helena*, in *Granville* County, containing between Four and Five Hundred Acres of Land, be it more or less, now in the Possession of *James Cockram* as aforesaid, shall be and is hereby declared to be vested in the aforesaid *Cusaboe* Indians, and in their Heirs forever.[2]

The only important treaties in regard to lands after this date were with the Cherokee and Creek Indians. As the treaties with the Cherokee are all mentioned by Mr Royce in his paper published in the Fifth Annual Report of the Bureau of Ethnology, a brief reference to them is all that is necessary here. The map which accompanies the paper cited shows the several tracts obtained by these treaties.

By treaty of 1721 with the Cherokee, Governor Nicholson fixed the boundary line between that tribe and the English; he also regulated the weights and measures to be used, and appointed an agent to superintend their affairs.

About the same time a treaty of peace was concluded with the Creeks by which Savannah river was made the boundary of their hunting grounds, beyond which no settlement of the whites was to extend.

In 1755 Governor Glenn, by treaty with the Cherokee, obtained an important cession. By its terms the Indians ceded to Great Britain all that territory embraced in the present limits of Abbeville, Edgefield, Laurens, Union, Spartanburg, Newberry, Chester, Fairfield, Richland, and York districts.

In 1761 another treaty was made with the same tribe by Lieutenant-Governor Bull, by which the sources of the great rivers flowing into the Atlantic were declared to be the boundary between the Indians and the whites.

On June 1, 1773, a treaty was concluded jointly with the Creeks and Cherokee by the British superintendent, by which they ceded to Great Britain a tract "begin," etc., as described below under "Georgia."

It is proper to remind the reader at this point that the royal procla-

[1] Laws of the Province of South Carolina, by Nicholas Trott (1763), p. 295. [2] Ibid., No. 338, p 277.

mation of George III, dated October 7, 1763, forbidding private persons from purchasing lands of the Indians and requiring all purchases of such lands to be made for the Crown, applied to South Carolina.

On May 20, 1777, a treaty was concluded by South Carolina and Georgia with the Cherokee, by which the Indians ceded a considerable section of country on Savannah and Saluda rivers.

As the subsequent treaties were made with the United States, they will be found in Mr Royce's schedule.

It would appear from the foregoing facts that the policy pursued by the South Carolina colony in regard to the Indian title was in the main just, and was based—impliedly, at least—on an acknowledgment of this title. But it is necessary to call attention to the fact that a large area in this state, as in North Carolina, appears to have been taken possession of without any formal treaties with or purchases from the Indians. This was due probably to the fact that, with the exception of the Catawba, the tribes who occupied this central portion were of minor importance and unsettled, and the Catawba, by the constant wars in which they were engaged, had been greatly reduced in numbers, so much so, in fact, that the governors of South Carolina and Georgia came to their relief by means of treaties of peace with their enemies.

## GEORGIA

On the 9th of June, 1732, George II granted by charter to certain "trustees" the right to establish the colony of Georgia, including all the lands and territories from the most northerly stream of Savannah river along the seacoast to the southward unto the most southerly stream of Altamaha river, and westward from the heads of said rivers in direct lines to the South sea, and all islands within 20 leagues of the coast.

During the first year of the colony's existence, Governor James Oglethorpe, who was placed in charge by the trustees, directed his attention to providing for the emigrants suitable homes at Savannah, Joseph's Town, Abercorn, and Old Ebenezer; the erection of a fort on Great Ogeechee river, and the concluding of treaties of amity and cession with the natives. "Having," according to one authority, "confirmed the colonists in their occupation of the right bank of the Savannah, and engaged the friendship of the venerable Indian chief Tomo-chi-chi, and the neighboring Lower Creeks and Uchees, he set out," etc.

On the 20th of May, 1733, at Savannah, Oglethorpe made a treaty with the headmen of the Lower Creeks, the summary of which, as given by Hugh McCall,[1] is as follows:

When Oglethorpe came over from England he was not vested with full powers, consequently the ratification of the treaty was to be made in England. Soon after his arrival he sent runners to the different towns, and invited a convention of the

[1] History of Georgia, vol. I, p. 37.

kings and chiefs of the Creek nation, and entered into a treaty of amity and commerce with them, making a transfer of the whole nation and all their lands, and agreeing to live under and become the subjects of his majesty's government in common with the white colonists of Georgia. It was further stipulated that a free and complete right and title, was granted to the trustees for all the lands between Savannah and Altamaha rivers, extending west to the extremity of the tide water, and including all the islands on the coast from Tybee to St Simons' inclusively, reserving to themselves the islands of Ossabaw, Sapeloe and St Catherines, for the purposes of hunting, bathing, and fishing—also the tract of land lying between Pipe-maker's bluff and Pallychuckola creek, above Yamacraw bluff, now Savannah; which lands the Indians reserved to themselves for an encampment, when they came to visit their beloved friends at Savannah. . . . This treaty was signed by Oglethorpe on the part of the king of England, and by Tomochichi and the other chiefs and headmen on the part of the Creek nation; it was transmitted to the trustees and formally ratified on the 18th of October, 1733.

By this treaty the Indians also granted to the trustees all the lands on Savannah river as far as the Ogeechee, and all the lands along the seacoast as far as St John river and as high as the tide flowed. McCall says the grant extended to the Altamaha, but White is certainly correct in limiting it by the Ogeechee, as is shown by the treaty of 1739 mentioned below.

In March, 1736, Governor Oglethorpe wrote to the trustees that "King Tomo-Chachi and his nephew Tooanoghoni and the Beloved Man Umpechee," had agreed they should possess the island of St Simons but reserved St Catherine to themselves.

From a letter to Mr Causton, dated March 17, 1736, it would seem that the lands had been purchased as far northwest as Ebenezer creek, in what is now Effingham county. "You are to notice," he says, "that the Trustees' orders for preventing Peoples settling beyond the River Ebenezer be executed by the proper officer. The Indians having complained that some persons have settled over against Palachocola and some near the mouth of Ebenezer."

Another letter to the trustees, dated May 18, 1738, informs us of what the Indians had made complaint, and shows also Governor Oglethorpe's desire to keep faith with them. He says:

Some private men have taken great pains to incense the Indians against the Spaniards and against the Colony of Georgia particularly. Capt. Green who I am informed has advised the Uchee Indians to fall upon the Saltzburgers for settling upon their Lands, the occasion of which was an indiscreet action of one of the Saltzburgers who cleared and planted four acres of Land beyond the Ebenezer contrary to my orders and without my knowledge. They also turned their cattle over the River some of whom strayed away and eat the Uchees corn 20 miles above Ebenezer. But what vext the Uchees more was that some of the Carolina people swam a great Herd of Cattle over Savannah and sent up Negroes and began a Plantation on the Georgia side not far from the Uchees Town. The Uchees instead of taking Green's advice and beginning Hostilities with us sent up their King and 20 Warriors with a Message of thanks to me for having ordered back the Cattle and sent away the Negroes which I did as soon as ever I arrived. They told me that my having done them justice before they asked it made them love me and not believe the stories that were told them against me and that therefore instead of beginning a War with

the English they were come down to help me against the Spaniards and that if I wanted them they would bring down four score more of their warriors who should stay with me a whole year. You see how God baffles the attempts of wicked men.[1]

In another letter, July 26, 1736, incidental mention is made of a cession of land by Opayhatchoo and his tribe. At this time the cessions he had obtained did not reach to the upper Altamaha, as he remarks: "The opposition from Carolina forced me to give the Indians large presents to procure their confirmation of the cession of the Islands; and they have refused as yet to give leave to settle the inland parts up the Alatamaha."

On the 21st of August, 1739, another treaty was entered into at Coweta with the Creeks, Cherokee, and Chickasaw. In this treaty the Indians declare—

. . . that all the dominions, territories and lands between the Savannah and St. John's Rivers, including all the islands, and from the St John's River to the Apalachie Bay and thence to the mountains, do, by ancient right belong to the Creek Nation, and that they would not suffer either the Spaniards or any other people excepting the trustees of the Colony of Georgia, to settle their lands. They also acknowledge the grant which they formerly made to the Trustees of all the lands on Savannah River as far as the river Ogeechee, and all the lands along the seacoast as far as St John's River, and as high as the tide flowed, and all the islands, particularly St Simon's, Cumberland, and Amelia, etc.[2]

It would appear from these facts that the policy adopted by this colony at the outset in dealing with the Indians was a kind and just one. Moreover, it was correct in method, as the grants from Indians were not obtained by or on behalf of individuals, but by the properly constituted authority for and on behalf of the "trustees," who were the proprietors of this colony. Happily for the welfare of the settlers, the active control had been placed in the hands of Oglethorpe, who was unquestionably one of the most just, kind, and truly worthy governors who ever ruled over an American colony. Yet, as history testifies, though strictly just and prompt to repair or amend an injury, he was watchful and prompt to resent an invasion of or trespass on the rights of the colonists, whether by the natives or by the whites from other settlements.

A letter to the trustees dated September 5, 1739, which refers to the treaty of 1739, above mentioned, gives some additional evidence of the just policy Oglethorpe had adopted in treating with the Indians:

I am just arrived at this Place from the Assembled Estates of the Creek Nation. They have very fully declared their rights to and possession of all the Land as far as the River Saint Johns and their Concession of the Sea Coast, Islands and other Lands to the Trustees, of which they have made a regular act. If I had not gone up the misunderstandings between them and the Carolina Traders fomented by our two neighboring Nations would probably have occasioned their beginning a war, which I believe might have been the result of this general meeting; but as their complaints were reasonable, I gave them satisfaction in all of them, and everything

[1] Georgia Historical Society Collections, vol. III, pp. 35–36.
[2] White, Historical Collections of Georgia (1855), p. 121.

is entirely settled in peace. It is impossible to describe the joy they expressed at my arrival they met me forty miles in the woods and layd Provisions on the roads in the woods.[1]

In 1757, or early in 1758, the following act was passed "to prevent private persons from purchasing lands from the Indians, and for preventing persons trading with them without licence:"

Whereas the safety, welfare, and preservation of this province of Georgia doth, in great measure depend on the maintaining a good correspondence between his majesty's subjects and the several nations of Indians in amity with the said province: *And whereas* many inconveniences have arisen, from private persons claiming lands, included in the charter granted to the late honorable trustees for establishing the colony of Georgia by his present majesty, and since reinvested in the crown under pretense of certain purchases made of them from the Indians, which have given occasion for disputes with those people; for remedy whereof, and for preventing any differences or disputes with the Indians for the future, and also for preventing persons trading with them without licence, *Be it enacted*, That from and after the fifteenth day of February, one thousand seven hundred and fifty-eight, if any person or persons whatsoever shall attempt to purchase or contract for, or cause to be purchased or contracted for, or shall take or accept of a grant or conveyance of any lands, or tracts of land, from any Indian, or body of Indians, upon any pretense whatsoever, (except for the use of the crown, and that by permission for this purpose first had and obtained from his majesty, his heirs or successors, or his or their governor or commander in chief of the said province for the time being), every such purchase, contract, grant, and conveyance, shall be, and is and are hereby declared to be null and void, to all intents and purposes whatsoever; and all and every person and persons so offending shall, for every such offence, forfeit the sum of one thousand pounds sterling money of Great Britain, the one half thereof to his majesty, his heirs and successors, for the use of the province, and the other half to him or them who shall sue for the same, by action of debt or information, in the general court of this province, in which no assoign, protection, privilege, or wager of law, or more than one imparlance shall be allowed.[2]

In 1763, by a treaty held at Augusta, the boundary line between the settlements and the lands of the natives was fixed and afterward actually surveyed by De Brahm. The line as determined by this surveyor, whose field notes have been preserved,[3] as shown on the following page; as but few copies of these notes exist, they are given in full. It would appear from Governor Wright's "Report on the condition of the Province of Georgia," made to the Earl of Dartmouth in 1773, that the amount of land he obtained at this treaty was estimated at 2,116,298 acres, as he makes therein this statement:

Answer to the third Quere.

The extent of the Province along the Front or Sea Coast from Savannah River to St. Mary's River is computed to be about one hundred Miles as the coast lyes, but less in a direct line from Tybee Inlet. The distance back up Savannah River and from the head of St. Mary's River is as far as His Majesty's Territories extend which it is impossible for me to determine, but the size and extent within the Boundary Lines settled with the Indians is as above and has been computed by His Majesty's Surveyor General to contain about 6,695,429 Acres as follows Vizr: Amount of Lands ceded in the time of the Trustees to General Oglethorpe 1,152,000 Acres.

[1] Georgia Historical Society Collections, vol. III, p. 81.

[2] Digest of the Laws of the State of Georgia from 1755 to 1799 (1800), p. 51.

[3] In "History of the Province Georgia," by John Gerar William de Brahm. Copied November 10, 1894. V. H. Pa Arits.

*Geometrical table, containing the actual survey of the Indian boundary.*

| Places set out from. | Course. | Distance. | South. | East. | West. | Places cross'd or went by. | Places arrived at. |
|---|---|---|---|---|---|---|---|
| | | *Miles.* | *Miles.* | *Miles.* | *Miles.* | | |
| The head of Williams Creek | S. 78°, 45′. E. | 14 | 2¾ | 13½ | | Cross'd several branches of Upton Rivt. | Stop'd upon Briar River. |
| The place upon Briar River | S. 56, 15. E. | 16¾ | 9¼ | 14 | | Cross'd Golphins Path, by Briar River. | Stop'd higher up Briar River. |
| Another place upon do. River | S. 45. W. | 22½ | 16 | | 16 | Cross'd head of Rocky Comfort Rivulet. | Stop'd on So. side of great Ogetchee. |
| A place So. side of Ogetchee stream | [1] S. 70, 09. E. | 61 | 20¾ | 57½ | | By the So. side of Ogetchee Stream | Came to Apalachicola Path from So. Carolina. |
| Apalachicola path from So. Carolina | South. | 26½ | 26½ | | | Cross'd the 2 Ohoopee paths | To the So. side of Cavanoochee River. |
| Cavanoochee River | South. | 18½ | 18½ | | | Cross'd Galls[2] of Weelustee River | To the So. side of Weelustee River. |
| Weelustee River, So. shore | S. 19, 51. E. | 38 | 35¾ | 13 | | Cross'd five boggy places | Alatamaha Stream, op'te. Dr's town. |
| Opposite Doctor's town from Alatamaha. | East. | 1¼ | | 1¼ | | Went down by water | Landed on So. side of Alatahama. |
| From So. side of Alatamaha Stream | S. 8, 36. W. | 32 | 43½ | | 6½ | Cross'd riv'r. sw'mp. & Phennehaloway. | To So. shore of great Satilla Stream. |
| So. shore of great Satilla stream | S. 8, 36. W. | 12 | | | | Upon Latchohowae Path | Made Station in the Pine Land. |
| From Station in the Pine Land | West. | 8 | | | 8 | Cross'd part of supposed Oekanphanoko Sw'p. | Made Station in the Pine Land. |
| From Station in the Pine Land | S. 19, 51. E. | 20 | 18¾ | 6¾ | | Cross'd a lake | Ended at a Pine Stump on the west side of St. Mary's Stream. |
| General course & distance | S. 21, 26. E. | 206 | 191¾ | 106 | 30½ | | |
| | | | | 30½ | | | |
| | | | | 75½ | | | |
| Difference Latitude | | | 2, 45, 44 | 1, 20, 30 | | Difference Longitude. | |
| Lat'd of the head of Williams Creek | | | 33, 8, 47 | 3, 8, 23 | W. | Longitude from | From the mouth of St. Mary's. |
| Lat'd of the Pine Stump on St. Mary's | | | 30, 23, 3 | 0, 29, 19 | W. | Longitude from | |

[1] This line is evidently an error. It should read as follows:
S. 63, 00. E. | 44½ | 23¾ | 37¾ | This would change the general course and distances of the lower line correspondingly.
[2] Probably "Falls."

Additional Cession to me at the Congress in November 1763, 2,408,800 Acres.
Addition made by the extension of this Province from the River Alatamaha to the River St. Mary computed at 998,400 Acres.
Additional Cession 20,000 Acres in 1766.
Additional Cession at the Congress held at Augusta the third of June 1773—2,116,298 Acres.
In all within the Indian Boundary Line supposed to be 6,695,429 Acres.[1]

This appears to refer to the territory obtained from the Indians. If so, it shows that some 10,460 square miles had been purchased previously to the date of the report, and that the policy of extinguishing the Indian title by a correct and legitimate method had been followed up to that time.

By the treaty at Augusta with the Creeks and Cherokee, in June 1773, the following boundary was agreed on:

Begin at the place where the Lower Creek path intersects the Ogeechee river, and along the main branch of said river to the source of the southernmost branch of said river and from thence along the ridge between the waters of Broad river and Oconee river up to the Buffaloe Lick, and from thence in a straight line to the tree marked by the Cherokees near the head of a branch falling into the Oconee river, and from thence along the said ridge twenty miles above the line already run by the Cherokees, and from thence across to Savannah river by a line parallel with that formerly marked by them, and the Creeks by Saleachie and Taleachie and other head men of the Lower Creeks also cede from the present boundary line at Phinhotaway creek on the Altamaha river, up the said river to an island opposite to the mouth of Barber creek, and from thence across to Oguechee river opposite to the road about four miles above Buch head, where a canoe ferry used to be kept.[2]

The above facts are sufficient to show that the policy of the colony in treating with the Indians in regard to their lands was just and equitable up to the time it became a state.

## NEW HAMPSHIRE AND DELAWARE

As the policy adopted by the colonies of New Hampshire and Delaware in treating with the Indians in regard to their lands was so intimately connected with that of the older adjoining colonies as to form in reality but a part of the history thereof, it is thought unnecessary to give the details.

## POLICY OF THE UNITED STATES

As already observed, the policy of the United States respecting the process of obtaining or extinguishing the Indian title to their lands was outlined, while the government was conducted under the Articles of Confederation. By a "clause of No. ix" of the "Articles of Confederation," it was agreed that "The United States in Congress assembled shall have the sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians not members of any of

[1] Georgia Historical Society Collections, vol. iii, p. 160.
[2] Digest of the Laws of the State of Georgia from 1755 to 1799 (1800), p. 763.

the states, provided that the legislative right of any state within its own limits be not infringed or violated."

By the proclamation of September 22, 1783, all persons were prohibited "from making settlements on lands inhabited or claimed by Indians without the limits or jurisdiction of any particular state, and from purchasing or receiving any gift or cession of such lands or claims without the express authority and direction of the United States in Congress assembled." It will be seen from this that the prohibition was not limited to lands in the actual use and possession of and occupied by the Indians, but extended to that claimed by them. It will also be observed that by the Articles of Confederation and as implied in this proclamation (or act of Congress) the sole authority in this respect is limited to "The United States in Congress assembled."

Although the theory and policy implied in the prohibitory clause have been maintained under the Constitution, there has been a change as to the "authority" which may act. The clause of the Articles of Confederation was not inserted in the Constitution, either in words or in substance. As power to regulate the commerce with the Indians is the only specific mention therein of relations with the natives, the authority to act must be found in this clause, in that relating to making treaties, and in the general powers granted to the Congress and the Executive.

An examination of the treaties, agreements, executive orders, acts of Congress, etc, referred to in the schedule which follows, will show that there are various methods of dealing with the Indians in regard to lands, and that these methods have not been entirely uniform.

According to the Annual Report of the Commissioner of Indian Affairs for 1890 (page xxix), "From the execution of the first treaty made between the United States and the Indian tribes residing within its limits (September 17, 1778, with the Delawares) to the adoption of the act of March 3, 1871, that 'no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty,' the United States has pursued a uniform course of extinguishing the Indian title only with the consent of those tribes which were recognized as having claim to the soil by reason of occupancy, such consent being expressed in treaties. . . . Except only in the case of the Sioux Indians in Minnesota, after the outbreak of 1862, the Government has never extinguished an Indian title as by right of conquest; and in this case the Indians were provided with another reservation, and subsequently were paid the net proceeds arising from the sale of the land vacated."

It would appear from this that until March 3, 1871, Indian titles to lands were extinguished only under the treaty-making clause of the Constitution. Treaties with Indians, even though the tribe had been reduced to an insignificant band, were usually clothed in all the stately

verbiage that characterized a treaty with a leading European power, as, for example, the following:[1]

Whereas a treaty between the United States of America and the mingoes, chiefs, captains and warriors, of the Choctaw nation, was entered into at Dancing Rabbit creek, on the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the fifty-fifth, by John H. Eaton and John Coffee, commissioners on the part of the United States, and the chiefs, captains, and head-men of the Choctaw nation, on the part of said nation; which treaty, together with the supplemental article thereto, is in the words following, to wit:

* * * * * * *

Now, therefore, be it known that I, Andrew Jackson, President of the United States of America, having seen and considered said treaty, do, in pursuance of the advice and consent of the Senate, as expressed by their resolution of the twenty-first day of February, one thousand eight hundred and thirty-one, accept, ratify, and confirm the same, and every clause and article thereof, with the exception of the preamble.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, having signed the same with my hand.

Done at the City of Washington, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-fifth.

[L. S.] ANDREW JACKSON.

By the President:

M. VAN BUREN, *Secretary of State.*

By the act of March 3, 1871, the legal fiction of recognizing the tribes as independent nations with which the United States could enter into solemn treaty was, after it had continued nearly a hundred years, finally done away with. The effect of this act was to bring under the immediate control of the Congress the transactions with the Indians and reduce to simple agreements what had before been accomplished by solemn treaties.

From the report of the Commissioner of Indian Affairs above referred to, we learn that the Indian title to all the public domain had then been extinguished, except in Alaska and in the portions included in one hundred and sixty-two Indian reservations and those acquired by the Indians through purchase.

Of these one hundred and sixty-two reservations there were established—

| | |
|---|---|
| By Executive order | 56 |
| By Executive order under authority of act of Congress | 6 |
| By act of Congress | 28 |
| By treaty, with boundaries defined or enlarged by Executive order | 15 |
| By treaty or agreement and act of Congress | 5 |
| By unratified treaty | 1 |
| By treaty or agreement | 51 |

It appears from this list that the method of establishing reservations has not been uniform, some being by treaty, some by Executive order, and others by act of Congress. Those established by Executive order, independent of the act of Congress, were not held to be permanent before the "general allotment act" of 1887, under which

[1] Laws, etc., Relating to Public Lands, vol. II (1836) pp. 104, 117.

"the tenure has been materially changed and all reservations, whether by Executive order, act of Congress, or treaty, are held permanent."

Reservations by Executive order under authority of an act of Congress are those which have been authorized or established by acts of Congress and their limits defined by Executive order, or have been first established by Executive order and subsequently confirmed by Congress.

Other respects in which the power of Congress intervenes in reference to Indian lands, or is necessary to enable the Indians to carry out their desires in regard thereto, are the following:

Allotments of land in severalty, previous to the act of February 8, 1887, could only be made by treaty or by virtue of an act of Congress, but by this act general authority is given to the Commissioner of Indian Affairs for this purpose.

Leases of land, sale of standing timber, granting of mining privileges, and right of way to railroads are all prohibited to the Indians without some enabling act of Congress. On the other hand, it is obligatory upon the government to prevent any intrusion, trespass, or settlement on the lands of any nation or tribe of Indians except where the tribe or nation has given consent by agreement or treaty.

The different titles held by Indians which have been recognized by the government appear to be as follows: The original right of occupancy, which has been sufficiently referred to. The title to reservations differs from the original title chiefly in the fact that it is derived from the United States. The tenure since the act of 1887 is the same, and the inability to alienate or transfer is the same, the absolute right being in the government. A third class is that where reservations have been patented to Indian tribes. According to the report of the Commissioner of Indian Affairs,[1] patents to the Cherokee, Choctaw, and Creek nations for the tracts respectively defined by the treaty stipulations were as follows:

December 31, 1838, to the Cherokee Nation, forever, upon conditions, one of which is "that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same."

March 23, 1842, to the Choctaw Nation, in fee simple to them and their descendants, "to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation, except to the United States or with their consent."

August 11, 1852, to the Muscogee or Creek tribe of Indians "so long as they shall exist as a nation and continue to occupy the country hereby conveyed to them."

The construction given to these titles by the Indian bureau and the courts is that they are not the same as the ordinary title by occupancy; but "a base, qualified, or determinable fee, with only a possibility of reversion to the United States, and the authorities of these nations may cut, sell, and dispose of their timber, and may permit mining and grazing within the limits of their respective tracts *by their own citizens*." However, the act of March 1, 1889, establishing a United States court in Indian Territory, repeals all laws having the effect to prevent the five civilized tribes in said territory from entering into leases or con-

[1] 1890, page xxxv.

tracts with others than their own citizens for mining coal for a period not exceeding ten years.

Lands allotted and patented were held by a tenure of a somewhat higher grade than those mentioned, though their exact status in this respect does not appear to have been clearly defined. The chief paragraphs of the act of 1887 bearing on this point are as follows:

Section 1 of this act provides—

That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an Act of Congress or Executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary,

and to allot the lands in said reservation in severalty to any Indian located thereon, etc.

The first clause of section 2 provides, in substance, that all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection.

In this section it is also provided that if any person entitled to an allotment shall fail to make a selection, the Secretary of the Interior may, after four years from the time allotments shall have been authorized by the President on a particular reservation, direct the agent for the tribe, or a special agent appointed for the purpose, to make a selection for such person, which shall be patented to him as other selections are patented to the parties making them.

Section 4 provides for making allotments from the public domain to Indians not residing upon any reservation or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order.

Section 6 provides as follows:

That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.[1]

This would seem to make the Indian a true and complete citizen, entitled to all the rights of any other citizen, yet this does not appear to be conceded.

[1] Report of the Commissioner of Indian Affairs for 1891, page 20.

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