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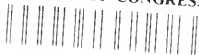
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FALL RIVER  
INDIAN RESERVATION

1907

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FALL RIVER  
INDIAN RESERVATION

BY

HUGO A. DUBUQUE

City Solicitor of Fall River.

FALL RIVER, MASS.

1907.



## INTRODUCTION.

On January 23, 1907, a petition signed by Hon. John T. Coughlin, mayor of Fall River, was presented to the legislature of Massachusetts accompanied by House Bill No. 868 (1907), which was prepared hurriedly and only intended to comply with the rule which requires that a bill should accompany a petition for legislation. Upon perfecting its measure, the City of Fall River now desires to offer as a substitute for House Bill No. 868 the following

### SUBSTITUTE BILL.

#### COMMONWEALTH OF MASSACHUSETTS.

In the year one thousand nine hundred and seven.

An Act Relating to the Indian Reservation and Water Supply of Fall River.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:—*

SECTION 1. Whereas certain lands situate in Fall River, in a section thereof called Indian Town, lying on the easterly side of North Watuppa pond, were conveyed to the Province of the Massachusetts Bay to be held as an Indian plantation or reservation to the use and occupancy of Indians; and whereas the Commonwealth of Massachusetts has succeeded to the rights and title of the Province of the Massachusetts Bay in said lands and may have obtained title to some part thereof by escheat or otherwise; and whereas there are apparently no Indians left on the same, except one family, claiming to be such, namely, that of Fanny L. Perry, occupying a small portion of the land of said reservation; and whereas it is necessary that a part of said Indian reservation be owned and controlled by the city of Fall River for the protection of its water supply, now taken from said North Watuppa pond; it is hereby enacted that the title of the Commonwealth to the parcel of said Indian reservation near said pond, and hereafter described be, and the same is, hereby conveyed to the said city of Fall River for the

protection of the purity of its water supply; namely, a certain tract of land situate in Fall River, in the county of Bristol, bounded and described as follows, viz: beginning at a drill hole in a stone bound set into the ground in the southerly line of Indian Town road, nineteen hundred and nineteen and 37-100 (1919.37) feet easterly from the intersection of said southerly line of Indian Town road with the easterly line of Blossom road; thence running in a southerly direction to a drill hole in a stone bound set in the ground at the northeasterly corner of land of the city of Fall River, recently purchased from Alfred Bridge; thence westerly in line of land of the city of Fall River to land of the city of Fall River and the North Watuppa pond; thence northerly by land of the city of Fall River and said pond to the northerly line of the land of said Indian reservation; thence easterly in said northerly line to the Indian Town road; thence to the point of beginning; containing one hundred and one and seven tenths acres of land, more or less, exclusive of highways crossing said tract.

SECTION 2. The city of Fall River may take in fee simple, by right of eminent domain, the lands above described forming a part of the Indian Reservation, for the protection of its water supply, in North Watuppa Pond; and if upon a vote of its Reservoir Commission or of its city council it decides so to do, then it may file and record a statement of such taking in the office of the registry of deeds, in the Fall River District, of the County of Bristol, giving a description of the land taken; and also file a plan of the same; both such statement and plan being duly signed by its mayor; and when such statement and plan are duly signed, filed and recorded as aforesaid, then said described lands shall become and remain the property of said city of Fall River, in fee simple.

SECTION 3. Any one aggrieved, or entitled to damages, by reason of any thing done or authorized by this act may recover the same from the city of Fall River, by filing a petition in the Superior Court for the County of Bristol, within one year from the date of taking aforesaid. The aforesaid damages shall be assessed in the same manner as lands taken for the protection of the water supply of Fall River, as provided in section four of chapter one hundred and fourteen of the Acts of the year eighteen hundred and ninety one; but all sums received by the petitioners or predecessors in title from the Commonwealth or said city in the way of Indian or other relief, the obligations placed upon said city by section four of this act, or by the general laws relating to the grant of relief or otherwise applicable to the petitioners; the non-



payment of taxes by the petitioners or predecessors in title, or their failure to discharge public obligations or to participate in the support or maintenance of city, county, state or national governments or to contribute to the state whatever was required in any deed relating to said lands and all other easements, conditions, water and flowage rights connected with said lands, the occupancy or use of said lands; and whatever other matters may be allowed by way of set off, recoupment, counterclaim or mitigation of damages, shall be allowed in reduction of damages for the taking of the lands aforesaid. Interest on the sums recovered shall only run at the rate of four per centum per annum from the date of taking; but in case of occupancy after the taking, such interest shall only run from the termination of such occupancy.

SECTION 4. The city of Fall River, its successors or assigns, shall maintain and discharge towards the present rightful occupants of the land conveyed or taken all duties that the Commonwealth is lawfully required to perform as the successor of the Province of Massachusetts Bay. But said city if it take the land before described, and if it decide, hereafter, that the houses or other buildings on the parts herein conveyed or taken should be removed, to a place beyond the area deemed necessary for the protection of the purity of its water supply, shall remove such buildings and all persons and their chattels, at its expense, to such other part of said Indian reservation, as may be without such area, and shall make suitable provision in the same buildings or in similar ones to be used by said occupants for a comfortable dwelling therein, and for safe and reasonable means of access thereto from the public road or highway.

SECTION 5. This act shall take effect upon its passage.



THE INDIAN RESERVATION  
and the  
WATER SUPPLY  
of  
FALL RIVER.  
1907.

BRIEF FOR THE CITY OF FALL RIVER.

The City of Fall River has presented a petition to the legislature of Massachusetts of 1907, through its mayor, at the request of its Reservoir Commission, which has charge of the protection of its water supply, asking for a special act transferring to the said City the interests of the Commonwealth, if any, in certain lands of the Fall River Indian Reservation; and authorizing it to condemn, by right of eminent domain, for the protection of the purity of its water supply, a part of said lands lying within the water shed of North Watuppa Pond which is the source of Fall River's water supply.

1. In 1656 Wamsutta, sachem of the Pocasset tribe of Indians, by leave of the colonial court of Plymouth, sold the four mile tract, known as "Ye Freeman's Purchase", to 26 purchasers.

*Finner, History Fall River, (1906), pp. 4-5.*

*Collective History Freetown, (1902), p. 1*

*Price, Indian History, (1878), p. 238*

In 1683 the government of Plymouth colony organized the above purchasers into a town, called Freetown, in the following words:

"July, 1683. This court orders that the inhabitants of the Freeman's land att the Fall River shal be a Township and have a Constable and Grand Jury men and henceforth be called by the name of Freetown."

*Price, Indian History, p. 243, App.*

The "Freeman's Purchase" included what is now the town of Freetown and about half of what is now Fall River.

2. In 1803, the "southerly part of Freetown in the County of Bristol" was divided, and the town of Fall River was established.

*St. 1802, Chap. 89, Approved February 26th, 1803.*

In 1804 the name of Fall River was changed to "Troy".

*St. 1804, Ch. 2.*

In 1834 the name of the town, which for nearly thirty years had been Troy, was changed back again to Fall River, to remain so to this day.

*St. 1834, Ch. 11.*

In 1854 the town of Fall River was organized into a city.

First city charter:

*St. 1854, Ch. 257*

Second city charter:

*St. 1885, Ch. 269.*

Third city charter:

*St. 1902, Ch. 393.*

3. In 1871 the city of Fall River was "authorized to take, hold and convey into and through the said city, by suitable aqueducts or pipes the waters of the North Watuppa Pond," to supply its inhabitants with water.

*St. 1871, Ch. 133.*

Under this statute it constructed its water works and expended several million dollars in providing tanks, pipes and hydrants to convey the waters of the North Watuppa Pond into the different parts of the city for domestic, fire and manufacturing purposes.

4. In consequence of the large increase of population, in Fall River, it became necessary, first, to avoid the occupancy of land within the water shed of the North Watuppa Pond, to preserve the purity of the water in the same, and, second, to provide a storage basin to increase the capacity of the water supply from this Pond.

Beginning with 1891 there was passed a series of acts for the protection of the Fall River water supply.

*St. 1891, Ch. 114*

*St. 1892, Ch. 362.*

*St. 1895, Ch. 478.*

*St. 1897, Ch. 285.*

These acts provided, in substance, that the city of Fall River might condemn, by eminent domain, or acquire by purchase, the lands lying within the water shed of North Watuppa Pond.

In 1895, the Reservoir Commission, charged with the duty of carrying out the purposes of the special legislation just alluded to, was created by an ordinance of the city council of Fall River.

*Fall River Revised Ordinances, Ch. 45.*

In pursuance of the authority granted by the legislature, under the special laws cited, the Reservoir Commission condemned and purchased the lands bordering on said North Watuppa Pond, to prevent the contamination of its waters, and the various springs, streams or brooks feeding the same.

In 1905 a new ordinance was passed, repealing the former one, and reconstituting the Reservoir Commission on a different basis. So that, under the ordinance now in force, the three members of the Water Board, with the mayor and the city engineer, form the Reservoir Commission.

*Fall River City Dec., 1905, pp. 651-2*

In 1902 the Reservoir Commission secured the services of Mr. Arthur T. Safford, of Lowell, as a special consulting engineer on the subject of Fall River's water supply, its increased capacity and the protection of its purity.

He made a voluminous report, accompanied by maps and various recommendations, among which was the necessity of securing all the lands adjacent to the pond, and within the water shed thereof.

*Report of Reservoir Commission, (1902) pp. 274-5.*

5. The city has expended, for the protection of its water supply, in the purchase of land, around the North Watuppa Pond, since the first special act passed for the purpose, (St. 1891, Ch. 114), the sum of \$272,955.37. And it is now engaged in securing the small part that remains to be purchased or condemned.

6. Under the special acts cited, while the city is authorized to take land by eminent domain to protect its water supply, it is not authorized to take the lands that the State is interested in, or that it holds for a different public purpose.

The rule seems to be that where lands are devoted to a public purpose they cannot be applied, under a general law, to a new or different public use, when the latter is inconsistent with the former.

(1892) *Boston v. Brookline, 156 Mass. 172.*

As was said by Chief Justice Shaw: "It sometimes happens that the full enjoyment of two public rights would, to some extent, interfere with each other; as where a highway, turnpike or railroad crosses a navigable stream. It is then for the legislature to determine which shall yield, and to what extent..... according to the greater preponderance of public necessity and convenience".

(1859) *Commonwealth v. Essex Company*, 13 Gray 239,247.

The title to lands in which the State has an interest does not pass by implication but requires a special grant.

(1832) *United States v. Arredondo*, 6 Peters 691,738.

Rose's notes to same, p. 325 and cases cited;

(1837) *Charles River Bridge v. Warren Bridge* 11 Peters 417.

Rose's notes to do, p. 682 and cases cited.

7. A grant of title of public lands may be made by an act of the legislature; and if such an act be passed, then there is no need of the state executing a deed in the usual form.

(1815) *Mayer v. Libby*, 12 Mass. 339,

(1828) *Ward v. Bartholomew*, 6 Pick. 414,

(1819) *Baker v. Fales*, 16 Mass. 488.

8. The maintenance of an Indian Reservation would imply the use of buildings and dwelling houses thereon; whereas the appropriation of land by the city, to prevent the contamination of its water supply, implies that barns, pig pens, outhouses and dwelling houses shall not be erected thereon. Therefore, the two purposes being practically inconsistent, it requires a clear expression of legislative intent, by a special act, to authorize the city of Fall River to condemn any part of the lands of the Indian Reservation.

9. Another reason for the special act is that the title to these lands is uncertain; yet the city of Fall River must have a clear title to apply the same to the public use which it has in view. The lands in question were conveyed to the Province of Massachusetts Bay, as will appear hereafter. A division of the lands was subsequently made, but the State kept exercising control over them, as well as over the occupants thereof. All the Indians granted land in severalty by the partition of 1764 have, of course, long been dead, and no one is absolutely certain that any of their true lineal descendants are in existence to-day.

The lands in question are now occupied by a single family, namely, that of Fanny L. Perry; but it is not intended to disturb her occupancy, if the special act, prayed for, is granted by the legislature. She has a settlement in Fall River and has received relief, in the past, and is entitled to it in the future, under the general laws. In other words, the city of Fall River is obliged to provide for her support in case of need.

10. The city has expended, in poor relief, to occupants of these lands, the sum of \$2,837.94, from 1870 to date, of which \$2,089.20 have been paid for the support of Fanny L. Perry's family.

### Constitutional Law.

11. In 1788 when the constitution of the United States was finally adopted, it was provided therein that "Congress shall have power . . . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes . . . . ."

*U. S. Const. Art. I § 8.*

This gave exclusive jurisdiction to the federal government over Indian tribes that still maintained a tribal organization, and prevented the states from interfering with the same thereafter.

(1832) *Worcester v. Georgia*, 6 *Peters* 515.

(1856) *Fellows v. Blacksmith*, 19 *How.* 366.

12. But the several states still kept jurisdiction of the remnants of tribes that did not maintain the attributes of tribal government:

"In some of the old states—Massachusetts, Rhode Island and others—where small remnants of tribes remain, surrounded by white population, and who, by their reduced numbers, had lost the power of self government, the laws of the state have been extended over them, for the protection of their persons and property":

McLean, J. in

(1832) *Worcester v. Georgia*, 6 *Peters*, 515

And in our own state, Gray, J. said:

"The remnants of Indian tribes, residing within the limits of the Commonwealth, having never been recognized by any treaties or executive or legislative acts of the government of the United

States, as independent political communities, were under the control of the legislature of the state."

(1871) *Danvell v. Whitquish*, 108 *Mass.* 133.

#### **Title to Indian Lands.**

We have on this subject a very instructive decision of Chief Justice Marshall in

(1823) *Johnson v. McIntosh*, 8 *Wheaton* 543, 5 *Law. Ed.* 681

He says at page 570: "On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence. But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession."

"In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent impaired. They were admitted to be rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it."

"While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to



be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy.

"The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles."

At page 691: "By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government, but to the 'propriety and territorial rights of the United States,' whose boundaries were fixed in the second article. By this treaty, the powers of government, and the right to soil, which had previously been in Great Britain, passed definitively to these states. We had before taken possession of them, by declaring independence; but neither the declaration of independence, nor the treaty confirming it, could give us more than that which we before possessed, or to which Great Britain was before entitled. It has never been doubted, that either the United States, or the several states, had a clear title to all the lands within the boundary lines described in the treaty, subject only to the Indian right of occupancy, and that the exclusive power to extinguish that right was vested in that government which might constitutionally exercise it."

And later, Miller J. in (1886) *United States v. Kagama*, 118, U. S. 375; 30 *Law. Ed.* 228, said at p. 230: "Following the policy of the European Governments in the discovery of America towards the Indians who were found here, the Colonies before the Revolution, and the States and the United States since, have recognized in the Indians a possessory right to the soil over which they roamed and hunted and established occasional villages. But they asserted an ultimate title in the land itself, by which the Indian Tribes were forbidden to sell or transfer it to other nations or peoples without the consent of this paramount authority. When a Tribe wished to dispose of its land or any part of it, or the State or the United States wished to purchase it, a treaty with the Tribe was the only mode in which this could be done. The United States recognized no right in private persons, or in other nations, to make such a purchase by treaty or otherwise. With the Indians themselves these relations are equally difficult to define. They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as Nations, not as possessed of the full attributes

of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided."

14. Speaking of the St. 1869, C. 163, which enfranchised the Indians in Massachusetts, and removed all disabilities to which they had theretofore been subject, the present Chief Justice of our Supreme Court, then associate justice, said:

"Previously, all the common lands had been held and controlled by the Commonwealth for the benefit of Indians, who were treated as wards of the State. The State recognized only certain equitable rights of ownership in the Indians, and it kept their property, and exercised a guardianship over them to protect them from the consequences of their improvidence."

(1894) *Trusts, etc.*, 151 *Mass.* 181, 183

The Indian title did not go to the fee, but only gave to the aborigines a right of possession, occupancy or improvement. The Indian, according to the Anglo-American common law, was in the position of a life-tenant, having the use of his land during his life, with the remainder, after his death, going over to the State, in all lands which were held by him in severalty; whereas the lands held by the Indians in common went to the survivors among other Indians, if there were any, and after their extinction to the State.

(1837) *Carlisle v. Hobbs*, 19 *Pack.* 499.

(1873) *United States v. C.*, 10 *W. C.* 591

(1831) *Carlisle v. Hobbs*, 19 *Pack.* 499

(1823) *Johanna v. McIntosh*, 8 *W. C.* 511

(1889) *Cherokee Nation v. Georgia*, 135 *U. S.* 641

(1871) *Dawson v. H. S.*, 108 *Mass.* 133

1 *Keel, Commonwealth v.*, p. 258 (11 *W. C.* 1896)

*State v. L. V. v. State*, 8 *W. C.* 138 (1904)

#### **Title to Indian Lands in Fall River.**

15. The deeds which relate to the title of the Indian Reservation are given in detail immediately following this Brief.

Reduced to its smallest compass, it appears that one Daniel Wilcox, to pay a fine of £150, conveyed in 1701 to the Province of Massachusetts Bay, about 160 acres of land which he owned as one of the original Proprietors of the Pocasset Purchase.

This land was thereafter (in 1709) conveyed by the Province to Benjamin Church in exchange for lands constituting the present Indian Reservation, which said Church conveyed to the Province of Massachusetts Bay at the same time. This latter conveyance of Church stated that the land consisted of 160 acres. Zebedee Terry who surveyed it in 1763 found 190 acres, 61 rods; whereas we find actually to-day that it amounts to 195 7-10 acres.

The habendum clause, or conveying part, of the Church deed to the Province is as follows:

"to have and to hold the said lands & premises herein before granted with the members and Appur<sup>cs</sup> thereof to the sd Govern<sup>r</sup> Council & assembly of the Province aforesd for the time being their successors and Assignes forever so as that the sd Land & premises shall from hence forth forever be and Remain at the free and absolute dispose of the Govern<sup>r</sup> & Generall Assembly of the sd Province for the time being as the Govern<sup>r</sup> and Gen<sup>l</sup> Assembly may grant or dispose of any other Publique or unappropriated land belonging to & within the sd Province of the Massachusetts Bay. But allways to be Continued & used for a plantation & settlement for the Indian Natives."

Of course this was to be held for Indian Natives as long as there were any of them left; but the Indian Natives have now disappeared.

As to the construction of this Church deed; does it impose a condition subsequent, a breach of which would cause a forfeiture, or a reversion of the land to the original grantor? Or does it simply create a public trust, the object of which having been ultimately attained, the doctrine of *estoppel* may now be applied to the subject of the trust?

The authorities in this Commonwealth establish conclusively the proposition that such a deed is not one upon a condition subsequent, the violation of which works forfeiture or reversion.

In a case where the deed gave the lot of land for a meeting house "to be built or rebuilt on the said lot of land forever", the lot had not been used for a meeting house for several years. The heirs of the original grantors brought a writ of entry to enforce the forfeiture or reversion of the land.

Bigelow, C. J., said:

"There are no apt or proper words to create a condition; there is no clause of reentry or forfeiture. The only words which bear any semblance of an intent to restrict the title conveyed by the deed are found in the habendum. These are merely, that the

grantees, the proprietors of pews, should hold the estate for the purpose of erecting and maintaining thereon a house for public worship. But we know of no authority by which a grant declared to be for a special purpose, without other words, can be held to be on a condition. On the contrary it has always been held that such a grant does not convey a conditional estate, unless coupled with a clause for the payment of money, or the doing of some act by the grantee, on which the grant is clearly made to depend. Without some such clause, a grant for a specific purpose can be held at most only to create a trust, but not an estate on condition" (cases cited).

(1860) *Bankers v. Mercer*, 16 *Gr.*, 327, 328-9.

Later it was held that a grant of land to a town "for a burying place forever" is not a grant upon condition subsequent. The land was sold by the town to a school district which removed the remains of those buried there and applied the land to school purposes. The same judge said:

"A deed will not be construed to create an estate on condition unless the language is used which according to the rules of law *ex proprio iure*, imports a condition. . . . Conditions are not favored in law. If it is doubtful whether a clause in a deed be a covenant or condition, courts of law will always incline against the latter construction. . . ."

"In the deed on which the present controversy arises, there are, strictly speaking, no words of condition, such as of themselves import the creation of a conditional estate. The usual and proper technical words by which such an estate is granted by deed are, 'provided' 'so as' or 'on condition' . . . ."

"We believe there is no authoritative sanction for the doctrine that a deed is to be construed as a grant on a condition subsequent solely for the reason that it contains a clause declaring the purpose for which it is intended the granted premises shall be used, where such purpose will not enure specially to the benefit of the grantor and his assigns, but is in its nature general and public, and where there are no other words indicating an intent that the grant is to be void if the declared purpose is not fulfilled".

(1863) *Wheeler v. Trustees of the City of New York*, 7 *Gr.*, 125, 127-8, 9-30.

See also (1871) *St. Louis v. The Board of Public Works*, 11 *Gr.*, 109, 110, 111.

It is clear, therefore, from the foregoing authorities that the State is free to convey the land in question for another public trust;

the first one having terminated. It will be noticed that Benjamin Church did not make a gift of his land to the Province. He got the equivalent for it, by getting the Wilcox land. The purpose for which the deed was made was rather the object of the Province; it devoted some of its land to aid the Indians. It is well also not to lose sight of the words, in the habendum clause, which provide that, "sd Land & premises shall from henceforth forever be and Remain at the free and absolute dispose of the Govern<sup>r</sup> & Generall Assem<sup>ly</sup> of the sd Province for the time being as the Govern<sup>r</sup> & Gen<sup>l</sup> Assembly may grant or dispose of any other Publicque or unappropriated land belonging to & within the sd Province. . . . . "which, no doubt were, intended to reserve in the Province, its successors or assigns the complete right of disposal, in case the land ceased to be needed for an Indian Plantation or Reservation.

In 1761, the Province of Massachusetts Bay made a partition or allotment of the land described in the Church deed, among various members of the tribe to be held in severalty.

See, *Report of John Milton Earle on Indians of the Commonwealth, Senate Document No. 96, (1861), App. C, p. 80; and plan annexed to the pamphlet containing said Sen. Doc. No. 96, State Ed., 1861.*

And also reprinted in

*Mass. House Doc. No. 215, 1862.*

The part which relates to the Fall River Indian colony, in Earle's Report, is found at pages 71 to 87 inclusive, in Mass. Senate Doc. No. 96 of 1861, as reprinted in pamphlet form.

15. The Special Report of J. M. Earle, on the claim of Zurviah Gould Mitchell of Abington, Mass., discusses generally the title of the Commonwealth, but more particularly the title of the persons among whom a division was made in 1761.

See *Special Report of J. M. Earle, on the Claim of Z. G. Mitchell (1861) post.*

It is difficult to determine whether the Commonwealth, prior to 1869, was anything more than a mere trustee for the Indians and their descendants. At any rate, it attempted to act for them, as previous colonial and provincial governments had done; it appointed guardians and granted relief to the occupants of the Indian Plantation or Reservation in Fall River, as appears more fully by the reports of the State Board of Charities, the special report to the legislature of 1849, on the Indians in the State, the Report of J. M. Earle in 1861 and the reports of the Guardian of the Fall River Indians, printed hereafter; and finally by St. 1869,

C. 163, it emancipated the Indians and removed all their disabilities.

16. Since it appears that many families of the original grantees in severalty under the division of 1761 have become extinct, it would seem that the Commonwealth may have acquired title by reversion or escheat to some of the lands in question.

*Mass. Rev. Stat. 133 s. 1*

and previous statutes cited in margin running back to 1692.

17. It is provided in the Constitution of this Commonwealth that "whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor".

*Mass. Declaration of Rights, Art. 10*

It is provided, in the substitute bill, that due compensation shall be made by the City of Fall River to persons aggrieved by the taking of the lands in question.

18. Fall River asks that so far as the State's title extends, it shall be transferred to another public corporation to be held by it under such limitations, if any, as the Commonwealth now holds under. Then the legislature is requested to authorize the city to take by eminent domain, paying whatever damages are suffered.

Formerly these lands were held in trust by the State for a small part of the people occupying them; now the State is asked that they shall be held in trust for all the people living in the vicinity, so that they may have a water supply whose purity and increased capacity shall be forever preserved from contamination.

19. In 1869 Governor Claflin made an earnest recommendation to the legislature to enfranchise the Indians residing in the Commonwealth.

See, Governor Claflin's Inaugural Address in

*Mass. Review, 1869, p. 843.*

The legislature of 1869 enacted the Magna Charta of Massachusetts Indians, in consequence, in the following provisions which ended a tutelage of 249 years:

*St. 1869, c. 463*

*AN ACT TO ENFRANCHISE THE INDIANS OF THIS COMMONWEALTH.*

"Section 1. All Indians and people of color, heretofore known and called Indians, within this Commonwealth, are hereby made

and declared to be citizens of the Commonwealth, and entitled to all the rights, privileges and immunities, and subject to all the duties and liabilities to which citizens of this Commonwealth are entitled or subject.

"Section 2. All lands heretofore known as Indian lands, and rightfully held by any Indian in severalty, and all such lands which have been or may be set off to any Indian, shall be and become the property of such person and his heirs in fee simple; provided, that such lands shall not be held liable to be taken upon attachment or execution for any debt or liability which existed before the passage of this act; and all Indians shall hereafter have the same rights as other citizens to take, hold, convey and transmit real estate.

"Section 3. The judge of probate of the county in which any lands held in common belonging to any tribe of Indians may lie, except in the case of the Indians of Marshpee and Gay Head, upon the application of any member of said tribe, after notice to all parties interested and a hearing of the same, if in his opinion it is for the interest of said parties that any or all of said lands be divided, shall appoint two discreet, disinterested persons commissioners to make partition of the same, and their award, being confirmed by said court, shall be final in the premises; but if he shall adjudge that it is for the interest of said parties that the same, or a part of the same, be sold, he shall direct the said commissioners, after they shall have given such bonds as the court may require, to proceed to sell any or all of said lands, and to divide the proceeds of the same among the parties rightfully entitled thereto in proportion to their several interests therein, under the direction of the said court; and the judge of probate of the county in which any lands heretofore and now known as Indian lands, and claimed in severalty by any Indians, may lie, shall direct the said commissioners to examine and define the boundaries of the lands rightfully held by individual owners, and shall properly describe and set forth the same in writing, and such description being approved by the court shall be final in the premises; and the same, together with all deeds of partition, division or sale made by such commissioners shall be recorded in the registry of deeds in the county, and the expenses of said commissioners, including the cost of recording said deeds the same being approved by the judge of probate, shall be paid out of the treasury of the Commonwealth, the same being also approved by the governor and council.

"Said commissioners are authorized to sue for, collect and receive all funds belonging to or held in trust for, any tribe of Indians for which said commissioners are appointed; and all such funds shall be divided by said commissioners among the parties rightfully entitled thereto under the direction of the probate court of the county in which such tribe resides; and any property held in trust by any person for any tribe of Indians shall be sold by such person under the direction of the judge of probate, and the proceeds of such sale shall be paid over to the commissioners to be divided as aforesaid. The judge of probate of Plymouth county shall have jurisdiction over all matters relating to the Herring Pond Indians under this section.

"Any person aggrieved by any order, decree or denial of the judge of probate under this act, shall have the same right of appeal, under the same rules and regulations as provided for in chapter one hundred and seventeen of the General Statutes: provided, that the attested copies and notices required to be given by said chapter shall be served upon such parties as the judge of probate shall direct.

"Section 4. Upon the application of the overseers of the poor, of any town, to the board of state charities, said board shall make provision in the state almshouses or elsewhere for the support of any persons heretofore known as Indians who may be unable to support themselves, and who have not acquired a settlement in any town; and upon the application of any Indian who has heretofore received aid from the Commonwealth, the said board shall furnish to such person in the state almshouses or elsewhere, such aid as they may deem expedient.

"Section 5. The general agent of the board of state charities shall take charge of the house, and all property connected therewith, in the town of Webster, belonging to the Commonwealth, and may lease to persons heretofore known as members of the Dudley tribe of Indians, upon terms substantially like those upon which they have heretofore occupied it; or he shall, under the direction of the board of state charities, sell the same at public auction, and the proceeds of such leases or sale shall be paid into the treasury of the Commonwealth." (Approved June 23, 1869.)

20. Previous to the foregoing statute of 1869, the Indians living in Massachusetts were subject to many civil disabilities. They were unable to buy or sell land or contract liabilities like white men. They were in a state of pupilage.



It was stated by Putnam J. that:

"The provisions which have been adopted by the legislature, in respect of this improvident race of men, have been dictated by a single regard to their welfare. The guardian is empowered to grant license to such of them as shall by industry, sobriety and correct conduct, entitle themselves to the privilege to make contracts generally, in particular to purchase real estate."

(1840) *Thornton v. Grinnell*, 2 *Met.* 13, 14, 15.

The effect of the statute of 1869 was such that "it gave every Indian a right immediately to have his share of the common lands of the tribe set out to him or sold for his benefit."

Knowlton J. in

(1891) *Drew v. Cornell*, 151 *Mass.* 181, 184.

In the course of the same decision it was said:

"Having all the rights of a citizen an Indian, under this statute, could sell and control, in any way, all his interests in property whether legal or equitable, as freely as any one else".

*Ibid.* p. 183.

Referring to the same subject, Gray J. said:

"By the law of Massachusetts, until very recently, the Indians were not subject to taxation, nor endowed with the ordinary civil and political rights of citizens, but were treated as the wards of the Commonwealth; the title in the lands occupied by their tribes was in the State, and could not be alienated by them without the consent of the legislature; and the use and improvement thereof by the Indians was regulated by the legislature, from time to time, at its discretion....."

"By recent legislation, the Indians of the Commonwealth have been fully enfranchised from the subjection in which they had heretofore been kept, and put upon the same footing as other citizens; and provision made for the division of their lands among them in severalty as their absolute property"; citing St. 1869 C. 463, and St. 1870, C. C. 213, 293, 350.

(1871) *Danzell v. Webquish*, 108 *Mass.* 133, 134.

It was held in the same case that the minor children of Deborah Danzell and of Mary Perry (the latter living in Fall River) not having been born, nor having ever lived upon the lands of the Herring Pond tribe of Indians (in Plymouth County) could not have a right, under St. 1869, C. 463, to a share in the division of the same; although their mother was one of the proprietors of

said lands and was born thereon; but after marriage she went to live in Fall River.

(1871) *Davis v. Wabquish*, 108 Mass. 133.

21. Precedent for the proposed action of the legislature, in this instance, is found in the disposal of the Commonwealth's rights in the lands of the Marshpee Indians in favor of the town of Marshpee.

(St. 1870, c. 293, §§ 1, 2)

The constitutionality of this statute was attacked but fully sustained by the supreme court which held, through Endicott J. that,

"There is no constitutional objection to any of these provisions. The tenure by which these lands were held was peculiar. In bestowing the privileges of citizenship upon these wards of the Commonwealth and giving a title in fee simple to all lands held by them in severalty under existing provisions of law, it was not only proper but a wise exercise of power for the legislature to frame provisions by which common lands belonging to the town or the tribe should be divided. The legislature could impose any reasonable qualifications or restrictions upon the privileges and power conferred by the statute, either upon the town or upon the people known as the Marshpee tribe of Indians".

(1879) *Darius Combs et al. Petrs.*, 127 Mass. 278

## HISTORY OF TITLE TO FALL RIVER INDIAN RESERVATION.

The lands now comprised within the territorial limits of Fall River were obtained in two parts; one from the Indians in 1659, called the "Freemen's Purchase"; and the other from the Colony of New Plymouth, in 1679-80, called the "Pocasset Purchase".

The Reservation includes the full width of the northerly quarter of the *Second Share*, and the full width of the southerly half of the *Third Share* of the Freemen's Purchase, and extends from North Watuppa Pond easterly to the Proprietor's Way, or "Head of Lots".

The Freemen's Purchase was deeded by Wamsutta and other Indians to James Cudworth and other proprietors, April 2, 1659.

Bk. 1, P. 361, Fall River Cop. Records; same in Bk. 3, P. 116-117 Bristol Co., No. Dist. Rec. Same in Fenner's Hist. Fall River, 1906, p. 4-5.

The *Second Share* of the Freemen's Purchase was allotted to Humphrey Turner, one of the original proprietors. It descended to his son Joseph Turner, who sold it to Israel Hubbard in 1671. From him it passed to I. Hubbard and Jonathan Dodson. History of Bristol County, Boston History Company, 1899, p. 425.

Israel "Hubart" and Jonathan Dodson sell to Benjamin Church the whole *Second Share* from Taunton River to Proprietor's Way or "Head of Lots". Bk. 1, pages 383-6, No. Dist. and Bk. 1, p. 101, F. R. Cop. Rec., give the deed as follows:

**Deed of "Hubart" and Dodson to Benj. Church.**

"To all Christian People to whom these presents shall come Israel Huberd of the town of Scittuate in the County of Plimouth in the Province of the masachuset Bay in New England yeoman and Jonathan Dodson of the town & County afores<sup>d</sup> sendeth Greeting Know yee that we the afores<sup>d</sup> Israel Hubard & Jonathan Dodson Hath for the Sum of one hundred & fifty pounds lawfull Currant money in New England by them in hand Received, and well & truly payd by Maj<sup>r</sup> Benjamin Church of Bristoll in the County of Bristoll in the Province afores<sup>d</sup> wherewith the said Israel Hubard and Jonathan Dodson Duth acknowledge themselves Sufficiently Sattisfyed, Contented, & fully & absolutely payd and thereof & of every part and percell thereof, They Do exonerate acquitt & fully Discharge, the said Benjamin Church his heirs Executors Administrators & Assignes forever, Have freely and absolutely Given granted Bargained sold Aliened Enfeoffed & Confirmed And by these presents Doe freely Clearly fully & absolutely Give Grant Bargain Sell Alien Enfeoffe & Confirme from them the said Israel Hubard & said Jonathan Dodson their heires executors & Assignes forever unto him the said Benjamin Church his heires & assignes forever A Certaine Tract or percel of uplands Scittuate lyeing & being in ffreetown in the County of Bristoll afores<sup>d</sup> being one Great lott (so called and is the second lott from the fall River, being Butted and Bounded, towards the south to the lott that was sometime Timothy ffosters, but partly now in the possession of Ralph Earle Jun<sup>r</sup> and toward the North to the lott y<sup>t</sup> was formerly

Christopher wadsworth, And Buting on the Salt water or River that leadeth up to Taunton, on the west and Runing up into the woods Easterly as far as the other lotts Do extend: to have and to hold the aforesaid great lott of upland (be it more or less) Scituate & bounded as aforesd with all & Singuler the timber wood under-wood stones Mines Minerals water Courses Herbage grass feedings Rents profits Heridittaments Immunities priviledges & appurtenances thereto belonging or in any manner of way apperteineing with the Reversion & Reversions Remainder & Remainders to him the said Benjamin Church his heires executors and Adm<sup>rs</sup>. And to the only proper use & usses benefit & behooffs of him the said Benjamin Church his heires executors Administrators & Assignes forever. And the said Israel Hubard & the sd Jonathan Dodson Doth hereby promise Covenant & grant to and with the sd Benjamin Church his heires & assignes that at the time of ye sealeing & untill the Delivery of these presents, they the said Israel Hubard & ye sd Jonathan Dodson are true only lawfull owners of all the above given & granted premises and that they are lawfully Seized of & in the same in their owne proper Right And that they have in themselves full power, Good Right, & lawfull authority to give grant Sell Convey & assure the same unto him the sd Benjamin Church his heires & assignes forever as a good sure perfect & absolute estate of Inheritance in Fee Simple without any manner of Condition or Reversion title of Dower or limmitation of usses, whatsoever, so as to alter Chainge Defeat or make voyde the same, And that the said Benjamin Church his heires & assignes shall & may by force & vertue of these p<sup>r</sup>sents, from time to time & at all times Hereafter forever Lawfully Peaceably & quietly have hold possess occupie & enjoy all & Singular the above given & Granted premises & every part and percell thereof ffree & Cleare & Clearely acquitted & fully Discharged of & from all, and all mann<sup>r</sup> of former & other Gifts grants Bargaines Sales Leases Mortgag Joyntures Dowers, Entailes, Judgments, executions, and extents and of & from all other titles troubles Charges & encumbrances whatsoever had made Comitted Omitted or suffered to be Done By them the sd Israel Hubard & Jonathan Dodson or by their privitie, or procurement And farther the said Israel Hubard & the sd Jonathan Dodson, Doth Covenant & promise to & with the said Benjamin Church his heires & assignes that at his or their Reasonable request and proper Charges, they the sd Hubart & Dodson will Do such farther lawfull act & Acts, thing & things for the farther Confirming & sure making of all the above granted premises, unto the

said Benjamin Church his heires and assignes for ever, as by his or their Councel Learned in the law shall be Reasonably Devized Advized or Required In witness whereof the said Israel Hubart & Jonathan Dodson have hereunto sett their hands & affixed their Seales this Sixth Day of September one thousand Six hundred Ninety four In the Sixth year of the Reigne of o<sup>r</sup> Sovereigne Lord & Lady King will and Queen Mary It is to be understood before signing & sealeing and it is hereby Declared & understood, that the abovesd Israel Hubart & Jonathan Dodson Doth sell one whole Share of land, or their whole Right off land in the town of freetown Contained in & belonging to the above said lott unto the sd Benjamin Church his heires & assignes forever

Signed sealed & Delivered

In the presence of us  
witnesses vizt.

ISRAEL HUBART (Seale)

Simon Davis  
Jno. Cary

JONATHAN DODSON (seale)

This 25th Day of february 1694-5 appeared ye abovesd Israel Hubart and Did own & acknowledge the above written Instrument & also the possession written on the Backside to be his act & Deed unto the abovesd major Benjamin Church, so far as said hubart is Concerned in said Deed for his part Before me John Cushen Justice of peace for the County of Plimouth"

"This 5th day of march 1694-5 appeared Sarah Hubart, the wife of the s<sup>d</sup> Israel Hubard & Did freely & fully Surrender up all her Right of thirds into the land above mentioned In the above written Deed unto the aboves<sup>d</sup> maj<sup>r</sup> Benja Church before me John Cushen Justice of Peace for ye County of Plimouth

"The above Named Jonathan Dodson acknowledged this Instrument above written to be his act & Deed & the Possession on the Backside at the same time this Ninth Day of march 1694-5 Befor Joseph Church Justice of ye Peace for ye County of Bristol. Memorandum that full and Peacable possession and Seizen was given & Delivered by the within Named Israel Hubart & Jonathan Dodson of all the lands within mentioned unto the within Named Benjamin Church & his heires according to the true Intent & meaning of the within written Deed, on the Seventh Day of September Anno Dom. Sixteen hundred Ninety four in the presence of us whose Names are Subscribed.

the mark of (V O) RALPH EARLE  
JAMES BURROUGHS  
the mark of (2) JOHN ALLEN"

Lieut. Benjamin Church sells to his son Constant Church the Southerly three fourths of the *Second Share* from Taunton River to Proprietor's Way or Head of Lots on April 12, 1707, Bk. 5, P. 214. No. Dist.: Bk. 2, Page 67, F. R. Cop. Rec.

The *Third Share* was allotted to Christopher (sometimes written Xopher) Wadsworth, one of the original proprietors.

The whole *Third Share* was transferred by John Wadsworth to Latham Clarke and John Wilbore. History of Bristol County, Boston History Company, 1899, p. 426.

By Agreement or Division Deed between Latham Clarke and John Wilbor, Clarke takes the South Half and Wilbore the North Half of the *Third Share*, Dec. 5, 1700. Bk. 6, pages 375-376, No. Dist.: Bk. 2, p. 248, F. R. Cop. Rec.

Latham Clarke and Ann, his wife, sell to Maj. Benjamin Church the whole South Half of the *Third Share* from Taunton River to Proprietor's Way or Head of Lots, on Dec. 20, 1700. Bk. 3, pages 291-292, No. Dist.: Bk. 1, p. 337, F. R. Cop. Rec. The deed reads as follows:

**Deed of Latham Clarke and Wife to Benjamin Church.**

"To all Christian People to whom these p<sup>e</sup>sents shall Come Lathum Clerk & Ann his wife of the town of Newport on Rhoad Island in y<sup>e</sup> Colony of Rhoad Island & Providence Plantations in y<sup>e</sup> Dominion of New Engl<sup>d</sup> Sendeth Greeting in o<sup>e</sup> Lord God Everlasting Know Yee that y<sup>e</sup> sd Lathum Clark & Ann his wife for Divirs good & valuable Considerations them hereunto moveing Butt more Especially for & in Consideration of the sum of One Hundred & forty pounds Curr<sup>t</sup> money of New England to them in hand payd before y<sup>e</sup> Ensealeing hereof, By Maj<sup>r</sup> Benjamin Church of the town of Bristoll in the County of Bristoll in the Province of the Massachu-  
sett Bay In y<sup>e</sup> Territory or Dominion of New England aforesd, the Receipt whereof the sd Lathum Clarke & and Ann his wife By these p<sup>e</sup>sents Acknowledge & therewith fully Sattisfyed Contented & payd & thereof & Every part & p<sup>e</sup>cell thereof Doe fully & Clearly Acquitt and Discharge the said Majo<sup>r</sup> Benjamin Church his heires, Executors Administrators & Every of them for Ever Have fully Clearly & absolutely Bargained, sold, Enfeoffed & Confirmed, and by these presents Doe fully clearly & absolutely Bargained sell

Enfeoffe & Confirme unto y<sup>r</sup> sd Maj<sup>ty</sup> Benjamin Church his heires & Assignes for Ever The whole halfe share of that ffreemans Lott of land in the Township of ffreetown Being the Third lott in Number so Called (which was Granted Enfeoffed & Confirmed unto the sd Lathum Clerke & unto John Wilbore of y<sup>r</sup> town of Portsmouth on Rhoad Island aforesaid. By John Wadsworth Dee<sup>d</sup> late of Duxbury, and is Now Equally Divided as may at Large appeare By an Agreement Mutually made and Consented unto Between them (the said Lathum Clarke & John Wilbore) Bearing date the fifth day of Decemb Anno Domini One thousand seven Hundred. The said halfe lott of land Butted & Bounded Northerly by the Division line of said John Wilbores part of land of said lott Easterly by Lands of Tiverton Southerly by Lands of Maj<sup>ty</sup> Benjamin Church Westerly by the River or salt water Which leads up to Taunton with all other lands or claime of lands Belonging to y<sup>r</sup> halfe lotte of Land Or in any place whatso Ever upon the East side of Taunton River, Belonging to the said Lathum Clarke Together with all & Singuler the wood trees timber & ffences standing lyeing & Growing upon the same or any part or p<sup>ce</sup>ll thereof and all Rights Liberties & Priviledges thereunto belonging or in any appertayneing.

To have and to hold the whole the said Halfe share of that ffreemans lott of land in the Township of ffreetown Being (the third lott in Number so called) Butting and bounding as abovesd with all other lands or claime of Lands belonging to y<sup>r</sup> halfe lott of land in any part or place whatso Ever upon the East side of Taunton River belonging to the said Lathum Clarke Clarke with all other the premises Liberties priviledges & appurtenances thereunto belonging or appertayneing unto Maj<sup>ty</sup> Benjamin Church his heires & Assignes To his and their onely proper use Benefit & behooffe for Ever & the said Lathum Clarke & Ann his wife for themselves their heires Executors & Administ<sup>es</sup> Doe hereby Covenant Promise & grant to & with the said Maj<sup>ty</sup> Benjamin Church his heirs and Assignes, That at & before the time of the Ensealing hereof they the said Lathum Clarke & Ann his wife or one of them were the true and lawfull owners of the above Bargained & sold premises & Every part & p<sup>ce</sup>ll thereof and have in themselves Just Right Power & Lawfull Authority To give grant Bargaine sell Convey & Assure y<sup>e</sup> same unto the said Maj<sup>ty</sup> Benjamin Church his heirs & Assignes Ass a good perfect and absolute Estate of Inheritance in fee simple without any manner of Condition, Reversion or Limitation whatso Ever So as to Alter Chainge Defeat

or make voyde the same free & cleare & freely & Clearly acquitted & Discharged, of & from all former & other gifts grants Sales Leases Morgages Joyntures Dowes or Powers of Thirds of said Ann & off & from all other Titles troubles Charges & Incumbrances whatso Ever And further that the said Lathum Clarke & Ann his wife the said Bargained & sold premises unto the said Maj<sup>r</sup> Benjamin Church his heire. & Assignes against themselves their heires Executors & Administrators & Against all & Every other person & persons Lawfully Claimeing the same or any part thereof they Shall & will well & truly & Suffeciently warrant & for Ever Defend by these presents And that at Any time or times hereafter upon Demand of the sd Maj<sup>r</sup> Benjamin Church & at his Cost & Charges in the Law they will Doe & perform any such further Act or Acts for the better confirmeing & sure makeing the above Bargained & sold premises unto him his heires and Assignes as in Law & Equity Can be Desired & Required.


In Witness whereof the said Lathum Clarke and Ann his wife Have sett their hands and alixed their scales this Twentieth Day of Decemb in the Twelveth year of the Reign of his Sacred Majestie King William the Third over England &c: AnnoqB Domini one thousand Seven Hundred.

Signed Sealed & Delivered

In presence of us  
Benj<sup>n</sup> Newberry

LATHUM CLARKE 

John Scot

ANN CLARKE 

Tho: Fox:

The above Named Lathum Clarke & Ann Clarke his Now wife acknowledged this Instrument above written to be their Act and Deed the Ninth day of January 1700

.70.1

Before Joseph Church one of his Majesties Justices of the Peace for the County of Bristol."

In 1679-80 Daniel Wilcox is one of the original grantees of Pocasset purchase. Fenner's Hist. Fall River, 1906 pp. 5-6.

In March, 1701, Daniel Wilcox petitioned the General Court to accept his land and interests in Pocasset Purchase in payment of a fine imposed upon him in August, 1693.

November 27, 1701, Daniel Wilcox conveys to Province of Massachusetts Bay, the 11th "Six Score Acre Lot" in Second



Div. Pocasset Purchase, the Second 40-Acre Lot, in Fourth Division Pocasset Purchase, and 1-30th interest in the Undivided Lands of Pocasset Purchase. The deed is recorded in Book 3, pp. 301-2, No. Dist.; Book 1, p. 243, F. R. Cop. Rec., and reads as follows:

**Deed of Daniel Wilcox to the Province.**

"To all People unto whom these presents shall Come Daniel Wilcox of Little Compton in y<sup>e</sup> County of Bristoll within his Maj<sup>ties</sup> Province of the Massachusetts Bay in New England Yeoman sendeth Greeting Whereas the said Daniel Wilcox being at a Superior Court of Judicature Court of Assize & Generall Goal Delivery holden at Bristoll in the County of Bristoll aforesaid in the month of August Anno Domini 1693 Convicted of High misdemeanors was by the said Court sentenced to pay unto his Maj<sup>ties</sup> a fine of one Hundred & fifty pounds which he hath never yet payd haveing made his Escape out of the Sheiriff's hand sometime after the said sentence or Judgement was given and thereupon Removed out of the Province abovesd. And whereas the said Daniel Wilcox being Desireous of a Peaceable Return to his ffamilie which was Removed from Little Compton aforesaid to Tiverton in the County of Bristoll aforesd Did by a Pittion presented on his behalfe by Maj<sup>r</sup> Benjamin Church unto the Generall Court or Assembly sitting at Boston in y<sup>e</sup> Province abovesd in the month of March Last past before the date hereof make a proposall that for y<sup>e</sup> Sattisfaction of the fine ordered to be payd by him as aforesd he would give a firme Deed of sale to the Province as should be Directed of the severall Tracts of land hereunder mentioned y<sup>e</sup> is to say of an one Hundred & Twenty acre lott being the fourteenth in numb<sup>r</sup> and of one forty acre lott being the second in Number as appeares on Record in the Purchassers Booke of Records in Tiverton and a Thirtyeth part or a whole share of a Tract of land that is undivided belonging to Tiverton Bounded as followeth viz<sup>t</sup> Southerly by the lands of Dartmouth west by lands of Tiverton & ffreetown & Northerly by lands of Middleborough Extending East to a place Known by the Name of Quitticus And hath prayed that upon his the sd wilcox compleating a Deed for y<sup>e</sup> said lands he might be set at Libertie to goe home to his ffamilie & Whereas the great and Generall Court or Assembly setting in the sd month of march last in answer to the aforesd Pittion Did pass a Resolve that the Prayer therein be Granted and Appointed Ebenezer Brenton Esq<sup>r</sup> the said Maj<sup>r</sup> Benjamin Church

& m<sup>r</sup> William Pabodie A Committee to take Care that Sufficient Deeds of Conveyance of the severall p<sup>ar</sup>cells of land above mentioned be made & Executed by the sd Daniel Wilcox.

Now these presents witness that the sd Daniel wilcox for & in Consideration of the payments & Satisfaction of the above mentioned fine of one Hundred and fifty pounds Hath given granted Bargained sold Aliened Enfeoffed Released Conveyed & Confirmed & by these p<sup>re</sup>sents Doth fully freely Clearly and absolutely give grant Bargaine sell Alien Enfeoffe Release Convey & Confirme unto the Council of his majestyes Province of the Massachusetts Bay aforesaid on whom the power & Authority of the Governour of sd Province is Now Devolved (the Governour & Leu<sup>t</sup> Governour of the same being both Deceased and to the Assembly of the sd Province & to their Successors vi:<sup>z</sup> the Govern<sup>r</sup> & General Assembly of the Province aforesaid for the time being & their Assignes for Ever The severall percells of land herein before mentioned That is to say The aforesd one Hundred & Twenty acre lot being the fourteenth in Numb<sup>r</sup> in Tiverton aforesaid and the aforesaid forty acre lot, being the second in Number in the sd town of Tiverton Also: all that aforesd Thirtieth part or whole share of a tract of land that is undivided belonging to y<sup>e</sup> sd town of Tiverton and bounded as before mentioned Together with all & Singuler the Trees timberwoods underwoods waters water Courses stones fields feedings Marshes Meadows Rights members profitts priviledges Comodities Advantages Heridittament Emoluments & appurtenances whatso Ever upon or in any wise belonging to y<sup>e</sup> severall p<sup>ar</sup>cells of land herein before granted or to any or Either of them And all the Estate Right Title Interest Inheritance use propertie possession Claime & Demand whatso Ever of him the said Daniel Wilcox and his heires of in Or to the same or any part thereof and the Reversion & Reversions Remainder & Remainders of the same To have and to hold the sd severall percells of land, & p<sup>re</sup>mises herein before granted unto the Councill & Assembly of the Province of the Massachusetts Bay aforesd and their Successors to witt the Govern<sup>r</sup> and General Assembly of the said Province for the time being their Successors & Assignes for Ever, To their use & behoofe so as that the sd lands & premises herein before granted Shall from henceforth for Ever be & remaine at the free & absolute Dispose of the Govern<sup>r</sup> Commander in Cheife & General Assembly for the time being of the Province aforesaid in such manner as the said Govern<sup>r</sup> or Commander in Cheife & General Assembly may grant or Dispose

of any other lands belonging to & within the said Province of Y<sup>er</sup> Massachusetts Bay or any part thereof And the said Daniel Wilcox for himself his heires Exe<sup>cut</sup> & Adm<sup>in</sup> doth hereby Covenant & Agree to & with the Councill & Assembly of y<sup>e</sup> Province aforesd their successors as aforesaid for the time being & their Assignes that he the said Daniel Wilcox is, at & until the Ensealing & Delivery of these presents the true sole and lawfull owner of y<sup>e</sup> said Severall percells of land & premises herein before granted and hath in himself full power good Right & lawfull Authority to grant Convey & Assure the same in manner as aforesaid and that the said Granted premises are free and Cleare and Clearely Acquitted & Discharged of & from all & all manner of former & other gifts grants Bargaines sales Alinations Mortgages Leases Releases Joyntures Dowes Judgements Executions forfeitures seizures Ameniaments, Titles troubles, Charges and incumbrances whatso Ever And ifurther that he the said Daniel Wilcox his heires Executo<sup>rs</sup> & Admin<sup>istr</sup> shall & will Warrant & Defend all & Singuler the said Herein before granted premises unto the Council & Assembly of the Province aforesd their Successors as aforesaid for the time being & their Assignes for Ever Against the Lawfull Claimes & demands of all & Every person & persons whatso Ever And at their Request & at their Cost and Charges shall & will at any time or times hereafter make seale & Execute any such further Act Instrument or thing for the better Confirmation & Assurance of the said granted premises according to the true Intent & meaneing of these presents as shall be Lawfully or Reasonably Divise l advised or Required.

In witness whereof the said Daniel Wilcox hath herunto sett his hand & seale the Twenty Seventh Day of Novemb<sup>r</sup> Anno Domini 1701. Annoq<sup>ue</sup> B. R. Rs. Gulielmi Tertii Anglie; &c Decimo tertio:

Signed sealed & Delivered

Signum

DANIEL (D) WILCOX (SEAL)

In presence of us  
Ebenezer Brenton  
John Mulder  
Benjamin Ellery

Portsmouth on Rhoad Island Novemb<sup>r</sup> y<sup>e</sup> 27th 1701: Personally appeared the above Named Daniel Wilcox & Acknowledged the above written Instrument to be his Act and Deed & his hand and seale thereunto sett.

Before me JOSEPH SHEFFIELD Assistant<sup>ly</sup>

On Feb. 18, 1701, the General Court of Massachusetts Bay Province assigns the above mentioned Wilcox land as a Plantation or Reservation for the Indians.

In Oct., 1707, the General Court of Province of Massachusetts Bay authorized the exchange of the Wilcox land, for land of Benjamin Church in *Second and Third Shares* of Freeman's Purchase, on the east side of North Watuppa Pond. (*Unassigned Reservation*, 1907). Referred to in Deed Bk. 5, pages 506-507 No. Dist.; same in Bk. 2, page 143, F. R. Cop. Rec.

April 4, 1709, the Province of Massachusetts Bay sells to Col. Benjamin Church the above described Wilcox land; Bk. 5, pages 506-507, No. Dist., and Bk. 2, p. 143, F.R.Cop. Rec., give the deed as follows:

**Deed of Province of Massachusetts Bay to Benj. Church.**

Ye seal of ye Joseph Dudley Esq<sup>r</sup> Capt Gen<sup>ll</sup> & Gov<sup>r</sup> in Cheife in Province of ye  
 Masachuset Bay in & over Her Maj<sup>tyes</sup> Province of the Massachusetts  
 Bay in N. E. Bay in New England in America To all towhom these  
 presents shall come Greeting Whereas the Great and General  
 Court of her Majesties Province of the Masachuset Bay in New  
 England at their Session held at Boston the eighteenth of febr<sup>ry</sup> 1701  
 upon application to them, before made by the Indians Resideing in  
 the Southern parts of the County of Bristol Divers of whome have  
 been very serviceable to ye Crown in the Late warrs with the  
 Indians, and some of them brought up in English ffamilies: viz<sup>t</sup>  
 That a Conveinient Tract of land may be Assigned to them for a  
 Plantation where they may settle together in an Orderly way and  
 have the benefit of enjoying the Ministry & settling a school for  
 the teething & Instructing of the Children And there being a  
 Tract of land within the Township of Tiverton lately Granted to ye  
 Government by Daniel Wilcox. Resolved and Ordered that the sd  
 Indians be Accomidated with a settlemt for a Plantation upon the  
 aforesaid Lands to be holden by them of his Majesties Government  
 with in this Province Dureing the pleasure of the Government And  
 Ebenezer Brenton Esq<sup>r</sup> Maj<sup>ty</sup> Benj<sup>th</sup> Church & m<sup>r</sup> William Hoades  
 are appointed to be the first Committee to Direct Order and Regu-  
 late the said settlement or Plantation in Assigneing and setting  
 forth Due allotments or proportions of land to each ffamilye of  
 the Indians that shall or may come to Inhabitt or settle within the  
 said Plantation To be severally Occupied & Improved and to do all

thing Relateing to the Concerns of the said Plantation two of the sd. Committee to Act And whereas upon further Application made by the said Indians the said Great and General Court at their Sessions in October 1707 upon the Report of their Committee Did Allow of a proposal made for ye exchaingeing some of the sd lands with Co<sup>llo</sup> Benjamin Church for land of his Lyeing more Comodious for the India Settlements & more Remote from the English And Directed that proper and Legall Instruments be Drawn accordingly the lands to be holden of her Majesties Government of this her Majesties Province by the said Indians and their heires forever Yielding unto the Govern<sup>r</sup> of the sd Province for ye time being upon the tenth day of December yearly One quarter of Good Venison in Lieu of all Rents and services not to be assigned or Alienated but Continued an Indian Plantation forever as in and by the Courts several Records Relation being thereto had will more fully appear Know yee therefore that wee the Gov<sup>r</sup> Council and Assembly of the Province afores<sup>td</sup> Agreeable to the afore Rented last vote And pursuant to the powers and Authorityes Contained and Granted in and by her Majesties Royall Charter for and in Consideration of the lands conveyed & Received on the afore mentioned Exchainge by Deed from Coll<sup>o</sup> Benj<sup>th</sup> Church bearing even date with these presents Have given Granted Released and Confirmed And by these presents Do fully and absolutely give grant Release and Confirme unto the sd Colonel Benjamin Church his heirs and assigns forever The two several Tracts and Allotments of land hereafter Mentioned being scittuate in the township of Tiverton in the County of Bristol within the Province aforesaid Granted by Daniel Wilcox late of Little Compton within the said County of Bristol yeoman Deceased to ye Govern<sup>mt</sup> in satisfaction of a fine by Deed bearing date the Twenty seventh day of November One thousand seven Hundred & One of Record in ye aforesd County That is to say One lott being the fourteenth in Number Containing One Hundred and Twenty acres and one other lott being the second in Number Containing forty acres as appears on Record in the Purchassers Book of Records in Tiverton afores<sup>td</sup> Together with all & singuler the trees timber woods underwoods Right members profits priviledges Heridittaments Emolluments Accomodations & Appur<sup>es</sup> to them and each of them belonging or in any wise Appertaining To have and to hold the said two severall Lotts of land with the members & profits priviledges Heridittaments and Appurtenances thereto belonging to the sd Benj<sup>th</sup> Church his heires and assigns to his and their onely proper use benefit & behoof

forever as his and their own free absolute and proper Estate of Inheritance in fee simple without any manner of Rent service Dues duties or demandes by them or any of them to be yielded Rendered or given In Testimony & Confirmation whereof the Publicke seal of the said Province of the Massachusetts Bay is hereunto set and affixed Dated at Boston the fourth day of Aprill 1709 in the Eight year of the Reign of our Sovereign Lady Queen Anne of great Brittain &c

J DUDLEY

This Instrument passed by order of the Gov<sup>r</sup> Council & Assembly  
ISAAC ADDINGTON, Secretary

April 4, 1709, Benjamin Church (in exchange for the Wilcox land described in last deed) conveys to the Province of Massachusetts Bay the full width of the northerly Quarter of the *Second Show* and the full width of the South Half of the *Third Show* Freemen's Purchase, from North Watuppa Pond easterly to Proprietor's Way or Head of Lots, Bk. 5, pages 488-489, No. Dist.; Bk. 2, p. 110-111, F. R. Cop. Rec. The deed reads as follows:

**Deed of Benj. Church to Province for Indians.**

"To all People to whom these p<sup>r</sup>sents shall come Benjamin Church of Tiverton within the County of Bristol in her Majesties Province of the Massachusetts Bay in New England in America sendeth Greeting whereas upon a proposall made to the Great and general Court or Assembly of the s<sup>d</sup> Province in favour of ye Indian Natives Resideing in ye southern parts of the s<sup>d</sup> County of Bristol, Divers of whom have been very serviceable in the present & former Wars and some of them brought up in English families, for exchanging some of the lands formerly granted to ye Govern<sup>r</sup> By Daniel Wilcox Yeoman since dec<sup>d</sup>, lyeing in Tiverton, and Allowed to the Indians for a settlem<sup>t</sup> and Plantations, with the s<sup>d</sup> Coll<sup>o</sup> Church for land of his lyeing more Commodious for the Indians settlem<sup>t</sup> & more Remote from the English. The Generall Assembly at their Session in October 1707 upon the Report of their Committee appointed to View the s<sup>d</sup> lands did Allow of the said proposall and exchange & Directed that proper and Legall Instruments be drawn accordingly the lands to be given in Exchange to be holden of her Majesties Government of ye s<sup>d</sup> Province by the s<sup>d</sup> Indians & their heires forever Yelding to the Govern<sup>r</sup> of the s<sup>d</sup> Province for the time being upon ye tenth day of December Yearly

One quarter of good venison in Lien of all Rents & services not to be Assigned or Allienate I but Continued an In lirn Plantation forever as in and the said Courts Records Relation thereunto being had, may more fully appear. Now Know yee that I the s<sup>d</sup> Benj<sup>a</sup> Church pursuant to the afore Recited vote and for & in Consideration of the proposed exchange viz<sup>t</sup> two lotts of land heretofore of Daniel wilcox lying in Tiverton within the said County of Bristol, by him Transferred to the Govern<sup>t</sup> & by them now passed & made over to me by Deed bearing even date with these presents One lot No 14 Containing six score acres and the other number 2 Containing forty acres, Have given granted Bargained sold Released enfeoffed and confirmed and by these presents for me & my heirs Do freely and absolutely give grant Release Convey and Confirm unto Joseph Dudley Esq<sup>r</sup> Present Govern<sup>r</sup> of the Province of the Massachusetts Bay afores<sup>d</sup> the Councill & Assembly of the said Province and to their successors and Assignes forever Part of the said Benj<sup>a</sup> Church his second & Third Great lotts of land being the easterly part of y<sup>m</sup> Lyeing scituate in Freetown within the County of Bristol afores<sup>d</sup> Measureing One Mile and a Quarter in Length & sixty four Rods in width Containing One hundred & sixty Acres Butted and bounded northerly on the land of John Willbore Easterly upon Tiverton undivided lands Southerly on the land of Constant Church and westerly on the great watupa Ponds or how ever other wise the same is Bounded or Reputed to be bounded Together with all and singuler the Trees timber woods underwoods waters water Courses Stones fields feedings Marshes Meadows Rights members Profits Priviledges Comodityes advantages Heriditaments emoluments & Appur<sup>ces</sup> what soever upon or in any wise belonging to the said several of land herein before granted or to any or either of them And all the estate Right Title Interest Inheritance use property possession Claime and demand of me the sd Benj<sup>a</sup> Church of in & to the same & the Reverstion & Reverstions Remainder and Remainders thereof To have and to hold the said lands & premises herein before granted with the members and Appur<sup>ces</sup> thereof to the sd Govern<sup>r</sup> Councill & assembly of the Province aforesd for the time being their successors and Assignes forever so as that the sd Land & premises shall from hence forth forever be and Remain at the free and absolute dispose of the Govern<sup>r</sup> & Generall Assembly of the sd Province for the time being as the Govern<sup>r</sup> and Gen<sup>l</sup> Assembly may grant or dispose of any other Publique or unappropriatted land belonging to & within the sd Province of the Massachusetts Bay, But allways

to be Continued & used for a plantation & settlement for the Indian Natives And I the said Benj<sup>th</sup> Church for me my heires executors & Adm<sup>r</sup> Do Covenant Grant and Agree to & with the sd Govern<sup>r</sup> & General Assembly for the time being their successors & Assignes to warrant and defend the said land & premises with the members and appurtenances thereof unto them against the Lawfull Claime and Demand of all and every person & persons whomsoever In Wittness whereof I the said Benjamin Church have hereunto sett my hand and seal the fourth day of April 1709 In the eighth year of the Reign of our Sovereign Lady Queen Anne.

Signed sealed and Delivered

BENJA CHURCH (Seal)

In the presence of us

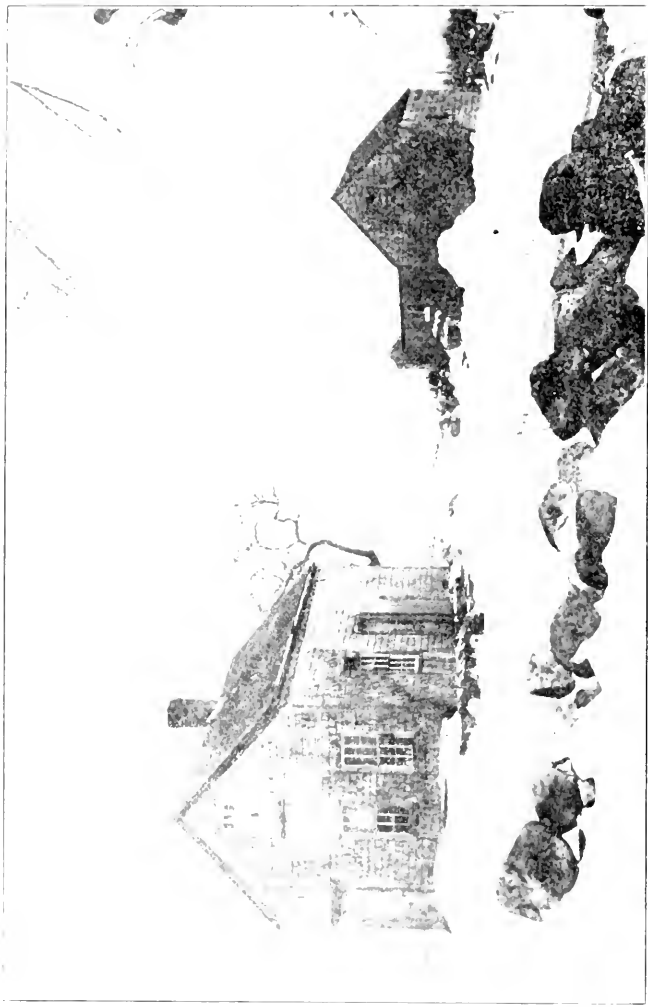
Benjamin Dyer

Thomas Maccarty

"Suffolk ss Boston Aprill ye 4th 1709 The within named Benj<sup>th</sup> Church p<sup>r</sup>sonally appearing before me ye subscriber One of her Majesties Justices of the Peace Acknowledged the within and above written Instrum<sup>t</sup> to be his Act and Deed

ISAAC ADDINTON."





ONLA BUILDINGS ON FALL RIVER INDIAN RESERVATION IN 1907.

## HISTORY OF FALL RIVER INDIAN RESERVATION.

Outside of the public records, a few implements and utensils, a few family traditions, very little has come down to us directly from the Indian colony settled on the eastern shore of North Watuppa Pond, in that part of Fall River now called Indian Town. In order, therefore, to reconstitute the life of the settlement we must have recourse to public documents and to books of local or general history. These sources of information have been resorted to, and the result is given here. The records tell us that in 1761-5 there were 59 Indians in Freetown which included Fall River then. As there were no other Indian settlements in Freetown, mentioned in local histories, we infer that these 59 Indians resided at Indian Town, Fall River, where land was set off to them.

*Mass. Census, 1860, p. 259.*

*Earle's Report on Indians, (Senate Doc. No. 96 of 1861), p. 79.*

In 1849, a full report on the Indians of the Commonwealth was made to the legislature by Francis W. Bird, Whiting Griswold and Cyrus Weeks appointed for the purpose, in 1848; and they say in that report, (House Document No. 46 of 1849), that the number of the Fall River Indians is 37.

In 1861, J. M. Earle found 78 Indians belonging to the tribe. (Earle's Report on Indians, Senate Doc. No. 96 of 1861, p. 77). The last report of Benjamin F. Winslow, who was the guardian of the Fall River Indians, appointed by the state, from 1848 to 1869 (under the Resolve of April 16, 1836.) (See Mass. House Documents No. 46 of 1849) does not state the number under his charge. A good account is given of the Fall River Indians by John Milton Earle in 1861, as follows:

"The Fall River Indians, . . . . . were not originally a distinct tribe or community, and the word tribe as applied to them is used simply as a matter of convenience to designate the descendants of those friendly Indians, who served the whites in the company of Captain James Church [an Indian serving under Col. Benjamin Church] in the war against King Philip. . . . . They are descendants of the tribe of the Wampanoags, and

are distinct from the remaining Indians of the region thereabout (who had a common origin with them) only by the fact of their possession of the plantation, and, in consequence thereof, being placed under guardianship by the government of the State." *Earl's Report, 1791, p. 82.*

The territory of Fall River was included in the Plymouth Colony; and it is interesting to note that the native Indians who inhabited this part of the country, in 1620, when the Pilgrims landed at Plymouth, belonged to the warlike and once powerful Algonquin race, the most numerous of all the Indian nations in North America. Its dominions extended north, as far as Hudson Bay; south, as far as the Carolinas; they were bounded on the east by the Atlantic Ocean, and on the west by the Mississippi river and Lake Winipeg. (Parkman, *Hist. Consp. Pontiac*, p. 25).

They greeted Jacques Cartier at Quebec, welcomed the Pilgrims at Plymouth, and clasped hands with William Penn at Kensington in Pennsylvania. Their ancestors, no doubt, witnessed the visit of the Northmen, or the Welsh, in Vinland, about A. D., 1000, nearly five centuries before Christopher Columbus discovered America. (Anderson, *America Not Discovered by Columbus*, Chicago 1874; Bowen, *America Discovered by the Welsh*, 1876; Miller, *King Philip and Wampanoags*, 2nd, ed. 1885, Prov., pp. 1 to 10; Winsor, *Hist. Am.*, pp. 64-5; Bancroft, *Hist. U. S.*, p. 99; 7th ed., Boston, 1840; Munro, *Hist. Bristol*, p. 17 et seq., Prov. 1880).

The forefathers of the Fall River Indians, no doubt, were the authors of the pictographic inscriptions on Dighton Rock, and on that other rock lying near Mount Hope, probably to commemorate the event of some great conflict among hostile Indian tribes. And the "Skeleton in Armor", found in Fall River in 1832, in a sand bank at the junction of Fifth and Hartwell Streets, and sung by Longfellow, must have been one of their great chieftains whose memorable deeds are carved in the almost inscrutable picture writings on the historic rocks now washed by the fresh waters of Taunton river, and the salt waters of Narragansett Bay. Miller, *King Philip and Wampanoags*, 6, 7, 8; Fowler, *Hist. Fall River*, 7; Fenner, *Fall River*, 25; Winsor, *Hist. Am.*, p. 104, note 4; Schoolcraft, *Indian tribes in U. S.*, pp. 281, 112; Schoolcraft, *Ind. Tribes*, pp. 113-111. It was customary for Indians to record great events by chiselling into some solid rock symbolistic signs; and the Old Colony Historical Society of Taunton, among other Indian relics, has the headstone of an Indian which shows his conversion to Christianity by having an arrow pointing to a cross.

The first knowledge we have of the Indians of this section, (in the accounts of later travellers), is from Verrazano, a Florentine pilot, who was sent out by Francis 1st of France, in 1524, in command of the ship "Dolphin" or "Dauphin". (Miller, *op. cit.*, p. 1; Fenner, *Hist. Fall River*, 10.) The Indian houses or wigwams are described by him thus: "We saw their houses, made in circular form, ten or twelve paces in compass, covered with mats of straw, wrought cunningly together. They live long and are seldom sick, and if they chance to fall sick at any time, they heal themselves with fire, without any physician, and they say they die for very age". (Miller, p. 1.) This seems to agree with later accounts of Roger Williams, Schoolcraft and others.

Previous to the arrival of the white settlers in New England, the Indians had been greatly reduced in number, in consequence of interecine conflicts, among the various tribes, but more particularly on account of a great epidemic or pestilence which occurred, before the arrival of the Pilgrims at Plymouth, about the year 1616 or 1617. (Miller, *King Philip and Wampanoags*, p. 12; Peirce, *Indian Hist.*, p. 2; Ellis and Morris, *King Philip War*, p. 17; Munro, *Hist. Bristol and Mt. Hope*, p. 27.)

The same Algonquin race was divided into several tribes, such as the Pequots and Mohegans, residing in Connecticut; the Narragansetts on the western shores of Narragansett Bay, including Providence; and the Wampanoags who included the Pokanokets living on the eastern shore of Narragansett Bay, including Warren, Swansea, Mass., Mount Hope and Bristol, R. I.; and the Seaconnets, Pocassetts and other tribes living in the southern part of Massachusetts as far south as the Atlantic Ocean at Seaconnet. Seaconnet, which is in the town of Little Compton, R. I., was then under the jurisdiction of Plymouth colony. The tribes of the Wampanoags, (excepting the Pokanokets) were under the immediate jurisdiction of sub-chiefs or local rulers, called sachems; for instance, the Seaconnets, under the squaw-sachem Awashonks residing at Seaconnet, in Little Compton, R. I., and the Pocasset Indians inhabiting what is now Tiverton and the present city of Fall River. The territory of Tiverton and Little Compton was then a part of Plymouth Colony, as heretofore stated. (Peirce, *Indian History*, 6, 7; Dexter's *Benj. Church Hist. King Philip War*, Pref. p. 6.) The Fall River contingent of Indians was sometimes called Pocassetts, (Fowler *Hist. Fall River*, p. 13, note), because most of them lived with that tribe, called after the name of Pocasset, which was the geographical Indian name for the

territory including what is now Fall River, Mass., and Tiverton, R. I. (Fowler, *Hist. Fall River*, 7). The squaw-sachem of the Pocassets, Weetamoe, was the wife of Wamsutta, son of Massasoit, and a brother of King Philip. She owed some sort of allegiance to Massasoit, the Great Sachem, or the supreme head of the Wampanoags, who lived at Sowams, (now Warren, R. I.), as the immediate sovereign of the Pokanokets. The latter had three settlements, one at Warren, the other at Mount Hope, and a third, at Kiekemuit Spring, (now Swansea), along the river of that name. (Peirce, *Ind. Hist.*, 9, 37; Fowler's *Hist. Fall River*, 5, 6, 7; Fessenden, *Hist. Warren*, (1815) p. 13).

So that the Fall River Indians were Pocassets, their geographic name; they were Wampanoags from their political, and Algonquins from their racial connections.

Pressed by the white men to dispose of his lands the red man did so too readily, without foreseeing the consequences to his race of the advance of the pale faces. It meant inevitable friction which culminated into the armed conflict known in history as King Philip's War, covering 1675-76. At that time the white population of Plymouth colony "contained not much less than seven thousand"; that of Massachusetts proper was "more than twenty-two thousands". The Indians numbered about 50,000, in New England; "Massachusetts with Plymouth..... had not more than twelve thousand" (2 Bancroft, *Hist. of U. S.*, 93-4; 7th ed. Boston, 1840). It was estimated that the Pocassets, (by members of which tribe the Fall River Indian Reservation was settled) "were so numerous that her armed men, able to go out upon the war path, were supposed to number three hundred" (Peirce, *Ind. Hist.*, p. 14). "As the forests were cleared, and the settlements increased, the wild game on which the Indian largely relied for his subsistence, grew scarce, while the more valuable of the fishing resorts were monopolized by the English" (Miller, K. P. and Wampanoags, 33; see also 2 Bancroft, *Hist. U. S.*, 99). King Philip, (also called Metacomet), the second son of Massasoit, at his brother Wamsutta's death, became chief sachem of the Wampanoags and the immediate sachem of the Pokanokets; and had his seat with the Pokanoket tribe, at Mount Hope. He refused to embrace the Christian religion and was averse to the preaching of missionaries. He told Roger Williams that he did not care more for his religion than the button on his coat; E. & M. King Philip War, 21. It was supposed by the natives that the conversion of an Indian was only another method of being adopted into the

white man's trick. This, no doubt, was another source of hostility stirred up in the breast of the red man. (Id., 21.)

"It is difficult, moreover, for the civilized man and the savage to understand each other. As a rule the one does not know what the other is thinking about"; John Fiske, *Beginnings of New England*, p. 236, (Boston).

Referring to John Eliot's work he says: "His design in founding his villages of Christian Indians was in the highest degree benevolent and noble; but the heathen Indians could hardly be expected to see anything in it but a cunning scheme for destroying them. Eliot's converts were for the most part from the Massachusetts tribe, the smallest and weakest of all. The Plymouth converts came chiefly from the tribe next in weakness, the Pokanokets or Wampanoags. The more powerful tribes—Narragansetts, Nipmucks and Mohegans—furnished very few converts. When they saw the white intruders gathering members of the weaker tribes into villages of English type, and teaching them strange gods, while clothing them in strange garments, they probably supposed that the palefaces were simply adopting these Indians into their white tribe as a means of increasing the military strength". *Fiske, Hist. N. E.* p. 237

A similar view is expressed by another authority:

"When we read of the earliest so-called 'deeds' by which the English colonists obtained from the sachems wide spaces of territory on the consideration of a few tools, hatchets, kettles or yards of cloth, we naturally regard the transaction as simply illustrating the white man's rapacity and cunning in trieking the simplicity of the savage. But we may be sure that in many such cases the Indian secured what was to him a full equivalent for that with which he parted. For, as the whites soon learned by experience, the savages supposed that in such transactions they were not alienating the absolute ownership of their lands, but only covenanting for the right of joint occupancy with the English. And then the coveted tools or implements obtained by them represented a value and a use not measurable by any reach of wild territory. A metal kettle, a spear, a knife, a hatchet transformed the whole life of a savage. A blanket was for him a whole wardrobe. When he came to be the possessor of firearms, having regarded himself the equal of the white man, he at once became his superior". *U. S. Hist. MSS. Comm. Report*, p. 289.

"It would seem as if the native tribes, when Europeans first secured a lodgment, were beguiled by a fancy which in most cases

was very rudely dispelled. This fancy was that the new comers might abide here without displacing them. The natives in giving deeds of lands, as has been said, had apparently no idea that they had made an absolute surrender of territory. They seem to have imagined that something like a joint occupancy was possible, each of the parties being at liberty to follow his own ways and interests without molesting the other. So the Indians did not move off to a distance, but frequented their old haunts, hoping to derive advantage from the neighborhood of the white man. King Philip in 1675 discussed and acutely defined the utter impracticability of any such joint occupancy. He indicated the root of the impending ruin of his own race, and he found a justification of the conspiracy which he instigated in pointing to the white man's clearings and fences, and to the impossibility of joining planting and hunting, and domestic cattle with wild game". *Life of A. Winsor, Hist. Am., pp. 296-7.*

Washington Irving, in his Sketch Book, has devoted an interesting chapter to a study of the Indian character; and another to Metacomet, the grand sachem of the Wampanoggs, to whom the Fall River Indians owed allegiance, above their immediate sub-chief of the Pocassetts. Under the caption of "Philip of Pokanoket" he says: "He was a patriot attached to his native soil—a prince true to his subjects, and indignant of their wrongs—a soldier, daring in battle, firm in adversity, patient of fatigue, of hunger, of every variety of bodily suffering, and ready to perish in the cause he had espoused—Proud of heart, and with an untamable love of natural liberty, he preferred to enjoy it among the beasts of the forests or the dismal and famished recesses of swamps and morasses, rather than bow his haughty spirit to submission, and live dependent and despised in the ease and luxury of the settlements. With heroic qualities and bold achievements that would have graced a civilized warrior, and have rendered him the theme of the poet and the historian, he lived a wanderer and a fugitive in his native land, and went down, like a lonely bark foundering amid darkness and tempest, without a pitying eye to weep his fall or a friendly hand to record his struggle".

The subject of King Philip's war is summed by Bancroft, as follows, after showing the weakness of the Indian as compared with the white man:

"The individual, growing giddy in danger—rushing as it were, towards his fate; so did the Indians of New England. Frenzy prompted their rising. It was but the storm in which the ancient

inhabitants of the land were to vanish away. They rose without hope, and, therefore, they fought without mercy. For them as a nation, there was no to-morrow". 2 Bancroft, Hist. U. S., p. 101.

The fate of the red man, in these parts, now that he lives only in memory, is surrounded with a halo of romance and poetry which can scarcely be dispelled.

"In the brief interval of peace, and in some favored recesses where game abounded and the changing seasons brought round festival plays, and scenes of jollity, there were even fascinations to delight one of simple tastes, who could enjoy the aspects of nature, share the easy tramp over the mossy trails, content himself with the viands of the wilderness, employ the long hours of laziness in easy handiwork, delight in basking beneath the soft hazes of the Indian summer, or listening to the traditional lore of the winter wigwam". *Life of A. H. Mason, Hist. Nov. for 1877*, 292-293.

Now that the voices of the aborigines are stilled there is an almost universal longing for Indian folk-lore. No one can solve a great many problems of sociology without pointing back to the primitive conditions of man on this continent. And the red man may be said to have contributed his share to the great variety of mental attributes and human experience. Very few writers have given him due credit for his qualities, whereas his vices have been exaggerated, to some extent. The theme is a vast one, and has been treated from various standpoints. Fenimore Cooper in his introduction to "The Last of the Mohicans" (the Mohicans or Mohegans were of the same race, and spoke the same language, as the Fall River Indians) says: "Few men exhibit greater diversity, or if we may so express it, greater antithesis of character, than the native warrior of North America. In war, he is daring, boastful, cunning, ruthless, self-denying, and self-devoted; in peace, just, generous, hospitable, revengeful, superstitious, modest and commonly chaste. These are qualities, it is true, which do not distinguish all alike; but they are so far the predominating traits of these remarkable people as to be characteristic. It is generally believed that the aborigines of the American continent have an Asiatic origin. There are many physical, as well as moral, facts which corroborate this opinion, and some few that would seem to weigh against it."

Another view of the Fall River Indians is given thus:

"There remains today very little to recall the red man, save some particular spot, such as on Mount Hope, on the opposite



shore from Fall River, where nature seems to have carved in the solid rock a place which is still called the chair of the famous chieftain, King Philip. A few Indian names have been adopted by the mills, given to streets or clubs, but generally the memory of the untutored child of the woods has vanished like the mists before the sunshine from the present busy generation of men. We cannot dismiss him from our recollections, however, without thinking of the strange destiny which awaited him two centuries ago. How bewildered he must have been when the first pale face saw him in his pristine glory. He was then the monarch of the forest, the proud possessor of boundless acres, the only explorer of the lakes and streams. He lies now in unmarked and unhonored grave, without an epitaph to tell of his valor, and without a record of his deeds except that which his foes have seen fit to preserve. Yet how often every student of social science recurs to the subject of primitive man to solve the intricate problems of our complex civilization. Peace to your ashes, wild child of nature! While you trod the thorny path of life you were favored by the grandest sights given to man to behold; every law of nature was a deep mystery to you, yet, in every wind that blew and every ray of sunlight which brightened your wigwam, you saw the majesty and power of the Omnipotent; you bore striking testimony to the existence of the living God, and offered the strongest instinctive proof of the immortality of the soul. This alone should make the recollection of your race immortal and embalm it forever in the memory of every believer in the divinity of the Creator of the world." *Dubuque, Art Work at Fall River, or, Fall River Illustrated, Chicago, 1897, p. 6.*

Parkman referring to the subject says: "The Indian is a true child of the forest and the desert. The wastes and solitudes of nature are his congenial home. His haughty mind is imbued with the spirit of the wilderness, and the light of civilization falls on him with a blighting power. His unruly pride and untamed freedom are in harmony with the lonely mountains, cataracts and rivers among which he dwells; and primitive America with her savage scenery and savage men, opens to the imagination a boundless world, unmatched in wild sublimity.

In an Indian community each man is his own master. He abhors restraint, and owns no other authority than his own capricious will; and yet this wild notion of liberty is not inconsistent with certain gradation of rank and influence. . . . " A sachem "never sets himself in opposition to the popular will which is the sovereign

power of these savage democracies." Parkman, *Hist. Pontiac*, 1, 2, 3, Boston, 1863.) Yet, notwithstanding these generalizations, the influence of good Massasoit, the head chief of the Wampanoags, and the kind friend of the whites, succeeded in keeping his various tribes from troubling the Pilgrim settlements for some forty-one years, and in having them observe strictly the treaty of amity and peace which he had made with the governor of the Plymouth Colony, soon after the landing of the Pilgrims.

Speaking of the effect of the contact of the white race with the red men, John Fiske says:

"There can, moreover, be little doubt that the material comfort of the Indians was for a time considerably improved by their dealings with white men. Hitherto their want of foresight and thrift had been wont to involve them, during the long winters, in a dreadful struggle with famine. Now the settlers were ready to pay liberally for the skin of every fur-covered animal the red men could catch . . . . ."

"The Algonquin tribes of New England lived chiefly by hunting, but partly by agriculture. They raised beans and corn, and succotash was a dish which they contributed to the white man's table. They could now raise English vegetables . . . . . Better blankets and better knives were brought within their reach; and in spite of all the colonial governments could do to prevent it, they were to some extent enabled to supply themselves with muskets and rum." *John Fiske, Beginnings of New England*, p. 228.

The unavoidable clash between the white and the red men was anticipated from many symptoms of unrest on the part of the latter. The race of the red men was run; the builders of an empire, in the form of a future great republic, were advancing steadily, and taking possession of the new world, overcoming all obstacles. But the misgivings of the English colonist were soon realized, although some of his leaders may have been mistaken as to the cause of his troubles.

Brooks Adams says:

"So early as 1671, the movements of the Indians began to give anxiety; and in 1675 Philip's war broke out, which brought the colony to the brink of ruin, and in which the clergy saw the judgment of God against the Commonwealth, for tenderness toward the Quakers."

Adams, *Emancipation of Massachusetts*, pp. 196-7 (Boston, 1887) citing *Records of the State of Magnalia*, bk. 5, pt. 1.

It was undoubtedly one of the lessons of history well brought out by De Tocqueville that the conquered race, being inferior, was bound to make slow progress towards civilization. Whereas, when the conquering race is intellectually inferior, as when barbarians took possession of Rome, the conqueror receives more readily the benefits of the superior advancement of the subject race which he endeavors to imitate. (*2 Democratic in America*, p. 288 (2nd Ed. Paris, 1835))

About the year 1628 the Indians, who heretofore had only used bows and arrows, in hunting or in war, were taught to use fire arms. (*Bradford, Hist. Plymouth*, p. 283 (State Ed. Boston, 1898).)

"Hitherto ye Indians in these parts had no peeces nor other armes but their bowes and arrowes, nor for many years after; nether durst they scare handle a gunne, so much were they affraid of them; and ye very sight of one (though out of kilter) was a terrour unto them". (Id.)

But afterwards they became expert marksmen; speaking of a colonist he says:

"And having thus instructed them, he employed them to hunte and fowle for him, so as they became far more active in that employment than any of ye English by reason of their swiftness of foote and nimblenes of body, being also quicksighted, and by continuall exercise well knowing ye hants of all sorts of game. So as when they saw ye execution that a peece would doe, and ye benefite that might come by ye same, they became madd, as it were, after them, and would not stick to give any prise they could attaine too for them; accounting their bowes & arrowes but Bables in comparisan of them." (*Bradford, Hist., Plymouth*, pp. 286-7.)

The King Philip war with its attendant evils and destruction took place in 1675-76, between the whites and the Indians, in part over the territory of Fall River and vicinity, and it ended by the death of King Philip, the last sachem of the Wampanoags, who was killed near Mount Hope, on August 12th, 1676. (Peirce, *Indian History*, p. 155). In the course of that war it became necessary, if not indispensable, to have a contingent of Indian soldiers. These were naturally found among "praying Indians" that is, those who had become Christians, or were friendly to the whites. While Weetamoe, the sachem of the Pocassetts, who ruled over the Fall River Indians, cast her lot against the colonists, and went over to her brother-in-law, and liege-lord, King Philip, yet many of her subjects, including her third husband, Petonamit, called "Ben" by the English, remained true and loyal to the latter.

(Peirce, Ind. Hist., 145). It was out of this band of friendly Indians that the Fall River Indian settlement was formed. They had followed Colonel Benjamin Church in the war against King Philip, and in the other colonial wars with the Indians and the French; so they were considered as being entitled to some recognition for their services and sacrifices. The tribes were thenceforward mostly disorganized. Awashonks, of the Seaconnets, was the only one left of the sachems south of Freetown; and it was difficult for the Indians to reorganize new tribes, or settlements, unless they were in relatively close proximity to the white settlers, as they had lost about all; every family had suffered, no doubt, the loss or the wounding of some of its members.

In 1676 Benjamin Church of Little Compton received a commission from the Plymouth Colony "to raise a company of volunteers of about 200 men, English and Indians; the English not exceeding 60.....to discover, pursue, fight, surprise, destroy or subdue our Indian enemies." (Dexter's B. Church Hist., pp. 30, 31, 54-5).

In the same year we find the following vote of the Plymouth Colony: Ordered that "Captain Benjamin Church having; for and in behalfe of the Collonie, engaged to feurall Indians; about five or six; That in case they did carry well they should abide in this jurisdiction; and not fold to any fforaigne p<sup>r</sup>tes; accordingly this Court doth confierme the said engagement and doth hereby tolerate their stay as aforesaid; notwithstanding any law of this Collonie to the contrary; except if any of them should appear to have had a hand in any horred murder of any of the English, p<sup>r</sup>ticularly excepting one Croffman; whoe is accused to have had a fpeciall hand in the crewell murder of Mr. Hezekiah Willett" (Dexter Memoir to B. Church Hist., p. 22; Plym. Col. Rec., Vol. 11, p. 212).

January 16th, 1677, Capt. Church received another commission from the Plymouth government to go out on an expedition with "divers parties of Indians". (Dexter's Mem., sup., p. 22.) March 6th, 1677, the Plymouth Court granted leave to eight of Church's Indian soldiers to settle at Seacomet, he supplying them with land, on condition that they hold themselves in readiness for service under him: "hee fatisfying the Indians, to have the whole prophett of such an adventure". (Id. and 5 Plym. Col. Rec., p. 225.)

The valuable assistance of the Indians to the Massachusetts white settlers cannot be gainsaid. It was well stated that, "In

war they exhibited unexampled bravery. Very few Indians have ever been known to be cowards. Friendly and Christian Indians probably saved New England colonies from extermination in the time of King Philip's war." (Rev. N. W. Jones, No. 1, Indian Bulletin for 1867, N. Y., pp. 7, 8.) "There were no less than seven villages of praying Indians who had long been instructed by the venerable Eliot within the bounds of the colony of Massachusetts. These were faithful to the English during the war. Had they joined Philip, the New England colonies would, in all human probability, have been exterminated." (Id. p. 12.)

The great Massachusetts Christian apostle to the Indians was John Eliot, who in 1661 translated into the dialect of Massachusetts Indians the new, and two years later the Old, Testament. (Dearborn, Sketch of Apostle Eliot, Roxbury 1850, p. 17.)

Sassamon was one of his converts. (Miller, K. P. & Wampanoags, 2nd ed., 62). He was an Indian educated at Harvard, a former secretary of King Philip. He was assassinated by three Indians in Middleboro on account of his alleged treachery to King Philip's cause. His murderers were tried and executed for this crime. He taught his own countrymen at Middleboro, and very likely his fellow Wampanoags of Fall River also received his instructions.

Fall River Indians must have heard also John Eliot himself, who on occasions visited Plymouth colony (Dearborn, Eliot, sup. p. 13); but "he had most to do with those who lived westerly and northerly from Boston and Roxbury; Massasoit and his tribe at the south being provided for by the Mayhews on Martha's Vineyard and neighboring islands; by Mr. Cotton of Plymouth and by Roger Williams of Rhode Island." (Furber, Apostle Eliot, Boston, 1896, p. 5.)

Other Christian missionaries preached to the Indians in these parts, for we find an account that, in June, 1698, Rev. Grindal Rawson of Mendon, and Rev. Samuel Danforth of Taunton, "Preachers to the Indians in their own tongue", visited Little Compton, R. I., and they had to go through Fall River to do so. (Dexter's Church Hist., p. 25, note 185).

The first historian of Fall River, the Rev. Orin Fowler, writing in 1841, says that in 1747 the first minister, Rev. Silas Brett, was settled in Freetown, and that he received contributions from a "Missionary Society in England . . . . by reason of which he was to preach to a small tribe of Indians, the remains of the Pocasset tribe, east of the Watuppa pond." Fowler, Hist. Fall River, p. 42.

He adds in a note: "This tribe had a small meeting house and school house in one building, east of the North Watuppa pond; which stood till within a dozen years; and there is a tract of about 300 acres of land there still belonging to the tribe. (Id.) It is evident that Mr. Fowler had not searched the records. If he had he would have found that the Benjamin Church deed of 1709 states only 160 acres, whereas surveyor Terry in 1763 found 190 acres (Earle's Rep. 1861, app., p. LXXX), while the present city engineer of Fall River, Philip D. Borden, finds 195 7-10 acres.

Some of the praying Indians were at times given minor offices, such as constables and justices of the peace, with jurisdiction over their own people. And they were highly pleased with these commissions. "The following warrant directed to an Indian constable was issued by one of these native magistrates. For 'sententious brevity' it is in striking contrast with our modern writ:

'I Hihoudi, you Peter Waterman. Jeremy Wicket, quick you take him, fast you hold him, straight you bring him before me, Hihoudi'." (Miller, King Philip and Wampanoags, 2nd ed., p. 61.)

The following account explains how the treaty was made with Awashonks, sachem of the Seaconnets; it is reported by Col. Church himself. See Benj. Church Hist. K. P. W., Dexter's Ed., pp. 30 and following:

"Upon their arrival, they were immediately conducted to a shelter, open on one side, whither Awashonks and her chiefs soon came & paid their Respects; And the Multitudes gave shouts as made the heavens to ring. It being now about Sun-setting, or near the dusk of the Evening; The Netops [friendly Indians] came running from all quarters laden with the tops of dry Pines, & the like combustible matter making a huge pile thereof, near Mr. Churches shelter, on the open side thereof; but by this time Supper was brought in, in three dishes, viz. a curious young Bafs, in one dish, Eels & Flat-fish in a second, and Shell-fish in a third, but neither Bread nor Salt to be seen at Table. But by that time Supper was over, the mighty pile of Pine Knots and Tops, &c. was fired, and all the Indians great and small gathered in a ring round it. Awashonks with the oldest of her People Men and Women mix'd, kneeling down made the first ring next the fire, and all the lofty, stout Men standing up made the next; and then all the Rabble in a confused Crew surrounded on the out-side. Then the chief Captain step'd in between the rings and the fire, with a Spear in one hand and an Hatchet in the other, danced round the fire, and began to fight with it, making mention of all the several

Nations & Companies of Indians in the Country that were Enemies to the English; & at naming of every particular Tribe of Indians, he would draw out & light a new fire brand, & at his finishing his fight with each particular fire-brand, would bow to him and thank him; and when he had named all the several Nations and Tribes, and fought them all he stuck down his Spear and Hatchet, and came out; and another stepped in and acted over the same dance, with more fury, if possible, than the first; and when about half a dozen of their chiefs had thus acted their parts, The Captain of the Guard stepped up to Mr. Church and told him, They were making Souldiers for him, and what they had been doing was all one Swearing of them, and having in that manner engaged all the lusty stout men. Awafhonks & her chiefs came to Mr. Church; and told him, That now they were all engaged to fight for the English, and he might call forth all, or any of them at any time as he saw occasion to fight the Enemy; and presented him with a very fine Firelock."

The Indian custom as to enlistment is given in Schoolcraft; *Indian Tribes of U. S.*, Vol. 2, pp. 59, 60: "The principle of enlistment is sufficiently well preserved. . . . Each warrior that rises and joins the war-dance, thereby becomes a volunteer for the trip. He arms and equips himself; he provides his own fustenance; and when he steps out into the ring, and dances, he chants his own song, and is greeted with redoubling yells. These ceremonies are tantamount to 'enlistment,' and no young man who thus comes forward can honorably withdraw."

It is easier to understand, now, how the Fall River Indians, who had stood by the whites in their struggles against red men, came to be rewarded by the setting off of land to them by the government as soon as the opportunity presented itself to do so. It will be remembered that the union of Plymouth Colony to the Massachusetts Bay Colony took place in 1691-2. (*Mass. Ancient Charters*, p. 18; Barry, *Hist. Mass.*, Pt. 1, pp. 515-6).

The first Indian plantation was on Daniel Wilcox's lands; that is about 120 acres in the direction of the present Stafford Road, or some twelve hundred and fifty feet south of the present Notre Dame Cemetery, immediately beyond the present Rhode Island line. This land was the 14th lot in the 2nd division of the Pocasset purchase which was fifty-one rods in width; it was bounded north by the present Rhode Island boundary line, south by the 15th lot of Pocasset purchase, east by South Watuppa Pond, and west by the present Rhode Island Avenue; but the Reservation

included also another tract, namely, the 2d lot of 40 acres in the 4th Division of Pocasset purchase; it was located a few miles farther north, on the east side of North Watuppa Pond, about opposite where the present Fall River Water Works Pumping Station is situated. And there was some undivided land, a part of the Pocasset purchase in which Wilcox was interested.

It seems that this Daniel Wilcox, who could understand the Indian language, (Dexter's Benj. Church Hist., 22-3) had, about 1686, bought some lands from the Indians, contrary to law, which required the consent of the colony. The latter either sold it to Thomas Hinkley or sent him to take possession of the land at Seaconnet, and he met with "tumultuous opposition" from Wilcox who gave him such a hot reception that shortly thereafter he was convicted and fined one hundred and fifty pounds. Wilcox thought it prudent to remove to Rhode Island, which he did and all efforts to extradite him were unavailing, as the Rhode Island authorities thought Wilcox was right.

Even the British Commissioner Bellomont, in 1699, made complaint about the occurrence. (Dexter, Benj. Church Hist., 21-2, note 177) but Wilcox only came back on practically his own terms. He offered to convey to the Province of Massachusetts Bay, which had in the meantime received its new charter, his interest in the lands of the Pocasset purchase.

The following petition of Benjamin Church explains the offer of Daniel Wilcox to the Province and its acceptance:

Mass. Archives,  
Vol. 40, p. 669.

To the Hon<sup>orable</sup> the Lieut<sup>enant</sup> Gov<sup>ernor</sup> Council and house of Representatives for the Province of the Massachusetts Bay now Conven'd in Generall Assembly in Boston

The petition of Benjamin Church of Bristoll in the County of Bristoll in behalf and att the Request of Daniel Wilcocks formerly of Tiverton now resideing att Rhoad Island,

Humbly sheweth

That Whereas the s<sup>aid</sup> Wilcocks was formerly fined by sentance of Court the summe of One hundred and fifty pounds to his Maj<sup>ties</sup> & hath neglected and refused to pay the same till poverty and old age is come on him & his family, and his wife being now mad and distracted, w<sup>ch</sup> hath occasioned yo<sup>r</sup> Petition<sup>r</sup> to p<sup>r</sup>sent the said Wilcocks proposall to this high and hon<sup>orable</sup> Court, for satisfaction



of said fine in ord<sup>r</sup> to his peaceable returne to his Family att Tiverton. Which is This viz<sup>t</sup> That if the said Wilcocks doe Give a firme deed of Sale to the Province as yo<sup>r</sup> hon<sup>rs</sup> shall direct of the severall Tracts of Land hereund<sup>r</sup> menconed That is to say, as One hundred and twenty acre Lott being y<sup>r</sup> fourteenth in Number, and one Forty acre lott being y<sup>r</sup> second in Number as appears on Record in the purchasers Booke of record in Tiverton, and a Thirtyeth part or whole share of a tract of land that is undivided belonging to Tiverton, bounded as followeth viz<sup>t</sup> Southerly by the Lands of Dartmouth, West by Lands of tiverton & free towne, and northerly by Lands of Middleborrough extending east to a place knowne by the name of Qitticus. That then upon compleateing y<sup>r</sup> said Deed according to Direction the sd Wilcocks may be sett att Liberty to goe home to his Distressed family.

And yo<sup>r</sup> Petiti<sup>o</sup>n<sup>r</sup> as in duty bound shall pray &c

Mar: 11<sup>th</sup> 1700 Read. In the House of Representatives, &. Resolved That the Prayer of the above written Petition be Granted. And That Ebenezar Brenton Esq<sup>r</sup> Maj<sup>r</sup> Benj<sup>th</sup> Church, and M<sup>r</sup> William Peabody, be a Committee to Take Care That Sufficient Deeds of Conveyance of the severall Parcells of Land above mentioned, be made and Executed by s<sup>d</sup> Daniel Wilcocks, according as the Govern<sup>r</sup> and Council shall Direct.

JOHN LEVERETT Speaker/.

Sent up for Concurrence

In Council

March, 13<sup>th</sup> 1700/1

Read and Pas<sup>t</sup> a Concurrence

JS<sup>A</sup> ADDINGTON Seery.

The deed of this land is given, *ante*, in the History of Title to Indian Reservation.

In 1701 this land was assigned, by a resolve of the Province of Massachusetts Bay, as an Indian Plantation or Reservation, as appears in the deed of the Province to Benjamin Church. (See, History of Title, *ante*, i.) But inasmuch as the Wilcox land was in several parts, the Indians petitioned to have it exchanged for a single tract, so that they could all dwell together, and be farther away from the English. Consequently they presented the following petition:

Mass. Archives  
Vol. 31, pp. 15 and 16

To His Excellency Joseph Dudley Esq<sup>r</sup>  
To the Honorable Gentlemen of His Maj<sup>ty</sup>'s  
Council and house of Representatives in the  
General Court Assembled, . . . . .

The petition of we the subscrib<sup>r</sup> Humblely sheweth that whereas there was formerly Granted and ordered to be Laid out for our settelment seauerall smale allotments of Land luying in Teuerton formerly belonging to Daniel Wilcox of s<sup>d</sup> Teuerton (viz<sup>t</sup>) one six score Aker Lott one twenty five Aker Lott and one forty Aker Lott with one whole shear or thirtyeth part of a tractt of undeuided land all which smale parcells Leys a Considerable Distance one from a nother, that we Can by noe meanes Liue upon itt, to make any improuement to Answer, the End prepossed; that is to Enjoy the publick worship of Almyty God nor for to keep a scoole to haue our Childerren taught in the winter time, therefore we Humbly pray that some suitable persons may be appointed and impoured to Exchange or, sell the six score Aker lott and twenty five Aker, lott for Lands Joying the forty Aker Lott w<sup>c</sup> when the whole will Joyn upon the undeuided Lands whih will make itt proper, for, the End that itt was intended for, And we your, Humble and pore pertitiners shall Euer pray as in Duty Bound,

Teuerton Sep<sup>r</sup> 28<sup>th</sup> )

day 1706: - - - )

In the House of Representatives

Nov: 16: 1706, Read.

JAMES CHURCH

Jugen his Mark,

NEBEE MANCHESTER

his Mark,

JAMES WILLCOX,

his mark,

JOHN BURGESS

his Mark,

SAMUELL CHURCH

JOSE DAVID,

his mark,

MOSES QUEAQUIN

his mark

JOHN COCKAWAY

his mark

THOS SESSENE

SAM QUEAQUIN

his mark

In the House, of Representatives, Nov<sup>r</sup> 16: 1706. Read & Ordered That Nathaniel Paine & Benj.<sup>d</sup> Church Esq.<sup>r</sup> Capt Seth Arnold, & M<sup>r</sup> Will<sup>m</sup> Fobes or any three of them be a Committee to make Inqviiry, whether, there is any Land, to be had in Exchange, for the Land mentioned in this Petition that will be more accomodable for the settlement of the Indians, and if they can find such to Report their Doings to this Court, the charge of the Committee in performing this service to be paid by the Petitioners  
Sent up for Concurrence.

THOMAS OAKES Speak<sup>r</sup>

Nov<sup>r</sup> 19<sup>th</sup> 1706,

In, Council.

Read, and Concurr'd, with the Amendment above, agreed

JSA ADDINGTON Secry.

We find the following vote in Vol. 19, Council Records, p. 141, and in 2 Acts and Resol. Prov. Mass. Bay, p. 311:

"January 26, 1719. In the House of Representatives, Voted that Mr. John Winslow, Samuel White, Esq., and Stephen Chase be the guardians over the Indians that are proprietors of lands within the town of Freetown and that said guardians be fully empowered to take care of said lands and suffer no person to cut off any timber on said lands unless it be by their consent. And that the produce of their said lands or what their timber may sell for, be improved for the support of said Indians as they may stand in need thereof, the said guardians to render an account of their proceedings to this court, once in two years, during the continuance in said trust." In Council read and concurred. Consented to by the Lieut.-Gov."

The committee appointed to view the lands for the purpose of making an exchange reported as follows:

Mass. Archives,

Vol. 31, p. 15.

Boston November 20<sup>th</sup> 1707./.

We whose names are hereunto Subscribed being appointed by the great and General Assembly at the Request of the Pocasset Indians and others, who formerly had a grant of lands lying near Tiverton, to be a Committee to View the said Lands, and other Lands which they desired to have in Exchange for the same and to make our Report thereof, Have accordingly been with the Said Indians to view the Said Lands and do find that the Lands the

Indians desire to have in Exchange for their Lands belongs to Col<sup>o</sup> Benjamin Church and is much the same sort of Land with theirs, but the reasons they are desirous to have it, is because it lies all together, joins to Common Lands, and is more remote from the English, which they earnestly pray they may have a Grant of to them, their Heirs and Assigns for ever.

NATH: PAINE  
BENJA<sup>N</sup> CHURCH  
WILLIAM FOBES

22<sup>th</sup> Nov<sup>r</sup> 1707.

In Council

Read and Allowed That an Exchange be made of the Lands as above proposed, And that proper and Legal Instruments be drawn accordingly, The Lands to be holden of Her Maj<sup>ty</sup> Governm<sup>t</sup> of this Her Maj<sup>ty</sup>s Province, by the s<sup>d</sup> Indians and their heires for ever; yielding unto the Governo<sup>r</sup> of the said Province for the time being upon the Tenth day of December yearly, One Quarter of good Venison in lieu of all Rents and Services, not to be assign'd or alienated, but continued an Indian Plantation for ever .

AS<sup>A</sup> ADDINGTON Secry.

Sent down for concurrence.

In the House of Representatives.

Nov<sup>r</sup> 21 1707 Read & Concurr'd.

JOHN BURRILL Speak<sup>r</sup>

The selectmen of Dartmouth who had a case of an Indian invalid on their hands filed the following petition:

Mass. Archives,  
Vol. 33, p. 195.

Province of            ) To His Excellency the Governor the Hon<sup>l</sup> the  
thee Massachus<sup>s</sup>    ) Council & House of Represantives in Gen<sup>l</sup>.  
Bay                    ) Court Assamb<sup>l</sup>, Feb<sup>ry</sup>, 1: 1762

The Pertition of the Select Men of Dartmouth, Humbly Sheweth that Rachel Pismi Indian woman hath Bin maintained by Sd Town of Dar<sup>mouth</sup>, for the Space of aboute Twelue months, by the Reason of a fit of Sickness which hes Left her helpless as to y<sup>r</sup> Use of her Limbs, so that we are Oblig<sup>d</sup> to give nine shillings a week for her Supporte besides her Doctors Bill & Clothing all which is a grate Charge to S<sup>d</sup> Town: wee beg Leve further to Informe your Excellency & Hon. that there is a Large Quantety of Land in the Townshipp of Tierton that Now is annex to Free-town that is a preopreted to the Use of the Indians which is under

no Impouement, so as to afford any Relief to her Destres<sup>d</sup> Condition: Wherefore we humbly pray, that yr Excelency & Hon<sup>rs</sup>, would grant Leane that Some part of S<sup>d</sup> Indon Land may be Sold for her Support, or other ways grant such Relief as you in Your grate Wisdom Shall think fit

As in Duty Bound, Ever pray.

HUMPHRY SMITH ) Select men  
EZEKEL CORNELL ) of Dartmouth

In the House of Rep<sup>ves</sup> Feb<sup>y</sup>. 16 1762

Reade and Ordered that James Williams and Thomas Morey Esq<sup>rs</sup> be a Comm to make sale of so much of the land above mentioned as will amount to a Sum not exceeding thirty five pounds and that the produce thereof be applied for defreying the Charges arising to said Town of Dartmouth by the Indian Woman above-named And that they render an account of their proceedings to this Court.

Sent up for concurrence

JAMES OTIS Speaker

In Council Feb. 17. 1762. Read and Nonconcurrent. And it appearing that on the 13 March 1700, the Government agreed to accept certain Tracts of Land in Tiverton in discharge of a debt of £150 due from one Daniel Wilcox: and that on the 26 Feb. 1701, the Government Ordered That the Indians in the County of Bristol "be accomodated with a Settlement for a Plantation upon the aforesaid Lands to be holden by them of his Majestys Government within the Province during the pleasure of this Government"- Ordered That Will<sup>m</sup> Brattle & Tho<sup>s</sup> Flucker Esq<sup>rs</sup> with Such as the hon<sup>le</sup> House shall join be a Committee to inquire whether there has been any disposition or Settlement made of said Lands by the Governmen<sup>t</sup> since the s<sup>d</sup> 26 Feb. 1701 And that they cause search to be made in the public or County records as to the quantity and situation of said Lands and their present Value, and report

Sent down for Concurrence

A OLIVER Sec

In the House of Rep<sup>ves</sup> Feb<sup>y</sup> 17 1762

Read and Concur'd and Maj<sup>r</sup> Pond Maj<sup>r</sup>  
Morey and M<sup>r</sup> Hewin and Joyned in the  
Affair

JAMES OTIS Speaker

The committee reported upon it. It will be noticed that in their report they fail to notice that the Daniel Wilcox land had been exchanged, in the meantime (in 1709). Here follows the report:

Mass. Archives  
Vol. 33, p. 202.

"The Committee on the petition of the Selectmen of Dartmouth setting forth that a large tract of land in the township of Tivertown that is now annex to Freetown that is appropriated to the use of the Indians pray<sup>mc</sup> that some part of s<sup>d</sup> Indian lands might be sold for the support of one Rachel Pismi an Indian woman in necessitous circumstances have considered the same beg leave to report thereon. — That on the 27<sup>th</sup> of Novem<sup>r</sup> 1701 Daniel Wilcox for a valuable consideration by his deed of that date accompanying this report did give grant & convey several tracts & parcells of land in s<sup>d</sup> deed mentioned unto the Governour & General Assembly of this Province for the time being which deed includes the lands prayed for; that the same was recorded in the records of Deeds for the County of Bristol the third book page 301 & thereby the Province became seised of the same in fee simple That on the 26<sup>th</sup> of February 1701 [?] upon application made by the Indians residing in the Southern parts of the County of Bristol (diverse of whom were servicable to His Majesty in the three late wars with the Indians) praying that a Convenient tract of land may be assigned them for a plantation where they may settle together in an orderly manner, & have the benefit of enjoying the ministry & a school for the teaching & instructing of their Children it was ordered

That the s<sup>d</sup> Indians be acomodated with a settlement for a plantation upon the aforesaid lands *to be had by purchase of His Majestys Government within the Province according to the pleasure of the Government* and that a Committee be appointed by the Court from time to time to direct order & regulate the said settlement or plantation in assigning & setting forth due allotments of land to each family of Indians that shall or may come to inhabit or settle within the said plantation to be by them severally occupied & improved & to do all things else relating to the concerns of s<sup>d</sup> plantation whether any thing further was done your Committee cannot tell [?] but supposing there had been a settlement as was proposed it is most evident to your Committee that the Indians never had the fee of the lands aforesaid or any part of them but

would have been only tenants at will that the same excepting what thru mistake was granted by the General Court) now remain to the Province as an estate in fee simple & that they ought not to be sold for the support of any Indians whatsoever your Committee beg leave further to report that in y<sup>r</sup> opinion the Province interest is so valuable there that it is necessary that a Committee be appointed to go upon the spott view the premises run the lines & make report to this Court of the Quantity & quality of s<sup>d</sup> lands that so such further measures may be taken touching the same, as the wisdom of the Court shall then direct

W. BRATTLE by order''

''In Council 24 April 1762. Read and Accepted and Ordered That William Brattle Esqr with Such as the hon.<sup>l</sup> House shall join be a Committee to repair to the Lands mentioned, run the Lines and make report to this Court of the quantity and quality of said Lands

''Sent down for Concurrence

A OLIVER Sec

''In the House of Rep<sup>tes</sup> April 24 1762

Read and Concurd and Co<sup>l</sup> Clap and Maj<sup>r</sup> Pond are Joyned in the Affair

JAMES OTIS Speaker''

In 1763 the Fall River Indians signed a petition to divide the lands of their Reservation in severalty, which was accordingly done the following year. Here are the official records on this petition:

Journal of the House of Representatives,  
1762-1763, p. 198.

''Martis, 25 Die Januarii, A. D. 1763.

''Thomas Flucker, Esq; brought down the Petition of Isaac Church, and others, Indians, Soldiers in the former wars.

Pass'd in Council, viz. In Council January 25, 1763.

Read and Ordered, That this Petition be committed to the Committee of this Court appointed in April last, to inquire into the Curcumstances of the grant made by the General Court of the lands within mentioned, and Report.

Sent down for concurrence. Read and concurr'd.

Journal of the House of Representatives  
1762-1762, p. 201.

"Jovis, 3 Die Februarii A. D. 1763.

John Hill, Esq; bro't down the Report of a Committee of both Houses, appointed in April last, to view the Province lands in Tiverton and Freetown.

Pass'd in Council, viz. In Council February 1, 1763.

Read and accepted.

Sent down for Concurrence. Read and concur'd.

As also the Report of the same Committee, to whom was refer'd the Consideration of Isaac Church, and others.

Pass'd in Council, viz. In Council February 1, 1763.

Read and accepted, and Ordered, that William Brattle, Esq; with such as the honourable House shall join, be a Committee for the purposes in the said Report mentioned.

Sent down for Concurrence.

Read and concur'd, and Col. Clap, and Col. Gilbert, are joined in the affair."

Journal of the House of Representatives,  
1762-1763, p. 270.

"Veneris, 3 Die Februarii, A. D. 1761.

Benjamin Lincoln, Esq; brought down the Report of a Committee of both Houses relative to the Indians at Freetown, with a Vote of Council thereon, viz.

In Council February 3, 1761. Read and accepted.

Sent down for Concurrence.

Resolved, That the Lands aforementioned, be and hereby are confirmed to the several Persons agreeable to the Report of said Committee.

Sent up for Concurrence."

Court Records, Vol. 25, pp. 181 & 182.

"Wednesday  
February 1, 1761)

"The following Report was made by the Committee appointed for the purpose therein mentioned viz<sup>1</sup>



The Committee upon this Affair has reported the Petition of the Indians, Heirs and Descendants of Cap<sup>t</sup> James Church and Company: have according to the direction of this Court, repaired to the Town of Freetown: and the Petitioners, taken a Plan of their lands, and subdivided the same into lots according to the original Grant and Survey; have set out the Bounds of the same, and assigned to the several Indians the Lots that do respectively belong to them according to a Schedule and Plan hereto annexed.

Signed: W<sup>m</sup> BRATTLE by Order

In Council Read and Accepted: And Ordered That the Lands be confirmed to the several Persons on the annexed Schedule.

In the House of Representatives: Read and recommitted to make the proposed Amendments.

In Council Read and Concurred"

Court Records  
Vol. 25 p. 192.

Friday

February 3. 1764

The Committee upon this Affair of the Indian Lands at Freetown, whose Report was re-committed on the first Instant having presented a Plan of the said Lands, and a Schedule of the Lots, and to whom they were severally assigned, the following Order passed thereon viz<sup>t</sup>

In Council Read and Accepted: And Ordered That the Lands aforementioned be, and hereby are confirmed to the several persons agreeable to the Report of the said Committee.

In the House of Representatives Read and Concurred

Consented to by the Governor"

The surveyor who made a partition of the lands of the Fall River Indian Reservation, and a plan of the same, (see Earle's Report, Sen. Doc. 96, 1861, App. C, p. lxxx) was Zebodee Terry. He was, very likely, the town clerk of Freetown, from 1767 to 1774 (Collective Hist. Freetown, p. 137). He made the following report:

Mass. Archives, Vol. 33, p. 271.

"I the Subscriber being appointed By y<sup>r</sup> Committee of y<sup>e</sup> Gen<sup>l</sup> Court to Renew y<sup>r</sup> Bounds Survey Subdivide & Plan The 185

Acres of land which I. make by Survey to be 190 Acres & 64 Rods. Granted By y<sup>r</sup> Gen<sup>l</sup> Court to Cap<sup>t</sup> James Church & Company Ind. and have Subdivid.d y<sup>r</sup> same into Twenty Eight Equeal Parts and Erected Sutable Bounds at y<sup>r</sup> Corners of each Divisionall Part or lott Fore of S<sup>d</sup> parts is layed Out in one Lott at y<sup>r</sup> North:West Corner next to y<sup>r</sup> Pond for y<sup>r</sup> Hears or legual Representatives of Cap<sup>t</sup> James Church likewise marked on y<sup>r</sup> Plan each lott y<sup>e</sup> place of y<sup>e</sup> House that stands There: on on those Lotts where there is any & y<sup>e</sup> Names of y<sup>e</sup> Indians that leivs in them and have set forth on each of y<sup>e</sup> Lotts what Improovment are made & by whom made and how long they have improoved them Each of y<sup>e</sup> afores<sup>d</sup> eaqual Parts Contains 6 Acres & 128 Rods

The Boundries of this afores<sup>d</sup> Land is as followeth Bounding WestNorth:West upon Wattuppa Ponds & Southwardly on y<sup>e</sup> land that y<sup>e</sup> Boouths now Owns Begining at y<sup>e</sup> Middle of a Flat Rock which is y<sup>e</sup> Edg of S<sup>d</sup> Pond South:West from a large White:Oak Tree Between S<sup>d</sup> Rock & another Rock Near to S<sup>d</sup> White:Oak and Northwardly of S<sup>d</sup> Tree Extending E S E. 2 Degrees S. 104 Rods  
a Stump with a Stake by it

by a Range of Marked Trees to y<sup>e</sup> an Old Anchent Bound mark with a heap of Stones about y<sup>e</sup> Same and likewise from thence 60 Rods To a gray Oak Tree full mark & so on by a Range of marked Trees 148 Rods unto a Ridged Hill To an old White Oak Tree full mark and from S<sup>d</sup> White:Oak 69 Rods to a Stake with a large heap of Stones about y<sup>e</sup> same which is y<sup>e</sup> South:East Corner Bound of y<sup>e</sup> afores<sup>d</sup> Land Which maketh the South Line from y<sup>e</sup> Pond to this Head Bound to be 381 Rods and from S<sup>d</sup> South:East Corner Bound giving y<sup>e</sup> Point of Compass on y<sup>e</sup> Head of S<sup>d</sup> Land Which appears to be on y<sup>e</sup> Head Line of the Freemans Purches of y<sup>e</sup> Town:ship of Freewn North 30 Degrees E. 71 Rods & about 12 feet To a Small gray:Oak Tree marked on Three sides with a large heap of Stones about y<sup>e</sup> Sam which is y<sup>e</sup> North:East Corner Bound of y<sup>e</sup> aboves<sup>d</sup> Land Which maketh S<sup>d</sup> Land to be 77 Rods wide and from S<sup>d</sup> North:East Corner Bound Runing WNW. 2 Degrees N By a Range of marked Trees to S<sup>d</sup> Watuppa Pond To a Scrub:Black:Oak:Tree full mark which Stands by y<sup>e</sup> Edg of S<sup>d</sup> Pond with a heap of Stones about y<sup>e</sup> Same which fully appears to be y<sup>e</sup> North:West Corner Bound of y<sup>e</sup> Land abovesaid

I. Humbly Submit My Self as in Duty Bound

ZEBEDEE TERRY''

## PARTITION OF 1761.

Here is the allotment, as officially approved:

Mass. Archives  
Vol. 33 pp. 269 to 273

"A Schedule of the Lotts of the Indians Land and to whom they Severally Belong Lying in Freetown in the County of Bristol

The First Lott Containing Twenty Seven Acres and thirty two Rods Belongs to the heirs & Legal Representatives of Capt<sup>n</sup> James Church who died April 1739 Leaving two Sons James & Isaace and five Daughters Mary, Experience Marcy, Mary and Phebe—  
Mary is Alive having one Child, a Daughter Named Experience who has five Children —

Marcy is alive having two Children

Mary the Second is alive & No Children

Phebe is alive & has Eight Children

James is Dead Leaving two Children George & Katherine George Aged. 25. years & Katherine Aged 22 years —

Isaace died Leaving Seven Children viz Isaace. Aged 23 years Comfort Aged 22 years, Phebe Aged 16. years, Constant 11 years non Compos mentis, Martha Aged 9 years, Mary Aged 7 years and Solomon Aged 6 years—

The Second Lott Contains 6 acres & 128 Rods originally laid out to Tom Pim, who Died without Children and has Left three Cousins, Isaac Church Mercy hope and Experience Ward—

The third lott Contains 6 acres & 128 Rods and Belongs to Hannah Mouse & Eliz<sup>th</sup> Penny Grandchildren of Jonathan George

The fourth lot Contains 6 acres & 128 Rods originally laid out to old Sam<sup>l</sup> Church, who is Dead and hath left no Posterity—

The fifth Lott Contains 6 acres & 128 Rods Originally laid out to James Wilcox, who is Dead and hath Left no Posterity—

The Sixth Lott Contains 6 acres & 128 Rods Originally laid out to old Nebe who has Left two Grand-Daughters Elizabeth and Nebe

The Seventh Lot Contains 6 acres & 128 Rods originally laid out to young James Church Belongs to his heirs George & Katy—

The Eighth Lott Contains 6 acres & 128 Rods originally laid out to Job Cockaway who has left a Daughter, Abigail Tetticutt —and a Grand-Daughter Betty Cockaway

The Ninth Lott contains 6 acres & 128 rods Originally laid out to Young Sam<sup>l</sup> Church, who has left no Posterity —

The Tenth Lott contains 6 acres & 128 Rods Originally Laid out to Joshua Quam, who has left a Widdo Sarah Quam, and one Daughter Hope Penny a Widdo

The Eleventh Lott Contains 6 acres & 128 Rods Originally Laid out to James Church Jun<sup>r</sup> and has left a Widdo

The Twelfth Lott Contains 6 acres & 128 Rods Originally laid out to old John Wood who has Left one Grandson Name Samuel

The thirteenth Lott Contains 6 acres & 128 Rods originally laid out to Simon Smith alias Slade who has left No Posterity

The fourteenth Lott Contains 6 acres & 128 Rods Originally laid out to David Rice, who has Left No Posterity

The Fifteenth Lott Contains 6 acres & 128 Rods Originally Laid out to Joseph Husband, and Belongs to Richard Grandson to his Sister Sarah Doggett

The Sixteenth Lott Contains 6 acres & 128 Rods Originally laid out to Joshua Church who has Left No Posterity

The Seventeenth Lott Contains 6 acres & 128 Rods originally laid out to Sam<sup>l</sup> Anthony and Belongs to Ellis Anthony & Sarah Titticut widows

The Eighteenth Lott Contains 6 acres & 128 Rods originally Laid out to John Yokine who left one Daughter Hannah Married to Sias Hall

The Nineteenth Lott Contains 6 acres & 128 Rods originally Laid out to old Job Weshue who has Left No Posterity

The Twentieth Lott Contains 6 acres & 128 Rods originally laid out to Jsaace Sissell who Left two Daughters Mercy & Mary

The Twentieth first Lott Contains 6 acres & 128 Rods originally laid out to James Cook who has Left no Posterity

The Twenty Second Lott Contains 6 acres & 128 rods Originally laid out to Tom Hunter who has Left No Posterity

The Twenty third Lott Contains 6 acres 128 rods originally Laid out to Sam<sup>l</sup> Titticut who has Left a Widdo and one Daughter Hannah Cooper

The Twenty fourth Lott Contains 6 acres and 128 rods originally Laid out to John Sochomoick who has Left one son named John and two Grand Daughters Mary & Mercy

The Twenty fifth Lott Contains 6 acres & 128 rods Originally laid out to James Demas & has Left a Grand Daughter Named Lydia

And whereas Sundry of the Soldiers Belonging to the Company under Capt<sup>n</sup> James Church have Left no Posterity and there being no Provision made for Levt<sup>t</sup> Manchester and Twelve others in the Same Company, The Committee have agreeable to the Direc-

tion of the Court, assigned to those who have left Posterity, the Lotts of those who had Lotts assigned to them and whose Posterity is Extinct

We Assign to the fourth Lott Debora and Experience the Daughters of Lieut. Robin Manchester

We Assign to the fifth Lott Joseph and William Grand children of Lieut Manchester and Sons of Will<sup>m</sup> Manchester

We Assign to the Ninth Lott Nancy Pelick Daughter of Francis Townsend

We Assign to thirteenth Lott Sarah Grand-Child of John Sossamon

We Assign the fourteenth Lott to Peter and Charles Grand children to Peter Washunk

We assign the Sixteenth Lott to Deborah and Penelope Grand Daughters of Peter Washunk

We Assign to the Nineteenth Lott to Esther Sampson Sarah Squire Grand-children of Benj<sup>n</sup> Squumamay -

We Assign the Twenty first lott to Sarah "quam" two Children Danill & James

We Assign to the Twenty Second Lott to Comfort and Thankfull Grand children of Benj<sup>n</sup> Squumamay

W BRATTLE by order

read & accepted & ordered that the lands aforementioned are & hereby are confirmed to the several persons according to y<sup>r</sup> report of s<sup>d</sup> committee

In Council Feb<sup>y</sup> 3<sup>d</sup> 1761 Read & accepted & ordered that the lands aforementioned, be & hereby are confirmed to the several Persons, agreeable to y<sup>r</sup> Report of said Comm<sup>y</sup>

Sent down for Concurrence

JN<sup>o</sup> COTTON, D. Seery

In the House of Rep<sup>tyes</sup> Feb<sup>y</sup> 3<sup>d</sup> 1761

Read and Concur'd

TIM<sup>o</sup> RUGGLES Spk<sup>r</sup>

Consented to

FRA: BERNARD

Sometimes the Fall River Indians are called Troy Indians, in public documents, because Troy was the former name of Fall River, as explained in the Brief. In 1819 a valuable report was made to the legislature on the Indians residing in Massachusetts, the Report of F. W. Bird, Whiting Griswold and Cyrus Weeks directed to His Excellency Geo. N. Briggs, (being House Doc. No. 46, 1819)

They were appointed under Resolve of May 10th, 1848, "to visit the several tribes and parts of tribes of Indians, remaining within this Commonwealth, to examine into their condition and circumstances and report to the next legislature what legislation, in their opinion, is necessary in order best to promote the improvement and interests of said Indians".

At pages 41 and 42 incl. of above Document is found:

"The Troy or Fall River Indians.

"The territory occupied by this tribe is within the limits of the town of Fall River some 3 or 4 miles from the village. The whole amount of territory is about 190 acres, of which about 20 acres are owned in severalty, and the remainder held in common. The soil is generally good; but the indolent and improvident habits of the tribe render it of little use to them as means of support.

"The population of the tribe is 37.

Families,	10,
Males,	17,
Females,	20,
Natives,	29,
Foreigners,	8,
Under 5 years,	1,
From 5 to 10 years,	2,
" 10 " 21 " "	8,
" 21 " 50 " "	15,
" 50 " 70 " "	10,
Over 70,	1,

Cynthia Cuffee born in Westport, aged 71.

At sea, 4.

"Eighteen or twenty of the above, who are considered as belonging to the tribe, do not live on the territory. Many of them will probably never return, unless it should be to claim a portion of the territory, in case of a division. The means of subsistence are mostly day labor. The whole stock of the tribe consists of 2 pigs and 20 or 25 fowls. They have no public income, (except some 25 or 30 dollars a year from rent of pasture lands). No schools and no preaching. Of the five children under 16 years of age, 1 are bastards, belonging to a family not residing on the Indian lands. The present guardian, Benj. F. Winslow, was appointed in May last, under the resolve of April 16th, 1836, authorizing the governor to fill a vacancy in said guardianship whenever it should occur. The salary of the guardian, so far as we can learn is not fixed by law. The usual sum allowed of late

years has been \$35, yearly. It might be expected, from the above statement of the condition of the tribe, that the appropriations by the State for the support of their paupers, have been large. For the five years previous to 1848, they have received from the State the following sums:

1843,	\$107.69,
1844,	165.82,
1845,	76.50,
1846,	140.83,
1847,	252.40,
Salary of guardian for five years,	165.00
To Holder Wordell in 1848 upon final settlement of guardian's account,	214.66
Total for 6 years,	\$1122.90**

"The case of this tribe is clearly one in which the benefits of the system of guardianship have not been commensurate with its expenses".

At page 68 of above Doc. 46 are found these names:

Fall River Tribe.

Mahala Page,	aged 36,
George Page,	" 15,
Burton Page,	" 42,
Charles Page,	" 8,
William Page,	" 7,
Cynthia Cuffee,	" 74,
Ruth Cuffee,	" 68,
David Perry,	" 51,
Hannah Perry,	" 55,
Lewis Perry,	" 30,
David " Jr.,	" 23,
Josephus Perry,	" 20,
William Perry,	" 27,
Louisa Perry,	" 30,
Catherine Perry,	" 1 1/2,
Persis Crank,	" 49,
Henry Crank,	" 39,
Eunice Crank,	" 39,
Wm. H. Crank,	" 21,
Jane Crank,	" 16,
Sarah Crank,	" 52,
Mark A. H. Crank,	" 21,

Catherine C. Crank,	aged 20,
Thomas M. Crank,	" 18,
Rebecca Allen,	" 60,
Adam Abner,	" 65,
Pamela Simonds,	" 40,
Mary Simonds,	" 58,
Daniel Slade,	" 51,
Lucretia Slade,	" 41,
Sarah Slade,	" 35,
Hagar Talbot,	" 60,
Jermima Freeman,	" 55,
Lucy Terry,	" 41,
Stephen Terry,	" 40,
Maria Terry,	" 42,
James Landry,	" 38,
Total,	37

As a part of the same report we have a letter of Benjamin F. Winslow of said Fall River who was then the guardian of the Fall River Indians. It is annexed to the foregoing report and purports to answer a list of questions. It is given here in full:

"Appendix D.

Letter from Mr. Winslow,

Fall River, Dec. 14th, 1848.

"Dear Sir:

"Yours of the 12th instant is at hand, and I must ask you to make all possible allowance for the imperfect manner in which I must, necessarily, answer the questions you propound, from my limited knowledge of the former condition of the tribe; I will, however, do what is in my power towards answering the same. And

1st. The present condition of the tribe is decidedly poor, but better than in former years, in some respects.

2nd. There are no existing laws that I know of, in relation to the tribe excepting a Resolve passed June 9th, 1818, appointing a guardian; no disabilities except their not being allowed to vote and I think that to be no disadvantage to them.

3rd. The present system of guardianship seems to be adapted only to the relief of those most needy, as far as their physical wants are concerned; I think it might be improved by a limited appropriation to be expended by the guardian, for specified pur-



poses, instead of having it at his discretion; and that he be instructed or directed by the legislature what course to pursue in regard to cultivation or improvement of the lands of the tribe.

4th. I think the tribe would receive no benefit from the privilege of citizenship, if conferred upon them.

5th. The land is held both in severalty and in common, some four or five acres to each of four families, and the remainder is held in common: the whole amount of territory is about one hundred and ninety acres. I suppose the whole territory to be public property and to belong to the State, as it was conveyed to the Province of Massachusetts Bay by one Daniel Wilcox, and afterwards, in the year 1701, "it was ordered, that the Indians be accomodated with a settlement for a plantation upon said lands to be holden by them of his Majesty's government, within this province during the pleasure of the government".

There is no other property of any kind, that I know of; no source of income excepting the small amount obtained from their wood lands, which are held in common.

6th. There are seven who have been supported in part at the expense of the State, at an average cost of about forty dollars each, per year. The present mode of supporting them is, probably, as good as any I could suggest.

7th. The tribe, I think, have not suffered, in any respect, from contact with the whites, otherwise than by depredations committed upon their woodlands, in former years, by some of their white neighbors.

8th. There is some, but very little fence to be troubled about; the bounds which mark the several portions belonging to individuals or allotted to them, are entirely obliterated; the bounds of the whole tract at the corners can be found. I have employed a surveyor to run the lines, and find that the lands have been encroached upon somewhat, by owners of the adjacent lands; the tribe have no title whatever to the lands, I think.

9th. What is, or has been, the effect of amalgamation, I cannot say; but from present appearances, it seems that the half negro is more disposed to labor for a living than the full blood native.

10th. There are none, at present, but have been some in former years, I understand, in relation to the lands. [This refers to "disputes or litigation". See House Doc. No. 46, p. 71, List of questions.]

11th. The principal employment is day labor, and the majority being women and children, their labor amounts to very little; their habits are not remarkably industrious; some few exceptions, however; generally speaking, they are decently supported.

12th. The health of the tribe, generally, is good, with one or two exceptions, very good; those are brought on by intemperance; a few cases of small pox have lately occurred, in one family, but are now well; their facilities for medical aid, the same as other inhabitants in the same neighborhood, which are good.

13th. The habits of the tribe as to chastity, are not bad; and as to temperance, probably will not suffer in comparison with the whites; there has been improvement in latter years in respect to both chastity and temperance, I think, from the best information, I can get, relative to their history.

14th. The tribe have no school, receive no money from the tribe, State or any other source for that purpose; but the children, generally, have access to the public schools, the same as the children of any citizen; there are not over five or six children, who are situated so they can attend school.

15th. The tribe enjoy the same privileges in regard to religious matters as they do in respect to schools, the families (four in number) living on the Indian lands, have no meeting that they can attend, within about four miles; those living near the village have all the privileges they could wish for, and by a few of their number, they are well improved; there is no money raised from any source, for the purposes before named, and never has been since they were under the care and superintendence of the Commissioners of the Society for Propagating the Gospel in North America, which superintendence was discontinued some time before any guardian was appointed. The first guardian was appointed in 1807, by a resolve of the General Court.

16th. It seems to me that if the legislature should in their wisdom deem it proper to make an appropriation for the purpose of fencing the lands, and otherwise improving the same, in some degree, and make suitable provisions for all such as will live upon and improve the land, (or such part as may be assigned to them), in the best way to obtain a living, that thereby their condition might be somewhat improved; or sell the land and support them from the proceeds, who are unable to support themselves, (as far as may be).

17th. The general state or condition of the tribe is such that it seems hardly possible to conceive of any plan that would be conducive of any great good to them, as a tribe, for they are but a "miserable remnant" comparatively speaking, and are but little disposed to associate or make a society of themselves, but seem to live isolated, and look for little else than the supply of their physical wants; therefore it is almost impossible to do anything for them, otherwise than in their individual capacity. There are four families living on the Indian land, and but two men among them, who are able to labor for their support, two families living in the village, composed of women and young children, mostly; the males generally are at sea, those above the age of sixteen years.

It seems by record in the secretary's office, that in the year 1761, a committee of the General Court appointed a surveyor, to renew the bounds, survey, subdivide and plan the tract of land, which he made to be 190 acres and 64 rods "granted by ye General Court, to Capt. James Church & Company Inds., and subdivided the same into twenty eight equal parts, and created suitable bounds, at ye corners of each divisional part or lot"; each lot contained 6 acres and 128 rods, and were then allotted to so many families or individuals, as the case might be. Now, I suppose there is not one of the tribe that can tell where his or her lot is situated, or any thing definite in relation thereto.

I have the honor to be, respectfully, your ob't servant,

BENJAMIN F. WINSLOW.

F. W. Bird, Esq.,

Chairman Commissioners, &c &c."

House Doc. No. 46, 1849, pp. 80<sup>1</sup>/<sub>2</sub>.

Appendix E, shows table from the State Treasurer that Fall River Indians received from 1843 to 1847 incl. \$743.24.

House Doc. No. 46, 1849, p. 83.

In 1857 one Zerviah Gould Mitchell, who lived in North Abington, Mass., and who claimed to be a lineal descendant of Massasoit, through Benjamin Sqummamay mentioned in the allotment of 1764, filed a petition with the governor and council asking that she be given her rights to lots 19, 20, 21 and 22 on Terry's plan of 1763. The following Council report on this petition contains several inaccurate statements as to dates and facts but it is given to show the action of the State authorities concerning the matter:

Council Files 1857

Commonwealth of Massachusetts,  
Executive Department.

Council Chamber,

Boston, Jan 7 1857

The Committee to whom was referred the Petition of Zerviah  
G. Mitchell, now resident of North Abington

## REPORT

That by examination of the records in the office of the Secretary of State they find that on the 13<sup>th</sup> of March 1700 Daniel Wilcox for a valuable consideration sold to the Government of the Province of Massachusetts several tracts of land, including the tract now claimed by the Troy Indians, to which land or a part thereof the petitioner is a claimant.

Feb. 26, 1701 on application of the Indians in the southerly part of the County of Bristol, many of whom were serviceable to his Majesty in the wars with the Indians prayed that a convenient tract of land might be assigned them where they might settle together in an orderly manner and have the benefit of schools, and of instruction for their children, it was *ordered* that the said Indians be accommodated with a settlement for a plantation upon the aforesaid lands to be holden by them of his Majestys Government within this province during the pleasure of the Government, and that a committee be appointed from time to time to direct, order & regulate the said settlement in arrangeing and setting forth allotments of land to each family of Indians that shall or may come to inhabit or settle the said Plantation to be by them severally occupied and improved.

It appears also that the lands were then divided and allotted to the several families.

It further appears that the selectmen of Dartmouth on the 1<sup>st</sup> day of Feb. 1762 petitioned the Provincial Government that part of the land in Tiverton appropriated for the support of the Indians may be sold for the relief of Rachel Pismi, an Indian woman who was helpless.

Thereupon on the 16<sup>th</sup> of Feb. 1762 the House of Representatives, *Ordered*, That Jos. Williams and Thomas Morey be commissioners to make sale of land not to exceed thirty five pounds in value to defray the charges for the support of Rachel Pismi, and on the 17<sup>th</sup> of Feb. 1762 the Council *Assented*. On the same

day in Council, *Ordered* That W<sup>m</sup> Brattle and Thomas Fletcher Esq. with such as the House may join be a committee to inquire whether there has been any disposition or settlement of the said lands by the Government since the 26<sup>th</sup> Feb. 1701 and that they cause search to be made in the public and County records as to the quantity and situations of said lands and report; the said order was concurred in by the House the same day. It appeared evident to this Committee that the Indians never had the fee of the lands aforesaid but were tenants at will, that the fee simple of the land was invested in the Province, and that they ought not to be sold for the support of any Indians.

In Council April 21. 1762, Ordered that W<sup>m</sup> Brattle Esq and in the House of Representatives, that Col. Clapp & Major Pond be joined as a committee to inquire into the State of the Indians and Report; and on the 3<sup>d</sup> of Feb 1764 they reported that the lands had been divided into twenty eight lots, four of which had been given to the family of Capt Church and the remainder assigned to the Indian soldiers in his Company. As some of them had died without issue the Committee made a new assignment of certain lots.

Your Committee also find the land claimed by your petitioner are lots No. 19, 20, 21 & 22 which were assigned to the Heirs of Benjamin Squinnamay on a plan drawn by Zebedee Terry Dated Dec 5, 1763 which lands she claims as the only heir now living of those persons to whom they were originally assigned. Each lot containing Six acres & 128 rods.

Your Committee also report that on the 22<sup>d</sup> day of September they had an interview with Benj. F Winslow Esq. Guardian to said Indians, who stated that he believed that she was the rightful heir to said lands but as *she did not reside on the premises* he did not consider her entitled to the proceeds of said lands; that he had cut off the wood and appropriated the proceeds to support the Indians resident on the premises.

Your Committee however are of the opinion that the proceeds rightfully belong to the heirs of those to whom they were originally assigned, and that the Guardian ought not to convert the income of the lands of one individual to the support of others, as such a course seems not only unjust to the parties concerned, but must have a tendency to destroy that enterprise, and desire to excel which is so much needed to elevate the Indian population of this Commonwealth.

In view of the limited time remaining to the present Council, and the importance of a thorough investigation of the claims of the Petitioner, and of the justice of that claim, your Committee would recommend that said Petition be referred to the next Council and that they take immediate action thereon.

DAVID DAVIS

for the Committee

Later in the same year, 1857, we have another report to the Council as follows:

Council Files 1857

Commonwealth of Massachusetts,  
Executive Department.

Council Chamber,

Boston, Feb<sup>ry</sup> 5<sup>th</sup> 1857

The committee to whom was referred the papers relating to the Troy Indians have attended to the subject and ask leave to

Report

That in their opinion those portions of the land sett off to Benjamin Squinniway are and of right ought to be the property of the heirs of the said Squinniway; and from the papers referred to them they have no doubt that the petitioner Zerviah G. Mitchell is the only surviving heir of the said Squinniway, and consequently the rightful owner of the lots numbered 19, 20, 21 & 22 (each lot containing 6 acres and 128 rods) so far as the State granted ownership to her ancestors.

They therefore recommend, that the Secretary forbid the agent from trespassing further upon the lands of the said Mitchell, as heir of the said Squinniway, and further that the Agent render an account of the net proceeds of the wood taken from said lots N<sup>o</sup> 19, 20, 21, 22 and that the amount so received be paid over to the said Mitchell by the said Agent in such sums as she may require from time to time and that the same be charged to the account of support of said Troy Indians.

L. M. WHEATON

GEO HOWLAND JUN<sup>r</sup>

Committee

Council Chamber Feb<sup>y</sup>, 5, 1857.

The foregoing Report is in Council Accepted.

FRANCIS DE WITT

Secretary of the  
Commonwealth.

Finally, the claim of Zurviah G. Mitchell was referred to J. M. Earle who made a special report upon it. It is annexed hereto as Appendix A.

Appendix B, gives the Resolve, Ch. 62 of 1861, relating to Mrs. Mitchell. Her genealogy is given in Peirce Indian History, pp. 210 to 218 inclusive.

There is found reference to Massachusetts Indians in other public documents as follows:

"It is well known that among the so-called Indians there is a majority of persons with some infusion of African blood, while some of their chief men have little or no Indian blood at all." *Pub. Doc.*, No. 17, 1867, p. 32. *1 Report Board of Comm. Charities*, p. 32, (1867).

"Our present Indians are chiefly descended, however, from those who were either conquered or won over to a friendly relation with the whites, and the disabilities imposed were such as, it was believed, would make them less likely again to become hostile". *Id.*, pp. 30, 31.

"We have no statement of the sums annually paid on account of the Indians before 1843.

Between 1843 and 1849 the total amount was \$10,059.25, an average of \$1,676.54, each year. For the ten years ending Dec. 31, 1859, the amount was \$29,961.37, an average of nearly \$3,000, a year. From 1860 to 1867 about \$30,000, have been expended, making a total, in a quarter of a century of \$70,000, and upward. Of late years the expenses have increased, being in 1865 \$4,382.13, of which \$581. was for schools, and in 1866 \$4,778.56, of which \$733. was for schools. *Id.*, pp. 28-29.

The English names borne by the Fall River Indians were usually taken from those of American families who were friendly to the Indians. For instance, Captain James Church was an Indian, as shown by the documents taken from the Massachusetts Archives, and no doubt the other names were distributed the same way. The Indian population on the Reservation never was large, and it got scattered in every direction and dwindled down to some four or five persons now living there who would probably have difficulty in establishing a rightful claim to any part of the lands. Earle's Report of 1861 tells us that only nine acres of land were cleared in more than half a century, and the tillage was of very inferior order (Earle's Report 80-1). He says also that "the families of several of the proprietors have become extinct". *Id.*, p. 81. He concludes: "They have no distinct organization. A great

portion of them have, for some time, mingled with the general community, their families separated alike from those on the plantation and from each other, while those remaining on the reservation are almost entirely in the incipient or more advanced stages of pauperism; and it is an unquestionable fact that those who have left the plantation are, as a whole, in a better condition than those who remain upon it. — *Id.* 86-7.

As to the life and customs of Indians recent writers (Ellis and Morris, *King Philip War*, N. Y. 1906) say:

"In his journey through New England the traveler would have noticed, scattered along the inlets of the coast and on the banks of the ponds and rivers, many an Indian village surrounded by clearings and cultivated fields.

Arranged around a center left open for the performance of the village games and ceremonies, were the wigwams, constructed of saplings, which, set firmly in the ground and bent together, were fastened at the top and covered with bark or mats. Some were cone-shaped, holding only a single family, while others, resembling a covered arbor, varied in length from twenty to one hundred feet.

The wigwams were pitched closely together, and the village seldom occupied more than from three to four acres. Within the wigwams, and arranged around the walls, were the woven baskets that held the corn, stone or earthen household utensils, the pails and the low raised bunks covered with boughs and skins. In the center blazed the fires, which, either for the purpose of cooking or for warmth, were kept constantly alight, and the smoke from which found its way skyward through a hole in the roof. The life of the inmates, what with the dirt, the fleas, unruly children, yelping dogs and the blinding smoke, which with every gust of wind filled the interior, was one of extreme discomfort."

"Dressed in moccasins and small breeches of tanned deerskin, fringed and embroidered with wampum, the body left bare above the waist and greased, and, on the warpath, adorned with grotesque and startling designs in black, yellow and vermilion, the totemic emblem of their clan, the bear, wolf, or tortoise being featured on the breast. The sachems were distinguished by heavy belts and caps of wampum, and the Indian dandies adorned themselves with long mantles of multi-colored feathers. In fall and winter, mantles of fox and beaver, deer and bearskin, with the hair turned in, were worn.



The hair was arranged in a variety of fashions according to the taste of the individual. Some shaved on one side of the head and let the hair grow long on the other. Some left only a ridge in the middle extending from the forehead to the neck, which, kept short and stiffened with paint and grease, resembled the crest of a Roman helmet, while still others shaved all but a small tuft, the scalp-lock, on the back of the skull.

Their diet consisted chiefly of fish, wild fowl and game, corn, beans and squash, ground nuts and berries, prepared in a variety of ways without regard to the niceties of life, the bones and entrails of fish and the smaller animals being seldom removed before cooking.

Two of their dishes were early adopted by the whites. Corn mush or samp, consisting of corn meal and currants boiled with water to a paste and served plain or fried in fat. The other was succotash, made of boiled corn, beans and fat, to which fish was sometimes added. The great dish, however, was a stew of all manner of flesh, fish and vegetables boiled in a common pot and thickened with powdered nuts. The clambake was a favorite way of cooking shell fish, and was early adopted by the whites.

While on the warpath or engaged in hunting, parched corn and maple sugar were carried, and on this coarse food, moistened by water from a spring, they covered long distances. Against the winter they provided stores of parched corn, maize and dried fish, stored in pits (the so-called Indian barns) dug in the slope of a hill and covered with mats and earth." (pp. 11, 12, 14, 15.)

There was published in London, in 1643, and reproduced in 1827, in Vol. I of Rhode Island Historical Society Collections:

"A key into the language of America, or an help to the language of the natives in that part of America Called New England", by Roger Williams.

A sketch of Roger Williams is found in 1 Coll. R. I. Hist. Soc. p. 3, wherein it appears that he was born in Wales in 1593, educated at Oxford University, England, came to America in 1631; settled as minister to Salem, Mass.; banished from Massachusetts in 1635. He died in Providence, R. I., in April, 1683.

Once an Indian said to Roger Williams: "Fire comes out of cold stone, it saved us from dying of hunger; if a single spark falls in the dry wood it consumes the whole country. Can anything which is so powerful be anything but a deity?" *Rhode Island Hist. Soc. Coll. Hist. Soc. C. 1, V. 2, pp. 226-229.*

Having ministered to the Indians he seems to be well informed about their speech, manners and customs. He says:

"There is a mixture of this language North and South from the place of my abode, about six hundred miles; yet within two hundred miles (aforementioned) the Dialects do exceedingly differ; yet not so, but (within that compass) a man may by this helpe converse with thousands of natives all over the countrey".....  
*J. R. L., Hist. Soc. Cal., p. 48.*

He says: "they constantly anoint their heads" .....and "they give dowries for their wives as the Jewes did."

They say that from the South-west came their traditions; their great God "Cautantauwit" dwells there, where the souls of their forefathers lie, and where they will go themselves when they die.

From there, they say, came "their Corne, and Beans out of the great God Cautantowit's field". Dialogue "is framed chiefly after the Narraganset Dialect, because most spoken in the country". They are fond of salutations; they say "Netop", which means friend. They could scarcely believe that that salt water is "three thousand English miles" from England. After the death of husband or wife they break up house "and live here and there, a while with friends to allay their excessive sorrowes. Though the natives hold the Soule to live ever" yet when a few persons of a particular name die they give up that name as dead.

"I have acknowledged amongst them an heart sensible of kindness and have reaped kindnesse again from many, seaven years after, when I myself had forgotten." "Parched meal which is a readie and wholesome food, which they eate with a little water, hot or cold ..... with this readie provision, and their Bow and Arrowes, are they ready for War and travell at an hour's warning, with a spoonfull of this meale have I made a good dinner or supper." "They generally all take Tobacco"..... "they say they take Tobacco for two causes; first against rheume [cold] which causeth the toothache which they are impatient of; secondly to revive and refresh them, they drinking nothing but water." "Whomsoever cometh in when they are eating, they offer them to eat of that which they have, though but little enough prepared for themselves..... many a time and all times of night, (as I have fallen in travell upon their houses), when nothing hath been ready, have themselves and their wives, risen to prepare me some refreshing". "It is a strange truth that a man shall generally finde more free entertainment and refreshing amongst these Bar-

barians, then amongst thousands that call themselves Christians."

Howling and shouting they use for alarms: as they have no drum or trumpets, they make known that way the coming of English or Dutch. Fire is used instead of bed clothes and the first one who awakes "must reparaire the fire." When they have a bad dream "which they conceive to be a threatening from God, they fall to prayer at all times of the night." In counting they can cast great numbers "with the help of graines of Corne, instead of Europe's pens or counters." They are very affectionate to their children. They cover the house with mats "and line them with embroidred mats which the women make" and they look well. They point to the sun for the time of day as we do to clocks, "Commonly they never shut their door day or night, and 'tis rare that any hurt is done." "Instead of shelves, they have several baskets, wherein they put all their household stuff; they have some great bags or sacks made of hompe which will hold five or sixe bushells".

The women raise and pound the corn by hand and "take as much paines as any people in the world which labour is questionlesse one cause of their extraordinary ease of childbirth". For doors they have hanging mats, and holes in the centre for chimneys. They some times get English boards and bolt their doors. They bewail or moan at the loss of friends or relatives. Nearly all use tobacco "some doe not, but they are rare Birds". They carry tobacco bags with a pipe in it on their backs; some are 2 feet long, made of wood or stone with men or beasts carved on it. In summer they work in their fields, plant corn, but they spend the winter in the woods. The men get poles and the women make and arrange the mats which cover the wigwam. They move when flies plague them, when some one dies &c. They are sociable. They believe the brain to be the seat of the soul. "For the temper of the brain in quick apprehensions and accurate judgments (to say no more) the most high and sovereign God and Creator, hath not made them inferior to Europeans."

Toothache is the only thing which makes Indian men cry. One who can tell them news in their language they call Manittoo, that is god. They sit around; every man has his pipe and keeps silent while one speaks, either getting some news or holding consultation "with very emphaticall speech and great action, commonly an houre, and sometimes two houres together." They say that the English left home because they have burned all the firewood and come here to get more. They are very observant of the

sun, moon and stars. If the year is dry they pray even 10 days for rain. "It is admirable to see what paths their naked hardened feet have made in the wilderness".

Many whites got lost in the woods, were found by Indians who helped them home. They are swift runners; some ran 100 miles a day; back in two days.

They prize horses more than any other "cattell". "They are joyfull in meeting of any in travell, and will strike fire either with stones or sticks, to take tobacco and discourse a little together". "I have been many a night with them, and many times alone, yet always mercifully preserved". They adore the sun "for a god or divine power". They gave to the guns the name of "thunder" and to shots that of "thunderbolts". They love the south west winds which are the warmest in the climate; they say they come from the abode of their gods and the dwelling place of their own souls after death. They plant corn deep enough to prevent the birds from eating it. They build watch house in centre of corn field and children scare away the black birds. They are great marksmen; they take birds by laying nets on shore and catch them.

"There are an abundance of singing birds whose name I have little as yet enquired after."

Roger Williams went to Martha's Vineyard where he was told by Indians that birds came from another island. They preserve chestnuts and acorns as dainties. Strawberries grew naturally. The Indians bruised them with Indian meal and made excellent bread. They use huckleberries and currants and dry them; mix them with "pareht meale". "The Indian Corne keeping the body in a constant moderate looseness". The women set or plant, weed, hill and gather corn and fruits.

They use natural hoes of shell and wood. Many get together to break the ground and plant.

An Indian would start with basket of corn, and stones to make fire, carry a hatchet, cut down a tree, make a shed of the bark and burn and hew the inside, make a dug-out, ate his corn, fished some and in 10 or 12 days had a boat to go and fish on the ocean.

"Their own reason hath taught them to pull off a coat or two and set it up on a small pole with which they would saile before a wind ten or twenty miles." They are great swimmers, they will swim over two or more miles to reach land. They make fishing nets of strong hemp; or catch fish by striking the fish with their

arrows and sticks. Indians delight in eating clams winter or summer. They are picked up by the women at low water. They boil them and mix the broth with their bread which gives them the necessary salt.

He says: "This (clams) is a sweet shellfish which all Indians generally over the country, winter and summer delight in....." English pigs watched low water and competed with Indian women about eating and rooting clams. They were hated badly by the Indians on that account. "The natives take exceeding great pains in their fishing, especially in watching their seasons by night; so that frequently they lay their naked bodies a cold night on the cold shoare about a fire of two or three sticks, and oft in the night search their nets; and some times goe in and stay longer in frozen water." They also break the ice on fresh ponds and catch fish.

They go naked, except wearing small breeches, or covered with beasts' skin some times. Aprons about the waste; children are naked until 10 or 12 years.

In doors they leave off the beast skins. They have turkey feathers for ornament or headgear. They are made by "their old men" and "is with them as velvet is with us".

They make shoes and stockings of deer skins, well oiled so that snow or water do not go through. [*Houassins*] They tan the leather themselves very well. They paint these deer skins for summer wear.

They wear English clothing some times, but take it off in the rain to keep them dry, and pull it off when they return home.

They believe God is the author of all things. If they loose a child or have an accident they say God is angry with them. But they have many other gods, such as Sun God, Moon God, Sea God, Fire God, &c. They say the spark which gives fire reveals a divine power.

If they see any one surpassing others, or something excellent in birds, beasts, fish, they cry out "*Amittoo*" a God. They have feasts where great excitement and contorsions prevail; dancing, &c. They make solemn speeches. Their priests and old men speak of peace, war and God. Their government is an absolute Monarchy. The sachem is their prince and ruler; but decides nothing without consulting them; he punishes by whipping or death, beheading the guilty. They generally have many wives except the chief of the Narragansetts who usually has only one.

An offending or adulterous woman is put away. The offender is beaten or wounded.

Dowry is given to women at marriage. If parents are too poor others contribute. They sell furs to the English for Indian money. Money is of 2 kinds. One white, made of the stem or stock of the periwinkle, when all the shell is broken off. 6 of these heads are worth an English penny. They bore a hole in them and string them like bracelets. Black money is made of the shell fish called henfish. 3 of these make an English penny. Wampum is white money. They string this money and hang it on the necks of men, women and children. Some only make bows and arrows. Others, women, make earthen vessels, some only attend to hunting and fishing and again others store shells which pass for their money.

They are very suspicious in trading with the English, thinking that the latter want to deceive them. They will go 40 miles to save 6 pence.

Women paint their faces with all sorts of color. Whole family go hunting. They set traps for deers. Some times wolves are caught; they take their skin. They eat the deer that is caught and use the skin for clothing. They play, instead of cards "with strong Rushes".

"They have a kind of Dice which are Plumb stones painted, which they cast in a Tray with a mighty noyse and sweating." Men and women paint their faces. They use pine bark and red earth for that purpose. They take sweats by making a hot house. Build it side of a hill. Heat stones. They go in without clothing several, about 20, at once, stay there some time, smoking, then jump in cold water. They sweat to clean their skin and purge their bodies.

Their own Indian priests and conjurers among them get their money. They effect some cures. They howl, roar and hollow at them and sing to the rest of the people.

When death occurs they blacken their face with soot, weeks, months, even a year at a time, as a mark of sorrow. The name of the dead must not be mentioned. Mere mention of a dead Sachem is the cause of war. They wrap up the body of their dead in mats, put it near the grave. Have general lamentations. Every one cries. They lay the body in the grave, they spread on the grave the mat on which he died, hang up his skin coat on the neurest tree and leave it to rot there. Canonicus, Sachem of the Narragansetts, after he buried his son, burned his horse in expiation.

Herrings were plenty then, and the Indians would dry what they did not use. They also used herrings as fertilizers, by putting one into every hill of corn. They also planted beans and pumpkins. Peirce, *Ind. Hist.*, p. 10. Massasoit sent some corn to the English and through the interpreter Hobbamock showed the Pilgrims how to plant corn and beans. *Id.*, p. 19.

The consideration paid for the Freeman's purchase conveying about one half of the territory now covered by the city of Fall River, north of City Hall, was "20 coats, 1 little kettle, 8 pairs of shoes, 6 pairs of stockings, one dozen of shoes, one dozen of hatchets, 2 yards of broadcloth and a debt to be satisfied of John Barnes which was due from Wamsutta" very likely for rum, since Barnes kept a tavern. *Id.*, 38.

We publish five reports of the guardians of the Fall River Indians, in the appendices (C, D, E, F, G,) which speak for themselves. The last one was made in 1868. Immediately after that, the St. 1869 C. 163 which freed the Indians from guardianship was passed.

## COLONIAL LEGISLATION CONCERNING INDIANS.

The general court of the colony of Massachusetts Bay took early steps to regulate the sale of liquor to Indians. They put on a penalty of 40 shillings for every pint sold or delivered to an Indian, except in cases of "sudden exigent faintness or sickness, not to exceed two drams." The statute went on further:

"And for the better discovery of such ill disposed persons who through greediness of filthy lucre shall privately sell or deliver strong liquors . . ." to any Indian, and it said that the testimony of an Indian, "with other concurring circumstances amounting to an high presumption in the direction of the court" would be sufficient to convict, unless the accused could take the following purgation oath:

"You, A.B., do swear that neither yourself, nor any other by your order, general or particular assent, privity, knowledge or allowance, directly or indirectly did give, sell or deliver any wine, cyder, rum, or other strong liquors or drink, by what name or names soever called or known, unto the Indian by whom and whereof you are now accused. So help you God."

It was also provided that if an Indian was found drunk he was fined five shillings, (about \$1.00, of present money), or else openly whipped by the constable of such town or place, not exceeding ten lashes, as the justice of the peace before whom such conviction is, shall determine".

February 24th, 1691: 1 Acts & Res. Prov. Mass. Bay, pp. 150-151.

Earlier legislation also applicable to the Indians in the Fall River territory are found in Plymouth Colony Laws, p. 89, (Boston, 1836.)

1658,

"SELLING WINE OR STRONG WATER TO INDIANS.

"It is enacted that noe person whatsoever shall henceforth sell wine or strong water to any Indian, unless in case of sickness or faintness and then onely with the foreknowledge & consent of a magistrate if there be any in the township, or in defect him with the foreknowledge and consent of the comittees or grandjurymen of the said township, & but for a smale quantity, and for every defaulte to pay x<sup>s</sup> to the Colonies use." Id. p. 141.

1663.

"It is enacted by the Court, that if any Indian or Indians shall be found drunke in any township of this Gov<sup>t</sup>ment: That they be forthwith taken by the constable of the towne and sett in the stockes; and that if any liquors shalbee found with the Indians that it he forfeit to the use of the Gov<sup>t</sup>ment, and that it shalbee lawful for any man to seize any Indian found drunke or any liquors found with the Indians and bring him or it to the constable to be ordered and disposed of as aforesaid, unless any Indian shall make it appear that hee hath such liquors according to order of Court. And the said Indians that shalbee sett in the stockes as above said shall defray the charge thereof which is two shillings and six pence a time for every of them." Id. p. 123.

1659.

"Whereas complaint is made that the Indians in severall ptes of this Jurisdiction liveing in remote places from any townships have received great damage by the horses and hoggs of the English: It is enacted by the Court that it shalbee lawful for the Indians soe enoyed by the horses or hoggs of the English whoe live remote from any towne to bring such horses or hoggs to the pound in the next township and there to bee kept till the owners take a course to satisfy the damage; and such Indians to have twelve pence



a peece for horses and six pence a peece for hoggs; if they bring them above eight miles; and alsoe that if any neat Cattle shall trespass the Indians; it shalbee lawfull for them to impound them that soe they may have reasonable satisfaction." Id. p. 288.

Laws relating to Indians revised:

PROHIBITIONS AGAINST INDIANS.

They were not to hunt, fish, fowl, travel with burden or do servile work on Sunday.

White men could not sell them firearms, ammunition ("because the Indians who are naturally perfidious are abundantly more insolent and proud, when they are furnished with English arms." Ply. Col. Laws, p. 288); nor boats, barges, vessels, sails or tackling; no Indian shall give any ear-mark to his swine, like the English, the latter alone to have earmarks for their swine: no person could purchase land of Indians without government's consent, nor buy wood, timber, herbage from them; 10 shillings must be paid in money to town clerks for every horse sold to Indians, but no mare shall be sold to them, & a mare found in keeping of Indians was to be forfeited; lending of horse to Indian punished by 10 shillings; £5 fine for selling liquor to Indians, ("this order shall not extend to restrain any charitable act, in relieving any Indian *bono fide* in any suddain exigent of sickness, faintness &c, not exceeding one dram or two, or by the prescription and direction of some Physician, under the hand of a Magistrate first obtain"); testimony of an Indian sufficient to convict "any English person" . . . . . unless such English shall upon their oath clear themselves from any such act . . . . . In case of conviction of sale of liquor to Indians, when the fine was not paid, the convict was publicly "whipt." Plym. Col. L. pp. 288-9-290. (State Ed. 1836).

NOTE.

Computation of time, *Old Style* and *New Style*.

A few words are necessary to explain what is to be understood by OLD STYLE and NEW STYLE.

The Julian Calendar proceeded on the supposition that a year is 365 days and 6 hours, whereas in truth an annual revolution of the sun is performed in 365 days, 5 hours, 48 minutes and 45½ seconds, so that the Julian civil year was too long, and exceeded the solar by 11 minutes and 14½ seconds, which in about 130 years amounted to one day. Pope Gregory XIII corrected the error, in 1582. The time as computed by the Julian method, which is called OLD STYLE, had then advanced ten days beyond the true time. He ordered that ten days should be suppressed, and that thenceforth three days should be

dropped 111 10 years, which would be nearly equivalent to one day in 114 years.

The year under the OLD STYLE began the 25th of March, he ordered that it should begin the first of January. The new reckoning was called NEW STYLE. It was not adopted in England and this country, till 1752, when the error had reached eleven days. In old records, deeds, and other papers, we find, between 1st January and 25th of March, DOUBLE dates, as Jan 17, 1717-18, which mean 1717 old style and 1718 new style. Another perplexity often arises from not recollecting that January and February were the latter part of the year. For instance, a distinguished man, who died a hundred years ago in February, it was said preached an ordination sermon in July of the same year, which was true reckoning according to OLD STYLE. Another example, King George III. in May 1746, ordered Tiverton to be set to Rhody Island, and the Legislature, AFTERWARDS, in obedience to that order, in January of the same year, incorporated anew the town of Tiverton. The act of incorporation took place the latter end of the year 1746, OLD STYLE, or the beginning of the year 1747, NEW STYLE. The practice of DOUBLE dating, between 1st of January and 25th March, was dropped after 1762. *English Hist. 10<sup>th</sup> Revis.* p. 111.

## APPENDIX A.

House Files 1851.

## SPECIAL REPORT

to the Governor and Council,  
of the Commonwealth,

in the cases of

ZURVIAH GOULD MITCHELL AND JOHN HECTOR,

heard before

John Milton Earle,

Commissioner

under the Act of April 6, 1859, relating to the  
Indians of the Commonwealth.

Commonwealth of Massachusetts.

To His Excellency

John A. Andrew, Governor &amp;c.

The undersigned, Commissioner under the Act of April, 1859, relating to the Indians of the Commonwealth, would respectfully submit the following

## SPECIAL REPORT:

By the provisions of the Act under which he was appointed, he was authorized to hear parties in relation to any matter of inquiry with which he was therein charged. Under that provision, several claims were brought before him for investigation, and, on two of them, which are treated in this report, after giving due notice to the parties and examining the claims, reports were prepared thereon, but were retained under an apprehension that new facts might be developed or some conclusion arrived at in relation to the general subject of inquiry entrusted to him, which might influence or control the recommendations which ought to be made, for the action of the legislature. That report having been made, he now submits the cases referred to, which are those of Zurviah Gould Mitchell and John Hector, as follows:

**Case of Zurviah G. Mitchell.**

The petitioner in this case claims, as the legal and sole surviving heir of Benjamin Squinnemay, four lots of land, containing each six acres and one hundred and twenty eight rods, situate in Indian Town, so called, in Fall River, being a part of the Indian plantation at that place, which lots, she affirms, are illegally withheld from her possession, by Benjamin F. Winslow, Guardian of the Troy or Fall River Indians. She also claims pay for wood cut from said lots, for the use of said Indians or sold for their benefit, by direction of said Winslow and his predecessors in said office, and prays that possession of said lots may be given her, and that payment may be made for the value of the wood, so taken from them.

Due notice having been given to said Winslow, the parties appeared at an adjourned public hearing at New Bedford, Aug. 31, 1859, and were fully heard thereon.

The evidence laid before the Commissioner establishes the following facts, viz:

1. That the Indian lands at Fall River were granted in the early part of the last century, to Capt. James Church and others of his company of friendly Indians, but no record was shewn of any subdivision among them prior to 1764.

2. In 1764 a number of the original grantees having died without heirs, a committee of the General Court, appointed for the purpose, caused the land to be resurveyed, and the bounds renewed, with a plan thereof. From the report of the Committee, it appears that there had been a previous subdivision and assignment of lots among the proprietors, and they give the names of the proprietors of the several lots, as originally assigned, designating the lots, the posterity of whose owners had become extinct, and giving the names of the present owners of those which were still held by hereditary descent. Then they say:

“And whereas sundry soldiers, belonging to the company under Capt. James Church have left no posterity, and there being no provision made for Lieut Manchester and twelve others, in the same company, the Committee have, agreeable to the direction of the Court, assigned to those who have left posterity, the lots of those who had lots assigned to them, and whose posterity is extinct.”

By the original assignment, the twentieth lot belonged to Isaac Sissell, who left two daughters Mercy and Mary.” Sissell’s

wife, the mother of Mercy and Mary, was the daughter of Benjamin Squinnemay. The posterity of the owners of the nineteenth, twenty first, and twenty second lots, having become extinct, these lots were respectively assigned, the nineteenth "to Esther Sampson and Sarah Squin," the twenty first "to Sarah Quam's two children, Daniell and James," and the twenty second to Comfort and Thankful", all "grand children of Benjamin Squinnemay". This report was read and accepted, in both branches of the General Court, Feb. 3, 1764, and an order passed thereon, that the lands be *conferred to the several persons named*, agreeably to the report of the Committee, which was approved by Gov. Bernard.

3. That, for many years past, most of this land has lain in common, being covered with wood, which has, from time to time, been cut off, by direction of the Guardian for the time being, and used by the families residing thereon, or sold for their benefit, as their necessities required, till little remains, except a growth of scrub oak. The original division into lots has been disregarded, and the families living thereon, have been located without any regard to such divisions, and have cultivated small patches, adjacent to their dwellings, cutting wood for fuel where it best suits their convenience, or where the Guardian may direct.

4. That Mrs. Mitchell, on the refusal of the Guardian to recognize her claims, applied to the Governor and Council for redress. The matter was, thereupon, investigated by a Committee of the Council, who made a report, dated Feb. 3, 1857, in which they gave the opinion that these lots "are, and of right ought to be, the property of the heirs of Benjamin Squinnemay, and, from the papers referred to them, they have no doubt that the petitioner, Zurviah G. Mitchell, is the only surviving heir of said Squinnemay, and, consequently, the rightful owner of the lots numbered 19, 20, 21, and 22, so far as the State granted ownership to her ancestors." The report further recommended that the Secretary be directed to forbid said Winslow from further trespassing on said lots, and that he render an account of the wood sold therefrom, and pay over the proceeds thereof to said Zurviah G. Mitchell, from time to time, as she may require, and charge the same to the account of the Troy Indians. This report was accepted by the Council, Feb. 5, and the same day, an order was issued by the Secretary, in conformity with the recommendation therein

For a full copy of this report containing the assignment of the lots, see Appendix C, of my General Report.

contained, which order was duly served on said Winslow, July 2, 1858.

5. That an adjustment, satisfactory to Mrs. Mitchell not having ensued in consequence of this action she brought the matter again before the Governor and Council, and again it was referred to a Committee of that body. The Committee made a report on the 2<sup>d</sup> of June 1858, in which they say that they "believe that neither the petitioner nor any of the Indians, are the owners *in esse* of the lands occupied by them, but they are owned by the Commonwealth, which holds them for their benefit." The Committee conclude by saying that have "visited the place with the Guardian, and directed him to cause to be surveyed, a portion of land, to be occupied by Mrs. Mitchell and her family, the amount *not received* that originally assigned to her ancestors, and with this, she appeared to be satisfied."

6. That the Guardian, acting under the order of the Council of 1857, paid over to Mrs. Mitchell a certain sum of money, being, as he claims, the full value of her portion of the wood sold a claim which Mrs. Mitchell does not admit.

7. That he also surveyed and set apart to Mrs. Mitchell's use, *acres* of the land, on which she caused a house to be placed, but was subjected to such opposition and molestation in the occupancy, that she felt constrained to abandon it.

8. That the Guardian has continued to cut wood as heretofore notwithstanding the injunction served upon him, and to act upon the assumption, which he claims to be authorized by the report of the Committee of the Council of 1858, that the land is held for the common benefit of all the Indians, of whom he is Guardian.

On the state of facts, thus presented, Mrs. Mitchell avers that her right to the land and its product is substantiated; that the Council of 1857 conceded the justice of the entire claim, first to the possession of the lots, and then to compensation for the wood taken from them; that the Committee of the Council of 1858, while they deny that the fee was in her, substantially concede the same thing, by directing a portion of the land, "not to exceed that originally assigned to her ancestors," to be surveyed and set apart to her occupancy and use, and by their tacit assent to the Guardian's paying her the value of the wood sold.

Committee of the

She claims, that, "when the General Court, in 1761, set off these four lots to the heirs of Benjamin Squinney, and the General Court confirmed the same, this confirmation was intended

to operate as a gift or grant in fee simple, the grant being, as she claims, a gift of the fee. But, if this claim is not sustained, she claims that her "right to the equitable fee is clear and indisputable, i. e. she is the owner of the land, to her self and heirs, subject only to the trusteeship of the Commonwealth. As *cestui que trust*, she has all the rights and privileges which any owner of land has, in the State, save that the legal fee is in the Commonwealth, and she cannot sell without permission of the State, her trustee." She claims, therefore, a recognition of these rights, and protection by the State, in the enjoyment of them.

On the other hand, it is contended by the Guardian, that the grant was made for the general use of the grantees, as the legislature might direct; that the assignment of lots in 1761 was temporary in its nature, limited to the personal occupancy of the assignees, and intended only to prevent the occupants from encroaching on each other, and that the legislature might, at any time, make another and different assignment of the lots, or otherwise dispose of the same, and that, consequently, Mrs. Mitchell has no special right to the lots assigned to her ancestors, but, that whatever right she has in the Indian lands is the same that all the other Indians of the tribe have, to a joint ownership in common to the whole, except so far as exclusive occupancy may be assigned by the Guardian or the Commonwealth; and that this position is confirmed by the fact, that most of the lands have lain in common for a long period, and that those who occupy portions of it, do it without any reference to the former division.

It is not perceived how Mrs. Mitchell's claim to the fee of the land can be sustained. Contemporaneous legislation shews that grants of land to Indians, for whatever purpose, or whatever cause, were not made in fee simple, but the fee was retained by the Commonwealth as their trustee, in order that the *other* benefits of ownership might be more perfectly secured to the grantees and their heirs. At the time of the assignment of the lots in 1761, there were fifty six proprietors. With the general poverty of the Indians, and the improvident habits which unfortunately, were too prevalent in that class of our population, it cannot, for a moment, be supposed, that, had they possessed the fee, some portion of the land, at least, would not have been sold to relieve their necessities, or taken on execution, in satisfaction of their debts.

The position of the Guardian seems equally untenable. Had the right granted been that of a tenant at will, or of a life estate, simply, it would have been made in such form. But the grant

appears to have been unrestricted, except by that general provision of law, existing at the time, by which no Indian could dispose of real estate but by consent of the State. The grants of lands to other Indians have all been in perpetuity, and, after division, made in severalty by authority of the legislature, the rights of hereditary descent have been scrupulously regarded. But we are not left to rest alone on inference drawn from the general course of legislation and precedents, in such cases. The report of the Committee, on which the subdivision and assignment of lots was made in 1761, recognizes and sustains the exclusive individual rights of the grantees, as well as the sanctity of hereditary descent. In every instance, where heirs of the original grantees were living, their rights were acknowledged and respected, alike, where the heirship was by direct or collateral descent, and whether the heirs to any lot were many or but one. And this is spoken of in the schedule which makes a part of the report, not as a matter of courtesy or convenience, but of absolute right. Thus, for instance, it is said: "The second lot was originally laid out to Tom Pin, who died without children, and has left *three co-heirs*, Isaac Church, Mercy Hope, and Experience Ward"; and on the accompanying plan, shewing the ownership of such lots as had inherited them from the original proprietors, it is said "this [the second] lot *belongs* to Mercy Hope, Isaac Church, and Experience Ward." Again; the schedule says: "the fifteenth lot, originally laid out to Joseph Husband, *belongs* to Richard, grandson to his [Husband's] sister, Sarah Doggett." These two cases furnish instances of collateral descent, and of inheritance both by a single heir and by more than one.

But, aside from all these considerations, the right of the heirs to the inheritance, and to hold it in severalty according to the assignment, would seem to be conclusive, from the nature of the grant. It was not made as a gift, conferred without pecuniary consideration, nor yet as a provision for paupers dependant on the State for support, but, as an equivalent for services, and, as such, carried with it all the rights of property, to which Indians were entitled under the laws of the State, as completely as if it had been purchased with the money of the grantees.

This report is based on the evidence I obtained from Mrs. Mitchell and the Guardian. Since it was written, I have ascertained facts from the Provincial Records which demonstrate most completely the correctness of the conclusions to which I had arrived in the report, viz: that the lots belong



An objection was made by the Guardian, that there was no sufficient evidence that Mrs. Mitchell is the *sole* heir of Benjamin Squinnemay. There might be some force in the objection, if the matter had not been investigated, or if good cause had been shewn, to believe that there were other heirs living; but as the Committee of the Council of 1857 made inquiry, and reported that they were satisfied she was the *sole* heir of Benja. Squinnemay; as the Council of 1858 recognized her rights as such, as the Guardian, himself admits that she is *an* heir, and as it is hardly possible, after the notoriety that has been given to Mrs. Mitchell's claim, and the consequent excitement among the members of the tribe, that any other heirs should be in existence, and the fact not become known, it would be unjust that her rights should be prejudiced by the mere suggestion that such might possibly be the case, when unsupported by any evidence to that effect.

I am therefore of the opinion that Mrs. Mitchell has sustained her claim to the ownership of the four lots in question, subject to the trusteeship of this Commonwealth, and that she is entitled to possession thereof, and to a fair equivalent for the wood that has been cut therefrom. By the report of the Committee of the Council of June 2, 1858, it appears that "the Guardian, B. F. Winslow, has paid the petitioner \$63.26, being as much as he thinks she is entitled to, of the money received from the sale of the wood." With this sum Mrs. Mitchell is not satisfied, and asks that the matter be investigated, and that a fair and just consideration be made to her, for the wood taken from her lots, down to the time when it may be adjusted.

Subsequently to the Report of June 2, 1858, the husband of Mrs. Mitchell, then living, purchased a building, and with the

to the several grantees in severalty, and to their heirs forever, but not in fee simple, the Commonwealth retaining the fee as their trustee. From those records it appears that the original grant of land was made to Capt. Church and members of his company in 1701. In 1707 the proprietors petitioned the General Court for an exchange of a portion of their land for some other which would better accommodate them, and for a division thereof, to be held in severalty, by them, their heirs and *assigns*, in other words for a grant of them in fee simple. The exchange of land was granted and made, and the original division into lots, and the assignment of them to the several proprietors, was made by a Committee, and on the 22d of November, 1707 the General Court confirmed the lands to them in severalty, and *to their heirs forever*. For a fuller account of this, and the relocation and assignment of the lots in 1764, see notice of the Fall River Tribe and Appendix C in my general report.

consent of the Guardian placed it on the lot which he had assigned to them, to be fitted up and occupied by themselves and family, as a dwelling house, with the intention of cultivating the land. The measures which had been taken by Mrs. Mitchell to obtain a recognition of her rights on the Plantation, had produced feelings of dislike and hostility toward her, in the minds of the residents on the Plantation, who looked upon her as a stranger and an interloper who was seeking to deprive them of their rights—feelings which had been freely manifested, by words, in the community and which were frankly avowed to the Commissioner, when he visited them. Soon after the house was placed on the territory, the windows were broken out, and other similar outrages were committed evincing a disposition to harass the family and to make their residence there disagreeable, if not impossible. These, with the death of Mrs. Mitchell's husband, which took place not long after, induced her to suspend further operations on the house, and it awaits, in an unfinished state, the adjustment and settlement of Mrs. Mitchell's claim.

It is obvious, that with the embittered state of feeling existing on the plantation toward Mrs. Mitchell, her settlement thereon would be unfavorable to the peace of the neighborhood, and most unpleasant to herself and family, and should be avoided, if it can reasonably be done. Believing that the interest of all parties concerned would be promoted by an adjustment that should give to Mrs. Mitchell a fair equivalent for her interest in the property at Fall River, and leave the State in possession of the same, for the benefit of the Indians residing there, I would respectfully recommend that measures should be taken to that end. Mrs. Mitchell's husband was a worthy and respectable man, a tax payer, and a citizen. She is a capable energetic woman, a member is good

The Annual Report of the Guardian dated Sept. 30, 1858, says:

"During the past year, the peace and quiet of those living on the Indian lands have been disturbed by a 'new comer' amongst them. One Zurviah Mitchell, a descendant of one of the tribe, came and claimed sole ownership of one eighth of the whole tract of land, and a Committee of the Council having decided, through a misapprehension of the facts in the case, that she was the owner, by inheritance, of the premises, claimed by her she has taken liberties, not heretofore allowed or claimed by any other member of the tribe. And, although another Committee of the Council have since decided that the said Zurviah Mitchell is *not the owner in fee simple* of any part of said lands, yet she continues boisterous in her claims, under the decision of the former Committee, and *has caused much ill feeling*, on the part of those of the tribe who live on the lands, towards her, and considerable trouble for the Guardian."

standing of a Christian Church, and is represented to be entirely competent to the management of her own affairs. She neither desires nor needs the Guardianship under which the Indians are placed, and would be better situated among her friends at her present home in Abington, where she has long resided, than among strangers, between whom and her unkind feelings prevail, on the plantation at Fall River. An arrangement which would prevent her settlement there would probably be quite as advantageous to the residents on the plantation, and to the Guardian, as it would be to Mrs. Mitchell.

I would, therefore, respectfully recommend that the Governor be authorized to appoint, with the advice and consent of the Council, a Commissioner whose duty it shall be to ascertain what amount, if any is still equitably due to Mrs. Mitchell for wood taken from her lots, and to agree with her upon a sum, on the payment of which she will relinquish to the Commonwealth all her right and interest in the Indian lands at Fall River, and, failing to make any arrangement with her, shall be authorized to proceed and lay out the lots for her, according to the original survey and allotment, and for this purpose, I report the annexed Resolves.

All which is respectfully submitted

JOHN MILTON EARLE

Commonwealth of Massachusetts,

House of Representatives, M'ch 15, 1861.

The Committee on Claims to whom was referred the Special Report of John Milton Earle, Commissioner under the act of April 6, 1859, relating to the Indians of the Commonwealth, ask to be discharged from the further consideration thereof and recommend that portion of the Report which refers to the case Zurviah G. Mitchell, be referred to the Committee on Probate and Chancery, and that portion, which relates to the Case of John Hector, to the Attorney General of the Commonwealth.

For the Committee,

S. B. STEBBINS,

Senate March 21, 61.

Concurred

S. N. GIFFORD Clerk

H. of R. Mar. 16 /61.

Accepted

Sent up for concurrence

WILLIAM STOWE, Clerk

## APPENDIX B.

Resolves 1861, Chapter 62.

## RESOLVES IN FAVOR OF ZURVIAH G. MITCHELL.

RESOLVED, That the governor and council be and they are hereby authorized to examine the claims of Zurviah G. Mitchell, and to ascertain what amount, if any, is still due to her for wood cut from her lots on the Indian territory, at Fall River, and sold by the successive guardians of the Indians at the place, for their benefit; and also to agree with the said Zurviah G. Mitchell, on a sum, for which on the payment to her, she will relinquish to the Commonwealth all her right, title and interest in and to said lots.

RESOLVED, That in case a satisfactory arrangement cannot otherwise be made with the said Zurviah G. Mitchell, of the sum to be paid to her for the relinquishment of her claims, the governor and council may agree with her on referees, to whom the question shall be left, and whose decision thereon shall be final and conclusive; subject, however, to the approval of the governor and council.

RESOLVED, That on the satisfactory adjustment of these matters, the governor be authorized to draw his warrant on the treasury for such amount as may be awarded to said Zurviah G. Mitchell, to be paid to her on the signing of such release as shall be satisfactory to the governor and council; said release to be a perfect and full discharge of the Commonwealth, and of the guardian of the Troy or Fall River Indians, from any claim she may have on the Indian land at Fall River, or for wood which may have been cut thereon.

RESOLVED, That in case a satisfactory arrangement cannot be made with the said Zurviah G. Mitchell, for the relinquishment of her rights in the Indian plantation, the guardian of the Troy or Fall River tribe be authorized to proceed to survey and lay out her lots, by metes and bounds, according to the original laying out, giving her due notice of the time when it is done; provided, however, that the legislature shall not have previously provided otherwise, for a new survey and location of the several lots on said plantation.

Approved April 2, 1861.

## APPENDIX C.

Miscellaneous Files;  
Reports of Indian Guardians, etc.

Fall River March 12<sup>th</sup> 1843

To the Hon. John A. Bolles Secretary of the Commonwealth of  
Massachusetts -

Sir-

Your letter dated Feb 1<sup>st</sup> 1843 was received on the 4<sup>th</sup>  
inst. at which time I was confined to my house with sickness -

You request me to state to you my own compensation, and  
that of my Deputies or Agents for the ten years, ending the first  
of the present year, or for the time I have been in office.

In reply, I state, that I have had no Deputies or Agents- I  
received my Commission as Guardian of the Troy Indians in May  
1836 - and have held said Commission six years the eleventh day  
of May last past - From the time I first rec<sup>d</sup> my Commission to the  
ending of the last year, I have received as compensation for my  
services as Guardian as aforesaid, one hundred and four dollars-  
I have charged for my services for the year past, twenty five  
dollars, and my bill for that sum is now before the legislature-  
but I have not yet rec<sup>d</sup> it- nor do I know that it has yet been  
allowed-

Very Respectfully,

Yours &c. HOLDER WORDWELL

## APPENDIX D.

Miscellaneous Files  
Reports of Indian Guardians, etc.  
Report of the Guardian of the Troy Indians.

The population of the tribe is thirty three.

Six families reside on the Indian lands; and contain in the  
aggregate sixteen persons.

Three other families reside in this vicinity, not on the lands  
of the tribe.

The general condition of the tribe is much better than in  
former years; the dwellings are in good repair; and some small  
portions of land well cultivated.

Two persons belonging to the tribe (both females) about 80 years of age are supported entirely at the expense of the Commonwealth, excepting their fire wood, which is obtained from the Indian lands.

Several others have received some aid from the state, mostly on account of sickness.

Amount expended by Guardian, for support of paupers, care of sick, and medical services, for nine months to Oct. 1, 1857.

Three hundred Sixty four & 7/100 Dollars	\$364.07
Paid for three Pews & expense of purchasing the same	166.25
Paid Indian Woman for her right in Woodland, by order of Council	51.76
Incidental expenses	23.35
Guardian's Services	75.00
	—
	\$680.43

One hundred and Sixty dollars of the above, was appropriated by the Legislature of 1857, for the purchase of Pews in Meeting House at North Westport.

Amount received for Wood Sold from Indian land	\$90.93
Amount due from Rent of Pasture on Indian land	25.00
	—
Fall River,	\$115.93

Oct. 6, 1857

Respectfully submitted,

BENJAMIN F. WINSLOW

Guardian

## APPENDIX E.

### Miscellaneous Files:

#### Reports of Indian Guardians, etc.

To His Excellency the Governor, and the Honorable Council of the Commonwealth of Massachusetts:

The undersigned, Guardian of the Troy Indians would respectfully beg leave to submit the following report for the year ending September 30<sup>th</sup> 1861.

The real estate occupied by said Indians consists of 190 acres

and 61 rods of land, valued at	\$3000.00
and 5 Dwelling Houses valued at	\$1000.00
	—
Total	\$4000.00

Whole number of the tribe living in different places, as nearly as can be ascertained,—Eighty Six. Five families numbering nineteen persons, live on the lands of the tribe:

The whole number who have received aid for the year ending Dec. 31<sup>st</sup> 1860, twenty eight, twelve adults, and sixteen children.

Amount expended by the guardian for their support during the year aforesaid \$577.38, —\$550.63 was paid from the treasury of the Commonwealth, and the balance —\$26.75, was received for wood sold by the guardian.

One death and two births have occurred since the last report.

There has been, during the last six months, an unusual amount of sickness among the tribe; three persons—Alice Northup, Pamela Gardner, and Abby J. Butler have received aid in consequence of their sickness, and those being in addition to the number usually receiving help, will make the expenditures for the present year more than those of the last year.

The moral condition of the tribe has improved, in some particulars since my acquaintance with it (some fifteen years ago,) many of the children now attend the public and Sabbath Schools; and are not behind many others who possess greater social privileges. And aside from the love of strong drink on the part of three or four of the older members of the tribe, they are a respectable and orderly people.

All of which is respectfully submitted,

BENJAMIN F. WINSLOW,

Guardian Troy Indians.

Fall River

Sept. 30, 1861.

## APPENDIX F.

### Miscellaneous Files

#### Reports of Indian Guardians, etc.

To His Excellency The Governor of the Commonwealth of Massachusetts, and the Honorable Council.

The undersigned, Guardian of the Troy Indians, would respectfully beg leave to present the following Report, for the year ending September 30<sup>th</sup> 1865.

The whole number of the tribe is about eighty. Three have died during the year—viz: James Northup, son of Cato and Alice Northup, died Oct. 13<sup>th</sup> 1861, disease consumption, unmarried;

Alice Northup, mother of James, died Jan<sup>y</sup> 3<sup>d</sup>, 1865, — widow; Joseph Gardner, son of Lydia Gardner, a soldier in the 5<sup>th</sup> Mass. Cavalry, unmarried, died recently in Texas.

There has been one birth since my last report, Mary F. Perry daughter of William and Mary Perry, — born Feb<sup>y</sup> 2<sup>d</sup> 1865.

Four members of the tribe have been in the Army of the U.S. in the 5<sup>th</sup> Massachusetts Cavalry; and are now in the service with one exception: — Joseph Gardner, deceased, David Northup, Charles A. Page and Ebenezer Lindsey.

There is one in the State Alms House at Bridgewater, — James Crank.

And one, William H. Gardner, age 12 years, in the State Reform School, Westbor'o.

The general condition of the tribe remains the same as heretofore.

Expenditures for support, for the year ending December 31<sup>st</sup> 1864, and for repairs of buildings, \$646.24

Salary of Guardian 100.00

746.24

Amount received from State \$686.74

Do for rent of land 25.00

Do " Sales of Wood 34.50

746.24

Respectfully submitted,

Your Obedient Servant,

B. F. WINSLOW,

Guardian of the Troy Indians.

Fall River, October 5<sup>th</sup> 1865.

## APPENDIX G.

Senate Files: Miscellaneous.

1869

Report of Committee on Indian Affairs.

PUBLIC DOCUMENT . . . . . No. 35.

Commonwealth of Massachusetts.

To His Excellency the Governor of the Commonwealth of Massachusetts, and the Honorable Council.

The undersigned, Guardian of the Troy Indians, would respectfully submit the following Report for the year ending 30th September, 1868.



The general condition of the tribe remains about the same as at last report. Three births have occurred during the year: a son to Thomas and Julia Crank, born March 10, 1868; a son to William and Mary Perry, born 19th February, 1868, and a daughter to Josephus and Sophia Perry, born September, 1868. One death has occurred, viz: a son of William and Mary Perry, died on the 23d of August, 1868, aged six months.

There are now six members of the tribe who from age and infirmity need a large part of their support from the State, viz.: Sarah Crank, Pamela Gardner, Persis Crank, Lydia Gardner and Lucretia Miller. One, James Crank, is still at the alms-house, Bridgewater.

The expenditures for the year ending December 31, 1867, were as follows:—

For supplies of provision, clothing, medical services, cutting and drawing wood, and other charges,		\$469 46
Salary of Guardian,		100 00
		<hr/>
		\$569 46
Received from rent of land,	\$25.00	
from State Treasurer,	544.46	
	<hr/>	\$569.46

Respectfully submitted,

B. F. WINSLOW,  
Guardian Troy Indians.

Fall River, October 1, 1868.

Endorsement.]

H. R. Feb. 13, '69

Ref<sup>d</sup> to the Com<sup>ttee</sup> on Indians,

Sent up for concurrence

W S ROBINSON Clk

Senate Feb. 15, 1869

Concurred.

S. N. GIFFORD Clerk



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