

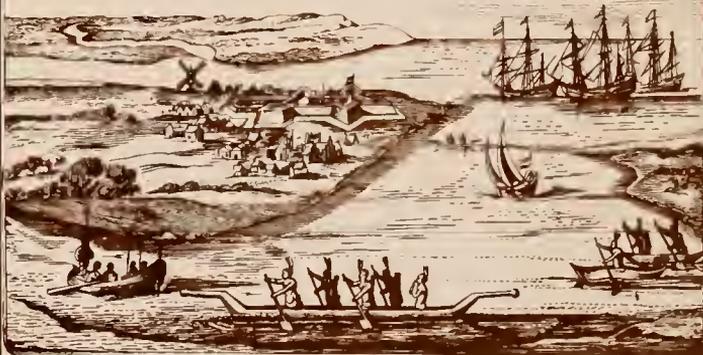


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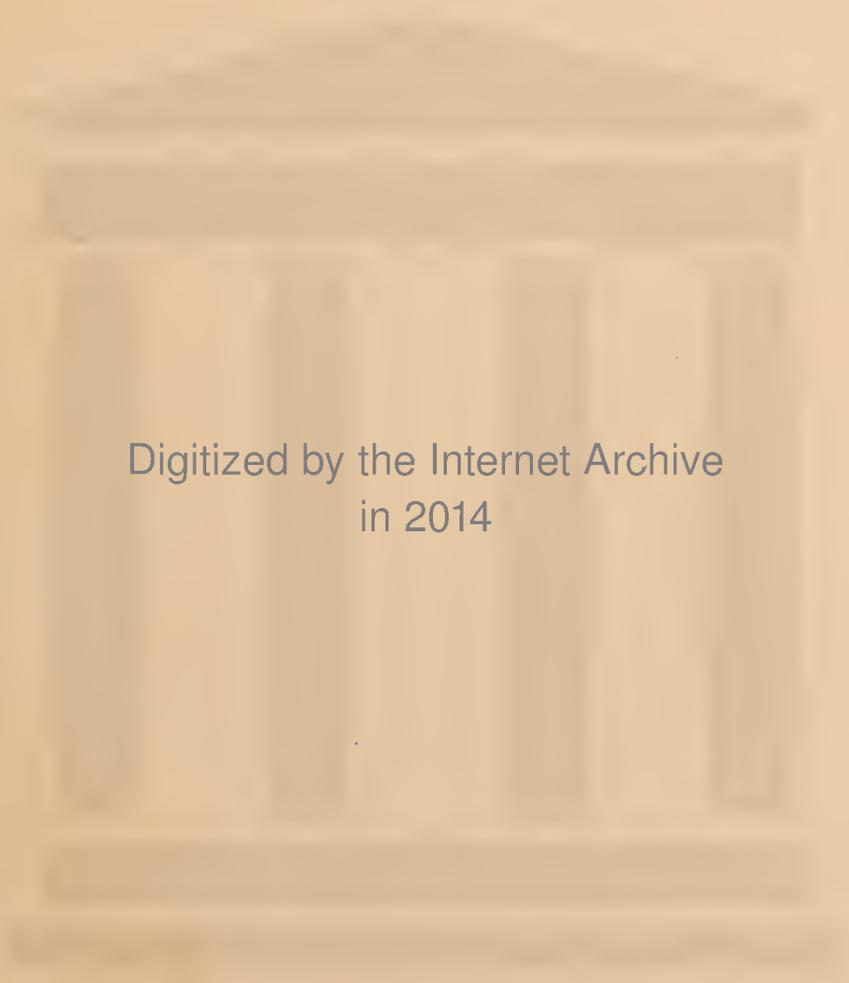
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*When you leave, please leave this book  
Because it has been said  
"Ever'thing comes t' him who waits  
Except a loaned book."*

To Cousin John Coombs  
with compliments of his  
friend Addison Brown

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# THE ELGIN BOTANIC GARDEN

ITS LATER HISTORY

AND RELATION TO

## COLUMBIA COLLEGE

THE NEW HAMPSHIRE GRANTS

AND

## THE TREATY WITH VERMONT IN 1790

BY

ADDISON BROWN, A.B., LL.B., LL.D.

*Ex-Judge of the United States District Court for the  
Southern District of New York*

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## PREFACE

The following sketch was written for the Bulletin of the N. Y. Botanical Garden (vol. V : 319-372) from which it is taken. The subject of the latter part of the article, viz., whether in the grant to Columbia College in 1814 the intent of the Legislature was to make *compensation* for any loss or injury to the College through the treaty of 1790, was found to require, having regard to the probabilities of the case as affected by the origin and history of the claim, more historical treatment than was anticipated.

The question, though not now of any practical concern to the parties to it, is of much historical interest and importance. For if compensation was intended, the case affords a valuable precedent for the future; while on the other hand the state's refusal of compensation to many other similar applicants in the same matter would convict the State of partiality to the one, or of gross injustice to all the rest.

Having become satisfied upon examination that the Legislature in 1814 had no such intent as alleged, and that no such inconsistency existed, it seemed desirable that the main considerations leading to a conclusion so contrary to current statements, should be fully stated. Among the most important of these are the origin of the patents on which the land claims were based; the authority of the governors to make them; their terms and conditions, and what was done under them; and finally their status and actual and prospective value in 1790, when the treaty is said to have caused the injury.

At the foundation of these enquiries, therefore, lay the question of the limits of the jurisdiction of the governors who granted the patents, or the Eastern boundary of the Province of New York under the Charter of 1664; or, since that charter contained no definite northern or eastern boundary, the extent of the actual settlement and occupancy by New York or by the Dutch, to whose rights New York by capture succeeded.

As the Duke of York's charters, moreover, in 1688 merged in the Crown, whereby his proprietary government ceased and New York became, like New Hampshire, a royal province only, the boundaries of both provinces and the jurisdiction and authority of their governors were thereafter at all times alterable at the King's pleasure. The reports of the Lords of Trade, who were charged with the Colonial administration, and the royal orders based upon them, as those orders were intended, understood and construed by the Crown and its chief ministers, and as expressed through their instructions to the provincial governors were binding and conclusive, and hence of prime importance in this enquiry.

The compilation of these papers now published in the Documentary History of New York and in documents relative to the Colonial History of New York has made this material easily accessible. The larger local histories make full use of it. The general histories make little allusion to this subject, and I have found no account that in brief space sets forth what seems indispensable to a right understanding and comprehension of the original merits of the New York land claims in the New Hampshire grants and their status in 1790, with such citations from the papers above referred to as would enable the reader to form some judgment of his own, and to pursue further inquiries as might be desired. The notes referred to in the main text are designed to supply this desideratum.

For data respecting the later history of Elgin Garden, the writer acknowledges with thanks his obligations to J. B. Pine Esq., Secretary of Columbia University, and to Prof. F. S. Lee, of the College of Physicians and Surgeons.

A. B.

NEW YORK, March, 1908.

## The Elgin Botanical Garden, its Later History, and Relation to Columbia College and the Vermont Land Controversy.

A century ago, the Elgin Botanical Garden, opposite the present Cathedral at Fifth Avenue and Fiftieth Street, was the pride of the New Yorkers of that day. It was the first establishment of the kind in this State, and was regarded as a marvel of the skill, zeal and munificence of Dr. David Hosack, who had created it. Something of the romantic interest that originally attached to it has descended to our own times, though as a botanical garden it has long since disappeared. Its history up to January, 1811, when Dr. Hosack conveyed it to the State, is pretty fully told by him in his "Statement of Facts," etc., concerning it, published in March, 1811,\* from which most of the subsequent notices of it are drawn, and there end. Nor have I been able to find any consecutive account of the use and management of the garden after that date, or of its decline and extinction. Such facts as have been learned will supplement, in some measure, the early narratives.

Latterly also some errors have crept into current accounts. In a recent address, the site of the garden is incorrectly given.† A common impression also has been that Columbia College received the property from the State in 1814 under an obligation to maintain it as a botanical garden; though released from that duty by Ch. 19 of the Laws of 1819. Lossing states this explicitly.‡ The same idea is expressed in the Columbia University Quarterly.§ In Torrey's (*loc. cit.*) it is said that in Columbia's hands the use of the grounds "was *diverted* from that of a botanical garden to highly profitable rentals."

\* Published apparently to correct some errors and misrepresentations about its sale to the State. An earlier and much briefer Descriptive Tract, without date, containing some additional particulars, may be found in the N. Y. Historical Society, and in *Med. Repository*, 13: 292. 1810.

† Torrey, 6: 104, 105. 1906.

‡ *Hist. of N. Y. City*, 146. 1884.

§ 5: 279. 1903.

More common is the statement, unknown, so far as I can find, for forty years after the gift to Columbia, that the grant of the Garden to her in 1814 was made as a “*reimbursement*” or “*compensation*” to Columbia for her lands in Vermont, “*ceded*” by New York to that State by the treaty of 1790.\* It has even been called an “*exchange*.”†

These expressions, I think, are all misconceptions having no valid basis. It is desirable that the facts derived from records and documents bearing on these points should be brought together, both from their inherent interest and their connection with a striking episode in our colonial and revolutionary history.

Something, however, should be premised of the eminent man by whom the Elgin Garden was founded. His father, Alexander Hosack, was born at Elgin (for which the garden was named) in Scotland, in 1736. In 1758 he came with Gen. Jeffrey Amherst, as an artillery officer, to the siege and capture of Louisberg, and afterward settled in New York, where he married Jane, daughter of Francis Arden, a prominent New York merchant. David Hosack was their oldest son, born August 31, 1769. He was for two and one half years a pupil of Columbia, but completed his college course in 1789 at Princeton.

He received his medical degrees at the University of Pennsylvania in 1791, and at Edinburgh in 1793, studying there and in London from 1792 to 1794, where he met many scientific men.

“One day,” he writes, “while walking in the garden of Prof. Hamilton, near Edinburgh, I was very much mortified by my ignorance of botany, with which his other guests were familiar, and I resolved to acquire a knowledge of that department of science.”‡

He was soon pursuing botany diligently under Curtis in his botanical garden at Brompton, and afterwards with Sir

\* New Internat. Encycl., 5: 49. 1903; Van Amringe, Hist. Columbia Col., 67. 1876.

† Columbia Univ. Quart., 5: 279. 1903; King's Handbook of N. Y., 272. 1893.

‡ Dr. A. E. Hosack in Gross' Amer. Med. Biog., 1: 297, 298. 1860.

James E. Smith, president of the Linnean Society, who became a life-long friend.

On his return to New York, Dr. Hosack took with him the first considerable cabinet of minerals brought to this country, and also duplicates of the herbarium of Linnaeus, afterwards given by him to the Lyceum of Natural History, but since destroyed by fire.

In 1795 he was made professor of botany in Columbia College, and in 1797, of *materia medica* also, which chairs he retained until 1811, when he resigned, on being made professor of *materia medica* and clinical medicine in the College of Physicians and Surgeons, which he held until 1826.\* In that year he, with Dr. Mott, Dr. Francis and others, resigned, through dissatisfaction with the government of that institution, and formed the Rutgers Medical College, with Dr. Hosack as president of the faculty.† The new school was very prosperous until the state interfered in 1830 and gave such advantages to the College of Physicians and Surgeons as caused Rutgers to be abandoned, though without immediate advantages to its older competitor.‡ Dr. Hosack did not afterwards engage in public instruction. He died December 23, 1835, from apoplexy caused by exposure to extreme cold.

The above engagements form but a small part of Dr. Hosack's activities. In 1796 he became a partner of Dr. Samuel Bard, who in 1798 retired to the country at Hyde Park § (where Dr. Hosack afterwards had a summer residence), leaving Dr. Hosack in the enjoyment of a large and lucrative practice. He became, says Dr. Francis, for thirty years the leading practitioner of his time. For twenty years he was one of the physicians of the New York Hospital. He attended Hamilton at his fatal meeting with Burr, July 11, 1804, and the following day until his death.

\* Pres. Barnard, Ann. Rept. 1878: 39.

† Hosack, Inaug. Address, Rutg. Med. Col., 1826.

‡ Dr. Francis in S. W. Williams' Amer. Med. Biog., 276. 1843; Gross' Amer. Med. Biog., 295-317. 1860 — the best sketches of Dr. Hosack's life that I have met, though they make but little mention of the Elgin Garden.

§ Dr. Ducachet in Amer. Med. Recorder, 4: 609.

It is a mark of Dr. Hosack's magnanimity of character, that though like Hamilton's other friends he probably regarded Col. Burr as little better than Hamilton's murderer, he nevertheless, four years afterward, when Burr, acquitted of treason, was in hiding in New York, seeking shelter from universal and overwhelming obloquy, supplied him with necessary passage money to effect his escape to Europe.\*

Dr. Hosack was one of the leaders in establishing the College of Physicians and Surgeons in 1807,† where he was professor of botany from 1807 to 1808, when he resigned. He was one of the organizers of the New York Historical Society, and for eight years its president, and for several years president of the New York Horticultural Society. Bellevue Hospital and the Humane Society were established "mainly by his persevering exertions."‡ He was a fellow of the American Literary and Philosophical Society, and of the Edinburgh and London Royal Societies.

He was large and robust of frame, of commanding presence and a piercing eye. His ideas and his views were also large and broad. He had a facile and elegant pen. From 1811 to 1814 he edited, with Dr. Mitchill, *The American Medical and Philosophical Register* (4 vols.), and his writings were numerous — medical, literary and biographical, including memoirs of Dr. Hugh Williamson and Gov. De Witt Clinton.

"His ardent temperament," says Dr. Dalton,§ "and undoubting self-reliance led him to the front in many controversial discussions, and his views were always maintained with force and ability. His sonorous voice, impressive manner and changing expression of face, gestures and utterance held attention."

"Hosack was a man of profuse expenditure," says Dr. Francis; "had he the wealth of Astor he might have died poor. . . . It was his general rule to terminate his spring

\* Lamb's *Hist. of N. Y.*, 2: 540.

† *Hist. Columbia Un.*, 316. 1904; Gross' *Amer. Med. Biog.*, 316. 1860.

‡ Lossing's *Hist. New York City*, 1: 115. 1884.

§ Dalton's *Hist. Col. Phys. and S.*, 39, 40. 1888.

course of botanical lectures by a strawberry festival, . . . to be practical as well as theoretical." "The disciples of the illustrious Swede must have a foretaste of them," he said, "if they cost me a dollar a piece."\* His character and social position are thus summarized :

"In all prominent movements concerned with the arts, the drama, literature, medicine, city improvements or state affairs, Dr. Hosack bore a conspicuous part; . . . he was distinguished beyond all rivals in the art of healing; universally acknowledged, also, to have been the most eloquent and impressive teacher of scientific medicine and clinical practice this country had as yet produced. His manner was pleasing, and his descriptive powers and his diagnosis were the admiration of all. . . . His early efforts to establish a medical library in the New York Hospital, his coöperation with the numerous charities which glorify the metropolis, his primary formation of a mineralogical cabinet, his copious writings on fevers, quarantines and foreign pestilence . . . and his adventurous outlay in establishing the botanical garden, evinced the lofty aspirations which marked his whole career as a citizen. It was a frequent remark in New York during his lifetime that Clinton, Hosack and Hobart were the tripod upon which the City stood.

"Through his fondness for society he exerted a strong personal influence. He gave Saturday evening parties, and, surrounded by his large and costly library and his works of art, there never was a more genial and captivating host. Great divines, jurists, etc., . . . and distinguished foreigners were summoned to his entertainments and charmed with his liberal hospitality. His home was the resort of the learned and enlightened from every part of the world. No European traveller rested satisfied without a personal interview with Dr. Hosack; . . . the Duke of Saxe Weimar mentions in his diary the social prominence of the Hosack Saturday evenings."

His son, Alexander Eddy Hosack, was a surgeon of distinction, who died at Newport, R. I., in March, 1871; his widow bequeathed \$70,000 for the Main Hall in the New York Academy of Medicine, where a tablet commemorates

\* Dr. Francis' Old New York, 30-31; 84, 85; Lamb's Hist. N. Y., 2: 581-583.

his memory. His botanical library has been given by that institution to the New York Botanical Garden in Bronx Park.

#### THE FOUNDING OF THE GARDEN.

Soon after his appointment in 1798, Dr. Hosack desired Columbia College to apply a small sum annually for a botanical garden, as an aid in the study of *materia medica*. A committee recommended £300 annually; but the trustees disallowed it for lack of funds. In 1800 he applied to the state legislature to aid in the same project, but without success. He then determined to undertake the work with his own means, trusting that when developed the garden would command public support.

Accordingly in 1801 he bought of the city four plots of the "common lands" (Nos. 54, 55, 60 and 61) in all about twenty acres, or 256 city lots, extending from 47th Street to 51st Street and from Middle Road (now Fifth Ave.) westward to a line about 100 feet east of Sixth Avenue. The deed was dated and executed by Mayor De Witt Clinton August 6, 1804. It conveyed to David Hosack the above four plots for \$4,807.36 in money, and a quit rent of sixteen bushels of good merchantable wheat to be paid every May 1 in kind, or its equivalent in gold or silver coin.\* These quit rents were in 1810 commuted and released for \$285.71; and in exchange for the city's rights in the streets through the four lots, he conveyed to the city in December, 1810, plot No. 84 of the common lands, of about five acres on 57th Street.† As the garden work was begun in 1801, probably that was the date of the purchase and first part payment, the deed in 1804 being given on the complete payment of the price.

The development of the garden was pushed forward with the energy and success of an enthusiast. Dr. Hosack's acquaintance with scientific men abroad greatly aided him in obtaining plants, seeds, shrubs and trees from every quarter. By 1806 the grounds, he says, were mostly under cultivation,

\* Recorded in Comptroller's office, Vol. 1, fol. 62.

† Deed dated December 31, 1810. Recorded in Reg. office, Liber 323, p. 534.

having about 2,000 species of plants, with one spacious greenhouse and two hot-houses, presenting a frontage of 180 feet. The plots devoted to plants were encircled by shrubs and trees; and the whole ground enclosed by a stone wall seven feet high and two and one half feet thick. Pursh was for a number of years the curator.

The early descriptive tract above referred to says:

“A nursery is also begun for the purpose of introducing into this country the choicest fruits of the table, . . . which the proprietor has been enabled to procure from various parts of the world, and from which the establishment *will hereafter derive one of the principal sources of its support*” — an expectation which, of course, was but slightly realized.

Dr. Francis in his “Old New York” (pp. 28-29) says:

“In 1807 the garden was a triumph of individual zeal, ambition and liberality, of which our citizens had reason to be proud. The eminent projector of this garden, with princely munificence, had made these grounds a resort for the admirers of Nature’s vegetable wonders and for the students of her mysteries.”\*

*The Sale to the State.* — Dr. Hosack’s expenditures upon the garden, according to his “Statement” (p. 56), must have exceeded \$100,000. Unable to sustain this burden, and disappointed in his appeals to the Legislature for support in 1805 and 1806, he was compelled in 1808 to offer the garden for sale. Upon the advice of many friends, in order to preserve it from extinction, he petitioned the Legislature in 1808 and again in 1809 to purchase and maintain it as an aid in medical education. Failing in the latter year by only six votes, the petition was renewed in 1810, supported by special memorials from the mayor, the common council of the city, the governors of the New York Hospital, the County Medical Society and five other medical societies of the state, and by many of the most prominent citizens and numerous medical

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\*Soon after the garden was established, the site of the present cathedral at 50th Street was purchased for the Jesuit College, the garden opposite being one of the attractions to that block. That college was carried on for a number of years. See U. S. Catholic Soc. Hist. Records, 4 : 329-334. 1906.

students. The medical faculty of the College of Physicians and Surgeons also favored the petition; but the censors and trustees strongly opposed it, because of the distance of the garden from the college (three and one half miles) and of its subordinate importance in medical education. The trustees of Columbia also declined to lend their support.\* It is not improbable that an additional reason for not joining in the application was that it might naturally obstruct further grants of patronage to themselves, which both colleges greatly needed for other purposes.

After much debate, a bill was passed March 12, 1810, by a small majority authorizing the purchase and a lottery to raise money to pay for it. The act was entitled an "Act for promoting Medical Science in the State of New York." It directed the fair value of the land and improvements, excluding the plants, to be ascertained by commissioners and paid from the proceeds of the lottery. Appraisers fixed this value at \$74,268.75; the land and wall being rated at \$2,500 per acre, and the buildings at \$24,300, and the plants at \$12,635. Dr. Hosack accepted the terms of the act though the compensation was \$28,000 less than his outlay; and having, as required, cleared the title of claims for quit rents and street rights, he conveyed the grounds, buildings and plants to the People of the State by deed dated January 3, and filed in the office of the Secretary of State, January 14, 1811.†

\* See *Exposition of the Transactions of the College of Physicians and Surgeons*, 16-21. 1812. This pamphlet exhibits the bitter feeling which at that time existed between the two medical schools, which were soon afterward united. At page 18, an amusing satirical note after referring to the botanical garden as Dr. Hosack's "*county-seat*" and "*garden*," proceeds as follows:

"On the gate is now written, '2 Shillings admittance, excepting subscribers and purchasers.' . . . Money is drawn from the sale of plants and vegetables and the *pasturing of cattle*. *These animals*, to the number of 20 or 30, attend the *Botanical Garden* and excite the ridicule of travellers passing there."

† Several trust deeds in the nature of mortgages, executed soon afterwards by Dr. H. upon the expected proceeds of the Lottery, for the benefit of Nath. Pendleton, Brockholst Livingston and several others, show how considerably Dr. H. had been obliged to draw upon his friends in building up the Garden enterprize. (*Liber 90*, p. 524, February 23, 1811; *Lib. 91*, p. 74, March 5, 1811.)

The general interest apparently indicated by the wide support of Dr. Hosack's petition, led Dr. Mitchill in June, 1810, to open a course of popular botanical lectures at 12 Magazine (Pearl) Street; but though, as he says, "they were carefully arranged and well advertised," there was but a slight attendance—15, 10, 4, and 9 persons at the first four lectures respectively, "without a single course ticket sold, or a pupil engaged"; and the course was then abandoned. (Letter of Dr. M., June 19, 1810, in "Exposition etc. of Phys. and S." 21-23. 1812.)

#### UNDER THE REGENTS AND THE COLLEGE OF PHYSICIANS AND SURGEONS, 1811 TO 1816.

The Act of 1810 provided for the management of the Garden as follows: (Sect. VII.)

"The Regents shall from time to time make such orders and regulations relative to the keeping, *maintaining* and preserving the said botanical garden and the use and employment thereof for the *benefit of the Medical Schools* of this State as they shall judge most conducive to the public good; and they are hereby directed *to make such regulations and take such measures for the support of said establishment, that it shall be attended with no future charge or expense* to the State; *provided* that physicians and medical students shall at all times have access to it *free from any expense*; and *provided* that the People of this State shall have the right at all times to sell and dispose of said property in such way and for such purposes as they may deem expedient."

The regents being thus forbidden to incur any expense to the State, committed the garden in May 1811 to the management of the College of Physicians and Surgeons, "to be kept and preserved in a condition fit for all medical purposes and open to medical students."\*

Up to that time Dr. Hosack had continued to pay the garden expenses, † and the medical students of both colleges had enjoyed the privileges of the garden in botanical instruction. ‡

\* Am. Med. and Phil. Reg., 2: 4; 3: 242; 4: 117. 1811-1814; Regents' Rept., 1811, 1812. Notice and Act in Medical Repos., 14: 373. 1811.

† Regents' Rept., January 12, 1812.

‡ Rept. to Regents by Col. Phys. and S., 1808.

In June, 1811, the garden was leased by the College of Physicians and Surgeons for five years to Michael Denison, Dr. Hosack's former gardener, whereby he agreed to keep it in good condition (after certain repairs by the College, costing \$543.98) in consideration of his having the produce of it, reserving for the garden, under the College inspection, three plants of every species.\* The buildings and the cultivation of herbaceous plants, as I surmise from the subsequent leases, were confined to the northeast part of the garden grounds, *i. e.*, north of 49th Street, and extending not over 450 feet westward from Fifth Avenue, the rest being used for shrubs, trees, nursery, crops and pasturage. The conservatories were between 50th and 51st Streets.

In 1811, the College of Physicians and Surgeons was re-organized by the Regents under a new charter. Dr. Hosack was called to the chair of materia medica and clinical medicine, and was largely instrumental in bringing about the union of the medical department of Columbia with the Physicians' College, which was completed in 1813-14.† Dr. Mitchill was professor of natural history including botany.

During the five years of Denison's tenancy, the College of Physicians and Surgeons had all the use of the garden that was desired. Dr. Mitchill "availed himself of its advantages."‡ In 1812 Dr. Hosack gave the lectures on Botany, "and the State Botanical Garden," it was said, "gave the most ample opportunity for study."§ In the *Syllabus of Courses* for 1814, it is said (p. 19)

"For practical lessons on genera and species, the grand establishment of Elgin . . . is visited as often as necessary."||

Differences, however, soon arose as respects the care and repair of the garden. Dr. Hosack reported in 1813 that repairs were much needed to fences, roads, cisterns, flues and

\* Dalton's Hist. Col. Phys. and S., 46. 1888. Trustees' Min., June, 1811: 18, 35.

† Hist. Col. Phys. and S., 39, 40.

‡ Ibid., 46.

§ Amer. Med. & Phil. Reg., 3: 242.

|| See Regents' Rep., 1814: 19.

conservatories, and that valuable plants had disappeared.\* I judge that these defects were soon remedied, for the trustees reported to the regents in 1812, that the garden was then "in good condition," and in 1814, that "the grounds were cultivated with care and continue in the same state of preservation as before." "We have a valuable botanical garden," they say, "highly useful and conducive to the acquisition of knowledge in *Materia Medica*" (p. 10). In 1815 there were similar complaints of decadence.

After several years of trial, however, in consequence of the distance of the garden from the College, its need of constant supervision and frequent repair, and the expense, the difficulty of finding a responsible and faithful tenant, the lack of state support and the subordinate importance of the garden in medical study, made the grant of the garden grounds to Columbia College in 1814† a welcome relief to the trustees of the College of Physicians and Surgeons, though Dr. Hosack was loath to part with it. Three times afterwards, as stated below, he endeavored, without success, to renew his connection with the garden by obtaining a lease of it to societies with which he was associated; and in 1816 he petitioned the legislature, also without success, to bestow the garden upon the College of Physicians and Surgeons, giving to Columbia instead, its money value § (post, pp. 16, 17).

When the garden was conveyed to the state, Dr. Hosack hoped it would remain a permanent institution under the state's support, as the *Jardin des Plantes* is maintained in Paris.¶ In that hope he had projected an enterprise, which, if carried out, would have been a permanent contribution to botanical science, but which, almost a century later, still remains unaccomplished. In his preface to the *Elgin Catalogue* (1811) he says:

\* Dalton's *Hist. Col. Phys. and S.*, 38. 1888. Trustees' *Min. Col. Phys. and S.*, 1: 35, 36, 73-78, 114; 2: 33.

† Act of Ap. 13, 1814, Ch. 120.

‡ Prof. Lee in *Hist. Columbia Un.*, 316. 1904.

§ Trustees' *Min. Col. Phys. and S.*, 2: 73; *Assembly Journal*, 1816: 384.

¶ "But it was suffered to go to ruin." Gross' *Amer. Med. Biog.*, 316.

“As soon as measures may be taken by the Regents of the University for the *permanent preservation* of the Botanic Garden, it is my intention immediately to commence the publication of *American Botany*, or a *Flora of the United States*. In this work it is my design to give descriptions of the plant, its uses, etc . . . to be *illustrated by a colored engraving* in the same manner in which the plants of Great Britain have been published by Dr. J. E. Smith. Considerable progress has already been made in obtaining materials for this publication” . . . “with drawings by James Inderwinck, a young gentleman of great genius and taste, and others by John [E] Le Conte Esq., and new collections by Mr. Pursh.”

But the regents could not obtain the necessary public support. The time was not ripe for a botanical garden at the public charge; and the existing business and financial conditions, the losses and depression from the prolonged embargo, the war with England, the closing of the National Bank, followed by irresponsible banking and a depreciated currency, were all adverse to grants of money for such purposes. The transfer of the grounds to Columbia in 1814, without any provision for the maintenance or preservation of the garden, of necessity sealed its fate sooner or later, since Columbia was then too weak to need it or to sustain it.

#### THE GRANT TO COLUMBIA NOT CONDITIONED UPON THE MAINTENANCE OF A BOTANICAL GARDEN.

The act of 1814, by which this grant was made, was originally designed mainly for the benefit of Union College, and so it remained to the end; but four other institutions, including Columbia, were finally embraced in it. The act is entitled, “*An Act instituting a Lottery for the promotion of Literature and for other purposes.*” \*

After providing for the lottery and for the payment from its proceeds of \$200,000, to Union College, and \$74,000 to other institutions, the sixth section enacted:

VI. “That all the right, title and interest of the People of the State in and to all that certain piece or parcel of land

\* Laws, 1814, Ch. 120. For its preamble and provisions for other colleges see post, p. 23.

. . . situate in the 9th Ward of the City of New York known by the name of the Botanic Garden and lately conveyed to the People &c. by David Hosack, be and the same is hereby granted to and vested in the Trustees of Columbia College; but this grant is made upon the express *condition* that the college establishment shall be removed to the said tract of land hereby granted, or to lands adjacent thereto, within twelve years from this time."

The seventh section directed that

"The Trustees of the College, within 3 months shall transmit to the trustees of the other colleges of the State a list of the different kinds of plants, flowers and shrubs in the said garden, and within one year thereafter deliver at the said garden, if required, at least one healthy exotic flower, shrub or plant of each kind of which they shall have more than one at the time of application, together with the jar or vessel containing the same, to the trustees of each of the other colleges who shall apply therefor."

There are no other conditions in the act. The grant is not of a botanical garden *to be maintained as such*. Had that been the intention, it would have been so declared in the act, as was done in the direction to the regents in the act of 1810 (ante, p. 9). By the latter act the state reserved the right to dispose of the grounds as it should see fit; and by the act of 1814, it granted them to Columbia, upon no other condition than that of *removal*, as required by the above § 6.

The obligation to distribute *duplicates* of exotic plants to other colleges that might apply for them, was not a condition of the grant; and though it imposed an obligation to preserve such duplicates for a year after notice to the colleges, it did not require their preservation in any particular place; still less to perpetuate a botanical garden; and after the expiration of the year, no duty whatsoever under § 7 remained, if the duplicates were delivered, or not applied for. This very provision for the distribution of exotic duplicates, seems to contemplate the speedy discontinuance of the garden as a botanical institution, and the dispersal of its most valuable plants. Considering the great financial needs of the college as set forth in its petition of 1814,\* and that the maintenance

\*Hist. Columbia Un., 100. 1904.

of a botanical garden would much increase its burdens, as was well known to all, I have not the least doubt that the college was not expected to maintain it, except as it might see fit to do so for the purpose of sale or exchange; and that the provision as to duplicates was inserted on account of this expected disposal of the plants.

The required removal to the garden grounds within twelve years, was not compatible with the permanent maintenance of a botanical garden; for there were but  $19\frac{3}{4}$  acres in all, and the college buildings, with suitable approaches, roads, yards, and a campus, would require so much of this space as not to leave sufficient for a botanical garden worthy of the name.

Thus all the provisions of the act of 1814, as well as the circumstances of the parties, so clearly negative any duty to perpetuate a botanical garden, that it is difficult to imagine how that idea gained currency.

The journals of the legislature do not show why *land*, instead of money, was given to Columbia. Dr. Vermilea states that Rev. Dr. Mason, Columbia's provost, who was representing her at Albany, "was *induced* to accept the garden and leave to Union the lotteries."\*

The land-grant (§ 6) seems to have been an *amendment* by the senate and accepted as such by the assembly,† although possibly it was only the senate's amendment of § 6 that was returned for acceptance. The lotteries for Union College authorized in 1805, were not drawn until 1814, and fell \$4,000 short of the authorized \$80,000, ‡ and Union needed much more money for her buildings, which the lottery of 1814 was intended to provide. In 1805, when the former lotteries for Union were authorized, and again in 1806, Columbia had presented to the legislature urgent memorials for relief, essentially the same as her memorial in 1814, but obtained nothing;§ and the same result might reasonably

\* Wilson's Memorial Hist. of New York, 3 : 584. 1893.

† Assembly Journal, 1814 : 475.

‡ Van Sanford's Life of Dr. Mott, 140 : Laws, 1805, Ch. 62.

§ Trustees' Min. Columbia Col. 2 : 240, 252 ; Assembly Jour., 1806 : 131, 132 ; "Assembly Papers—Colleges" (Albany), pp. 75-113. Post, pp. 49-50.

have been feared if she insisted on sharing in the lottery mainly designed for the new colleges. Columbia had already been considering the question of removal; \* and the garden grounds would certainly be useful to her at some time, either for sale or for her own occupancy on removal; and her acceptance of the land instead of money would leave larger sums for the other institutions. Some such considerations, no doubt earnestly pressed, probably led to the reluctant acceptance by Dr. Mason of the disguised treasure, which the trustees naturally enough at that time but lightly esteemed.

#### THE GARDEN IN COLUMBIA'S HANDS.

The grant of 1814 encumbered by the condition of removal, was not available for raising money by sale or mortgage, and "was not considered by the trustees an attractive or helpful gift."† They did not take formal possession until October, 1816, two years and a half after the grant, when repairs for the winter being needed, possession was tendered by the College of Physicians and Surgeons and accepted by Columbia. ‡

There was no intention of a continued maintenance of the garden; but it was thought that if the condition of removal were repealed, an advantageous sale or exchange might be effected. Urgent memorials were accordingly addressed to the legislature in 1817, 1818, and 1819 for the repeal of that condition, the last being successful, with a further gift of \$10,000, as the act of 1814 "had not been productive," as the preamble recites, "of the benefit intended." § The select legislative committee that considered the application in 1819, reported that the act of 1814 was intended to give relief to Columbia equal to the \$40,000 given to a sister institution [Hamilton College]; that by depreciation the grounds were not of one fourth the value supposed; that as a mere botan-

\* Moore's Hist. of Columbia Col., 82. 1846.

† Hist. Columbia Un., 36. 1904.

‡ Trustees' Min. Col. Phys. and S., 2: Sept. 27, 1816; Trustees' Min. Columbia Col., 2: 477-479.

§ Laws, 1819, Ch. 19; Trustees' Min. Columbia Col., 2: 423, 477, 493.

ical garden they would be an incumbrance rather than a benefit, and that removal was impracticable. That condition was accordingly repealed, and also the seventh section as respects duplicates.\*

The trustees' memorial of 1818 states, that when they took possession of the garden "the whole establishment was in a state of dilapidation and decay." † They made some repairs, and in March, 1817, let the grounds to a Mr. Gentle for one year, apparently without rent, but upon condition that he keep the green houses and grounds in order. Renewals were continued for several years, a long lease being refused on account of "the prospects of an advantageous exchange, if the property were kept unencumbered." ‡

In the summer of 1819, Dr. Hosack in behalf of the Agricultural Society applied for a lease for a term of years, free from rent, for "market gardening"; but the trustees declined to rent for a term of years, "unless a source of revenue." §

In May, 1819, the Committee on the Botanic Garden reported, that

"Agreeably to the wish of the Trustees, the *green-house plants* belonging to the College were offered to and accepted by the Governors of the Hospital; and the Committee have given an order for the delivery of them and such *ornamental trees* and shrubs as might be removed without injury to the place." ||

In 1823 the grounds were rented to J. B. Driver for five years at \$125 per year and taxes, the tenant agreeing "to keep the grounds and buildings in order, and not to lop, cut or remove any trees or shrubbery, or pasture other than his own cattle"; and the college reserved the right to cancel the

\* Assembly Journal, 1819 : 123, 124 ; Trustees' Min. Columbia Col., 2 : 477, 494. See post, p. 53, note.

† Ibid., 2 : 477-479.

‡ Ibid., 2 : 441, 507.

§ Ibid., 2 : 515, 519.

|| Ibid., 2 : 507. It was under this order, probably, that the yew trees which now flank the stone steps leading up to the Library Building, were first removed from the Elgin Garden to the "South Court," in Bloomingdale, from which, seventy-five years later, they were transplanted to near where they now stand.

lease in case of sale ; also the right to remove trees and shrubbery, and *glass* and *frames* from the front building ; and the tenant was to preserve them till removed." \*

In September, 1825, Dr. Hosack again applied for a lease, but the terms were not agreed on, † and in April, 1826, the garden was let to David Barnett, a seedsman, for ten years, at \$500 per annum, and taxes. Barnett paid no rent ; but \$118 was collected by a sale of his goods in 1827, and the lease was surrendered. ‡

In the summer of 1828 Dr. Hosack, in behalf of the Horticultural society of which he was then president, applied for a lease of the grounds, again without success. In his inaugural address soon after, he commented with some severity on his failure, saying that

“It was stated to the trustees that the society’s practical men would *restore* the establishment to the condition in which it was conveyed to the state.” §

But the trustees preferred a rental rather than a botanical garden, and private responsibility to that of an association.

In October, 1828, two leases were executed to William Shaw for 21 years from the following May ; one of 36 city lots on the block between 50th Street and 51st Street, and the other of the residue of the grounds, at the annual rent of \$400, repairs and taxes on the whole, and also any assessments on the 36 lots. || Shaw occupied and cultivated the grounds. ¶ In 1833 the trustees remitted \$100 per year from the rental for three years, upon Mr. Shaw’s petition showing that the premises when he took them were much more dilapidated than he supposed ; that he had expended for repairs to *dwelling-house*, grounds and wall, over \$5,000 ; that much of the ground was not tillable, being rocky beneath a thin

\* Trustees’ Min. Columbia Col., 3 : 84.

† Min. Stand. Com., Sept. 22, 1825.

‡ Trustees’ Min., 3 : 173, 187, 248 ; Min. Stand. Com., Oct. 26, 1827.

§ Address Hort. Soc., Aug. 26, 1828, p. 9.

|| Treas. Rept. Columbia Col., 1850 ; Trustees’ Min., 4 : 336 ; 3 : 248.

¶ Ibid., 3 : 443, 450 ; Min. Stand. Com., Aug. 28.

soil, two acres swampy, and that he had received notice that the wall encroached twelve feet on Fifth Avenue.\*

In November, 1833, Shaw assigned his lease to John Ward, a prominent exchange broker and banker in Wall Street and for several years president of the Stock Exchange, who had made advances to him upon it, and who held the lease until it expired in 1850. In 1835 and 1836 various negotiations were had between the trustees, who were anxious to pay off their accumulating debt, and Mr. Ward, looking to a cancellation of the lease, and the sale of new leases of single lots for long renewable terms, at a nominal rent, and a division between them of the premiums realized on the sales. The trustees voted to agree to this, provided \$6,000 were first reserved to them from the proceeds, and their share of the residue to be not less than \$40,000. Mr. Ward wanted 26 lots (four of them on Fifth Avenue), to be first reserved for himself. Other modifications were proposed, but no agreement could be reached.†

In 1838 the city began opening streets in the region of the garden. During the next 25 years the trustees expended over \$150,000 in payment of assessments, and by their own contracts, for completing the streets and levelling the grounds so as to be ready for use.‡ In 1850, though their debt amounted to \$68,000, the trustees, disagreeing with the standing committee, voted not to sell any of the property at present.§ In 1851, the long lease having expired, the grounds were laid out into city lots, and in 1852 it was resolved to prepare them for leasing in separate lots.|| In 1856 it was voted to remove the college to the two blocks on 49th Street, and Mr. Upjohn prepared plans for one of the buildings with a facade of 280 feet.¶ But the expense made building impracticable,\*\* and

\* Trustees' Min. Columbia Col., 3 : 298, 397, 409.

† Ibid., 3 : 336, 443, 450, 454, 461, 465, 476, 477.

‡ See Treasurer's Reports, and Reports to Regents, 1851 to 1863.

§ Hist. Columbia Un., 123-124 ; 130-160. 1904.

|| Trustees' Min., 4 : 357, 404.

¶ Hist. Columbia Un., 129. 1904.

\*\* Pine's Half Moon Ser., 2 : 47.

in the autumn, the asylum property on 49th Street was purchased as "temporary quarters," to which on May 12, 1857, the college removed, and remained there for 40 years.\* The idea of using the garden ground for college buildings was abandoned. Its rapidly rising value proved that it was worth more for nursing the college than for housing it.

In 1857 sixteen city lots at 48th Street and Fifth Avenue were sold to the Dutch Reformed Church for \$80,000, the first sale of any part of the garden grounds. In 1859, a map of the rest was made in city lots (No. 611, Reg. Office), and not long afterwards the trustees began leasing on renewable 21-year leases for the erection of first class dwellings; and before 1875 the lots on the four blocks were all taken and dwellings erected. Then, for the first time, the college came into the receipt of "highly profitable rentals," and in a few years it passed from straightened circumstances to comparative affluence.†

By the close of the century, the property that was estimated by the college authorities to be worth only from six to eight thousand dollars when received from the state, ‡ was worth as many millions. It had enabled the ill-supported college, struggling with innumerable difficulties for near a century and a half, to expand into a great university. The sale of the block between 47th and 48th Streets for about \$3,000,000 within a few years past has supplied the means for the payment of a considerable part of the cost of this expansion. The residue of the grounds, if sold at present prices, would discharge the remaining indebtedness and leave a surplus endowment of several millions. If these splendid results have sprung primarily from Dr. Hosack's courageous and brilliant enterprise, they are equally the fruit of the sagacious and heroic tenacity of the college trustees for three quarters of a century in holding on to the garden property, and in resisting the temptation to purchase present ease and freedom from debt at the sacrifice of a triumphant future.

*The Decline of the Garden.* — This was inevitable from the time when it came to the state in 1811 and the state refused to

\*Hist. Columbia Un., 160. 1904.

† Ibid., 191.

‡ Ibid., 102.

make appropriations for its support. No one else had sufficient interest and ability to keep up the necessary repairs and supplies. Such repairs as were made by the tenants up to the time of the lease to Shaw in 1828, were evidently unsubstantial; for, as above noted, the grounds and buildings are repeatedly spoken of as much out of repair, deteriorated, or dilapidated (ante, pp. 10, 16, 17).

After 1819, when the green-house plants were removed, though its botanical character suffered, the trustees aimed, as the leases show, to preserve the ornamental features of the garden, as an attraction to purchasers or lessees.

The earliest known engraving of the garden is the elegant one by L. Simond, published in the *Medical Repository* in 1810, vol. 13, p. 217.\* Another by Reinagle, in the *Catalogus Elginensis* of 1811, and in the *Amer. Med. and Phil. Register*, vol. 2, p. 1, 1814, is perhaps less attractive, but gives a wider view of the grounds. A third, much like the first, from a little different point of view, said to be of 1825, with a copy of the Sully portrait of Dr. Hosack, is given in the *Magazine of Am. Hist.*, 16: 218, 219, 1886. The latter, if its date is correct, indicates the continuance of ornamental culture till 1825; and though after 1819 it was no longer maintained as a botanical exhibition, the survival of many interesting trees, hardy shrubs and herbaceous plants must have long continued to make the garden an attractive resort.

The leases given by Columbia were all for agricultural and gardening purposes.† Dr. Hosack's offer in 1828 (ante, p. 17) "to restore the establishment," and "to renew and improve the green-houses," and Shaw's petition in 1833 (ante, p. 17), show that these buildings were then standing. I can learn nothing certain after that of the state of the garden, or when the buildings were removed; except that according to the tax records, but one building remained on the block in 1849 (the prior records being destroyed by fire),

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\* *Lithographic copy* in Valentine's Manual, 1859, p. 204, dated 1825.

† Assembly papers, "Colleges" (Albany), pp. 410, 542, 590; Petitions for aid, 1820, 1824, 1826.

which was probably the dwelling shown in the cut near 5th Avenue, and that disappeared from the records in 1856. The green-houses were probably removed some time during Shaw's lease, or at its close.

In Spafford's *Gazeteer of New York* for 1824 (p. 605) is the following notice of the garden — the last contemporaneous description of it I have found :

“It embraces a great variety of indigenous, naturalized and exotic *vegetables*: . . . Elgin Grove has as many visitants as the Botanic Garden, chasing pleasure or catching knowledge.”

Dr. Francis in 1829, says of it, \*

“Flourishing under its founder, it perished under the neglect of the public. It is not for me to speak of the disgrace that the state sustains by its failure in this enterprise.”

#### THE GRANT OF THE GARDEN TO COLUMBIA NOT MADE AS COMPENSATION FOR HER LAND CLAIMS IN VERMONT.

It has often been stated that the grant of the garden to Columbia College by the State in 1814, was made as compensation for her loss of lands in Vermont through the treaty with that State in 1790. Dr. Moore, President of the College, writing in 1846, says :

“This treaty . . . surrendered a property belonging to the college, which would at this day have been of immense value, and in doing so may be regarded as giving to the college *a claim of retribution*, which all that the state has since done for it does not fully satisfy ;” †

thus intimating the existence of a claim against the State, and of grants in partial satisfaction of it.

In the *New International Encyclopedia*, 5: 49. 1903, however, it is directly stated that the legislature granted the Hosack Botanical Garden to Columbia College

“as a *reimbursement* for lands in New Hampshire [Vermont] belonging to the college, which were ceded by the state on the settlement of the New Hampshire grants.”

\* Address to N. Y. Hort. Soc. (N. Y. Hist. Soc. Tracts).

† Moore's *Hist. Col. Col.*, 51. 1846; quoted in *Hist. Col. Un.* 1904: 36.

In Van Amringe's History of the College (1876) the garden grounds are said to have been

“ given to the college as a *partial compensation* for the large estate in Gloucester County, Vermont, which she had lost when Vermont was made a State.” \*

Similar statements are found elsewhere,† and are occasionally heard in current speech; and the grant has also been referred to as an *exchange*.‡

New York by the treaty of 1790 ceded to Vermont jurisdiction over her present territory; she did not cede, grant or transfer any *title* to lands; but she *declared* that, on Vermont's agreeing to pay her \$30,000, all claims and titles to lands in Vermont under grants from the Colony or State of New York (other than grants confirmatory of previous grants by New Hampshire) should *cease*. Columbia College at that time held New York Colonial grants, made from 16 to 20 years before, for about 54,000 acres of wild land. Many others held similar grants. Vermont had long prior to the treaty declared all such grants to be null and void, and by her citizen settlers she had long held possession of at least most of the lands. The intent of the treaty was to extinguish all such New York claims of title (as an incident to the independence of Vermont and of her admission into the union), and such was its practical effect.

The import of the expressions above quoted is, that this action of New York inflicted great loss on the college, and that the grant to her in 1814 was made and intended as a reimbursement, compensation or retribution for that act as a wrong.

On investigation I am persuaded that this view of the subject is wholly mistaken; that the treaty was not a wrongful act on the part of the state and inflicted no substantial loss on the New York land claimants, but was rather a benefit to them; and that the grant was a voluntary bounty, like the state's ordinary grants to educational institutions.

\* Hist. Columbia Col., 67, 56; not found in the History of 1904, nor in Chamberlain's "Universities and their Sons," 1: 573. 1898.

† King's Handbook of New York, 272.

‡ Columbia Univ. Quart., 5: 279. 1903 (with Reinagle's engraving).

The question requires an examination not only of the act of 1814, but also of the origin of these land claims, their condition in 1790, and the circumstances leading to the treaty.

*The Act.* — Nothing in the title or preamble of the act of 1814, to which we look for an explanation of its motive, indicates compensation for an injury to be its object, but quite the contrary. Its title is

“An act instituting a lottery for the promotion of literature and for other purposes.”\*

Its preamble reads as follows :

“Whereas well regulated seminaries of learning are of immense importance to every country, and tend especially by the diffusion of science and the preservation of morals, to defend and perpetuate the liberties of a free state: It is enacted,” etc.

The first five sections of the act provided for the lottery, and for the payment from its proceeds of the sum of \$200,000 to Union College; \$40,000 to Hamilton; \$30,000 to the College of Physicians and Surgeons of the City of New York; and \$4,000 to the Ashbury Colored Church of New York. The sixth section granted to the trustees of Columbia College

“All the right, title and interest of the People of the State in and to the parcel of land known as the Botanic Garden and lately conveyed to the people, etc., by David Hosack,” etc., “on condition of the removal of the College to said tract, or to lands adjacent thereto, within twelve years.” †

The reason and motive of the grant, as respects Columbia, as stated in the preamble, were the same as respects the other colleges named, viz., the public interest in the maintenance of seminaries of learning. No different purpose is intimated, and there is, therefore, a very strong presumption against any other.

There were numerous persons in the same situation with Columbia, as respects losses of Vermont lands, none of whom ever received compensation except from the fund paid by

\* Laws, 1814, Ch. 120.

† This condition was repealed by Ch. 19 of the Laws of 1819.

Vermont in accordance with the treaty; and it is not supposable that an intended compensation to Columbia, denied to all others, was thus secretly smuggled into the act of 1814, under a deceptive statement of a different purpose (post, p. 51).

The prior legislation, moreover, and the history and condition of the New York land claims at the time of the treaty, and the distribution of the indemnity fund received from Vermont, render the motive of compensation by the act of 1814 improbable in the extreme.

*Prior Legislation.*—The act of 1790 (Ch. 18), which authorized the treaty, appointed commissioners from New York to meet commissioners from Vermont to agree upon terms of settlement, and expressly declared that,

“Nothing herein shall be intended or construed to give such claimants [of lands] any right to any further compensation whatever from this State, other than such compensation which may be stipulated as aforesaid” [to be paid by Vermont].

This provision, expressly excluding further compensation, was not an unadvised or a hasty one. It expressed the deliberate judgment and determination of the legislature; it was in accordance with a similar provision of the act of 1789 (repealed by that of 1790), and was enacted after discussions at various times during the preceding decade concerning a controversy of forty years' standing. It was in effect a decision by the legislature that the New York land-claims, whether good or bad originally, had become incapable of enforcement through the rebellion and long continued independence of Vermont; so that those claims were really worth only what could be obtained from Vermont by negotiation and compromise, and should no longer stand in the way of the public interests in the recognition of Vermont's independence and admission into the union.

The commissioners having agreed upon the sum of \$30,000 to be paid to New York, and Vermont having agreed to pay it, New York *declared*, as above stated, that all claims and titles under New York colonial or state grants, except those

which confirmed prior grants from New Hampshire, should *cease*; and she *ceded* to Vermont her claim of sovereignty and jurisdiction over that territory, and consented that Vermont might be admitted into the federal union as an independent state. In 1791 she was accordingly admitted, after seeking admission in vain for thirteen years.\*

In 1795, the exclusion of any other compensation than the fund derived from Vermont, was again enacted in the act appointing commissioners "to make a just and equitable distribution" of that fund.† Claimants were required to present their claims, and it was declared

"that all who do not present their claims within one year to the Commissioners, shall be *precluded from all compensation whatever.*"

Columbia did not present her claim. Her name is not on the commissioners' "minutes" nor among the seventy-six distributees,‡ though Mr. Duane, who for nearly ten years prior to 1795 was chairman of her board of trustees, presented his claim, and his heirs were allowed his share of about five cents per acre, on 52,500 acres. At the same rate, Columbia's share, had she proved her claim, would have been from \$1,500 to \$2,500, according to the acreage she held.§ This was more than the land had cost her, as the official fees for the patent and the preliminary surveys were the principal

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\* Ridpath, Hist. U. S., 366, says this payment was for the purchase of New York's claim to the *jurisdiction* of the province of Vermont. But Vermont always refused to admit that the New York land grants had any validity, and hence she would pay nothing directly to those grantees; but her Commissioners knew, what the Act of 1790 shows, that New York would receive the money for the benefit of the New York grantees alone.

† Act of April 6, 1795, 3 N. Y. Laws, Ch. 56, p. 578. 3 Green. Laws, 220.

‡ See Commiss. Rept., 1799, Doc. Hist. N. Y., 4: 1024-1025, H. Hall, Vt., 510. See Regents' Rêpt. on Boundaries, 1873, pp. 226-228.

§ It is uncertain how much land Columbia had. In her petitions of 1805 and 1806, "over 100,000 acres" are stated as "held by a double grant from New York and New Hampshire." No double grant to Columbia appears in the list of 49 double grants given in Doc. Hist. N. Y., 4: 477, 478 (qto.). The records show no patents to her from New Hampshire, and but two from New York, both by Lt. Gov. Colden; the first, on March 14, 1770, of 24,000 acres at Kingsland, now Washington (Vol. 15 of Patents, p.

items of cost,\* and these had been remitted to Columbia "as a compliment to the college." †

It is hardly credible that a loss of such a character, even had it been presented as a *claim* in 1814, would have been recognized by the legislature as a legitimate demand against the state, in the face of these three prior enactments and of Columbia's failure to prove her demand before the commissioners; or that "*compensation*" for her Vermont lands could have been intended by that act to be given to her without any reference being made to those statutes, or any reason assigned for departing from them. ‡ But, in fact, the petition of 1814 did *not present* any such claim, nor ask *compensation* for anything. No such language is found in the petition. It presents forcibly and at length the urgent needs of the college. It appeals, not to any duty or obligation of the legislature, but "to its *magnanimity*, for such *assistance* as to its wisdom shall seem meet," which is the ordinary prayer for public support. § At the close of the petition two circumstances are mentioned as emphasizing the deserts of the college; first, that for 30 years "the *patronage* extended to Columbia had been very limited — not one fifth of the benefactions . . . made to a kindred institution" [Union College]; and second, the loss of her Vermont lands, as follows:

72), and the second on August 16, 1774, of 20,000 acres near Cambridge & Johnson (Vol. 16, p. 391 of Patents). A further grant on April 6, 1774, from Gov. Tryon personally, by lease and release, of 10,000 acres at Norbury, now Worcester, the income from which was required to be applied to the maintenance of Tryonian Professorships, is stated in Pine's Charters of Columbia College, pp. 72, 84. These make in all but 54,000 acres, and of these only the first and third, it is said, are now known (Hist. Columbia Un., 35-36. 1904. See post, p. 52). All three patents were covered by the King's prohibitory order of July 24, 1767. See post, pp. 30, 41, 46, 50, notes.

\* The regular fees were in all \$90.25 per 1,000 acres, divided among six officials, of which the governor's share was \$31.25 (H. Hall's Vt., 71).

† Trustees Min., 1 : 134.

‡ Had compensation been the object of the grant to Columbia, it would have been wholly foreign to all the rest of the act, and properly the subject only of an independent statute: and that purpose not being indicated in the title or preamble of the Act of 1814, it would, under our present constitution, have been unconstitutional.

§ See Petition in full, Hist. Columbia Un., 1904, pp. 100, 101.

“That Columbia College was once in possession of landed property, which, if she still retained it, would be amply sufficient for her wants, and would save your memorialists from the afflicting necessity of importuning your honorable body. That property was transferred by the state of New York, on great political considerations, to other hands. It was entirely lost to the college, and no relief, under the privations which the loss occasioned, has hitherto been extended to her.”\*

Had this been strictly accurate, without other facts affecting the merits of Columbia's land-claims, a strong case for compensation might have been urged, except for the three statutes above cited.

But the real situation was quite different. The New York grants of Vermont lands were disputed from the first, and in 1790 they had become wholly unavailable to the claimants and practically worthless. For twenty years the colony and state of New York had done all that was practicable for their enforcement. Vermont, by a rebellion and revolution caused alone by the New York land-grants and the endeavors to enforce them by eviction of the earlier settlers, had won her independence of New York, and maintained it for thirteen years. Since 1782 the controversy had been practically closed, and in 1790 the state was justified in making peace with Vermont without liability for the disappointed expectations of her citizens, or even their actual losses, if there were such; and this was the reason for expressly excluding any such liability of the state, by the act authorizing the treaty.† The subject is historically so interesting, and the facts illustrating it are at this day so unfamiliar to the majority of

\* Some corrections, as respects accuracy, should be made in these statements: (1) The College apparently never settled the lands or obtained actual “possession.” It was the same with Mr. Duane, *Cyc. Amer. Biog.*, 2: 526; (2) the state did not “transfer” the lands, as it never held them; it did declare that claims and titles under the New York colonial grants should cease; (3) the state did “extend relief” in the offer of the \$30,000 fund, for her share in which, Columbia did not apply. Why she did not apply is a matter of conjecture only. Sharing in the fund would doubtless have worked as an estoppel against any further claim in the future, and it may have been thought best to preserve the shadow of claim still left.

† Hamilton's Works (Lodge), 7: 9-22. See post, p. 48, 1 Kent 178.

readers, that I venture to state the most material of them in some detail, though greatly abridged.

Upon the accession of the Duke of York to the throne in 1685, the Province of New York, granted to him by Charles II. in 1664, became like New Hampshire a Royal Province, and its lands an appanage of the Crown.\* Its charter was *merged* and no longer operative. When the controversy between them arose, the boundaries and jurisdiction of both were alterable at the King's pleasure; the Provinces, as such, had no title in the *soil*, and their Governors, in making grants of land, acted as mere agents of the Crown, with authority limited by its orders and subject to its restrictions.

In June, 1741, Benning Wentworth was appointed Governor in Chief of "Our Province of New Hampshire," with jurisdiction extending westwards "till it meets our other Governments" (*i. e.*, New York) and "with authority to grant such lands, tenements and hereditaments as now are or hereafter shall be *in our power to dispose of.*" †

Understanding the easterly boundary of New York to be a line 20 miles east from the Hudson river, the same as that dividing New York from Massachusetts and Connecticut, Gov. Wentworth in 1749 granted to intending settlers the township of Bennington, four miles easterly of that line. But, being informed by Governor George Clinton, of New York, that the east boundary of his province was, by the Duke of York's charter, the Connecticut river, and that Massachusetts had extended further westward "by intrusion, and the neglect of New York," the dispute was referred (1750 to 1754) to the King. ‡ On July 20, 1764, an order was issued by the Crown "declaring the west bank of the Connecticut river *to be* the boundary between the two provinces." This order was usually referred to by the Crown Ministers as an order "*annexing*" the disputed territory to New York; because the district was previously regarded as belonging to New Hampshire.§

\* Broadhead's Hist. N. Y., 2 : 424; Colonial Doc., 3 : 332, 360.

† H. Hall's Vt., 43-46, 476; Doc. Hist. N. Y., 4 : 532.

‡ N. Y. Hist. Soc. Pub., 1869 : 281-290, 496, 502; Doc. Hist., 4 : 329.

§ Doc. Hist. N. Y., 4 : 574; Colonial Doc., 4 : 625-627; *ibid.*, 7 : 224; *ibid.*,

Governor Wentworth had in the meantime granted 130 townships; a few before the final submission in 1754, and the rest from 1761 to 1764, after the close of the French war in 1760, and was censured by the Board of Trade for making these grants *pendente lite*.\* Some of them in 1763 were hawked about the streets of New York for sale, and the district came to be known as the "New Hampshire grants." This coming to the notice of Lieutenant-Governor Colden, who was then acting Governor, he took up the matter with his accustomed vigor, wrote repeatedly in 1763 and 1764 to the Lords of Trade, who had the matter in charge, urging a speedy decision, and the impolicy of extending the power and influence of the New England governments, "all formed on Republican principles in opposition to those of the British Constitution," and of diminishing New York, formed after the English model. The Ministry was already urging taxation of the colonies. The Stamp Act soon followed. Governor Colden was informed that the reasons he suggested "for making the Connecticut river the boundary, were adopted"; *i. e.*, as a *new* boundary.†

The order of 1764 was thus clearly intended and understood by the Crown to relate to the future only. It cut off Gov. Wentworth's power to make further grants, but did not deny his previous authority, nor avoid his prior grants. Explained as *annexing* the district to New York, it affirmed and validated both. Lt. Gov. Colden and the New York officials, on the contrary, assumed that Gov. Wentworth's grants were invalidated, and that the former grantees might be required to take out new surveys and new patents from New York, paying again for fees and quit rents upon the New York scale (more than double those of New Hampshire) or be disregarded and their lands patented to others. Lt. Gov. Colden accordingly, at once began issuing patents for townships in the "New

8 : 12, 193, 285, 295, 318; H. Hall's Vt., 31, 52, 99, 479; Thompson's Vt., Part II., 19-20; Slade's State Papers, XV.-XX.; post, pp. 38-40, note.

\*N. H. State Papers, 10 : 204; Slade, 13; Colonial Doc., 8 : 331.

†N. Y. Hist. Soc. Pub. 1876, 236, 285, 304, 316; Colonial Doc., 7 : 562, 642; *ibid.*, 4 : 625; Jones, Hist. N. Y., 1 : 48, 543; Bancroft, 5 : 150, 225-247.

Hampshire grants"; and an active speculation in those lands soon arose, in which some of the most eminent citizens of New York City took part. Numerous patents were issued by Lt. Gov. Colden and Gov. Moore from 1665 to 1667, most of which conflicted with prior grants from Gov. Wentworth, under which settlements and improvements to some extent had been already made. Upon complaint being made to the King, a further order in council, made July 24, 1767,\* according to the repeated directions of his Ministers, forbade any further grants in that district "until his Majesty's further pleasure should be made known"; thus *suspending the power* to make grants within that territory.†

This order was never modified. It was carefully observed by Gov. Moore, who refused to make any further grants, though urged to do so (Doc. Hist. N. Y., qto., 4 : 377); and he accordingly forebore to issue the first patent to Columbia, which had been resolved on by himself and his council in 1767, shortly before he received warning of the forthcoming prohibitory order.‡ Upon his death, however, in September, 1769, Lt. Governor Colden and the succeeding governors, no doubt under similar pressure, and allured by the prospect of large official fees, upon a different construction of the King's order, but in violation of its intention and of the repeated instructions of the crown ministers, granted from 1769 to 1774 to speculators and officials,§ mostly of New York City, over

\* Doc. Hist. N. Y., 4 : 609, 612; H. Hall's Vt., 480, 88, 89; Slade's State Pap.

† Rept. Board of Trade, Dec. 3, 1772, Colonial Doc., 8 : 331, 334, 339.

‡ Trustees' Min. Columbia Col., 1 : 122, 134; Letters Lord Shelburne to Gov. Moore, Ap. 11, 1767, and his reply; Doc. Hist. N. Y., 4 : 589, 593, 610.

§ Barstow's Hist. N. H., 209; Benton's "Vermont's Early Settlers." 1894. Goldsbrow Banyar, the Clerk of the Colonial Council, was the largest speculator, and was allowed by the Commissioners of 1797 for 144,600 acres. Mr. Duane, the champion and defender of the New York grants, was the third in amount, being allowed for 52,500 acres, Doc. Hist. N. Y., 4 : 1024; H. Hall's Vt., 510; Commiss. Rept., Albany, 1799.

Colden's grants were upwards of 1,000,000 acres; and his fees were from \$25,000 to \$30,000, occasional abatements being made; Dunmore's and Tryon's, each over half as much. H. Hall's Vt., 100, 109, 115; Vt. Hist. Collection, 1 : 158. About half of Gov. Tryon's grants were confirmatory of previous patents issued by Gov. Wentworth. See Vt. Hist. Collection, 1 : 152.

1,500,000 acres (besides confirmatory and military grants) including the tracts claimed by Columbia. About 500,000 acres more, previously granted by New Hampshire patents, and in part occupied, were granted by Governors Moore and Colden prior to 1767. These and subsequent grants by New York Vermont claimed to be null and void.\*

\* NOTE I. THE EASTERLY BOUNDARY OF THE PROVINCE OF NEW YORK; THE NEW HAMPSHIRE GRANTS.

For more than a century prior to 1764, jurisdiction of the district west of the Connecticut River to a line *twenty miles east of the Hudson*, had been generally considered and treated as belonging to the New England Colonies, from which its settlers had come. (Macauley, Hist. N. Y., 56, 57, 1829. Colonial Doc., 6: 121, 125; 7: 224; 8: 330. Cartwright to Clarendon, N. Y. Hist. Soc. Collection, 1869: 86.) With a possible slight exception near that line in Rensselaer Manor and at Hartford, that district had never been actually settled, occupied or inhabited by New York or by the Dutch. (Gov. Tryon, Colonial Doc., 8: 381. H. Hall's Vermont, 486.)

Gov. Clinton's claim of jurisdiction eastward to the Connecticut River, was based on the Charter of Charles I. to the Duke of York, in 1664, renewed in 1674, which granted to the Duke (beside other lands) "Long Island . . . abutting upon the mainland *between the two rivers* called . . . Connecticut and Hudson's River; together also with the said river called Hudson's River and all the land from the west side of Connecticut River to the east side of Delaware Bay." (Colonial Doc., 2: 295; Broadhead Hist., 2: 651.)

This description, it was claimed, conveyed to the Duke all the land between the two rivers.

But the Lords Commissioners of Trade and Plantations, who administered Colonial affairs, reported in 1757, that this description "is so inexplicit and defective that no conclusive inference can be drawn from it as to the extent of territory intended to be granted." (Colonial Doc., 7: 223, 224; Phelps' oration, Bennington, 1891, pp. 19-23; N. H. State Papers, 10: 259-261; Williams Hist. Vt., 2: 15.)

The last clause does not convey any definite tract of country; nor is it of itself a *boundary*, since it encloses nothing. It seems purposely to omit granting the lands *between* "the two rivers," which would naturally have been expressed, if intended.

There was abundant reason for the omission. For the Crown had already granted to the Massachusetts and Connecticut colonies in 1628 and 1662, that whole district from the Atlantic to the Pacific, extending north three miles beyond "any and every part of Merrimack river"; that is, nearly to the latitude of Whitehall. (See location of the "Endicott" stone, at Weirs' in 1652; N. H. Hist. Soc. Collections, 4: 194-200. 1834; Mass. Hist. Soc. Proc., 18: 400; Amer. Antiq. Soc., 7: 15.) The Massachusetts charter EXCEPTED "such lands as [on Nov. 3, 1620] were *actually possessed or inhabited* by any Christian Prince or State." (Hazard St. Pap., 1: 239, 604; Hutchinson

Though the Order of 1764 annexing the disputed district to New York was unwelcome to the settlers, no trouble would have arisen had they been left unmolested in the possession of their titles and of the improvements made

1: 1, 160; N. Y. Hist. Soc. Pub., 1869: 345, 361.) These "actual possessions" of the Dutch were all that the Crown after their capture had lawful power to convey.

The charter was, however, a part of the project to surprise and capture these Dutch possessions, and to "replace" New Netherland by *New York*, under the proprietary government of the Duke. (Denton's "Brief Description, etc.," in Gowan's Bib. Am. 1670; J. Miller's "New York," 1675; Brodhead's Hist., 2: 16, 38; Atty. Gen. in Doc. Hist., 4: 338 qto.) He was to hold what he should capture from the Dutch; but as the precise bounds of their "actual possessions" were not known, they were not defined in the charter, but were naturally left to be determined by the Royal boundary Commission sent out for that purpose with the expedition.

On Stuyvesant's surrender, September, 1664, the "actual possessions" of the Dutch being all that the Duke of York could acquire by his capture, as against the charters of Massachusetts and Connecticut, the easterly boundary of those "actual possessions" was the easterly limit of the Duke's province of New York. Regents' Bound. Rept. 1886, Sen. Doc., 71: 405.

*The easterly line of the Dutch in 1664.* When James I. on Nov. 3, 1620, granted to the Council of Plymouth all the lands "from Sea to Sea" between the 40th and the 48th parallel, except those "actually possessed or inhabited by some Christian Prince or State," no Dutch *Colony* had yet been planted in that region. There were only a few Dutch traders at Manhattan and Albany and along the banks of the Hudson, in the employ of the New Netherland Company. That company had a charter from the States General, granted in October, 1614, giving it a monopoly of trade with New Netherland for four years. (Jaques in Doc. Hist. N. Y., 4: 15-17; Brodhead's Hist., 1: 59-66, 134-8, 150; Trumbull's Conn., 1: 546.)

The first attempt at colonization by the Dutch was through the West India Company, which in June, 1621, some months after the above grant by James I., and after the Pilgrim Settlement at Plymouth, obtained from the States General a Patent covering the two continents from the Straits of Magellan to Newfoundland. In May, 1623, that company planted the first colony at Manhattan. Their subsequent settlements and trading posts extended but little beyond Albany and along the banks of the Hudson, except a few acres at Fort Good Hope (Hartford) and some villages in southeastern Connecticut, where meeting the westward emigration of the Connecticut colonists, controversies arose, which led to a treaty at Hartford in 1650 between Governor Stuyvesant and the representatives of the "*United Colonies of New England*"—a confederation formed in 1634 for mutual protection and defense. (Bancroft's Hist. U. S., 1: 420-422.)

By this treaty it was agreed that "the bounds and limits between the United Colonies and the Dutch" should cross Long Island at Oyster Bay; and

under their prior grants.\* But in 1769, numerous suits were brought upon the New York grants to evict the earlier settlers from their homes honestly acquired from New Hampshire, and practically to confiscate all the improvements made under

\* N. H. State Papers, 26 : pp. vi-viii. Williams' Hist. Vt. 2 : 17, 1809.

on the mainland, should run "from the west side of Greenwich Bay (about 15 miles east of the Hudson) twenty miles northerly up into the country; and after, as agreed between the Dutch and New Haven; provided that said line come not within 10 miles of Hudson's River," and reserving also to the Dutch certain habitations at Hartford; the Dutch "not to build any house within six miles of said line," and the treaty to "be kept inviolate by both parties until a full determination be agreed on in Europe by England and Holland." (Brodhead's Hist., 1 : 519, 621, 654); Hazard's State Papers 2 : 169.

The line thus agreed on, though not complete or exact, limited the Dutch to from ten to twenty miles east of the Hudson in the most important part of the territory; and the provisions for an indefinite extension of this line northwards, "was a virtual abandonment of any claim to lands west of the Connecticut river" beyond 20 miles at most east of the Hudson, and along the whole New England line extending northwards to the limit of the Massachusetts colony at about the south end of Lake Champlain. This agreement was ratified by the States General in 1656, and in the Act of ratification it is described as "the line of division between New Netherland and New England." So in the Commission to Colve, the Dutch Governor, appointed upon the recapture of the province in 1673, this treaty is again referred to as fixing the boundary upon *New England*. (Colonial Doc., 1 : 609, 611; 2 : 228, 609. Brodhead's Hist., 1 : 519, 621. Bancroft's Hist. U. S., 2 : 295-297 (map). Smith's Hist. N. Y., 1 : 20, 26, 35-38. H. Hall's Vt., 14-28, 483, 484. Hazard's State Pap., 2 : 549; O'Callahan's N. Y. 2 : 277. Regent's Rept. on Bounds., 1857; pp. 38, 39.)

England did not ratify the treaty because the Crown was unwilling thereby to admit that the Dutch in New Netherland had any right at all. They were regarded as intruders. But the States General never withdrew its ratification; the treaty of 1650 remained in force by its own terms, and its effect as an *acknowledgment* of the eastern limit of the "actual possessions" of the Dutch was unaffected. The exception in the Massachusetts Charter of 1628 was in fact of much less extent than was allowed by this treaty; for that exception referred to the conditions existing on November 3, 1620, when the "actual possessions" of the few Dutch traders along the Hudson were far short of the treaty line. (1 Hutchinson, 160.) From every point of view, therefore, the legal right and title of Massachusetts in 1664 under her charter extended at least to the 20-mile line east of the Hudson, as the extreme limit of the "actual possessions" of the Dutch, which was consequently the extreme eastern limit also of the lawful jurisdiction of the province of New York.

them, except, such allowances therefor as the later New York grantees might choose to make. On the trials at Albany in 1770, the earlier grants were rejected as evidence, both on technical grounds and on the ground of Gov. Wentworth's

The charter to the Duke of York in 1774 was in the identical words of that of 1664, of which it was merely a reissue, designed to cure any defects in the Duke's title arising from the Crown's want of possession when the first charter was granted, or from the Dutch recapture of New Netherland in 1673. It undid nothing done under the former charter. 1 N. Y. Colonial Laws, 104.

*The 20-mile line adopted by New York.* The expedition for the capture of New Netherland was accompanied by a Royal commission of four persons, of which Gov. Nicolls was the head. This commission was authorized to settle disputes and to determine boundaries, which were to "continue and be observed" until otherwise determined by the crown. (Colonial Doc., 3 : 51-53, 64, 110, 117, 171, 241 ; 7 : 597. H. Hall's Vt., 31.) Their determinations were never changed, except to correct errors of detail.

In December, 1664, this commission with Gov. Nicolls, adopting nearly the easterly line of the Hartford treaty of 1650, agreed with Connecticut upon a uniform parallel line 20 miles east of the Hudson, as the line of division. Broadhead's Hist. 2 : 54. As reduced to writing, the treaty was erroneous in location and direction. (Colonial Doc., 3 : 51-64, 112, 125 ; H. Hall's Vt., 24-28.) These errors were corrected by the commission appointed by Gov. Dongan in 1683, so as "to answer to the *true intention of the first agreement.*" (Colonial Doc., 4 : 623-630 ; Smith's Hist. N. Y., 1 : 38, 285-288.) The corrected line ran 20 miles distant from the Hudson northwards and parallel thereto, "as far as the Connecticut colony doth extend, that is, to the southerly line of the Massachusetts colony ;" thus recognizing also, as did Nicolls' agreement, the equal westerly extent of Massachusetts. (Colonial Doc., 4 : 623-630.) This report was confirmed by Gov. Dongan and his Council in 1684 ; by the Crown (after Massachusetts' new charter) in 1700 (Colonial Doc., 7 : 776) ; again ratified by the N. Y. Legislature, by its Act of June 25, 1719, wherein all the boundaries are recited (1 Colonial Laws, 1039-1043) ; again confirmed by the Crown in 1723 (Colonial Doc., 5 : 698), and the work finally completed in 1731. As respects Connecticut, this line has never since been questioned. N. Y. Hist. Soc. Pub., 1868, p. 223.

*The same line applicable to Massachusetts.* In his letter to the Duke of York in November, 1665, Gov. Nicolls wrote that the agreement with Connecticut "was made by *virtue of her precedent patent*" ; that is, on account of her superior rights under her prior charter and the Hartford treaty of 1650, of which that agreement was in fact a recognition ; that it was "*a leading case of equal justice and of great good consequence in all the colonies, . . . so that to the east of New York and Hudson's River nothing considerable now remains to your royal highness except Long Island and twenty miles from any part of Hudson River.*" (Colonial Doc., 3 : 51, 64, 106, 110-117, 170, 235 ; N. Y. Hist. Soc. Pub., 1869 : 76, 86.)

From these expressions it is plain that Gov. Nicolls considered that the

alleged lack of authority to make them, and judgments of ejectment were accordingly entered.\*

The rulings of the Court in these cases were probably technically correct upon the evidence presented. The proper evi-

\* See *Small vs. Carpenter, etc.*, Benton's "Vermont's Early Settlers," p. 60; *Narrative of Proceedings, etc.*, N. Y. Assembly Journal Supplement, 1773: 8.

determination of the western bounds of Connecticut applied equally to Massachusetts, the conditions in each case being the same. Her charter rights were the same; she was a party to the treaty of 1650; the Dutch possessions approached Massachusetts certainly no further eastward than they approached Connecticut, and Massachusetts had already settled several towns west of the Connecticut River. The Commissioners were apparently expecting to make the same agreement with Massachusetts, but the latter colony refused to treat with the Commission because unwilling on principle to admit its authority to bind them. (Bancroft's Hist. U. S., 2: 78-84; Hutchinson's Hist., 1: 229-257. See Pope's West. Mass., Berkshire Book, 1: 49-95. 1982.)

The Commission, however, in its report in 1665-6, expressly state that they "find *the just limits* of Massachusetts" to be the same 20-mile parallel east of the *Hudson*. (Colonial Doc., 3: 110-112.) That Massachusetts had the same westward extent as Connecticut, was also recognized by Gov. Nicolls and the Commission, in the agreement with Connecticut itself, by making the latter's western boundary line run northerly "to the line of the *Massachusetts Bay*." (Colonial Doc., 3: 51-64.)

The report of the Dongau Commission by the use of similar language, and the numerous confirmations of that report both before and after the new charter of Massachusetts, as above noted, also directly recognized the equal westward extent of Massachusetts. In the Acts also of the Colonial Legislature of Nov. 1, 1683, and Oct. 1, 1691 (1 Colonial Laws, 123, 267) entitled "*An Act to divide this Province and Dependencies into shires and counties*," the same limit is recognized by implication, by omitting any reference to the Connecticut River or to any lands approaching it in the description of Albany County on the east side of the Hudson, but bounding it on the south by Dutchess County "running eastward *twenty miles* into the woods," without indicating that Albany County extended any further eastward. The title of the Act and the description of other counties show that the whole territory of the province was intended to be divided up. These numerous recognitions and confirmations of the 20-mile line by New York and by the Crown seem to be conclusive evidence of the general understanding.

The absence of an express *agreement* between Massachusetts and the Commission was immaterial; because (a) no such agreement was required; (b) the prior rights of Massachusetts rested upon her charter of 1628, and upon the narrow limits of the "actual possessions" or "inhabitaney" of the Dutch east of the Hudson; and (c) because the Commission in fact found and *reported* the 20-mile line to be her "just limits" in a report probably filed in the Plantation Office (Colonial Doc., 3: 110, 112; see "Represent-

dence for the defence was not at hand, nor easily procurable. But the result was none the less a fatal mistake.\* For it subjected to the call of a few land speculators the whole power of the local executive for the enforcement of unjust,

\* Mag. Am. History, 23 : 143-5.

tation, etc.," of the N. Y. Council, in June, 1763, N. Y. Hist. Soc. Pub., 1869 : 240), which finding the Crown never disapproved of, but *uniformly adhered to* for near a century afterward, until the order of annexation in 1764. Even the Duke did not try to change it. (Colonial Doc., 3 : 231, 236. 1676.)

*The 20-mile line adopted by the new charter of Massachusetts.* The first charter of Massachusetts was annulled in September, 1684. King William on October 7, 1691, granted her a new charter as a *Royal Province*, "*extending towards the South Sea westwards as far as our colonies of Rhode Island, Connecticut and the Narragansett Country*"; evidently meaning as far westward as those three provinces extend; adopting her long recognized westward extent as co-terminous with Connecticut. (Smith's N. Y., 1 : 285; Hutchinson's Mass., 2 : 7.)

The Duke of York having meantime, in 1685, ascended the throne as James II., his individual title was *merged* in the Crown; the charters of 1664 and 1674 were thereby extinguished, and the province of New York became a part of the Crown domain (Colonial Doc., 3 : 322, 361; Brodhead's Hist., 2 : 424; Benton's Vt., 63, 76). In 1688 he *annexed* the whole province to New England, to form the "*Dominion of New England in America*," under Andros as Governor. (1 Colonial Laws, 216, 221; Colonial Doc., 3 : 537; Brodhead's Hist., 2 : 447, 500.) Soon after, during the English revolution, the *Dominion*, contrary to King William's intent, was disrupted by revolution and the mutual secession of its members. But the King accepted the situation and in 1689 appointed Sloughter governor of the "province of New York and the territories depending thereon," without any designated boundaries (Colonial Doc., 3 : 623); thus doubtless reconstituting the Province as it previously existed, with its Eastern limits as defined by the Nicolls Commission.

More than 70 years afterward, Lt. Gov. Colden in support of New York's claims eastward to the Connecticut River, urged that by its new charter Massachusetts was meant to extend only to Connecticut *River*. Mr. Duane argued that it was meant to extend *to* the Connecticut colony, *i. e.*, to its easterly line only. (N. Y. Hist. Soc. Pub., 1876 : 303; *Ibid.*, 1870 : 72.) The objections to both contentions are insuperable. Both disregard the natural reading and meaning of the charter, by which the province is to *extend* as far as the *three colonies*; not to a *river*, nor to *one* colony alone; but as far as all three. The three abut upon the southerly side of Massachusetts and hence could not possibly form her westerly boundary: and the westward extent of the three, can only mean as far as the three extend westerly. Mr. Duane's contention would moreover limit the province to the meridian of

and in many cases, inhuman decrees. It stung the settlers to desperation; offended the instincts of humanity; turned the sympathies of the disinterested everywhere largely in favor of the settlers, which their subsequent violence and ir-

Worcester and leave two thirds of its former westward extent, including Springfield founded in 1636 and numerous towns on both sides of the river without any government at all. The actual exercise of full governmental jurisdiction over the whole territory and the settlement of towns up to the 20-mile line without question during a half century afterwards, prove the contrary intent of this charter, and the groundlessness of both contentions.

Gov. Sloughter soon after the new charter reported the "great narrowness" of his province. (Colonial Doc., 3: 628; Regents' Bound. Rept., 1873, p. 312.) Gov. Hunter in 1720, in reply to enquiries by the Board of Trade, stated that New York was bounded "east, by a parallel 20 miles distant from the Hudson." (Colonial Doc., 5: 555.) In 1738 Lt. Gov. Colden, then *Surveyor General*, answering special enquiries, reported its northerly boundary as running "east — from [Lake Ontario] along the bounds of Canada [not then determined] to the Colony of Massachusetts Bay, and thence southerly along the boundaries of Massachusetts Bay and the Colony of Connecticut to the [Long Island] Sound": stating also that the boundary of Massachusetts was disputed everywhere, but without mentioning in what respects or to what extent, it was disputed (Doc. Hist., 4: 177 (qto. 115). Colonial Doc., 5: 555, 600; 6: 125. H. Hall's Vt., 31-37); showing that Massachusetts was then understood to extend north to Canada, and that her western boundary was understood to be a *continuous southerly line from Canada to and along the western line of Connecticut to the Sound.*

*The Vermont part of Massachusetts annexed to New Hampshire.* In 1740, upon a controversy as to boundaries between New Hampshire and Massachusetts, it was determined by the Crown (unjustly, says Bancroft, 3 Hist. U. S., p. 382) that the northerly line of Massachusetts should cross the Merrimack River three miles north of Pawtucket Falls [Lowell] and run thence westerly (as at present) "to his Majesty's other Governments." This new boundary line was soon after run to within 20 miles of Hudson River, where it has since remained, being confirmed by agreement of the two provinces in 1773. (N. Y. Hist. Soc. Pub. (1870), pp. 121-122; do. (1869), 324.) Both colonies being then merely Royal provinces, the King could change their boundaries at his pleasure.

The Crown, thereupon, appointed Benning Wentworth Governor of New Hampshire (running north to Canada); and his commission, dated June 3, 1741, extended his jurisdiction "*westward until it meets with our other governments.*" (4 Doc. Hist. 532; H. Hall, Vt. App., 476.) The southern part of what is now Vermont was thus transferred from Massachusetts to New Hampshire. The change of jurisdiction did not affect its western boundary, which remained as before, a line 20 miles east of the Hudson northwards to Lake Champlain. Benton's Vt., 68.

The new charter of Massachusetts gave express power to grant all lands

regularities, and riots did not wholly destroy; and it committed New York to a false and difficult position, which she never retrieved until the Treaty of 1790. It moreover impressed the Vermont settlers with such an indelible sense of wrong,

embraced in the former charter, as theretofore. New York in December, 1786, ceded to Massachusetts, in compromise of her New York land claims, all preëemptive rights in a tract of land in Western New York equal to the area of Massachusetts. Regents' Bound. Rept., 1836 (Sen. Doc. 71), 402-417. N. Y. Laws, 2: 3, 293, Ap. 28, 1786. Benton's Vt., 174. Hotchin's West. N. Y., 3-8, 1848. N. Y. Laws, Acts of Nov. 12, 1784, Ap. 28, 1786, Mch. 24, 1795. Benton's Vt., 174. Phelps and Gorham's Purchase, p. 136.

Until the adjudication of 1740 it had not been supposed that her new charter had changed the northerly extent of Massachusetts. Hutchinson (Hist. Mass., vol. 2, p. 5) says the new province contained "the *whole* of the old colony *without any deduction or reserve.*" During nearly half a century after the new charter, Massachusetts had been in possession of that district, as under her first charter, from the Merrimack westward; she had granted lands on the southern border, settled towns west of the Connecticut, and had built Fort Dummer at Brattleboro in 1724 (the first settlement in Vermont), and continuously maintained that fort as a defence against the Indians.

North of the former Massachusetts line the country was sparsely inhabited by branches of the Algonquin Indians, mortal enemies of the Iroquois on the west side of Lake Champlain. The territory was claimed by the French, and dominated by their fortresses at Ticonderoga and Crown Point. In 1731 they planted a settlement on the east side of the lake at Chimney Point, in Addison, Vt. (B. H. Hall's Vt., 24), and held the forts until 1759, when they were abandoned near the close of the French and Indian War, all Canada being ceded to England by the treaty of Paris in 1763, 22 years after the date of Gov. Wentworth's commission. (See map, Bancroft's Hist. U. S., 2: 297.) Thus no part of what is now Vermont was at the date of that commission, or previously, under the "government" of New York. The Lords of Trade, in reviewing this whole matter in 1772, say that "*no establishments were made by New York*" [north of the present line of Massachusetts] "*competent to the exercise of any regular jurisdiction.*" (Colonial Doc., 8: 331. Doc. Hist. 4: 488.)

From the date of Gov. Wentworth's commission in 1741 until the King's order of 1764 the whole territory now constituting Vermont was therefore considered and treated by the Crown and its responsible ministers as a part of the province of New Hampshire, and never as appertaining to New York. By orders of the Crown in 1744, and again in 1749, New Hampshire was required to assume the support of Fort Dummer as "*having lately fallen within the limits of New Hampshire*" (H. Hall's Vt., 48, 477); and in 1752 Mr. Murray, Solicitor General, afterwards Lord Mansfield, in reference to a tract of about 44,000 acres of land west of Connecticut River set off to Connecticut by Massachusetts, reported that "*by the determination of the boundary line in 1738, that tract is become a part of New Hampshire.*" (Doc. Hist., 4: 547-

and of distrust of the New York Courts, that none of New York's subsequent overtures of peace, of amnesty, and of confirmation of titles could prevail on them to put themselves again in her power, by submitting voluntarily to her authority or to the jurisdiction of her courts. It thus closed the doors

548.) And in 1757 the report of the Lords of Trade, acting upon the complaints of Governor Hardy, of New York, recommended that the western boundary of Massachusetts should be a line 20 miles east of the Hudson running "northerly to a point 20 miles due east from the Hudson, *on that line which divides the province of New Hampshire and the Massachusetts Bay*" (Colonial Doc., 7: 223, 224; Smith's Hist. N. Y., 2: 303-309; H. Hall's Vt., 38); showing that New Hampshire was considered and treated by the Lords of Trade and other Crown officers as extending westward, like Massachusetts, to within 20 miles of the Hudson on the westerly line as run in 1740-1741.

The same report, in view of the defective description of the bounds of the provinces in the charters, says that the partition line should be determined "upon *consideration of the actual and ancient possession of both*"; that they had therefore "had recourse to such papers in our office as might show the actual and ancient possession, . . . and as it appears in several of them, *almost as old as the said grants* that Massachusetts had in them been *understood to extend within 20 miles of Hudson's River*, and that many settlements had been made so far to the westward . . . and as *that evidence coincides with* the general principle of the agreement between New York and Connecticut," the report recommends the 20-mile line of division.

Numerous maps, from 1688 to 1770 including Mitchell's, "the most authoritative" (Smith's Hist. N. Y., 1: 226), prepared in 1755 under the direction of the Lords of Trade from documents, maps, and charts and surveys in the Plantation Office, show the limit of New York to be a short distance east of the Hudson, and New England with New Hampshire extending westward to Lake Champlain and thence southerly to Long Island Sound. (See H. Hall's Vt., 50-53 and frontispiece; Bancroft's Hist. U. S., 2: 297; same description of bounds in Douglas' N. Am., 2: 230. 1755.)

From the above it sufficiently appears that at the time of the capture of New Netherlands in 1664, the Dutch held no "actual possessions" east of a parallel line 20 miles distant from the Hudson along the whole western border of New England; that the rightful jurisdiction of New York never, until the order of 1764, extended further eastward than that line; but that the soil and jurisdiction to the east of it belonged to Massachusetts and Connecticut under their prior charters, and that to the eastward of the same line, New York had no established government at the time Gov. Wentworth was commissioned in 1741, and that the latter's grants to the west of Connecticut River were authorized and valid.

*The district of the New Hampshire grants annexed to New York.* The order of July 20, 1764, making the west bank of the Connecticut to be the boundary between New York and New Hampshire, was received in New

of peace, and the only logical end was the subjugation or the independence of the settlers.

The sheriff's efforts during the following eight years to enforce these and similar judgments, sometimes with an

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York in April, 1765. It was not a direct answer to the enquiries submitted to the Crown ten years before. It was clear as respects the future, but not clear as respects the past. The New York officials understood it to apply to the past, and thus to invalidate the prior grants of Gov. Wentworth. But the Crown had no such intent. For over 20 years it had treated the district as a part of New Hampshire, and authorized grants by its Governor accordingly. It could not invalidate these grants without gross injustice, but it could change the jurisdiction for the future by making the boundary (thenceforth) TO BE the Connecticut River. Ante, p. 28, note. Thus George III, by a discretionary but arbitrary order, *annexed* this district to New York, as James II, by a similar arbitrary order in 1688, had annexed the province of New York to New England. Neither order was long successful.

Had the subsequent instructions of the Crown ministers been sent with the original order, all trouble would probably have been avoided. But it was not until after trouble had arisen from the issuing of conflicting grants, that positive instructions were given to the Governors that prior settlers under Governor Wentworth's grants must "not be molested" (Lord Shelburne to Gov. Moore, Dec. 11, 1766, and Ap. 11, 1767; Colonial Doc., 7: 917; H. Hall's Vt., 88-90), and that the order of July 20, 1764, only "*annexed*" the district in question to New York. (See letters, Lord Hillsborough to Gov. Moore, Feb. 25, 1768, Colonial Doc., 8: 12; to Lieut. Gov. Colden, Dec. 9, 1769, Colonial Doc., 8: 193, 206; to Gov. Tryon, describing the district as "HERE-TOFORE CONSIDERED AS A PART OF NEW HAMPSHIRE, *but which was annexed to New York by his Majesty's order in Council of July 20, 1764.*" (Colonial Doc., 8: 285, 317, 318, 331, 332.) That order was always referred to and interpreted by the Crown officers in that sense, which necessarily imported that the disputed district was previously within the jurisdiction of New Hampshire and not within that of New York; that the prior titles under Gov. Wentworth were not affected by it, and that the settlers under them should not be molested, as expressly enjoined upon the Governors by Lords Shelburne and Dartmouth. (Doc. Hist., 4: 476, 559; 7: 917. H. Hall's Vt., 88, 89, 119. Colonial Doc., 8: 339, 343, 356, 357. Macauley's Hist., 408, 414.) Thus, the Lords of Trade say that by the order of July 24, 1767, "his Majesty was pleased to declare that *no part of the land tying on the west side of Connecticut River within that district claimed by New Hampshire*, should be grauted till his Majesty's further pleasure was known. (Colonial Doc., 8: 331.)

*The prohibitory order of July 24, 1767.* Gov. Moore, by proclamation issued June 6, 1766, notified all the patentees under Gov. Wentworth to present their papers within three months, or that they would be rejected in favor of other applicants *for the tands*. (Doc. Hist., 4: 587; N. Y. Hist. Soc. Pub., 1869: 291.) To obtain new grauts from New York, as also

armed *posse comitatus* of from 300 to 700 men,\* met with forcible resistance, riot and bloodshed.

The settlers believed themselves protected by their earlier grants, and also by the King's prohibitory order of 1767; they

\* Preamble to Vermont's first Constitution; Slade's Vt. State Papers, 241. Poor's "Constitutions," p. 1858.

required, payment of the New York scale of fees and quit rents was demanded (more than double those of New Hampshire), which many were unable to pay. (Robinson's Pet. in H. Hall's Vt., 86; N. Y. Hist. Soc. Pub., 1877: 11, 15, 198.) A previous order on May 22, 1765, forbade the Surveyor General to make return of any warrant of survey of any lands "actually possessed" under the New Hampshire grants, until further order. The numerous subsequent grants of such lands shows, however, that this order was disregarded. (H. Hall's Vt., 91.)

In 1767, Mr. Robinson's petition, signed by more than one thousand of the settlers, as was claimed, and reciting their hardships was presented to the Crown, which led to the speedy issue of the order of July 24, 1767, *forbidding* upon pain of his Majesty's highest displeasure, *any grant whatever of any part of the land described* in the [Privy Council's] report." This made all subsequent grants a "doubtful title." Col. Doc., 8: 339.

The order was intended and understood by the Crown to apply to all the disputed or "annexed" territory. Gov. Moore so construed it, and made no further grants. (Doc. Hist., 4: 377, qto.) He had previously received a caustic censure from Lord Shelburne for taking proceedings against New Hampshire settlers contrary to his instructions of December 11, 1766, that the settlers should "*not be molested on account of territorial differences.*" (H. Hall's Vt., 88; Doc. Hist. N. Y., 4: 589, 593.)

Repeated instructions to the different Governors from 1769 to 1773 renewed the same injunction against making any grants within that district; and Mr. Duane, counsel to Gov. Moore, could not have been ignorant of its extent and application. (H. Hall's Vt., 90, 99, 100.) This prohibition was incorporated in 1771 into the regulations imposed upon Gov. Tryon as the 49th article; and finally by another royal order of April 3, 1773, all power to make grants except to officers and soldiers was withdrawn. (Colonial Doc., 8: 330, 331, 339, 343, 356, 357, 372; Doc. Hist., 2: 821, 824.)

ore/ Gov. Morgan, Lt. Gov. Colden and Gov. Tryon by special instructions from Lords Hillsborough and Dartmouth in their letters of February 25, 1768, December 9, 1769, and December 9, 1772, were forbidden in the strongest manner "to presume on any pretence to make any grant of *lands annexed to New York by the order of July 20, 1764.*" (Colonial Doc., 8: 10-12, 193, 285, 295, 318, 339, 357, 372.) The letter to Colden was received by him before the first patent was issued to Columbia. (See his letter of Feb. 21, 1770, Colonial Doc., 8: 206, Colden Papers, N. Y. Hist. Soc., 1877: 207.) He understood it applied to the whole district. (See letter to Tryon, May 4, 1774, N. Y. Hist. Soc. Pub., 1877: 337.) The restrictive force of the order of 1767 was admitted by his Council, June 15, 1772. (B. H. Hall's Vt., 123.)

believed the New York Court to be venal and corrupt,\* and they would make no terms with the "Yorkers," by which they would lose their homes or pay twice for them. Suits of ejectment were therefore multiplied. But after the first few trials in 1770, the settlers resolved to defend no longer in the court at Albany, but at their own hearthstones; they accordingly suffered judgments by default, but resisted writs of possession to the death.

The persistent efforts to enforce evictions under these judgments led to the formation of the "Green Mountain Boys," a rude military organization for their common defence. Committees of safety were also formed to direct measures for their mutual protection throughout the district. They forbade New York surveys for further New York grants; prevented by

\* New Amer. Cyc., 16: 731, "Vermont," 1863. Judge Livingston, who presided at the trials at Albany, or his family, held by New York patents 35,000 acres of the Vermont lands. Land Patents, Albany, Vol. 14. (H. Hall, Vt., 121.)

Notwithstanding this order and all the additional instructions to the same effect, Lt. Governor Colden and the succeeding Governors after Gov. Moore's death in September, 1769, made the numerous grants above stated; Gov. Tryon even continuing to issue grants from the English war-vessel on which he had taken refuge on fleeing from the patriots in October, 1775, through the timely warning given by Mr. Duane's footman. These grants, being made without actual authority, were void as to all who had knowledge of that fact; and the order of 1767 was a matter of such common knowledge that it is difficult to see how any of the grantees could escape being chargeable with knowledge of it. Vermont granted the lands as unappropriated. H. Hall's Vt., 327.

Gov. Tryon was among the 60 persons whose lands were confiscated under the N. Y. Act of attainder, passed Oct. 22, 1779. (I Green. Laws 26; T. Jones' Hist. N. Y. in Rev., 2: 510, 539.)

Mr. Duane's elaborate argument, "*State of the Evidence*," in favor of New York titles, may be found in N. Y. Hist. Soc. Pub., 1870: 1-154. Documents also in N. Y. Hist. Soc. Pub., 1869: 282-528. The Assembly's "State of the Right, etc.," prepared mainly by Mr. Duane (B. H. Hall's Vermont, 606), is entered at length in the New York General Assembly's Journal of 1773, pp. 90 to 116, and is also printed. As to these, see H. Hall's Vt., App. 482; N. Y. Hist. Mag., Jan., 1868: 22; Feb., 1868: 74; Mag. Am. Hist., 23: 142; also Journals of Congress, 3 and 4; Vt. Hist. Soc. Pub., 1 and 2, 506; 1 and 2, "Governor and Council"; "Slade's Vermont State Papers"; B. F. Hall's "Early History of Vermont"; R. C. Benton's "Vermont's Early Settlers," 1894; Thompson's History of Vermont, Pt. 2; Windsor's Narr. Crit. Hist. Amer., 3: 5: 179. Regents' Rep. on N. Y. Bounds., 1873, 1886.

military force and intimidation many of the New York grantees from gaining possession; soon threw off all subjection to New York authority, her laws and officers; forced local New York magistrates to cease the exercise of their functions; and threatened with death all who should endeavor to arrest or remove persons indicted at Albany for resistance to the writs of possession. They ridiculed orders of arrest, and retorted with a burlesque counter proclamation for the arrest of prominent "Yorkers," including Mr. Duane.\*

The sheriff's *posse comitatus*, largely sympathizing with the settlers, gave him but feeble support; and when it came to armed resistance, they would not engage in effective fighting. The Crown, disobedience of whose orders and instructions had led to all the trouble, declined to order military assistance; and Gen. Gage, when applied to by the New York Governor, refused to aid with the regulars.†

The outbreak of the Revolution checked open hostilities, but otherwise made little change. Though the Vermonters said that the only British oppression they had ever *felt* was that of the New York officials, whom they hated more than the British, they were nevertheless anxious to fight in the common cause of Independence, but under their own officers. They were the most effective barrier against attacks on New York by way of Canada; they captured Ticonderoga and Crown Point in 1775; and in 1777, by their victory at Bennington, they led to the success of Gen. Schuyler's campaign, resulting in the capture of Burgoyne and his army. But the pursuit of the settlers' possessions by the "Yorkers" continued as before; and after being harried for twelve years, they determined in convention in September, 1776, that in independence lay their only safety;‡ and in January, 1777, supported by from two thirds to three fourths of the people,

\* H. Hall's Vt., 134, 234; Chipman's "*Seth Warner*," 20, 21.

† Dartmouth in Colonial Doc., 8: 339; N. Y. Hist. Soc. Pub., 1877, p. 364; Williams' Hist. Vt., 2: 1-25; Chipman's *Seth Warner*, p. 20.

‡ H. Hall's Vt., 273-276.

they declared Vermont to be an independent state.\* In 1778 the whole machinery of the State Government was in operation, and its independence has been ever since maintained.

When the treaty of 1790 was made, Vermont had for 12 years been "as independent of New York as of Great Britain."† From 1779 to 1781, ten years before this treaty, Vermont had formally declared the New York colonial grants to be null and void.‡ Most of the lands not covered by the New Hampshire grants, Vermont had granted to other settlers. The Kingsland tract, claimed by Columbia, was granted to Major Elisha Burton and 64 others on Aug. 8, 1781; and there were some earlier settlers there under New Hampshire authority.§ The grantees of 1781 thereupon entered on and occupied the lands long after the expiration of the 3 years' time allowed to Columbia by the New York patents for settling and cultivating the lands granted her.|| Up to 1781, the records show no officers or soldiers from that township.

\* H. Hall's Vt., 229-234, 238, 239, 257, 273; N. Y. Assembly's letter of Aug. 11, 1778, to its Delegates in Congress, N. Y. Hist. Mag., May, 1873: p. 294.

See first Constitution and Preamble for recital of grievances against New York, Slade's State Papers, 241; Poor's "Constitutions," p. 1858.

In January, 1777, a committee of the N. Y. Convention reported that the claims of the settlers were "unjust and iniquitous" and their complaints "frivolous pretenses." Mr. Dawson, N. Y. Hist. Mag., July, 1871, 67, calls "the great body of the early settlers nothing more nor less than lawless ruffians"—the usual Tory description of the Revolutionary patriots. As respects *New York* law, the settlers were, of course, "lawless," because they were sturdy revolutionists against New York authority; but their defense was mainly by threats, intimidation, and personal chastisement—then a common mode of punishment; cases of great severity were rare. Mr. Dawson's treatment of this controversy seems to me to consist largely of immaterial, microscopic criticism and unsupported declamation. See N. Y. Hist. Mag., January, 1871, p. 52; *Ibid.*, July, 1871, pp. 49, 62 note, 74.

† Jones' Hist. N. Y. in Revolution, 1: 51.

‡ H. Hall's Vt., 301-327, 409, note.

§ See Vt. Charters, 111-114; Thompson's Hist. Vt., Part III., 181; N. H. State Pap. 26: 728; Hemmingway, Vt. Hist. Gaz. 2: 1138.

|| NOTE 2. It does not appear that Columbia obtained actual possession of, or settled, or cultivated her grounds, as the patents required. All the patents declared that the grant should be *null* and *void* "if the grantees do not within 3 years *settle* one family to every 1,000 acres, and *within 3 years* plant and effectually *cultivate* at least three acres for every 50 of such as is

During this long period New York had exhausted all available means, both civil and criminal, to enforce her authority and the claims of her colonial grantees. Sheriffs with a large posse had been often sent to enforce her judgments for possession; she had indicted the leaders of the rebellion, sought in vain to arrest them, offered large rewards for their apprehension, outlawed them and set a price on their heads.\* Later, she had for years prevented the admission of Vermont into the Union and sought the intervention of Congress to compel her

susceptible of cultivation." (Pine's Charters Columbia Col., 72.) The disorders of the times might have formed an excuse, had they not been known to exist in 1769, prior to the issue of Columbia's first patent, even to the interruption of further surveys. (Thompson's Hist. Vt., Part II., 19-20. Chipman's Life of Seth Warner, 21. N. Y. Hist. Soc. Pub., 1869: 299-302; Ibid., Colden Papers, 1877: 196.)

Upon the grant of Kingsland to Columbia on March 14, 1770, a committee was empowered to convey 500 acres to such settlers as they thought proper. (Trustees' Min. 1: 122, 134.) A year later, "there was not a family in the township" (Judge Chandler, in B. H. Hall's Vt., 178; Doc. Hist. N. Y., 4: 708, 709); and in February, 1771, the Judge, Sheriff and Clerk of the County, not being able to find the log-cabin that served for court-house and jail, they opened court *in the woods*; whereupon, as the Clerk entered it, "the Court, *if one*, adjourned." (Doc. Hist. N. Y., 4: 623, qto.) In 1772, there were apparently no settlers on the tract; for at a meeting of the Trustees on February 17, it was reported that "the former encouragement to settlers was *insufficient*"; and the Committee were authorized to "grant in fee to the *first twelve settlers who shall go and settle on said tract*" one 10 acre plot within, and 100 acres out of, the town." (Doc. Hist. N. Y., 4: 767.)

In April, 1772, Yates wrote Mr. Duane as respects his own grants that the civil power was insufficient; and that without military force "you will, I presume, *never recover possession* of your lands." (H. Hall Vt., 138.)

For the following twelve years the trustees' minutes are missing; but their next known mention of these lands is in November, 1787 (after the reconstitution of the college in the preceding April), when a Committee was appointed to report "means for *recovering* their landed property in the N. E. part of this State *called Vermont*." In March, 1788, a Committee was appointed "to *negotiate* with the persons claiming or *possessing* the lands," to *compromise* with them, or to let, sell, take possession or sue for them. (Trustees' Min., 2: 75, 90, 92, 99.) In September, 1788, the Committee reported that they had employed surveyors to run the lines of their land; and this is the last entry found concerning them. If Columbia had ever had possession, she had lost it; the lands were granted by Vermont, in 1781, to other settlers, and they retained them (ante, p. 44). Efforts to compromise, if made, were ineffectual.

\* B. H. Hall's Hist. Vt., 607; H. Hall's Vt., 180, 181; Doc. His., 4: 869; Slade, 42.

submission. But Congress, after long vacillation, on August 20, 1781, adopted resolutions looking to the admission of Vermont into the Union, on terms which (after being at first refused) Vermont a few months afterwards accepted, while New York protested.\* Thenceforward the land claims were the principal bone of contention; and with Congress no longer supporting her, New York continuously lost ground. For while Vermont maintained her independence of New York, and was not admitted into the Union, there was no tribunal to which New York could appeal. Civil war was the only resource. But Congress would not sanction civil war; and New York was not in a condition to resort to it, through the general financial distress and the difficulty of raising troops; nor would her people or the country have sustained it.†

The validity of most of the New York patents, issued contrary to the King's order, was at least doubtful; it was denied by Vermont; and if valid, the patents had now become incapable of enforcement.‡

\* Slade's State Papers, 163-167; H. Hall's Vt., 296, 355, 382-388, 424, 434. N. H. State Papers, 10: 225.

† See Washington's letter of February 11, 1783; Spark's Washington, 8: 382; H. Hall's Vt., 424; Mag. Am. Hist., 23: 149; Hamilton's Speech below cited, p. 48.

‡ NOTE 3. Beside the above irregularities, another systematic violation by the Colonial Governors of the royal orders was in the excessive grants to individuals, and to persons not intending to settle on the lands. The design of the Crown was to promote *settlements*, not speculation. The regulations, therefore, limited grants to persons intending to settle and able to cultivate the land, and limited the amount of the grant, at first to 2,000 acres, afterwards 1,000, to each such person. But most of the land covered by the New York grants was in tracts of from 10,000 to 40,000 acres for speculators, who arranged for inserting in the patents the names of dummies to the requisite number, who, when the patent was issued, assigned their interests to the intended grantee, none of whom ever purposed settlement.

All the Governors (after Governor Moore) understood this practice, abetted it, and practiced it for their individual benefit. Lord Hillsborough severely censured it as evasive and *fraudulent*, as it clearly was. (Col. Doc., 5: 10, 11; 8: 286, 293, 373, 410; H. Hall. Vt., 100-104, 107.) Columbia's 10,000 acres were derived from one of these fraudulent grants to Tryon, through a patent granted by him as Governor to 32 dummies, April 14, 1772, and by them deeded to him personally two days afterwards. (Albany Patents, Vol. 16, p. 213; Deeds, Vol. 19, p. 97. Gov. Wentworth's grants involved similar irregularities, though to a less extent.

Except in New York, the superior rights of the settlers under the New Hampshire grants prior to 1764, were generally sustained; viz., by the Cabinet Ministers of the Crown (Colonial Doc., 7: 917; 8: 343, 344, 356-359; Doc. Hist., 4: 589); by the Board of Trade (Colonial Doc., 7: 224; 8: 330); by the Commissioners under the British Act of 1783 for compensation to Loyalists (see Jones' Hist. N. Y., 2: 643-662), who in the case of John Monroe granted him compensation for his New York lands, but denied it for lands in Vermont for *lack of title*, because previously granted to others by Gov. Wentworth (Vt. Gov. and Council, 1: 17; Benton's Vt. Settlers, 71); and finally after much vacillation, by our own Congress (ante, p. 46).\* The U. S. Supreme Court also in the cases of *Society for the Propagation of the Gospel vs. New Haven* (8 Wheaton 464) and *same vs. Town of Paulet* (4 Peters 480, 502), though this point apparently was not litigated, gave judgments for the plaintiffs, grantees of Gov. Wentworth, in actions of ejectment, in which the plaintiff recovers only on the strength of his own title.

In 1782 it was apparent that Vermont was irretrievably lost to New York, and efforts to make the grants effective ceased. Time soon softened the asperities of the former struggle; and when a few years later a need arose in Congress for another northern state and for more northern votes to preserve the balance of power (Doc. Hist. N. Y., 4: 1068) and to sustain the hopes of New York to retain the seat of government, the sentiment gained ground that the controversy with Vermont ought to be formally closed by her admission to the Union, though relinquishment of the land-claims was a necessary condition (Hamilton to Chipman, July 26, 1788; Life of N. Chipman, 75-77; Williams' Vt., 2: 276-284).

Aside from these considerations, New York, after so long a struggle, was justified in making peace with Vermont without any liability to make compensation for land-claims lost as a consequence of revolution, even had they been of

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\* See N. Y. Hist. Mag., 23: 357, 360; June, 1873. Col. Doc., 8: 339.

substantial value.\* For New York had never used or appropriated these lands in any way. When the treaty was made, there was not the remotest probability that Vermont would ever be regained, or the land-claims ever made effective. They had been virtually lost for years; not by any act of New York, but by Vermont's rebellion and successful revolution. The claims had, therefore, become prac-

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\* 1 Kent 178. Hamilton's Speech on his bill to recognize the independence of Vermont in 1787, from which I have here drawn (Hamilton's works, 7 (Lodge): 9-22; Grotius, Ch. 20, §8: Vattel, b. III, ch. XV, §232). Hamilton's bill passed the Assembly but failed in the Senate. His argument was, however, the basis of the Acts passed in 1789 and 1790. In this speech he declared that Vermont "had in fact been severed from New York for years," with "no reasonable prospect of recovering it"; that "no rights capable of being rendered effective would be sacrificed," and "of course no obligation to make compensation will exist"; and he added: "I should regard the reunion of Vermont to this State as one of the greatest evils that could befall it; as a source of continual embarrassment and disquietude."

Mr. Harrison, counsel for the opponents of the bill, in his speech before the Assembly (see N. Y. Daily Advertiser, April 3, 1787) was assisted by Mr. Duane's brief (Doc. Hist., 4 (qto): 654), and urged, among other things, that "many settlers, if not all, are solicitous to secure a good permanent title to their possessions by *purchasing* the rights held under the State of New York," to which, he urged, the Bill would be a "most fatal blow" — like "the dagger of Brutus from those to whom they looked for protection." The main points of his address were:

(1) That it was *unconstitutional* to divide the State; (2) but if necessary, *compensation* must be made to those who suffer by it; (3) that Hamilton's bill in referring the land claimants to a *Federal Tribunal*, gave no actual compensation, because that resource would be too expensive to be of any value; (4) that compensation should be sought through commissioners from each state — the method finally adopted in the treaty of 1790, and through commissioners of high character and ability.

In February 1781, however, the New York Senate, like Massachusetts, had passed resolutions favoring the independence of Vermont; but Governor Clinton prevented their consideration in the Assembly by threats of prorogation (H. Hall Vt., 332-334.) This situation continued for eight years longer, till 1789; but without any benefit to the New York claimants, or any improvement in their situation or prospects of compromise. Their expectations had become visionary.

Mr. J. L. Heaton in Mag. Amer. Hist., 23: 145, says New York's claim to the grants was for a decade "as blank an absurdity as King George's own was soon to become." And Mr. B. H. Hall in his History says (p. 553) that in 1783 the idea of the reduction of Vermont was "foolish and chimerical."

tically worthless, because not enforceable. Private efforts to obtain something by compromise, after long opportunity for trial, had proved mostly fruitless. In declaring by the treaty that claims and titles under Colonial grants should *cease*, New York extinguished nothing that was, or could be made, of any substantial value to the claimants except by negotiation; and by that means, through Commissioners, she did secure for them a small salvage, which could not have been obtained in any other way. The treaty was not an injury but a benefit to the claimants, secured by the method their counsel had advocated three years before.

It was upon this history and existing situation of the New York land-claims that the Legislature in 1789 and 1790 authorized the treaty, and enacted that it should give rise to *no claims of compensation against the State*, except upon the fund it received from Vermont — a provision which, upon the above review, seems abundantly justified.\*

This situation was perfectly understood by the College trustees in 1814; for in 1805, and again in 1806, they had presented a petition to the Legislature for pecuniary aid, stating essentially the same facts as in the petition of 1814, except that their losses in Vermont were stated more prominently and more strongly. But aware of the Legislative exclusion

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\* Considering that Columbia's land-grants originally cost her almost nothing, the infirmities that attached to them and the absence of any prospect of benefit to be derived from them at the time of the treaty in 1790, the idea expressed by Dr. Moore, writing 56 years afterward, that by making the treaty the State gave the college "a claim of retribution which all that the State has since done for it does not fully satisfy" (ante, p. 21), seems irrational and fanciful. 1 Kent's Commentaries, 178, 179.

Between 1790 and 1814 the State had given the college, in 1792, 1796, 1797 and 1802 about \$60,000 in land and money, and in 1814 and 1819, what was estimated at \$40,000 more, all of which Dr. Moore would apparently credit on the State's imagined debt of "retribution" in part satisfaction of that claim. The trustees in 1814, however, thought differently; for in their memorial of that year (ante, p. 27) they say that "no relief has hitherto been extended to her" on that account; which shows that by the *contemporary understanding* none of those grants was given or received as "compensation" for losses in Vermont; and the grant of 1814 is in no way distinguishable from those prior grants in its character or motive.

of claims to compensation for such losses, they sought to distinguish the claim of the College as a *Scientific Institution* from that of ordinary claims; and, therefore, in 1805 and 1806 "they ask permission to enquire whether the circumstance of its being the good of the State in science which on this occasion yielded to its good in other things, does not put their case *out of the range of ordinary claims*, and entitle them to some *other remuneration* than has been allowed hitherto."\*

But the distinction was disallowed and the petition was rejected.

The principal passages in that petition referring to the Vermont lands are as follows:

"Had war revered science; had the benefactions of individuals survived the struggle for independence, and had not the exigencies of the State since the peace required enormous sacrifices of property in Vermont, the Trustees would have been spared the pain of this address."

After referring to the injury to its buildings by fire and the pillaging of its library during the war and its loss of bonded capital by the depreciation of paper currency, it continues:

"Still, the College might have emerged with new lustre had it been able to retain the lands which it held in Vermont by a double grant from New York and New Hampshire, and which were surrendered by this State in the adjustment of her controversy with Vermont. The Trustees cannot refrain from expressing to your honorable body, that *this blow*, which deprived them of more than one hundred thousand acres of valuable land, which long before now would have commanded a market, *cut off their best hope* that the college in a short time would be venerated by the lovers of knowledge and reflect dignity upon the American name. They are aware that the *wound* was inflicted by the hand of *necessity*, but they ask permission to enquire whether the circumstance of its being the good of the State in Science," etc., etc., as above.

There were numerous other land-claimants, as before stated, in the same situation as Columbia College. The State could

\* Assembly Papers, "Colleges" (State Library), Albany, pp. 75, 113. The "remuneration" doubtless referred to the fund of \$30,000, paid by Vermont (ante, pp. 24-25).

not have granted compensation and thus acknowledged an obligation to Columbia while similar relief to others was refused, without subjecting itself to the charge of gross partiality and injustice; nor was Columbia at that period in any such special favor with the majority in the Legislature as would make any such favoritism, for her benefit alone, in the least degree probable. I have found no case in which such relief was granted for the loss of mere land-claims. In 1797 a petition was presented by Jacob Wilkins, John Rogers, William Linn in behalf of the Dutch Reformed Church, and by some twenty others, for relief on account of the State's "cession of lands in Vermont": it was referred to a committee, but failed, like Columbia's special claim in 1805 and 1806.\*

The trustees in 1814, therefore, had every reason to believe that any *claim to compensation* would not only be refused, but would injure, rather than promote their petition for relief. The State, in its distribution of patronage to educational institutions in need of it, might grant as a necessary *bounty* what it must deny as compensation for lost lands — under a claim of right thereto. Hence nothing about any "claim" or "compensation" for the loss of lands is to be found in the petition of 1814.

The petition as a whole was manifestly framed as a strong appeal for the *ordinary bounty* of the State to aid an educational institution in great need of relief. Of the incidental circumstances calculated to draw favorable attention, the one first mentioned, that Columbia had not received "one fifth part of the *benefactions* made to a kindred institution," had no relevancy to a claim of *compensation*, but was very pertinent to the distribution of *patronage*; and the second circumstance, the loss of the Vermont land, was not mentioned as a subject of claim, or of specific compensation — for none of the neces-

\* In 1786 to 1788 (Act of March 20) a grant of land eight miles square in western New York was made to Timothy Church and about 100 others, as compensation for personal injuries and losses of property while living in Vermont, through their efforts to uphold the authority of New York (Doc. Hist. N. Y., 4: 1014, 1027; qto ed., *ibid.*, 610, 615; B. H. Hall's Vt., 542, 757) — a wholly different case from that of the N. Y. land-claimants.

sary data for such an application was stated; but it was inserted as a make-weight, showing a large additional loss of means which the college had formerly counted on — circumstances which might naturally induce the Legislature to give Columbia a liberal share of the patronage expected to be distributed through the new lottery (ante, pp. 26–27).

The treatment of the subject in the select committee of the Senate was of precisely this import. Had compensation for lands lost through the treaty of 1790 been the purpose of the grant, an investigation and report must have been made by the committee as to the value of the lands at the time of the treaty; the nature and condition of the college title at that time, and her ability ever to gain possession. No such investigation or report was made, or even suggested. But a most careful inquiry and an itemized report were made as to all the government *patronage* the college had received from its very foundation. Only about \$45,000 in money were found, of which only \$6,500 remained as an active source of revenue. The committee reported that they could not

“well conceive how the *public patronage* to so respectable and ancient an establishment should have been so limited, unless on the supposition that Columbia was too richly endowed to need it” — which was a mistake; that “no grants have been made, except by lottery, and a few small tracts of land, and 44,000 acres of land in Vermont, which was lost by the cession to Vermont,” (considered as an immense sacrifice), and in closing say: “Considering her hard case, *it will comport with the dignity and magnanimity* of this State to *interpose with the public patronage* for her effectual relief.” \*

Plainly there was no thought in the minds of this committee of making reimbursement or retribution for the loss of lands in Vermont; there is no suggestion of that idea, but only of a liberal grant of public patronage for Columbia’s relief.

In the various subsequent petitions also for the repeal of the “removal” condition, the grant of 1814 is nowhere referred to as compensation, but as the ordinary bounty or

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\* Senate Journal 1814, 37th Session, pp. 154 to 156.

assistance granted to other necessitous institutions.\* By the Legislative committee of 1819 the grant of 1814 is referred to in the same manner — as bounty or assistance intended to be equal to the \$40,000 given to Hamilton College, with no suggestion of compensation for Vermont lands; † and the \$10,000 given by the Act of 1819 to make good the erroneous estimate of value of the Garden grounds, were given as a bounty and not as compensation for the loss of land, as further appears plainly from the preamble of that Act. ‡

Such then was the conclusion of the whole matter — “to *interpose* with the *public patronage* for her effectual relief”; not to make “compensation” for the loss of land-claims excluded by law 25 years previously, again specifically barred 20 years before, and finally in 1805 and 1806, on Columbia’s petition urging the claim on exceptional grounds, rejected.

The references to the meagre gifts Columbia had received, as compared with other institutions, and to the disappointment of her expectations from her landed property in Vermont, served the purpose intended. They awoke the sympathy of the Legislature, and aided in securing a land grant of the supposed value of \$40,000 by the State’s bounty, of which Columbia had received nothing since 1802.

But from the considerations above recited, that grant cannot rationally be ascribed to any intent of the Legislature to make compensation or “retribution” for any injury inflicted, or for any obligation to Columbia, through the treaty of 1790. That idea, so far as I can discover, is of comparatively recent origin, perhaps growing out of the later appreciation of the immense ultimate value of the grant of 1814, so far sur-

\* Trustees’ Min., 2 : 477, 494.

† Assembly Journal, 1819 : 123, 124.

‡ It recites that, “*Whereas* it is of the first importance that seminaries of learning should be carefully *protected* and receive from time to time the *fostering aid* of the Legislature : and *Whereas, with these views*, all the right, title and interest of the people of the State . . . in the Botanic Garden were by the Act of April 4, 1814, granted to Columbia College . . . and *Whereas* the said grant has not been productive of the benefit intended, Therefore be it enacted” etc. — giving \$10,000 and repealing the condition of the Act of 1814. This Act affected Columbia College alone. See ante, pp. 15-16.

passing the State's gifts to any other educational institution, and perhaps to all such institutions combined, as seemingly to call for explanation of such excess of favor to Columbia.

But there was never any need of explanation or apology; for Columbia has never enjoyed any excess of favor at the hands of the Legislature, certainly not in 1814. The land granted by that Act was supposed to be only equal in value to the \$40,000 in money granted to Hamilton College, which was but one-fifth the amount given to Union by the same Act. The vast increase in the value of the land bestowed on Columbia was not foreseen; it was an accident of its situation; and the benefits of its increase were secured to the college, after long waiting, only by the sagacity, the untiring patience and the devoted services of the college trustees.

## INDEX.

- Acts of Legislature 1790, Vermont treaty 22, 48
- 1795, distributing the Vermont fund 25
- 1810, buying the Elgin garden 8, 9
- 1814, grants garden to Columbia, Lotteries for Union, etc. 12-15, 23, 52
- 1819, corrects error of 1814 15, 23, 53
- Banyar, Goldsbrow, Clerk, speculator 30
- Board of Trade, see Lords of Trade
- BOUNDARIES of New York province by charter of 1664, valid to the Dutch east-line 31; fixed by Hartford treaty of 1650, 10-20 miles east of the Hudson 32-33; *confirmed* by states general 33-34; 20-mile line adopted by Governor Nicoll's boundary commission, *confirmed* by the Crown 34; applied to Massachusetts and New England 34; so recognized by New York and the Crown 34-38. In 1764 Vermont *annexed* to New York 28, 39. In 1786 New York cedes large tract to Massachusetts 38. Of *Massachusetts colony* by charter of 1628, ran to Pacific, excepting the Dutch "*actual possessions*" 31; north, 3 miles beyond Merrimack river ("Endicott stone") 31; by new charter of 1691, westerly co-terminous with Connecticut, *i. e.*, to 20 miles east of the Hudson 36; in 1640 Vermont part of Massachusetts annexed to New Hampshire 37-38
- Burr, Aaron, aided by Dr. Hosack 4
- Charter, Duke's of 1664 and 1674 extinguished by merger in 1684, 36. Of Massachusetts annulled in 1684; new one 1691; bounds of, 36. See *Boundaries*.
- Clinton, Geo., Governor claims to the Connecticut 31
- Colden, Lt. Governor urges Connecticut river to be made New York bounds 29, 37. His different bounds in 1738 37. After 1764 makes conflicting grants, large fees; grants continued after king's prohibition in 1767 29, 30
- College of Physicians and Surgeons. Trustees oppose State's purchase of Garden 8; in charge of garden 1811 to 1816, 9; five years lease to Denison, reserving use for Medical School 9-10; his neglect 11. In October 1816 Garden delivered to Columbia 15; a welcome relief 11
- Columbia College, did not favor state's purchase 8; Garden lightly esteemed; reluctantly taken 14-16; long an expense; took possession October 1816; repaired and let for keeping in repair; sale or exchange hoped for, removal clause repealed 15-16. Plants given in 1819 to Hospital 16; not required to maintain it 12-14; ornamental features preserved 16, 20. Dr. Hosack desires it for societies; offers to *restore* it 16, 17. Short leases at small rent until 1828; then for 21 years to William Shaw, 1829 to 1850 17. In 1833 abates rent 17; in 1835 lease assigned to John Ward 18; efforts for sale of long leases unsuccessful 18; in 1855 abandons intent to remove to Fiftieth street; in 1857 goes to Forty-ninth street; in 1897 to One Hundred and Twentieth street 19. Great cost of grading and assessments 18; sale in 1857 of 16 lots 19; by 1875 all lots leased, rentals large, enabling later expansion into a University 19. *Land claims* on grants in Vermont by Colden and Tryon 22, 25, 30; extinguished by treaty of 1790 22; the treaty a benefit not an injury 48-9; Columbia did not apply for Vermont fund 25. See *Compensation, Treaty, Vermont*.
- COMPENSATION for land-claims in Vermont not intended by Act of 1814, only ordinary bounty 21-54; shown by its Preamble 23; by Senate Committee's report and Act of 1819 23, 52; not asked in petition 26; sought in 1806 on special grounds and not granted 50, refused to other petitioners 23; granted to none 50-51; College did not apply for share in fund 25. Amount of land uncertain 25; title doubtful 30, 41, 47; the grants prohibited 30; not settled as conditioned 45; held void by Vermont 31, 46; if ever valid, worthless and not enforceable in 1790 by Vermont's revolt and independence 24, 48-49; no legal liability for 27, 47-48; prohibited twice by statute 24-25, 50; not the contemporary understanding 49 note; President Moore's fantastic view 49; improbability of 24, 53
- Connecticut, *river*, as a boundary, abandoned by the Dutch and by New York 33-34; in the Duke's charter of 1664 a limit, not a boundary 31; made boundary of New Hampshire in 1764 35; see *Boundaries; colony*, westerly line co-terminous with Massachusetts 31-36
- Dalton, Dr., Account of Dr. Hosack 5

- Dawson, H. B., treatment of Vermont controversy 44
- Double (confirmatory) grants 25 note, 50
- Duane, James, chairman of trustees 25; large grants to, shared in fund 25, 30; champion of claims to Connecticut river 36, 42; counsel of Governor Moore 41; resisted admission of Vermont into Union 41 note
- Dutch Reformed Church, sale of 16 lots to 19
- Dutch settlers, first colony planted 1623 32. In 1650, by Hartford treaty, abandoned claims east of 20-mile line except a few acres at Hartford 33; their "actual possessions" less 34; ratified by States General 33; east-line of N. Y. 34
- Elgin Botanic Garden*, current errors 1, 21. Location, deed, cost, founding by Dr. Hosack 6-8. Sale to state in 1810 widely supported; but not by Columbia or Physicians and Surgeon's College 7-9; satirical note 8. In 1811, in charge of the Regents, and in care of Physicians and Surgeon's College-botanical medical instruction in 9-10. Leases to Davidson for 5 years, reserving Medical College uses; tenant to keep in repair 10. Granted to Columbia in 1814 11. Delivered to her, October, 1816, dilapidated 15. Repair, 15. Plants given to Hospital 16. Last contemporary descriptions 17, 20, 21. Decline of, lack of public support 19, 20. Hot houses removed probably about 1850 20; Engravings of "1825" not originals 20; Vast increase in value leading to college expansion 19. First sale of lots 1857, all improved by 1875, rentals then first "highly profitable" 19. Not granted to Columbia, as compensation for Vermont land-claims 21-53. See *Compensation Columbia College; College of Physicians etc.* designed to equal Hamilton's gift of \$40,000, 53
- France, Dominated the region of Lake Champlain until 1759; her settlements on the East-Side 38
- Engravings of garden 20, 22.
- Evictions attempted, a fatal mistake 36; led to resistance by Green Mountain Boys, 40-3; revolt and independence of Vermont 44. Help to N. Y. by regular troops refused 43
- Francis, J. W., on Dr. Hosack and Garden 4, 5, 7, 21
- Green Mountain Boys, formed to protect settlers 42. Captured Crown Point 43; victory at Bennington leading to Burgoyne's surrender 43
- Hamilton, Alex. 3. Supports Treaty of 1790 46, 48
- Horticultural Society. Seeks lease of Garden 17
- Hosack, David, parentage 2; education 2; foreign study and beginning bot- any 2; brought home first mineral cabinet and an herbarium 3; professor at Columbia and College of Physicians and Surgeon's till 1826; formed Rutgers' Medical College; death 1835 3. Leading physician for 30 years 3. One of founders of New York Historical Society, Bellevue Hospital, New York Horticultural Society, copious author 4. Aided Colonel Burr 4. Character and social prominence 4, 5. Founded Elgin 1801, its rapid growth 6. Expectations from its fruit culture 7. Garden sold in 1810 to the state 7-8. Mortgaged the proceeds to friends 8. Satirized 8 note. Expected the state to maintain the Garden 11. Planned *American Illustrated Flora* 12. "Statement" to correct errors 1. Until 1816 lectured at the Garden 10. Tries to renew connection with the Garden; in 1828 offers to restore it 11, 16, 17. His botanical library in New York Botanical Garden 6
- Hosack, Alex. E., widow's gifts to Academy of Medicine 5.
- Jesuit College, opposite the Garden 7, note
- Judgments of eviction, a mistake causing the loss of Vermont 36-44
- Land-claims, see *Columbia—Compensation*. Speculation in 30 note; worthless in 1790 48-9. See *Treaty*. Of Massachusetts, large cession to her by New York 38
- Land-grants in Vermont; see *New Hampshire Grants, Wentworth, Colden, Tryon, Compensation*; to Columbia College 25. Conflicting, Speculation in, 30 note. Power to grant suspended in 1767 30. Treated as void by Vermont 31, 44. Double 25, 50. Large fees on New York Patents 30 note. Excessive, by use of dummies 46 note; Governor Wentworth's uphold, except in New York 47. In 1790, New York grants worthless 22, 27, 47-9
- Leases of Garden 10, 11, 16-18. In lots for first class dwellings 19
- Lords of Trade, Order of 1764, annexation to New York 28, 29, 40. Boundary of Charter defective 31; Uphold 20-mile line 31, 34, 39, 47. Power to make grants suspended 30
- Lottery for buying the Garden 8; for Union college etc. 12, 14
- Massachusetts*, see *Boundaries*; Charter of 1628, ran to the Pacific, except "actual possessions" of the Dutch 31. See *Dutch*. "Just limits" reported by Commission 31-5. Extent northwards to Canada 38, charter cancelled 1684 36; new one 1691, coterminous with Connecticut westward 36; Colden and Duane, *contra* 36. Receives large tract from New York in 1786 38
- Mitchill, Dr. S. L., Professor of botany

- 8; lectures at Garden 10; popular course, a failure 9
- Moore, Sir Henry, New York Governor. His grants conflict with Governor Wentworth's 30; intended a grant to Columbia, but observed the restraining order of 1767 30
- Moore, N. F., President, fantastic claim of "retribution" 21, 49 note
- NEW HAMPSHIRE GRANTS, now Vermont. See *Columbia College, Wentworth, Vermont*, north part held by the French 37; south part, by Massachusetts till 1740, 31, 37. In 1741 included in Governor Wentworth's commission 28; 130 townships granted by him 29. In 1664 *annexed* to New York 28, 39. Former grants not affected 29, 40; conflicting grants by New York lead to forcible resistance and independence of Vermont 29-43. In 1667, New York grants prohibited 30; order disobeyed 30, 42; titles doubtful 41-2
- New York Province, see *Boundaries*. A proprietary government till 1684, 32; charter then extinguished by merger in the Crown 28, 36; in 1688, *annexed* to New England 36; in 1689 reconstituted without boundaries 36; in 1764, New Hampshire grants *annexed* to 28, 37. Governors Crown agents only 28; in 1767 power to grant suspended 30. See *Land Grants*. Efforts to evict settlers a fatal mistake 36-40. Outlawry of leaders in 1774, 45
- New York State; continued previous efforts to evict settlers 43; *posse comitatus* no heart in it 43, 46; in 1782, senate favored acknowledgment of Vermont's independence; thwarted by Governor Clinton 48, kept Vermont out of the Union till treaty of 1790, 47-9. In 1786 cedes large tracts to Massachusetts 38
- Nicolls, Governor. See *Boundaries, Massachusetts*. Head of boundary Commission 1664; fixed 20-mile boundary applicable to all New England 33-4. His decisions adhered to 34
- Regents of University of New York, in charge of Garden 1811-1816; to incur no expense 9, see *Elgin*
- Ridpath, J. C., error as to treaty 25
- Rutgers Medical College; see *Dr. Hosack*
- Shaw, William, Lessee for 1829-1850, 17; memorial for abating rent 17-18.
- Treaty of 1790, \$30,000 for New York grantees 25; no injury to land-claimants 48-9; of *Hartford*, 1750, Dutch bounds 32; ratified by States general 33 with *Connecticut*, 1664, 20-mile line; west line co-terminus with Massachusetts 34
- Tryon, Sir William, Governor. Half his grants confirmatory, 30 note; the rest prohibited by order of 1767, continued till his flight 42; titles doubtful 30, 41-2, 47; fees 30
- Union College, lotteries 1805, 1814, 14
- United Colonies of New England; treaty with *Stuyvesant* 1650, 32.
- Van Amringe, Dr. J. H., histories of Columbia College and University 2, 21-22
- Vermont, see *Duane, New Hampshire Grants*. Kept out of Union by New York till treaty of 1790, 25, 45. Debate on, by Hamilton 47-8. Revolt caused by New York's conflicting grants 32, 43; declared them void, granted them to others 44. Settlers called "lawless ruffians" 43. In 1781 favored by Congress; civil war was impracticable 46, her titles sustained 46-7
- Ward, John, assignee of lease 1835, 18.
- Wentworth, Benning, Governor, commission of 1741 extended to New York *i. e.*, to the 20-mile line 28, 34-7; granted 130 townships mostly in 1761-4 28-9; none after 1664 29; titles under valid, upheld by Crown 29, 40-1, 47. Dispute submitted to the King 29. Censured for grants *pendente lite* 29. See *New Hampshire Grants*
- York, Duke of, see *Charter*; proprietor of lands captured from the Dutch 32; boundaries indefinite, to be fixed by commission; fixed at 20-mile line 32-5; annulled Massachusetts Charter of 1628; in 1688 *annexed* New York to New England 35-6; ascended throne 1688, when charters merged in Crown, and ceased to be operative 28, 36



4

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