

LONG ISLAND *Colonial* PATENTS

By
FREDERICK VAN WYCK

Illustrated



BOSTON
A. A. BEAUCHAMP
1935

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PREFACE

ALL the publications cited by the author in this tract have been consulted in the Boston Public Library, the Harvard Law Library, and the library of the New England Historic Genealogical Society, some in one of them and some in the others, and for the unfailing courtesy shown to him by all three of these libraries and for the favors and privileges freely extended to him by all of them while he was making these researches he expresses here his appreciation and gratitude.

The first patent by the King to the Duke and the Duke's commission to Governor Nicolls have been reproduced from photostatic copies of these instruments as published by Brodhead. The comparing of the other quoted matter in Part I with the sources has been done without assistance, and while care has been exercised it is hoped that those interested in the subject will consult these sources direct. As is in effect said in the tract, it is mainly a collection of authorities thought to have a bearing on a certain legal question, but arguments have been avoided and no assertive position on the question is taken.

On the subject of Seventeenth Century chirography, reference is here made to *Oyster Bay Town Records, Volume I—1653-1690* . . . Compared, Annotated

and Indexed By John Cox, Jr., New York, Tobias A. Wright, Printer and Publisher, 1916, "Introduction," at pages viii, ix. It is there said:

"The most common contraction was the use of *y* for *th*, at the beginning of a word, with the remainder of the word raised, as *y^e* for the . . . These letters have not been raised in this copy. . . . When *c* was substituted for *ti*, as in *consideracon*, a mark was used to indicate the sound. Writers generally did not double *m* in such words as *common*, but put a mark over the letter to indicate the omission of the second consonant. No attempt has been made to reproduce the superior marks and specially formed letters, except as here stated, as no increased clarity would result and the text would be confusing to the average reader. . . . The capitalization has been followed as closely as may well be done, rendering for the ancient capital *F* the nearest printable approximation, *ff* . . ."

In the present tract "the superior marks" have been in most cases omitted, as well as the punctuation marks under the raised letters. The use of *y* for *th* is more fully explained in the Oxford *Dictionary*, under "Y" and "Th."

49 Wall Street,
New York City,
January, 1935.

CONTENTS

PART I

CHAPTER	PAGE
I. The Patents Generally	3
II. Several Fisheries	41
III. The Long Island Fisheries	66
IV. New York Colonial Statutes	96

PART II

SUBDIVISION	
I. Easthampton Patents	113
II. Flatlands Patents	131
III. Hempstead Patents	145
IV. Smithtown Patents	162
V. The Southold Patent	168
VI. Two Manhattan Patents	172
ILLUSTRATIONS	ix

ILLUSTRATIONS

PLATE		FACING PAGE
1.	The Five Children of Charles I . <i>Frontispiece</i>	
2.	Elizabeth of York	3
3.	Windsor Castle, from the Clewer Meadow .	41
4.	Windsor Castle, from the Eton Playing Fields	66
5.	The Castles of Nassau and Stein	96
6.	Mary, Queen of Scots	113
7.	Richmond Hill and Bridge, Surrey	123
8.	Richmond Terrace, Surrey	131
9.	Hampton Court Palace	145
10.	Trematon Castle, Cornwall	162
11.	Eton, from Windsor Castle Terrace	168
12.	Eton, from the Playing Fields	172

Plate 1.—The Five Children of Charles I. (From a photograph of the copy in the Royal Gallery, Berlin.)

“Five figures, full-length. Vandyke. Painted in 1637. Prince Charles, then seven years old, with his hand on a large dog; the Princess Mary; James Duke of York, then four years old; the Princess Elizabeth, and the Princess Anne, who died an infant. This fine picture hung in King Charles’s breakfast-room at Whitehall. George III. purchased it from the Earl of Portmore.” (*A Summer’s Day at Windsor, and A Visit to Eton*. By Edward Jesse, Surveyor of Her Majesty’s Parks and Palaces, A New Edition, London, John Murray, 1843, p. 68, under the heading, “The Vandyke Room,” p. 67.)

The large dog is a boarhound. (*Anthony Van Dyck, An Historical Study of His Life and Works.* By Lionel Cust, F.S.A., Director of the National Portrait Gallery, London, Honorary Member of the Royal Academy of Fine Arts at Antwerp, Chevalier of the Order of Léopold. London, George Bell and Sons, 1900, p. 111. The book is a large folio, and was printed at the Chiswick Press, Charles Whittingham and Co., London.)

Plate 2. — “ELIZABETH OF YORK. QUEEN TO HENRY THE SEVENTH. OB. 1502. FROM THE ORIGINAL IN THE COLLECTION OF THE RIGHT HONBLE THE EARL OF ESSEX.” (From *Portraits of Illustrious Personages of Great Britain.* Engraved from Authentic Pictures in the Galleries of the Nobility and the Public Collections of the Country. With Biographical and Historical Memoirs of Their Lives and Actions, By Edmund Lodge, Esq., F.S.A. Twelve Volumes. London, Harding and Lepard, 1835, Vol. I, Plate 1. Engraved by W. Holl. On the plate stands, “*London, Published Sept 1, 1833, by Harding & Lepard, Pall Mall East.*” In the “CHRONOLOGICAL ARRANGEMENT OF THE WHOLE OF THE PLATES, DIVIDED INTO VOLUMES, AND CONSISTING OF TWO HUNDRED AND FORTY PORTRAITS,” Plate 1, Vol. I, is listed as “ELIZABETH OF YORK, QUEEN TO HENRY THE SEVENTH. 1502”; “*From the Collection of the Right Honourable the Earl of Essex, at Cashiobury.*” — *Ibid.*, p. 1.)

THE WHITE ROSE

Sent by a Yorkish lover to his Lancastrian mistress.

If this fair rose offend thy sight,
Placed in thy bosom bare,
'Twill blush to find itself less white,
And turn Lancastrian there.

But if thy ruby lip it spy,
As kiss it thou mayest deign,
With envy pale 'twill lose its dye,
And Yorkish turn again.

Anonymous.

(*A Library of Poetry and Song, Being Choice Selections from the Best Poets*, With an Introduction By William Cullen Bryant, New York, J. B. Ford and Company, 1874, p. 39.)

Plate 3. — "*Windsor Castle. From the Clewer Meadow.*" (From *Windsor Castle and Its Environs, Including Eton College*. By Leitch Ritchie, Esq., Second Edition, With Additions By Edward Jesse, Esq., Embellished with Numerous Engravings by the First Artists. London, Henry G. Bohn, 1848, Plate facing p. 138. Artist, J. D. Harding, engraver, J. B. Allen.)

Plate 4. — "*Windsor Castle. From the Eton Playing Fields.*" (From Ritchie's *Windsor Castle and Its Environs, Including Eton College*, 2nd ed., by Jesse, London, Henry G. Bohn, 1848, Plate facing p. 148. Artist, J. D. Harding, engraver, J. T. Willmore.)

Plate 5. — "THE CASTLES OF NASSAU AND STEIN." (From *A Tour through part of Belgium and the Rhenish Provinces*. The author's name is not given, but from the text matter it appears that the Duke of Rutland was the author. London, Printed for Rodwell and Martin, 1822, Plate facing p. 84. The book is a large but not thick quarto, and has thirteen plates of lithographed illustrations. Under the lower left-hand corner of each illustration stands, "Sketched by Eliz^h Duchess of Rutland"; under the lower right-hand corner, "Drawn on Stone by J. D. Harding." On the plate stands in each case, "London. Pub^d by Rodwell and Martin, New Bond St. Ap^l 10, 1822." Each plate has on it, "Printed by C. Hullmandel." The book was printed by Thomas Davison, London. The illustrations range in length from about 8 to 9½ inches, and in width from about 5¼ to 6½ inches.)

John Henry Manners, Fifth Duke of Rutland, who was born January 4, 1778, and died January 20, 1857, married

Lady Elizabeth Howard, daughter of the Fifth Earl of Carlisle. (*Dictionary of National Biography*. Edited by Sidney Lee. London, Smith, Elder, & Co., Vol. XXXVI, 1893, pp. 47, 48.)

Plate 6. — "MARY, QUEEN OF SCOTS. OB. 1587. FROM THE ORIGINAL, IN THE COLLECTION OF THE RIGHT HONBLE THE EARL OF MORTON." (From Lodge's *British Portraits*, London, Harding and Lepard, 1835, Vol. III, Plate 10. Engraved by J. Thompson. On the plate stands, "London, Published Oct. 1, 1829, by Harding & Lepard, Pall Mall East." In the "CHRONOLOGICAL ARRANGEMENT OF THE WHOLE OF THE PLATES . . ." in Vol. I, this plate is listed as "MARY STUART, QUEEN OF SCOTLAND, 1587"; "From the Collection of the Right Honourable the Earl of Morton, at Dalmahoy." — *Ibid.*, Vol. I, p. 5.)

Plate 7. — "Richmond Hill and Bridge. Surrey." (From *Picturesque Views in England and Wales*, From Drawings by J. M. W. Turner, Esq., R.A., Engraved under the Superintendence of Mr. Charles Heath, With Descriptive and Historic Illustrations by H. E. Lloyd, Esq., In Two Volumes. London, Published for the Proprietor, by Longman, Orme, Brown, Green, and Longmans, 1838, Vol. II, Plate No. 1 by count. Engraved by W. R. Smith. On the plate stands, "London, Published 1832 for the Proprietor, by Moon, Boys & Graves, Pall Mall"; "Printed by McQueen." The engraving is 9 by 6¾ inches.)

A recent description of Richmond Palace when it was occupied by the Duke of York or his children in 1671-1674 appears in *Anne of England, The Biography of a Great Queen*, By M. R. Hopkinson, With Sixteen Illustrations, New York, The Macmillan Company, 1934, pages 60-62.

Plate 8.—“*Richmond Terrace. Surrey.*” (From Turner’s *Picturesque Views in England and Wales*, Engraved under the Superintendence of Mr. Charles Heath, With Text by H. E. Lloyd, Esq., London, Longman, Orme, Brown, Green, and Longmans, 1838, Vol. II, Plate No. 47 by count. Engraved by J. T. Willmore. On the plate stands, “*London, Published 1838, for the Proprietor, by Longman and Co Paternoster Row*”; “*Printed by McQueen.*” The engraving is about $9\frac{3}{4}$ by about $6\frac{1}{2}$ inches.)

Plate 9.—“*Hampton Court Palace.*” (*Ibid.*, Vol. I, Plate 28 by count. Engraved by C. Westwood. On the plate stands, “*Published 1829, for the Proprietor, by R. Jennings, Poultry, & by Giralton Bovinet, Gallerie Vivienne, Paris*”; “*Printed by McQueen.*” The engraving is 9 by $6\frac{1}{2}$ inches.)

Plate 10.—“*Trematon Castle. Cornwall.*” (*Ibid.*, Vol. I, Plate No. 38 by count. Engraved by R. Wallis. On the plate stands, “*London, Published 1830, for the Proprietor, by Robert Jennings & William Chaplin, 62, Cheapside*”; “*Printed by McQueen.*” The engraving is $9\frac{3}{8}$ by about $6\frac{1}{2}$ inches.)

“This castle was erected before the Conquest, and was . . . afterwards . . . made part of the Duchy of Cornwall.” (*Ibid.*, Mr. Lloyd’s note, under the heading, “Trematon Castle, Cornwall.” Neither the pages nor the plates are numbered.)

It appears that in Great Britain “. . . Until recent years the title ‘prince’ was never conferred upon anybody except the heir-apparent to the Crown, and his principality is a peerage. Since the reign of Edward III. the eldest sons of the kings and queens of England have always been dukes of Cornwall by birth, and with few exceptions, princes of Wales by creation. Before that Edward I. had conferred the principality on his eldest son, afterwards

Edward II., who was summoned to and sat in parliament as prince of Wales. But Edward the Black Prince was the original grantee of the principality as well as of the dukedom, under the specific limitations which have continued in force to the present day. . . ." (*The Encyclopædia Britannica*, 14th ed., Topic, "Prince.")

In the charter or patent, dated March 17, in the eleventh year of Edward III, creating the Duchy and the Dukedom of Cornwall, as this charter is set forth in "The Prince's Case," in Coke's *Reports*, the grant includes, "the castle and manor of Tremeton, with the town of Saltash, and the park there, and other the appurtenances in the said county; the castle, borough and manor of Tintagel, with the appurtenances in the said county of Cornwall . . . together with wreck of the sea, as well of whales and sturgeon, and other fishes which do belong to us by reason of our prerogative, and whatsoever belongs to any wreck of the sea with the appurtenances, in our said county of Cornwall. . . ." (*The Reports of Sir Edward Coke, Knt. . . . A New Edition . . . In Six Volumes . . . London, Joseph Butterworth and Son, Dublin, J. Cooke, 1826, Vol. IV, pp. 158-164, at p. 159, star page 8b, Part VIII.*)

"In England the title of duke was unknown till the 14th century . . . In 1337 King Edward III. erected the county of Cornwall into a duchy for his son Edward the Black Prince, the first English duke. . . . In Scotland the title of duke was first bestowed in 1398 by Robert III. on his eldest son David, who was made duke of Rothesay, and on his brother, who became duke of Albany." (*The Encyclopædia Britannica*, 14th ed., Topic, "Duke.")

The first Duke of York, Edmund Plantagenet, 5th but 4th surviving son of King Edward III and Queen Philippa, was born June 5, 1341, created by his father, November 13, 1362, Earl of Cambridge, and on August 6, 1385, by King Richard II, Duke of York. (*Complete Peerage of*

England, Scotland, Ireland, and Great Britain, And the United Kingdom, Extant, Extinct, or Dormant, Alphabetically Arranged and Edited by G. E. C., 8 vols., London, George Bell & Sons, Exeter, William Pollard & Co., 1887-1898, Vol. VIII, p. 212.)

A history of the Earldom of Ulster appears in the same volume, pages 3-7. "Edward (Plantagenet), Duke of York . . . also Earl of Ulster . . ." born April 28, 1442, "ascended the throne as Edward IV" on March 4, 1460/1, "when all his honours became merged in the Crown." (*Ibid.*)

A brief history of the Duchy of Cornwall appears in *A Handbook for Travellers in Cornwall*, Eleventh Edition, Revised, With Maps, London, John Murray, 1893, page 48 in brackets. A brief account of Trematon Castle appears in *Cornwall*, By Arthur L. Salmon, Illustrated by B. C. Boulter, London, Methuen & Co., 1903, pages 245, 246.

Plate II.—"*Eton. From Windsor Castle Terrace.*" (From Ritchie's *Windsor Castle and Its Environs, Including Eton College*, 2nd ed., by Jesse, London, Henry G. Bohn, 1848, Plate facing p. 294. Artist, J. D. Harding, engraver, T. A. Prior.)

One Sunday in June, 1905, the present author visited Eton, and in the afternoon was a spectator at the concert on the East Terrace, Windsor Castle. The day was exceptionally fair. Two bands of music played alternately on the Terrace. The scene was exquisite in its simplicity and lack of ostentation. Except for the two bands of music, it might have been an assemblage on the terrace of any stately country-seat. Later in the afternoon the author went to Stoke Poges churchyard, and remained for the vesper service, and then returned by a footpath across a wheatfield to the railway station at Slough. It was still broad daylight in that latitude. Windsor Castle

was in view in walking across the wheatfield. A few days earlier, he had spent Commencement Week in Cambridge, England, and had gone from there across country to Oxford, and after spending a week in Oxford had visited Rugby.

Plate 12. — "*Eton. From the Playing Fields.*" (From Ritchie's *Windsor Castle and Its Environs, Including Eton College*, 2nd ed., by Jesse, London, Henry G. Bohn, 1848, Plate facing p. 303. Artist, J. D. Harding, engraver, J. T. Willmore.)

PART I



ELIZABETH OF YORK (PLATE 2)

CHAPTER I
THE PATENTS GENERALLY

THE following is the first patent by the King to the Duke, as published by Brodhead, except the paragraphing:

“King Charles the Second’s Grant of New Netherland, &c., to the Duke of York.

“CHARLES the Second by the Grace of God King of England, Scotland, France and Ireland Defender of the Faith &c. To all to whom these presents shall come Greeting:

“Know ye that we for divers good Causes and Considerations us thereunto moving Have of our especial Grace, Certain knowledge and mere motion Given and Granted and by these presents for us Our heirs and Successors Do Give and Grant unto our Dearest Brother James Duke of York his Heirs and Assigns All that part of the maine Land of New England beginning at a certain place called or known by the name of St. Croix next adjoining to New Scotland in America and from thence extending along the Sea Coast unto a certain place called Petuaquine or Pemaquid and so up the River thereof to the furthest head of the same as it tendeth Northward; and extending

from thence to the River Kinebequi and so Upwards by the Shortest course to the River Canada Northward.

“And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island situate lying and being towards the West of Cape Cod and the Narrow Higansetts abutting upon the main land between the two Rivers there called or known by the several names of Connecticut and Hudsons River, together also with the said River called Hudsons River and all the Land from the West side of Connecticut [*sic*] to the East side of Delaware Bay. And also all those several Islands called or known by the Names of Martin’s Vineyard and Nantukes otherwise Nantuckett;

“Together with all the Lands, Islands, Soils, Rivers, Harbors, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawking, Hunting and Fowling and all other Royalties, Profits, Commodities and Hereditaments to the said several Islands, Lands and Premises belonging and appertaining with their and every of their appurtenances; And all our Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand of in or to the said Lands and Premises or any part or parcel thereof And the Reversion and Reversions Remainder and Remainders together with the yearly and other the Rents, Revenues and Profits of all and singular the said Premises and of every part and parcel thereof;

“To have and to hold all and singular the said Lands, Islands, Hereditaments and premises with their and every of their appurtenances hereby given and granted or hereinbefore mentioned to be given and granted unto our Dearest Brother James Duke of York his Heirs and Assigns forever, To the only proper use and behoof of the said James Duke of York his Heirs and Assigns forever,

“To be holden of Us our Heirs and Successors as of our Manor of East Greenwich and our County of Kent in free and common soccage and not in Capite nor by Knight service yielding and rendering.

“And the said James Duke of York doth for himself his Heirs and Assigns covenant and promise to yield and render unto us our Heirs and Successors of and for the same yearly and every year forty Beaver skins when they shall be demanded or within Ninety days after.

“And We do further of our special Grace certain knowledge and mere motion for us our Heirs and Successors Give and Grant unto our said Dearest Brother James Duke of York his Heirs, Deputies, Agents, Commissioners and Assigns by these presents full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of us Our Heirs and Successors who may from time to time adventure themselves into any of the parts or places aforesaid or that shall or do at any time hereafter inhabit within the same according to such Laws,

Orders, Ordinances, Directions and Instruments as by our said Dearest Brother or his Assigns shall be established;

“And in defect thereof in case of necessity, according to the good discretions of his Deputies, Commissioners, Officers or Assigns respectively; as well in all causes and matters Capital and Criminal as civil both marine and others; So always as the said Statutes Ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the Laws, Statutes & Government of this Our Realm of England, And saving and reserving to us Our Heirs and Successors the receiving, hearing and determining of the Appeal and Appeals of all or any Person or Persons of in or belonging to the territories or Islands aforesaid in or touching any Judgment or Sentence to be there made or given.

“And further that it shall and may be lawful to and for our said Dearest Brother his Heirs and Assigns by these presents from time to time to nominate, make, constitute, ordain and confirm by such name or name stile or stiles as to him or them shall seem good and likewise to revoke, discharge, change and alter as well all and singular Governors, Officers and Ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and Islands;

“And also to make, ordain and establish all manner of Orders, Laws, directions, instructions, forms

and Ceremonies of Government and Magistracy fit and necessary for and Concerning the Government of the territories and Islands aforesaid, so always as the same be not contrary to the laws and statutes of this Our Realm of England but as near as may be agreeable thereunto:

“And the same at all times hereafter to put in execution or abrogate revoke or change not only within the precincts of the said Territories or Islands but also upon the Seas in going and coming to and from the same as he or they in their good discretions shall think to be fittest for the good of the Adventurers and Inhabitants there.

“And We do further of Our speciall Grace, certain knowledge and mere motion grant, ordain and declare that such Governors, Officers and Ministers as from time to time shall be authorized and appointed in manner and form aforesaid shall and may have full power and authority to use and exercise Martial Law in cases of Rebellion, Insurrection and Mutiny in as large and ample manner as Our Lieutenants in Our Counties within Our Realm of England have or ought to have by force of their Commission of Lieutenancy or any Law or Statute of this our Realm.

“And We do further by these presents for us Our Heirs and Successors Grant unto Our said Dearest Brother James Duke of York his Heirs and Assigns, That it shall and may be lawful to and for the said James Duke of York his heirs and Assigns in his or

their discretions from time to time to admit such and so many Person and Persons to trade and traffic unto and within the Territories and Islands aforesaid and into every or any part and parcel thereof, and to have possess and enjoy any Lands or Hereditaments in the parts and places aforesaid as they shall think fit according to the Laws, Orders, Constitutions and Ordinances by Our said Brother his Heirs, Deputies, Commissioners and Assigns from time to time to be made and established by virtue of and according to the true intent and meaning of these presents and under such conditions, reservations and agreements as Our said Brother his Heirs or Assigns shall set down, order, direct and appoint, and not otherwise as aforesaid.

“And We do further of Our especial grace, certain knowledge and mere motion for us Our Heirs and Successors give and grant to Our said Dear Brother his Heirs and Assigns by these presents That it shall and may be lawful to and for him, them or any of them at all and every time and times hereafter out of any Our Realms or Dominions whatsoever to take lead, carry and transport in and into their Voyages and for and towards the Plantations of Our said Territories and Islands all such and so many of Our Loving subjects or any other strangers being not prohibited or under restraint that will become Our Loving subjects and live under Our Allegiance as shall willingly accompany them in the said voyages; to-

gether with all such clothing, implements, furniture and other things usually transported and not prohibited as shall be necessary for the inhabitants of the said Islands and Territories and for their use and defence thereof and managing and carrying on the trade with the People there and in passing and returning to and fro:

“Yielding and paying to us Our Heirs and Successors the Customs and Duties therefore due and payable according to the Laws and Customs of this Our Realm.

“And We do also for us Our Heirs and Successors, grant to Our said Dearest Brother James Duke of York his Heirs and Assigns and to all and every such Governor or Governors or other Officers or Ministers as by Our said Brother his Heirs or Assigns shall be appointed, to have power and authority of Government and Command in or over the Inhabitants of the said Territories or Islands that they and every of them shall and lawfully may from time to time and at all times hereafter forever for their several defence and safety encounter, expulse, repel and resist by force of Arms as well by sea as by land and all ways and means whatsoever all such Person and Persons as without the speciall Licence of Our said Dear Brother his Heirs or Assigns shall attempt to inhabit within the several precincts and limits of Our said territories and Islands:

“And also all and every such Person and Persons

whatsoever as shall enterprize or attempt at any time hereafter the destruction, invasion, detriment or annoyance to the parts, places or Islands aforesaid or any part thereof.

“And lastly Our will and pleasure is and We do hereby declare and grant that these Our Letters Patents or the enrolment thereof shall be good and effectual in the Law to all intents and purposes whatsoever notwithstanding the not reciting or mentioning of the Premises or any part thereof or the meets or Bounds thereof or of any former or other Letters Patents or Grants heretofore made or granted of the Premises or of any part thereof by Us or of any of Our progenitors unto any other Person or Persons whatsoever, Bodies Politic or Corporate, or any Act, Law or other restraint incertainty or imperfection whatsoever to the contrary in any wise notwithstanding; although express mention of the true yearly value or certainty of the premises or any of them or of any other gifts or grants by Us or by any of Our progenitors or predecessors heretofore made to the said James Duke of York in these presents is not made or any statute, act, ordinance, provision, proclamation or restriction heretofore had, made, enacted, ordained or provided, or any other matter cause or thing whatsoever to the Contrary thereof in any wise Notwithstanding.

“In Witness whereof We have caused these Our Letters to be made Patents.

"Witness Ourselves at Westminster the *twelfth* day of March in the *Sixteenth* Year of Our Reign. [1664]

"By the King.

HOWARD.

"*Original in State Library, Albany; Patents, i., 109-115; Leaming and Spicer, 3-8; New York Colonial Documents, ii., 295-298.*" (*History of the State of New York*. By John Romeyn Brodhead, 2 vols., 1853 and 1871, New York, Harper and Brothers, Vol. II, pp. 651, 652, Appendix, with additional paragraphing.)

The foregoing patent appears also in *The Colonial Laws of the State of New York, From the Year 1664 to the Revolution . . .* (5 vols.), Albany, James B. Lyon, State Printer, 1894, Volume I, pages 1-5, a work hereinafter cited as *Colonial Laws of New York*, or as *Colonial Laws of N. Y.* The "Second Grant to the Duke of York, 1674," down to and including the words "To Have and to Hold, etc.," followed by the words in brackets, "continuing substantially the same as in the grant of 1664," and by the testimonium, appears in the same volume, pages 104, 105. Prefixed is a note referring to a statement that "in the Journal of the New York General Assembly, March 8, 1773, p. 92, is the following declaration: 'To remove any doubt of the validity of the Duke's title, either from the want of seizin in the Crown when it originated, or on account of the intermediate conquests by the Dutch, it was confirmed to his Royal Highness by further

letters patent dated 29th day of June 1674.' ” (*Colonial Laws of N. Y.*, I, p. 104; see also Brodhead, *History of the State of N. Y.*, II, pp. 260, 261.)

The following is the Duke's Commission to Governor Nicolls, as published by Brodhead, except the paragraphing:

*“The Duke of York's Commission to Colonel
Richard Nicolls.*

“JAMES, Duke of YORK and ALBANY, Earl of ULSTER, Lord High Admiral of ENGLAND and IRELAND, &c., Constable of Dover Castle, Lord Warden of the Cinque Ports, and Governor of Portsmouth, &c.

“WHEREAS it hath pleased the King's most Excellent Majesty, my Sovereign Lord and Brother, by His Majesty's Letters Patents, bearing date at Westminster the *Twelfth* day of *March* in the Sixteenth year of His Majesty's Reign, to give and grant unto me and to my Heirs and Assigns, All that part of the mainland of New England, Beginning at a certain place called or known by the name of *Saint Croix*, next adjoining to *New Scotland* in America, and from thence extending along the sea-coast, unto a certain place called *Petaquine* or *Pemaquid*, and so up the River thereof to the furthest head of the same, as it tendeth Northwards, and extending from thence to the River of *Kinebequi*, and so upwards by the shortest course to the River *Canada* northwards;

“And Also all that Island or Islands commonly called by the several name or names of *Matowacks* or *Long Island*, situate, lying, and being towards the west of Cape Cod and the Narrow-Higansets, abutting upon the mainland, between the two rivers there, called or known by the several names of *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*;

“And Also all those several Islands called or known by the name of *Martin’s Vineyard* and *Nantukes* otherwise *Nantucket*;

“Together with all the Lands, Islands, Soiles, Rivers, Harbours, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishing, Hawking, Hunting, and Fowling, and all other Royalties, Profits, Commodities, Hereditaments, to the said several Islands, Lands, and Premises belonging and appertaining, with their and every of their Appurtenances;

“To Hold the same to my own proper use and behoof, With Power to correct, punish, pardon, govern, and rule the Inhabitants thereof, by Myself, or such Deputies, Commissioners, or Officers as I shall think fit to appoint; as by His Majesty’s said Letters Patents may more fully appear:

“AND Whereas I have conceived a good opinion of the Integrity, Prudence, Ability and Fitness of RICHARD NICOLLS, Esquire, to be employed as my Deputy

there, I have therefore thought fit to constitute and appoint, And I do hereby constitute and appoint him the said *Richard Nicolls*, Esquire, to be my Deputy-Governor within the Lands, Islands, and Places aforesaid, To perform and execute all and every the Powers which are by the said Letters Patents granted unto me, to be execute by my Deputy, Agent, or Assign.

“TO HAVE AND TO HOLD the said place of Deputy-Governor unto the said *Richard Nicolls*, Esquire, during my will and pleasure only; Hereby willing and requiring all and every the Inhabitants of the said Lands, Islands, and Places to give obedience to him the said *Richard Nicolls* in all things, according to the tenor of His Majesty’s said Letters Patents; And the said *Richard Nicolls*, Esquire, to observe, follow and execute such Orders and Instructions as he shall from time to time receive from myself.

“GIVEN, under my hand and seal, at *Whitehall*, this *Second* day of *April*, in the Sixteenth Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God King of England, Scotland, France, and Ireland, &c., *Annoque Domini* 1664.

JAMES.

“By Command of His Royal Highness,

“W. COVENTRY.

“*Patents*, i., 116-118; *Leaming and Spicer*, 665-667.”
(Brodhead’s *History of the State of New York*, Vol. II, p. 653, Appendix, with additional paragraphing.)

The articles, dated August 27, Old Style, or September 6, New Style, 1664, by which the Dutch at Manhattan Island capitulated to the English under Nicolls, appear in Brodhead's *History of the State of New York*, Volume I, pages 762, 763, Appendix, under the heading, "Note S, Chapter XX, page 742." The garrison at Fort Orange quietly surrendered on September 24, 1664, and the name of this fort was changed to Fort Albany. (*Ibid.*, p. 744.) Brodhead's account of the proceedings at the South River, September 13–October 10, 1664, ending in the reduction of the fort there, appears in the same volume, pages 744, 745.

Ex-Surrogate Robert Ludlow Fowler's comments on the articles of capitulation signed by the Dutch and the English on August 27, 1664, appear in *History of the Law of Real Property in New York, An Essay Introductory to the Study of the N. Y. Revised Statutes, With Appendices*, By Robert Ludlow Fowler, Counsellor at Law, New York, Baker, Voorhis and Company, 1895, pages 14, 15. The "Patent to the Duke of York, 1664," appears in the same work, pages 179-184, Appendix No. I, with a note at the end. This Appendix is cited in the last paragraph of Chapter I, entitled "European Law in New York," of the same work. (*Ibid.*, pp. 3-24, at p. 24.)

Governor "Nicolls' Proclamation Revoking the Dutch and Establishing the English form of Government, 1665," "copied from 'The Documentary His-

tory of New York,' arranged under the direction of the Hon. Christopher Morgan, Secretary of State, by E. B. O'Callaghan, M.D., 1850, Volume I, p. 389," appears in *Colonial Laws of New York*, Volume I, pages 100, 101. The "Commission of Major Edmund Andros to be Governor of New York, 1674"; the "Order to Put the Duke's Laws in Force in New York, 1674"; the "Proclamation of Governor Andros, 1674"; and the "Instructions to Governor Dongan, 1683," appear in the same volume, pages 106-110.

The "Commission of Colonel Thomas Dongan to be Governor of New-York," dated September 30, 1682, appears in *Documents Relative to the Colonial History of the State of New York . . .* (hereinafter cited as *Col. Doc.*, or as *New York Colonial Documents*), Volume III, pages 328, 329. The "Instructions for Governor Dongan," dated January 27, 1682/3, appear in the same volume, pages 331-334. On pages 377-382 (*Ibid.*) is the "Commission of Governor Dongan," dated June 10, 1686, followed on pages 382-385 by "Instructions to Governor Dongan," dated June 20, 1686.

King Charles II died February 6, 1684/5 (*Ibid.*, p. 359); King James II was proclaimed in the city of New York April 23, 1685 (*Ibid.*, p. 360, n.). In the same volume the "Commission of Sir Edmund Andros," from King James II, dated April 7, 1688, appears on pages 537-542; the King's "Order to Gov-

ernor Dongan to resign his Government to Sir E. Andros," dated April 22, 1688, appears on page 550; and a letter by "Governor Andros to Monsieur de Denonville," dated "New Yorke 11th August 1688," appears on page 555. "In July, 1688, Governor Dongan received a letter from the royal hand, announcing that Sir Edmund Andros had been appointed to this exalted position [Governor-General of the United Colonies of New England with the Provinces of New York and New Jersey], and requiring him [Dongan] to resign the administration of New York. . . . On August 11th he [Andros] was in New-York to take the government of that province from the hands of Dongan, and on August 15th his commission was proclaimed at Elizabethtown, the capital of the New Jersey colony." (*Memorial History of the City of New York, From Its First Settlement to the Year 1892*, Edited by James Grant Wilson, 4 vols., New-York History Company, New York, 1892-1893, Vol. I, p. 453.)

If it is true that there were four classes of towns on Long Island under the English, namely, (1) towns that may have been recognized by the English as having been incorporated under the Dutch on principles too closely in accord with those of the common law on this subject (1 Blackst. *Comm.*, 472-475) to permit of treating these towns as unincorporated; (2) towns the freeholders and inhabitants of which ap-

pear to have been expressly incorporated by Governor Dongan after he became the Deputy or Lieutenant of the King; (3) towns that appear to have been regarded under the English as unincorporated whether they were corporate under the Dutch or not; and (4) towns of a class that appears to have included — it is thought — Shelter Island and Smithtown, the method of converting the Dutch titles into English titles, or of converting pre-existing titles not held under the Duke into titles held under him, appears to have been, so far as the lands in towns of the first three of these classes were concerned, in many respects the same in all three cases, that is, by a general town patent from the Duke's Governor to several men as patentees, for and on behalf of themselves and their associates, the freeholders and inhabitants of the town, their heirs, successors, and assigns, habendum to the patentees and their associates, their heirs, successors and assigns, to the use of the patentees and their associates, their heirs, successors (but see the next sentence), and assigns forever. It may or may not be significant that in the present author's certified copy of the record of the Nicolls patent of Flatlands (PATENTS, IV, p. 44) the limitation was simply to the use of the patentees and their associates, their heirs and assigns forever.

As to the appropriated land in the town under such a general town patent in the first instance in the cases of any of the towns in the first three of these classes,

it may be that the several and respective proprietors of this land at the ensealing and delivery of the patent were by virtue of that instrument (unless holding under a prior patent from the Duke's Governor as appears to have been the case with respect to a Loockermans parcel at Canarsie as will be shown below) in under a new title, derived from the patent by the King to the Duke. (The Duke's Laws, Title, "Lands," and amendments, as these Laws and amendments appear in *Colonial Laws of N. Y.*, I, pp. 44, 73, 77, 80-84.)

It may be that the uses as to the unappropriated or common lands, tenements, and hereditaments under such a general town patent were executed in the Town as a corporation in the cases of towns of the first of these three classes; and in the cases of towns of the second and third of these classes, respectively, were executed in the freeholders and inhabitants of the town, as tenants in common and not as joint tenants, in proportion to their several and respective settlements, divisions, allotments, or purchases of the appropriated land; with the result that in cases of towns of the class numbered (2) in the foregoing classification the title to the unappropriated or common lands, tenements, and hereditaments in the town under such a patent vested in the corporation when the freeholders and inhabitants of the town became corporate.

It may be that this result and the rule that a corporation could not be seised of lands to a use (1

Blackst. *Comm.*, 477), and the fact that Governor Dongan's patents of towns of the class last mentioned may have been conveyances of the prerogative property in game (2 *Idem*, 410-419) as well as of a several fishery, rendered it proper that the uses as to the two classes of premises—appropriated and unappropriated or common—confirmed or granted by these patents be expressed separately in them; and the rule that a corporation might be trustee for a public purpose (1 Blackst. *Comm.*, 479; Earl Cairns in the H. of L. case cited by Mr. Leake, *infra*; Lord Halsbury's *The Laws of England*, IV, p. 255, Title, "CHARITIES") applied then, so far as the title to the unappropriated or common lands, tenements, and hereditaments included in either the general or the particular description in the granting and confirming clause in these patents was concerned, and the title to the appropriated lands, tenements, and hereditaments so included was simply confirmed.

Some might prefer to classify the towns on Long Island under the English by dividing these towns into two classes, one to comprise the towns of the class numbered (1) in the foregoing classification, and the other to comprise all the rest of these towns and have three subdivisions corresponding to the respective classes numbered (2), (3), and (4) above, or possibly a greater number of subdivisions if there were Long Island towns under the English not comprehended by either of these two methods of classifica-

tion. For the purpose of the present tract, the method of classification adopted is thought to be the simpler and more convenient of the two.

It might help to classify these towns in the English period if the records and translated records of all the Long Island colonial patents were officially published with the care that the Town of Oyster Bay is exercising in publishing its records, or has exercised in publishing them. The cost of publishing officially all the Long Island town patents would probably not be greater than the expense that must have been incurred in printing the record in a certain case involving the construction of the two town patents of a town the heretofore published town patents of which are mentioned in the present work. The object of this work is to try to show that what was said in that case to the effect that the earlier of these two patents incorporated that town and vested the title in the town is not applicable to either of the Flatlands town patents, but arguments have been avoided, no assertive position is taken, and the present tract is mainly a collection of authorities thought to have a bearing on this question.

The tract is a supplement to a book the author wrote in 1921-1924 on the subject of the early history of Amersfoort, later called Flatlands. That book was written in support of plans for public improvements, mainly in the Jamaica Bay district, but legal questions were avoided as far as possible. As soon as the

book was found to contain errors it was withdrawn from distribution and is now out of print. That is one of the reasons why it is not cited in this tract. It is hoped to publish a revised edition of the book later.

On the question of whether the town of Flatlands was regarded as corporate or not under the English, the following records and unrecorded deed are referred to: Liber 1, CONVEYANCES (Kings Co.), page 26, and Liber 2, *idem*, pages 82, 125; FLATLANDS TOWN BOOK, Translations (Commissioner of Records Office, Kings Co.), folio 33, and pages 80-89; FLATLANDS ROAD RECORDS (same Office), pages 35, 53, 57, 61; COURT AND ROAD RECORDS, Kings County (same Office), volume beginning with minutes of a Court of Sessions held March 17, 1668/9, folios 196-203; and an unrecorded deed, Liber 1, UNRECORDED INSTRUMENTS (Deeds), page 380 (same Office). This deed, set forth below from that liber, appears to have related to a lane mentioned in FLATLANDS TOWN BOOK, Translations, folio 33, cited above. All the records referred to in this paragraph are mentioned again below.

There was a patent by Governor Nicolls to Govert Loockermans, dated March 29, 1667, for a parcel of land at Canarsie (PATENTS, IV, p. 31, *infra*), antedating the Flatlands town patent dated October 4, 1667, from Nicolls (PATENTS, IV, p. 44), and reciting a ground-brief by Stuyvesant to Loockermans dated May 20, 1664. The patent by Nicolls to Elbert

Elbertsen (PATENTS, I, p. 91) bore date November 1, 1667, — twenty-eight days after the date of the Nicolls patent of Flatlands (PATENTS, IV, p. 44), — and like this patent dated March 29, 1667, by Nicolls to Loockermans recited a Dutch ground-brief.

The Duke's Laws provided, among other things, under the Title, "Lands," that

"To the end all former Purchasers may be ascertained to the present possessor or right owner They shall bring in their former Grants, and take out new pattents for the same from the present Governoure in the behalfe of His Royall Highness the Duke of Yorke."

.

"Every Purchasor in acknowledgment of the propriety [archaic now, — Funk & Wagnall's *New Standard Dictionary*] of such Lands belonging to his Royal Highness James Duke of Yorke, shall upon Sealing of the Pattent Pay unto the Governoure So much as they shall agree upon; Not exceeding for every hundred Acres." (*Colonial Laws of N. Y.*, I, p. 44.)

At the September–October Assizes, 1665, it was provided that

". . . all persons whatsoever who have any grants or Patents of Towneshippes, Lands or Houses, within

this Government shall bring in the said Grants or Patents to the Governour and shall have them Renewed by Authority from his Royall Highness the Duke of Yorke, before the beginning of the next Court of Assizes. . . .

.

“That every Purchaser &c. shall pay for every hundred Acres as an acknowledgment two Shillings and Six pence.” (*Ibid.*, pp. 73, 80, 81.)

An order at the October Assizes, 1670, recited (1) that at Assizes in 1666 “It was ordered that all Townes or private Psons who held . . . by Graunt . . . from ye West India Company or any of ye Dutch Governors or upon pretence of purchase or Patent from any other Pson or Psons whether Indians or others should have them Renewed or Confirmed by ye Governor and ye Authority of his Royall Highness . . .”; (2) that “all Townes upon Long Island have had new Patents Except . . . South Hampton Southhold and Oysterbay . . .” (*Ibid.*, pp. 82, 84.)

So far as has been found, the patent dated March 29, 1667, by Nicolls to Loockermans, *infra*, and the patent dated November 1, 1667, by Nicolls to Elbertsen (PATENTS, I, p. 91), were the only English patents of lands in Flatlands reciting a Dutch ground-brief. There was a Dutch ground-brief dated May 14, 1646, by Kieft to Captain John Underhill (DUTCH PATENTS, GG, Translations, p. 343; *Col. Doc.*, XIV,

p. 66) for an island now known as Bergen Island, Flatlands, and it appears from the record in Liber 2, CONVEYANCES, page 82, cited above, that John Underhill conveyed this island to Elbertsen, and apparently the conveyance was an endorsement in Dutch, dated in 1665, on the original ground-brief (*Annual Report of the Attorney General of the State of New York*, 1898, pp. 185-198 at p. 186), but so far as has been found this ground-brief was not "Renewed or Confirmed" by the English, and perhaps this may be taken to indicate that this island was a part of the tract described in the patent dated November 1, 1667, by Nicolls to Elbertsen (PATENTS, I, p. 91).

There were ground-briefs by Stuyvesant of parcels or tracts in that part of the mainland of the town of Flatlands which lies west, and south, and southwest of the Paerdegat outlet or Bedford Creek, or in other words in the mainland of that town exclusive of Flatlands Neck and Canarsie (references to these ground-briefs appear on the working charts in the Commissioner of Records Office, Kings County), but so far as has been found none of these ground-briefs were "Renewed or Confirmed" by the English, and perhaps this may be taken to indicate that the parcels or tracts described in these ground-briefs were included in the tract described in the patent dated November 1, 1667, by Nicolls to Elbertsen (PATENTS, I, p. 91).

There was an unrecorded Indian deed dated July 20, 1652, of the above-mentioned island now known

as Bergen Island to Thomas Spicer, with a conveyance dated November 25, 1665, by "Mactel Spieser" to Elbertsen endorsed on the deed. (*The Underhill Society of America*, Thirty-Sixth Annual Report, Brooklyn, 1928, pp. 32, 33; *The Bergen Family* . . . By Teunis G. Bergen. Joel Munsell, Albany, 1876, p. 247, n.) So far as has been found, this deed was not "Renewed or Confirmed" by the English, and perhaps this may be taken to be a further indication that this island was included in the tract described in the patent dated November 1, 1667, by Nicolls to Elbertsen (PATENTS, I, p. 91).

There is an unrecorded Indian deed dated May 13, 1664, of "a certain Island commonly called by the Indians Equindito and by the English the broken Lands" to "John Tilton Sen'r and Sammuell Spicer of Gravesend," with a conveyance dated May 2, 1681, by John Tilton and Samuel Spicer to Elbertsen endorsed on the deed. (*The Underhill Society of America*, Thirty-Sixth Annual Report, pp. 35, 36; Stiles's *History of Kings County*, New York, W. W. Munsell & Co., 1884, pp. 77, 78.) So far as has been found, this deed was not "Renewed or Confirmed" by the English, and perhaps this may be taken to indicate that the tract described in this deed was included in the tract described in the patent dated November 1, 1667, by Nicolls to Elbertsen (PATENTS, I, p. 91); and it may be that this patent itself was taken out merely to comply with the Duke's Laws,

and simply confirmed an English title derived under the Nicolls patent of Flatlands (PATENTS, IV, p. 44) dated twenty-eight days earlier.

The confirmation in each of the confirmatory patents set forth in the present work or, so far as has been found, in the publications cited (the second patent to the Duke excepted) appears to have been in terms a confirmation of a parcel or parcels of land (perhaps by construction a confirmation of the possession and enjoyment of the parcel or parcels of land, or perhaps following an ancient form of the assurance known as a "confirmation" and described in 2 Blackst. *Comm.*, 325, and in Sheppard's *Touchstone*, 311), and in addition, in cases of general town patents by the Duke's Governor (Shelter Island and Smithtown excepted), of all the rights and privileges, or of all the privileges and immunities, belonging to a town "within this government,"—the general words in the description in the granting and confirming clause in the Dongan patent of Hempstead (PATENTS, V, p. 182) including "all Libertyes Priviledges" to the tract and premises belonging or in any wise appertaining.

In each of the general town patents so set forth, and in the patent dated November 1, 1667, by Nicolls to Elbertsen (PATENTS, I, p. 91), as well as in the patent dated October 9, 1693, to Colonel William Smith (*Records, Town of Brookhaven, Up to 1800*, As Compiled by the Town Clerk, Patchogue, Printed

at the office of the "Advance," 1880, pp. 77-83; PATENTS, VI, p. 421), there was included in the description in the granting and confirming clause a category of general words, certain of which may have been descriptive of topographical features of the tract, and certain others an enumeration of rights, privileges or royalties included, such as fishing, hawking, hunting and fowling. In the Dongan patent of Southampton (PATENTS, VI, p. 35) this category of general words included "ffranchises."

It appears from the present author's certified copy of the record of the patent last mentioned that the grant, ratification, release and confirmation in this patent was in terms to twelve men, "ffreeholders and Inhabitants of Southampton herein after erected and made one body Corporate and Politique and Willed and Determined to be Called by the Name of the Trustees of the ffreeholders and Comonalty of the Towne of Southampton and there Successors"—the word "assigns" was not included; the habendum was in terms to these twelve men, "freeholders and Comonalty of the Towne of Southampton and there Successors for ever," to and for the uses expressed—the word "assigns" was not used except in expressing the uses. (*Ibid.*) It may be that a part of the corporate name, that is, the part consisting of the words "Trustees of the," was inadvertently left out of the habendum in this patent, or that the patent was loosely or ineptly drawn in this respect. The differences be-

tween these two descriptions of the twelve men are thought to indicate that this habendum was in reality to the twelve men, "Trustees of the ffreeholders and Comonalty of the Towne of Southampton and there Successors," or in other words to the corporation by its corporate name and to its successors, to and for the uses expressed. The twelve men were not described or referred to as patentees except as nine of them were patentees in the earlier Andros patent recited very fully. (*Ibid.*) In a later part of his patent, Governor Dongan nominated and constituted these twelve men "to stand and be the first modern trustees of the ffreeholders and Comonalty of the Towne of Southampton" (*Ibid.*), and perhaps, strictly speaking, the patentee in this case and in the cases of similar patents was the corporation.

The record of the English patent of Gregory's Plantation, Manhattan (the ground-brief is said to appear in DUTCH PATENTS, GG, Translations, p. 481), involved in one of Ex-Surrogate Robert Ludlow Fowler's authorities for confirmation of a Dutch transport, Dutch patents, and Dutch grants to towns (*History of the Law of Real Property in New York . . .* pp. 13, 14), has not been found; the other patents involved in his authorities mentioned are, respectively, (1) a patent entitled "A Confirmacon Graunted unto Govert Loockermans & Cornelys Leenders for a Certain House upon y^e Island Manhatens./." (PATENTS, II, p. 11, set forth in Part II

of this work) ; (2) a patent entitled "A Confirmation of a Parcell of Land on Manhatans Island Graunted to y^e Children of Anneke Bogardus./." (PATENTS, IV, p. 28, set forth in Part II of this work) ; and (3) the Dongan patent of Hempstead (PATENTS, V, p. 182, set forth in Part II of this work and in *History of Long Island, From Its Discovery . . . to the Present Time*, By Benjamin F. Thompson, 3rd edition, Revised and Greatly Enlarged, With Additions and A Biography of the Author, By Charles J. Werner, Member of the Long Island Historical Society, a 2 vol. ed., and a 3 vol. ed., New York, Robert H. Dodd, 1918, Vol. II, 3 vol. ed., pp. 490-492).

A copy of the record of the above-mentioned patent dated March 29, 1667, by Nicolls to Loockermans (PATENTS, IV, p. 31) appears in BOOK OF ALBANY DATA, page 34, Commissioner of Records Office, Kings County. From this copy it appears that the record reads:

"A confirmation of a Parcell of Land Canaresing Graunted unto Govert Loockermans Richard Nicolls Esqr &c Whereas there is a Certaine Parcell of Land lying at Canaresing in the West Riding of Yorkshire upon Long Island being to the North East of the Land belonging to Adrian Hendricks of Haerlem and to the South West of that of of that [*sic*] of Cornelis Jansen by a Line on both sides South East and South East and by South betwixt both containing in Breadth two and

thirty Rod in Length ffoure hundred and twenty Rod in all about foure and fforty Acres and two hundred and forty Rod ffor which Parcel of Land Govert Loockermans had heretofore a Patent or Ground briefe from the Dutch Governor Petrus Stuyvesant bearing date the 20th day of May 1664.

“Now for a confirmation unto ye said Govert Loockermans in his Possession & Enjoym^t of the p^rmises, Know yee That by virtue of the Commission and Authority unto mee given by his Royall Highness I have Ratified Confirmed & Grannted and by these prits do Ratify, Confirm & Grannt unto Govert Loockermans his Heires & Assignes the above recited Lott of Land and p^rmesis wth their and every of their Appurtenances To have and to hold the said Parcell of Land and P^rmissis unto ye said Govert Loockermans his Heires and Assignes unto the proper use and behoofe of the said Govert Loockermans his Heires and Assigns forever Rendering and Paying such Dutyes and Acknowledgmts &c dated the 29th day of March 1667.

R. Nicolls

“I do hereby Certify the foregoing to be a true copy of the Original Record. Word twenty interlined between 2nd and 3d lines.

“Compared therewith by Me

“Lewis A. Scott

“Secretary.”

(Recorded in Book IV of PATENTS, p. 31, Albany.)

The records hereinbefore referred to on the question of whether the town of Flatlands was regarded as corporate or not under the English are, in the order in which they are cited above: A deed, dated October 29, 1687, by "the Inhabitants and ffreeholders off the towne off fflacklands" to Willem Gerritse Van Couwenhoven, executed by the constable "in behalve off the Inhabitants off Flacklands" and acknowledged by him in the same behalf (Liber 1, CONVEYANCES, p. 26); an award, dated February 13, 1695/6, in an arbitration between "Roeloff Martinse Schenk and John Albertse Terhuynse both of fflatlands alias Amsfort in Kings County on the island Nassau for and on the behalf of themselves and other the freeholders and inhabitants of the towne aforesaid of the one part," and the son and sons-in-law of Elbert Elbertsen of the other part (Liber 2, CONVEYANCES, p. 82); a confirmatory deed, dated February 3, 1696/7, by Elbertsen's son and sons-in-law to three men, "for and on the behalf of themselves and other the ffreeholders and Inhabitants of fflatlands," of the house and garden spot "now used and occupied for a schooll house for said towne" (*Ibid.*, p. 125); a translation of the original Dutch transport, dated February 17, 1681/2, of the school plot, "to and in behalf of the town Amersfoort or the constable and overseers" (FLATLANDS TOWN BOOK, Translations, folio 33); the record of a division, partition, or allotment in 1719 of a large tract of common land in Flatlands

Neck and Canarsie, by or under the direction or supervision, apparently, of three men, two of whom were patentees, and the third an owner, apparently, of a full share of a patentee, the record including a deed dated September 17, 1719, of 1.7 acres of undivided land at Canarsie by these three men without description (*Ibid.*, pp. 80-89) ; an Indian deed, dated April 23, 1665, New Style, or April 12, 1665, Old Style, to the "Inhabitants of the Town of Amersfoort" (FLATLANDS ROAD RECORDS, p. 35) ; a copy of part of the record of an action at a Court of Sessions on December 17, 1679, by "The Inhabitants of Flatt Lands" against "Cap^m Elbert Elbertsen" (*Ibid.*, p. 53) ; a copy of an explanatory award, dated February 19, 1695/6 (*Ibid.*, p. 57), in the arbitration mentioned above; an award, dated September 26, 1705, in an arbitration between Elbertsen's son and son-in-law "of the one part & John Albertson Terhuden & Martin Schenck Trustees for the Inhabitants of fflatlands of ye other part" (*Ibid.*, p. 61) ; and the original record of the above-mentioned action by "THE INHAB: of FFLAT LANDS agst CAP^T ELBERT ELBERTS" (COURT & ROAD RECORDS, Kings Co., folios 196-203, cited above).

The unrecorded deed (Liber 1, UNRECORDED INSTRUMENTS,—Deeds,—p. 380, cited above) is a deed, dated May 19, 1733, by "Peter Wykof of flatlands . . . to the said Inhabitants of flatlands," habendum "unto the said Township of flatlands."

No use is expressed in this deed, and it may have operated by way of estoppel. (2 Blackst. *Comm.*, 295.) It reads, according to the copy in the liber last cited:

“To all Christian people to whom these presents shall come I Peter Wykof of flatlands in Kings County on the Island Nassau in the province of New York send greeting in our Lord God Everlasting Know ye that I Peter Wykof for and in consideration of the Love good will and affection which I have and do bear towards my loving friends in the Township of flatlands have given and granted and by these presents do freely and absolutely give and grant to the said Inhabitants of flatlands a Certain piece of Land Lying and being in the Township of flatlands adjoining to the School Lott being breadth two Rods and in Length as far as the School Lott runs, Bounded Southerly by said School Lott and northerly by the ground of said Peter Wykof Westerly by the highway Easterly by the land belonging to the Church To Have and To Hold the abovesaid piece or parcel of Land unto the said Township of flatlands from henceforth as their proper right for Ever absolutely without any manner of condition as I the said Peter Wykof have absolutely and of my own accord sett and putt in further Testimony in Witness Whereof I have hereunto Sett my hand and Seal the nineteenth day of May in the sixth year of the reign of our

Sovereign Lord George The Second King of England and In the year of our Lord Christ one thousand Seven hundred and thirty-three.

Signed sealed and delivered

in the presence of

“S. Gerritson Pieter Wyckoff. [Seal?]
Wilhelm Kouwenhoven”

According to the charts in the Commissioner of Records Office, Kings County, the parcel of land described in this unrecorded deed comprised “the lane of the church,” mentioned in the following copy of the translated record of the original Dutch transport of the school plot:

“Appeared before us constable and overseers Ferdenandes van Siegelen who declares to convey and to transport for him and his heirs a certain house and lot, standing and situate in the town of Amersfoort, adjacent to the lane of the church and that up to the lot of Ferdenandes van Siegelen, and that just as it is fenced in and built, declares to desist therefrom and to transport to and in behalf of the town Amersfoort or the constable and overseers. He Ferdenandes van Siegelen acknowledges therefor to be satisfied and paid the first pennies with the last to have received, thanks them for their good payment. In Witness of the truth they have signed this with their customary signature together with the witnesses here present. Actum in

Amersfoort, the 17th day of February, Anno 1681/2

“Ferdenandes van Sijklen

Coert Stevensen

Deirick Jansen, Constable

Roelof Martensen

in these clerk”

(FLATLANDS TOWN BOOK, Translations, folio 33,
cited above.)

The confirmatory deed of the school plot, Liber 2, CONVEYANCES, page 125, cited above, was, according to the record, a bargain and sale deed of indenture dated February 3, 1696/7, by “Gerret stoothoff Thomas Willett and John Vandyckhuys . . . gent Coeheyres of the Estate of Capt Elbert Elbertse . . . deceased” to “Coert Stevense [Voorhees] Dirick Amertman [Ammerman] and Claes peterse [Wyck-off] for and on the behalf of themselves and other the ffreeholders and Inhabitants of fflatlands”;

And witnesses that the grantors for the consideration expressed “give grant bargain sell Convey release and Confirme unto the said Coert stevensen Dirick Amertman and Claes peterse to and for the use of themselves and other the ffreeholders and Inhabitants of fflatlands aforesd their heyres and assigns for Ever, all that house and garden spot as it is now in fence lying scituate and being in the Towne of fflatlands aforesd adjoining to the house and land of fferdinando vansycklyn and now used and occupied

for a schooll house for said towne, together with . . .
To have and to hold all the said house garden spot
and premises with the appurtenances unto the sd Coert
stevense Dirick Amertman and Claes peterse as
aforesd their heyres and assignes for Ever, to the
sole and only proper use benefit and behoff of them
the sd Coert stevense Dirick Amertman and Claes
peterse for themselves and other the ffreeholders of
fflattlands aforesd their heyres and assignes for Ever”;

With a covenant “to and with the sd Coert stevense
Dirick Amertman and Claes peterse as aforesd their
heyres and assignes” that the grantors “their heyres
Executors and administrators the said Coert stevense
Dirick Amertman and Claes peterse and their asso-
ciates as aforesaid their heyres and assignes in their
quiett and peaceable seizin and possession of the above
granted and bargained house garden spot and premises
with the appurtenances against them and their heyres
shall and will warrant, and by these presents for Ever
defend.”

The consideration expressed was “a certaine sume
of good & lawfull mony of the province of New Yorke
aforesd by the sd Coert Stevense Dirick Amertman
and Claes peterse to them the said Garret stoothoff
Thomas willett and John vandyckhuys at or before
the Ensealing and delivery of these presents in hand
payd, the Receipt whereof they doe hereby acknowl-
edge and themselves therewith to be fully Contented
and satisfyed and thereof and therefrom and of and

from Every part & parcell thereof for Ever by these presents doe acquitt and discharge the sd Coert stevense Dirick Amertman and Claes peterse their heyres Executors and administrators.”

Recorded March 22, 1696/7.

The deed, Liber 1, CONVEYANCES, page 26, cited above, was, according to the record, except the paragraphing, a bargain and sale deed poll, dated October 29, 1687, by “the Inhabitants and ffreeholders off the towne off fflacklands,” witnessing that “the sd Inhabitants,” for the sum of £25 current money of the Province, granted, bargained, sold, aliened, enfoeffed, and confirmed to Willem Gerritse Van Couwenhoven “A certaine pice off land lying within the bounds of said towne off Flacklands over the musheote hole att the East side off Jan Stevense [Voorhees.] broath thirty rodd, long ffrom the ffore ffence to the fflact according to the paipers and deeds thereoff being which pice of land did fformaly belong to the said Inhabitants and Freeholders butt now in the possession off the said Willem Gerritse Van Couwenhoven his assigne or assignes and all and singular the buildings and heriditaments and Right and Previlidges to the sd Pice off ground in the Common woods belonging, and Commonly used occupied Possessed and Enjoyed or which are accepted Reputed or taken to be Part Parcell or Member there off, with all Commons or Common off Pasturage Right and Previlidges Nott Yet Layed out or divided, and all benefitts and

advantages what so Ever there unto belonging . . . together with all deeds evidences and wrightings touching and concerning the Premisses onely”;

With habendum in fee and covenants by the “sd Inhabitants and ffreeholders . . . ffor them selves theire heires Executors and administrators” that “the said Inhabitants are and Stand Lawfully and Rightfully seized and Possessed off the Premisses and off Every Part thereof and thatt they have ffull Power just Right and Lawfull authority to grant bargain and sell the same unto the sd Willem Gerritse Van Couwenhoven in manner and fforme as it is beffore in this Present Expresst, and thatt the sd Pice off ground and tenements with the Premisses and Every Part and Parcell there off with the appurtinances unto the sd Willem Gerretse Van Couwenhoven his heires and assignes shall ffrom hencefforth Remaine and Continue ffor Ever ffreely and Cleerly acquitted Exhonorated and discharged off and ffrom all Manner off fformer and other bargaine sales Judgements Executions titles troubles Incumbrances and Charges what so Ever which here affter shall or may be had made Committed or done by the sd Inhabitants and ffreeholders, or any Person what soever Claiming or Pretending there unto,

“In Witnesse where off have the Constople and Commissaris off fflackland in the behalffe off the sd Inhabitants here unto sett theire hand and seale this 29th day off octob^r in the third yeare off his Mayties

Reigne annoq Domine 1687 att fflackland In the kings
County.

“ Seigned
Luijcas Stevens Constoppel
in the behalve off the Inhab-
itants off Flacklands. (LS)

“ Seigned Sealed and delivered
In the Presents off us
Roeloff Martense
Court Stevense
Jan theunissen Vandyckhuysen
Jan albertse terhuijn

“ This bill of seale being acknowledged by the Con-
stopel In the behalve off the Inhabitants off fflack-
lands beffore mee

“ Elbert Elbertse
“ Justice ”

The original of this deed is thought to have been ,
about 1910, in the possession of Mr. William H.
Kouwenhoven of Flatlands Neck.



WINDSOR CASTLE, FROM THE CLEWER MEADOW (PLATE 3)

CHAPTER II

SEVERAL FISHERIES

SIR HENRY S. THEOBALD appears clearly to be of opinion that Magna Charta did not restrict the Crown's right to grant a several fishery. (*The Law of Land, Wherein are to be found the Prerogative Rights of the Crown, The Rights of the Public and the Rights and Duties arising from the Ownership and Use of Land.* By Sir H. S. Theobald, K.C., M.A., of the Inner Temple. One of His Majesty's Counsel, Honorary Fellow of Wadham College, Oxford, 2nd ed., Revised and Enlarged by the Author, London, The St. Catherine Press, xlvi, 424 pp., 1929, pp. 57-62, at pp. 58-60.)

Mr. Stephen Martin Leake says on the same subject: "A crown grant may be made to a body corporate; or to a section of the public, as the inhabitants of a borough, provided the terms of the grant expressly or impliedly incorporate them, so as to enable them to hold the franchise in a corporate capacity (citation of authority)." (*Uses and Profits of Land.* By Stephen Martin Leake. London, Stevens & Sons, 1888, p. 179.) Mr. Leake cites as authority for his rule two cases, one (*Saltash v. Goodman*, *L.R.*, 7 *C.D.*, [*Q.B.D.*] 106; 50 *L.J.*, *C.P.*, 508; *Goodman v. Saltash*, *L.R.*, 7 *Appeal Cases*, 633; 52 *L.J.*, *Q.B.*,

193) decided in the House of Lords in 1882, and the other (*Re Free Fishers of Faversham*, 57 *L.J., C.*, 187) decided in the Court of Appeal in 1887. In a cross-reference, Mr. Leake cites these same two cases (the second as *Re Faversham Free Fishermen*, *L.R.*, 36 *C.D.*, 329) and another case, 1 *Wms. Saund.*, 346 *a*, *Mellor v. Spateman*. (Leake, *Uses and Profits of Land*, p. 566, Footnote *o.*) In none of the three cases thus cited does it appear that the rule deduced by Mr. Leake and quoted above was expressly laid down.

Mr. H. Stuart Moore says:

“In all waters within the territorial limits of the kingdom, subject to the flow and reflow of the tide, the public, being subjects of the realm, are entitled to fish (citation of authority), except where the King or some particular subject has gained a propriety exclusive of the public right (citation of authority), or Parliament has restricted the common-law rights of the public (citation of authority). Originally the bed of the sea and of all tidal rivers and estuaries within the realm belonged to the Crown as part of the waste of the kingdom, and as owner of the soil the fishery was vested in the Crown, but by common law the public had a public common of fishery over such soil (citation of authority). The Crown, before *Magna Charta* (citation of authority), could exclude the right of the public to fish by granting a several fishery to a subject (citation of authority), and did so in

numerous cases, but since that date this power has ceased to exist, and the public can now [1910] be deprived of their common right only by act of the legislature." (Lord Halsbury's *The Laws of England*, XIV, p. 574, in "Sub-Sect. 1.—*Origin of the Right*," in "Sect. 2.—*In Tidal Waters*," in "PART II.—PUBLIC FISHERIES," under the Title, "FISHERIES.")

Mr. Moore introduces his subject in the work last cited by saying:

"PART I.—INTRODUCTORY.

"In law the term 'Fishery' means either an extent of land covered with water containing fish, or a right to take fish or a certain class of fish from a defined stretch of water. When used in the first sense it means that the ownership of the land covered with water and the right to the fish thereover are united as one corporeal inheritance, the right of fishing being a profit of the soil like the grass of other land (citation of authority), or that the ownership of the right to fish carries with it the ownership of the soil under water, as in the case of a several fishery by fixed engines in tidal waters. Such a fishery is sometimes spoken of as a territorial fishery, and is hereafter referred to as a corporeal fishery (citation of authority). When used in the second sense the term implies nothing more than an incorporeal right—a right to take

fish without interfering with the soil (citation of authority).

“It is possible for a corporeal fishery and an incorporeal fishery to exist over the same extent of land; for instance, one may own the soil and the shell fishery thereover, and another may own the right of fishing for the floating fish (citation of authority), each having a fishery as a separate and distinct hereditament.

“Also a man may own two separate fisheries over the same extent of land; for he may own the soil and the fishery thereover, and also the franchise fishery for royal fish, separate hereditaments which do not merge by the ownership of the soil (citation of authority).” (*Ibid.*, pp. 572, 573.)

It is in Part III of his treatise on Fisheries in the work last cited that Mr. Moore treats of private fisheries. He says:

“PART III. — PRIVATE FISHERIES.

“Sect. I. — *Origin.*

“Sub-Sect. I. — *In Tidal Waters.*

“Private or several fisheries in tidal waters owe their origin to some act of the Crown before Magna Charta whereby the public right of fishing was excluded, and the fishery was either made exclusive for the Crown or for some subject (citation of authority).

As fisheries of this class cannot now be created (citation of authority) except by act of the legislature, the public right of fishing, when it has existed since Magna Charta, cannot be now excluded under the Prescription Act or Statutes of Limitation (citation of authority). The Crown can grant the foreshore to a subject, but such grant will not carry with it a right to a several fishery over it. A grant of a several fishery before Magna Charta raises the presumption that the soil passed by the grant (citation of authority).

“ Sub-Sect. 2. — *In Non-tidal Flowing Waters.*

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“ Sect. 2. — *Different Kinds of Private Fisheries.*

“A private right of fishing, whether in tidal or non-tidal waters, is either a right of several fishery or of common of fishery (citation of authority). A several fishery is an exclusive right of fishing in a given place, either with or without the property in the soil (citation of authority). By exclusive is meant that no other person has a co-extensive right with the owner (citation of authority). The fact that some other person has (1) a right to a particular class of fish in the fishery, (2) a right to fish in common with the owner of the several fishery, or (3) is entitled to fish at a certain time of the year under a presumed trust in his favour, does not destroy the severalty of the fishery (citation of authority).

“Several fisheries may be corporeal or incorporeal, for the liberty of fishing being once in the subject he may part with the soil, reserving the fishery as an incorporeal hereditament (citation of authority).

“Several fisheries are held and pass in the same way as any other hereditaments. If corporeal they may pass by any mode of conveyance of corporeal property, but if incorporeal they can only pass by deed (citation of authority).

“Several fisheries may be appurtenant to or parcel of a manor or appurtenant to a particular tenement, but not to a pasture (citation of authority), or in gross (citation of authority), and may be freehold, or copyhold, or leasehold (citation of authority).

“Sect. 3.—*Presumptions of Law as to Ownership of Corporeal Fisheries.*

“Sub-Sect. 1.—*In Non-tidal Rivers.*

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“Sub-Sect. 2.—*In Tidal Waters.*

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“Sect. 4.—*Incorporeal Fisheries.*

“Sub-Sect. 1.—*Several Fishery.*

“As fisheries owe their origin to ownership of the soil, whether in tidal or non-tidal waters, they were presumably at their creation by the Crown corporeal

hereditaments (citation of authority). There is no legal restriction to their becoming incorporeal in their nature, for the liberty of fishing being once in the subject as an incident of the soil, he may grant out the soil, reserving the liberty as an incorporeal hereditament, or *vice versa* (citation of authority). Where this has occurred the incorporeal fishery may be either a several fishery or a common of fishery, and it may be appurtenant to a manor or a house and land (citation of authority), but not to another incorporeal hereditament like a right of pasture (citation of authority), or it may be held in gross (citation of authority). An incorporeal fishery cannot be exercised by means of engines fixed in the soil unless there be a special provision in the grant, for the mere grant of such a fishery does not confer the right to occupy the soil, but the temporary driving in of stakes for holding a net in position may be regarded as ancillary to the grant (citation of authority). If the ownership of the soil and of the incorporeal fishery unites in the same person, the fishery merges in the soil and becomes a corporeal hereditament (citation of authority).

“Sub-Sect. 2. — *Common of Fishery.*

“Common of fishery is a liberty of fishing in a several fishery in common with the owner of the fishery, and perhaps also with others who may be entitled to the same right (citation of authority). It

may be held either as appurtenant to a house or land (but not to a pasture, citation of authority), or in gross (citation of authority), and may be granted at this day (citation of authority). When not held in gross it may be claimed under the Prescription Act, 1832 (citation of authority).

“Sect. 5. — *Franchise Fisheries — Royal Fish.*

“Although it has sometimes been suggested that a several fishery may be a franchise — a Royal privilege in the hands of a subject — part of the prerogative of the Crown (citation of authority), and that on forfeiture it would merge again in the Crown and could not be regranted, this is not the case (citation of authority). If a several fishery can be a franchise, which is doubtful, it must be an incorporeal fishery and of the same class of franchises as a warren (citation of authority), for the right of fishing did not grow originally out of the prerogative, but arose as a proprietary right from the ownership of the soil (citation of authority).

“There is, however, a special right of fishery which is a franchise, namely, the right to the royal fish — whales and sturgeons. These fish are confirmed to the Crown by the Statute De Prerogativa Regis (citation of authority), whether taken in the sea or elsewhere in the realm, except in places where the Crown has granted out its rights (citation of authority). Except when taken by a grantee of the Crown, the

captor has no property in the fish, though he be the owner of a several fishery at the spot where the fish is captured (citation of authority). When the fish are taken beyond the territorial waters of the realm they belong to the first taker, according to the rules and customs observed in the locality (citation of authority).” (*Ibid.*, pp. 576-581.)

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“Sect. 11.—*Evidence of Title to Fisheries.*

“Sub-Sect. 1.—*By Documentary Evidence . . .*

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“When the grant is made by the Crown it is construed strictly against the grantee, and it passes nothing by implication (Footnote: *Royal Fishery of the Banne Case* (1610), Dav. Ir. 55.) . . .” (*Ibid.*, p. 585.)

In an earlier work, of which Mr. Moore was one of the authors, it is said:

“It is submitted that it is very doubtful whether the right of riviation had any relation to fishing at all, or whether the generally accepted theory, now settled law (Footnote: *Malcomson v. O’Dea*, (1862) 10 H. of L. Cas. 593; *Neill v. Duke of Devonshire*, (1882) 8 A. C. at 179.), that Magna Charta was the statute that prevented the creation of several fisheries in tidal waters is founded on fact. It seems more probable that the several fisheries which exist had all been

created before (Footnote: *R. v. Preston* (Ed. I.), Plac. de Quo Warranto, p. 387.).” (*The History and Law of Fisheries*. By Stuart A. Moore, F.S.A., of the Inner Temple, Barrister-at-Law, “*Author of ‘The History and Law of the Foreshore.’*” And Hubert Stuart Moore, of the Inner Temple, Barrister-at-Law, “*Author of ‘The Rules of the Road at Sea,’ and Joint-Editor of ‘Abbott’s Merchant Ships and Seamen’ (Fourteenth Edition).*” London, Stevens and Haynes, Law Publishers, Bell Yard, Temple Bar, xliii, 446 pp., quarto, 1903, at p. 13.)

Mr. Stuart A. Moore, in his above-mentioned “*The History and Law of the Foreshore,*” says:

“The sole purpose of the present treatise is to throw light upon the difficult questions which so often arise between the Crown and the subject with regard to the title to the foreshores of this kingdom. . . .” (*A History of the Foreshore and the Law Relating Thereto. With a Hitherto Unpublished Treatise by Lord Hale, Lord Hale’s ‘De Jure Maris,’ and Hall’s Essay on Rights of the Crown in the Sea-shore, Third Edition. With Notes, and an Appendix Relating to Fisheries.* By Stuart A. Moore, F.S.A., of the Inner Temple, Barrister-at-Law. London, Stevens and Haynes, Law Publishers, Bell Yard, Temple Bar, liv, 984 pp., octavo, 1888, Introduction, at p. xxvii.)

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“The treatise which is here printed (p. 311) as Sir Matthew Hale’s first treatise, and which is in his undoubted handwriting, would seem to be a first draft of the more finished work which was subsequently printed by Hargrave. The earlier part relating to the ports will be found to be almost wholly incorporated and much amplified in his work ‘De Portubus Maris and of the Customs.’ The second part of it, at p. 357, would appear to be an argument prepared for the case of *Rex v. Oldsworth*, concerning Sutton Marsh. It is valuable as shewing Hale’s contention in a form slightly differing from his argument in the work ‘De Jure Maris.’ The long vexed question of the authorship of the tract is now settled, for we have Hale’s statement (p. 355) under his own hand that he was present at the trial of the case of the Barons of Barclay. . . .”

“In the reigns of Charles II. and James II. the efforts of the Crown to regain possession of the foreshores and marshes were continued, but with little success. In the time of William III. these efforts, after two defeats, slackened, and from that time till 1824 scarcely a claim was made . . .” (*Ibid.*, pp. xl, xli.)

Chapters XVI and XVII of the work last cited are entitled, respectively: “A.D. 1666 to the End of the Reign of Charles II.,” and “The Reigns of King James II. and William III.” (*Ibid.*, pp. 414, 420.)

Appendix II of the same work is entitled "Notes as to the Existence of Several Fisheries around the Coasts and in the Tidal and Non-Tidal Rivers of the Kingdom." (*Ibid.*, p. 908.) Mr. Moore says in the last paragraph of this Appendix:

"The following very imperfect list refers to places in which fisheries are shewn to have existed from notes of records in the Editor's collection. The list might be amplified if the inquisitions and extents of manors were inspected, the calendars of these documents not giving particulars as to fisheries. . . ." (*Ibid.*, p. 909.)

By count the place-names thus listed by Mr. Moore are 541 in number. (*Ibid.*, pp. 910-915.) The first entry in the list reads: "Abbotsbury, Kent—royal fish." (*Ibid.*, p. 910.)

In *The History and Law of Fisheries*, cited above, a similar list contains by count 2024 place-names, with a similar statement to the effect that the list is imperfect and might be amplified. (Moore, *The History and Law of Fisheries*, pp. 406-422.) In this case the list is entitled "List of Fisheries." The authors say:

"It has been thought that the existence of several fisheries in tidal waters is exceptional (Footnote: See Hall on Sea-shore, p. 716.). This is a mistake.

“The true fact is, as can be shown from the records, that all, or almost all, tidal rivers and estuaries were in ancient times, and, where the right still remains valuable, still are, covered by several fisheries in the hands of the subject. . . .” (*Ibid.*, p. 406.)

The entry, “Abbotsbury, Kent—royal fish,” mentioned above, does not appear in this list. The first entry in it reads: “Abbotsbury, Dors.” (*Ibid.*, p. 407.) The place-names in both lists are arranged alphabetically. The work last cited contains also a list of “Fisheries referred to in Domesday Book” (*Ibid.*, pp. 400-405), and states that “The figures refer to the pages in Domesday.—In the places marked * the water is tidal.” (*Ibid.*, p. 400.) By count the place-names in this list total 527; those marked with an asterisk, as being places where the water is tidal, total 72.

In “De Jure Maris” it is said:

“Touching the kind of these fishes that are called royal fish, there seem to be but three, viz. sturgeon, porpoise, and *balæna*, which is usually rendered a whale. . . .

.

“Where observe these two things:

“1st. That these royal fish extended to other than whale and sturgeon, viz. to porpoise, and *grampise*, or great fish.” (“Hale, ‘De Jure Maris,’” in Moore’s

A History of the Foreshore and the Law Relating Thereto, p. 412.) On the preceding page of the same work it is said:

“These liberties of wreck, flotson, jetson and lagon, and that also of royal fish, may be parcel of or belonging to an hundred. But enough of this.” (*Ibid.*, p. 411.)

The treatise entitled “Fisheries,” in Lord Halsbury’s *The Laws of England* (XIV, pp. 569-641), was contributed by “H. Stuart Moore, Esq., M.A., Barrister-at-Law”; “In this Volume the Law is stated as at 30th November, 1910.” (*The Laws of England, Being a Complete Statement of the Whole Law of England*. By the Right Honourable the Earl of Halsbury, Lord High Chancellor of Great Britain, 1885-86, 1886-92, and 1895-1905, And Other Lawyers. London, Butterworth & Co., 11 & 12, Bell Yard, Temple Bar, Law Publishers, Vol. XIV, 1910, at p. vii.)

Munsell’s *History of Suffolk County, New York*, is a large folio volume bearing the imprint of W. W. Munsell & Co., New York, 1882, with no author’s name on the title-page. The work has 82 pages of preliminary history, including a “General History of Long Island”; the rest of the work is paged separately for each town, and the towns are treated of in alphabetical order. Paragraphs relative to whaling

on the southeastern coast of Long Island appear at page 29 of the preliminary history, under the heading "General History of Long Island," and in the following places: "The Town of Brookhaven," pages 15, 16; "The Town of East Hampton," pages 8, 9; and "The Town of Southampton," pages 18, 19.

The following is a copy of a published license for whaling on parts of the Long Island coast.

"Robert Hunter, Esq., Captain General and Governor in Chief of the Provinces of New York, &c., &c., to Major Thomas Jones, reposing especial trust and confidence in your care, and diligence, and integrity, I have thought fit, and I do hereby empower you to seize, secure, and take into your custody and possession all Driffts, driftt whales, and whatsoever other fish or wrecks you shall find floating upon the sea or shall be driven or cast on shore or any part of the sea coast between the gut joining to Mr. Nichols land, and ye west end of Gravesend Beach, and Brookhaven, commonly called Seatawcut, on the north side of Long Island, and saw, cut up, try, and make into oyle, all such driftt whales or other fish, as aforesaid within said bounds, yielding and paying unto me at New York, one half part of the oyl, and whale bone which you shall make or gett thereout aforesaid, and also one half of all other wrecks and driffts, detaining and keeping ye other half thereof to your own proper use and behoofe, giving me an account from time to time

what you shall have done herein; and for so doing this shall be your sufficient warrent; given under my hand and seal at Fort Anne in New York, this 4th day of Sept., 1710." (*The Jones Family of Long Island, Descendants of Major Thomas Jones, 1665-1726, And Allied Families*. Illustrated. By John H. Jones, New York, Tobias A. Wright, 1907, pp. 49, 50.)

Thompson, in treating of St. George's Manor at Mastic, in the town of Brookhaven, sets forth "evidence of the extent to which boat-whaling was carried, on this part of Long Island, at the beginning of the eighteenth century." (Werner's Thompson's *History of Long Island*, 3 vol. ed., Volume II, pages 335, 336.)

In *A Brief Description of New York . . .* By Daniel Denton, London, 1670, it is said:

"Upon the South-side of Long-Island in the Winter, lie store of Whales and Crampasses, which the inhabitants begin with small boats to make a trade Catching to their no small benefit. Also an innumerable multitude of Seals, which make an excellent oyle: they lie all the Winter upon some broken Marshes and Beaches, or bars of sand before-mentioned, and might be easily got were there some skilful men would undertake it." (1 Gowans' *Bibliotheca Americana*, New York, William Gowans, 5 vols., 1845-1869, Vol. I, being a new edition of Denton's tract, with an Introduction and copious Historical Notes by

Gabriel Furman, Member of The New York Historical Society, 1845, p. 6.)

A brief description of "the art of catching Whales" from boats appears in Wolley's *A Two Years Journal in New York . . . 1678, 1679*, published in London in 1701. (2 Gowans' *Bibliotheca Americana*, being a new edition of Wolley's Journal, with an Introduction and copious Historical Notes by E. B. O'Callaghan, M.D., Corresponding Member of The New York Historical Society, 1860, pp. 38, 39.)

Statutes or statutory provisions relating to the whaling industry appear in *Colonial Laws of New York*, Volume I, page 99 (being an am'd't to the Duke's Laws at the October Assizes, 1675, — *Ibid.*, p. 97) ; page 409 (being the title of an act the Commissioners who prepared the publication, *The Colonial Laws of New York*, thought did not become a law) ; pages 610, 611 (being "An Act for the Encouragement of Whalling, Passed September 18, 1708"). This act was continued in force by an act "Passed November 19, 1720" (*Ibid.*, Vol. II, p. 34), which was continued in force by an act "Passed November 1, 1733" (*Ibid.*, p. 818), which in turn was revived by an act "Passed November 17, 1739" (*Ibid.*, Vol. III, pp. 37, 38), which was continued in force by an act "Passed November 24, 1750" (*Ibid.*, pp. 759, 760). Acts relative to the fishery for porpoises were "Passed September 4, 1714" (*Ibid.*, Vol. I, pp. 839, 840), and "June 17,

1726" (*Ibid.*, Vol. II, pp. 311, 312), the respective dates on which the several colonial acts were passed appearing in brackets in most if not in all cases in the work last cited.

The subject of whaling receives attention in *A History of the Town of East-Hampton, N. Y.* . . . By Henry P. Hedges, Sag-Harbor, J. H. Hunt, Printer, 1897, pages 10, 11, 52, 53, 66, 174, 191-194, 196-198, 234-236. A chapter (No. XI) entitled the "Growth and Decline of the Whaling Industry" appears in *History of the Town of Southampton (East of Canoe Place)*, By James Truslow Adams, M.A., Hampton Press, Bridgehampton, L. I., 1918, profusely illustrated, pages 227-245.

According to Blackstone

"Cities and towns were first erected into corporate communities on the continent, and endowed with many valuable privileges, about the eleventh century. . . ." (1 Blackst. *Comm.*, 472, n.)

Of "Article First, Of the Powers and Rights of Towns as Bodies Corporate," of "Title I. Of towns as bodies corporate," of "Chap. XI, Of the Powers, Duties and Privileges of Towns, [Passed 3d December, 1827, and took effect 1st January, 1830]," of Part I of the "Revised Statutes of the State of New-York," or, for short, of 1 *R.S.*, 337, Article I., Title I, the Revisers say:

“*Original note.* ‘This article is wholly new in its present form. . . .’” (*R.S.*, 2nd ed., Albany, 1836, 3 vols., Vol. I, star pages 61, 336, 337, and Vol. III, Appendix, running title, “Revisers’ Reports and Notes, &c.,” pp. 401-863, at p. 482.)

It seems that oysters were natural to Oyster Bay harbor. (Munsell’s *History of Queens County, New York*, W. W. Munsell & Co., New York, 1882, p. 486, under the heading, “Oysters and Clams.”) The theory of the prerogative property in game is expounded by Blackstone. (2 *Blackst. Comm.*, 410-419.) He concludes his remarks on “A *free fishery*,” “a *several fishery*,” and “a *common of piscary*” by saying:

“ . . . it must be acknowledged, that the right distinctions of the three species of fishery are very much confounded in our law-books; and there are not wanting respectable authorities (Footnote: See them well digested in Hargrave’s notes on Co. Litt. 122.) which maintain that a *several fishery* may exist distinct from the property of the soil, and that a *free fishery* implies no exclusive right, but is synonymous with *common of piscary*.” (*Ibid.*, pp. 39, 40.)

Blackstone’s *Commentaries*, according to one authority, were published in 1768-9. (*The Constitutional History of England*, A Course of Lectures Delivered By F. W. Maitland, LL.D., Late Down-

ing Professor of the Laws of England in the University of Cambridge. Cambridge, At the University Press, 1911, p. 416, n.)

Professor Sharswood says:

“It was about the year 1750 that Blackstone first began to plan his Lectures on the Laws of England. . . . In Michaelmas Term, 1753, he delivered his first course at Oxford. Whether from the novelty of the subject or the reputation of the lecturer, his first course was numerously attended. Nor did the interest flag. Such was the elegance of style and popular character of the course, that attendance soon became the fashion. In 1754, he found it worth while, from the number attending, to publish his *Analysis of the Laws of England*, for the use of his hearers. It is founded on a similar work by Sir Matthew Hale, with some alterations, not generally regarded as improvements.” (Sharswood’s Blackstone’s *Commentaries*, In Two Vols., Philadelphia, Childs & Peterson, 1860, Vol. I, “A Memoir of Sir William Blackstone,” p. xii. The editor of this ed. of Blackst. *Comm.* was George Sharswood, Professor of the Institutes of Law in the University of Pennsylvania. — *Ibid.*, p. i, Title-page.)

Mr. G. P. Macdonnell, the author of the memoir of Sir William Blackstone in the *Dictionary of National Biography*, says:

“Some imperfect reports of his lectures having been circulated, and some having ‘fallen,’ as he says, ‘into mercenary hands, and become the object of clandestine sale,’ Blackstone determined to prepare them for publication in the form of a general survey of the English law. . . . He produced the first volume of the ‘Commentaries’ in 1765, and the other three volumes at intervals during the next four years. . . .

“Few books have been more successful than the ‘Commentaries.’ From his lectures, and from the sale of the work, he is said to have made altogether about 14,000 *l.* (Prior, *Malone*, p. 431; in Böhmer’s *Litteratur des Criminal-Rechts* the sum is said to have been 16,000 *l.*) Eight editions appeared in the author’s lifetime, and the ninth edition was ready for publication. For sixty years after his death editions continued to follow one another almost as quickly . . . Nowhere has his work been more widely read than in America. ‘I hear,’ said Burke, in 1775, ‘that they have sold nearly as many of Blackstone’s Commentaries in America as in England. . . .’” (*Dictionary of National Biography*. Edited by Leslie Stephen, London, Smith, Elder, & Co., 15 Waterloo Place, Vol. V, published in 1886, pp. 135, 136.)

In the memoir last cited, Mr. Macdonnell quotes or mentions several estimates of Blackstone’s *Commentaries* from a legal point of view.

The following is from *The Annals of Hempstead*, by Onderdonk:

“1784, July 14.—The town votes that every person who shall get or carry away any clams from our south bays and beaches, in any boat or vessel, to any part of this State and other States, (to our great damage), shall pay one shilling per thousand for toleration; nor shall any one get or sell clams to any boatman, under 5 shillings per thousand, to be carried to New York or out of this town, under penalty of 40 shillings fine, half to go to the informer. If any foreigner or boatman shall dig or get clams, or bring hands to get them, he shall pay £5 penalty. No boatman shall take any clams in his boat before he pays his ‘toleration’ and obtains permission, under penalty of £5; and if he takes more clams in his boat than he has paid toleration for, he shall pay £5 penalty. William Pearsall, James Pine, Thomas Dorlon, Joseph Raynor, Jr., and Obadiah Jackson are to oversee the same, and receive the toleration money, and grant permissions; and they may arrest and carry offenders before a justice, sue for the fines and claim assistance, if needed; and any one refusing assistance shall pay 40 shillings fine. For their trouble they are to have two pence out of a shilling out of the toleration money.” (*The Annals of Hempstead, 1643 to 1832, Also the Rise and Growth of the Society of Friends on Long Island and in New York, 1657-1826*. By

Henry Onderdonk, Jr., Hempstead, N. Y., Lott Van De Water, Printer and Publisher, 1878, pp. 81, 82.)

The questions that arose relative to the common land of the Town of Hempstead, after the division of Hempstead into the two towns of Hempstead and North Hempstead, and the decision of those questions, resulted in certain of the provisions of 1 R.S., 337, defining the powers and rights of towns as bodies corporate in New York. ("Revisers' Reports and Notes, &c.," R. S., 2nd ed., 1836, Vol. III, Appendix, pp. 401-863, at pp. 482, 483.)

Mr. Onderdonk's work, cited above, has also the following:

"1804. — Voted that Morris Fosdick, Harmones Lott and Richard Bedell copy off the old records of this town, that are now in North Hempstead. (Footnote: At the division of the town, 1784, the clerk, John Schenck, lived in North Hempstead, and by an oversight the records were left with him and ever after remained in that town. They have since been copied for Hempstead, but very imperfectly.)" (Onderdonk, *The Annals of Hempstead, 1643-1832* . . . p. 83.)

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"1808, April. — \$500, if necessary, are to be raised toward carrying on a lawsuit now commenced against the town for the meadows, marshes and beaches. (Footnote: For a history of these suits against the

town by North Hempstead and the patentees, see (1) Johnson's Reports, ii, 320-338, Kent's opinion; (2) Hopkins' Reports, i, 289-300, Sanford's opinion; (3) Wendell, ii, 109-113, Court of Errors.)

"1812.—\$700 are raised to defend the common rights of the town." (*Ibid.*)

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"1821, February 12.—\$500 are voted to the supervisor and clerk to defend the suit brought in chancery by North Hempstead, and a committee is appointed to meet the committee of North Hempstead, to know their demands and offer to unite the two towns again, if they were dissatisfied with the present division, and North Hempstead to pay the equal part of the expenses of the former lawsuit with the patentees. February 19th.—William Pine, Thomas Tredwell and Edward A. Clowes, of Hempstead, met John B. Kissam, John Schenck, Singleton Mitchell and others, of North Hempstead, but nothing was agreed on." (*Ibid.*)

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"1826, January 4.—\$1,500 is to be raised to defend the common rights in the suit now in the Court of Errors, between Hempstead and North Hempstead. April 1.—\$1,200 is raised to pay the expenses of the lawsuit formerly brought by the patentees, &c." (*Ibid.*, p. 84.)

An account of the convention at Hempstead at

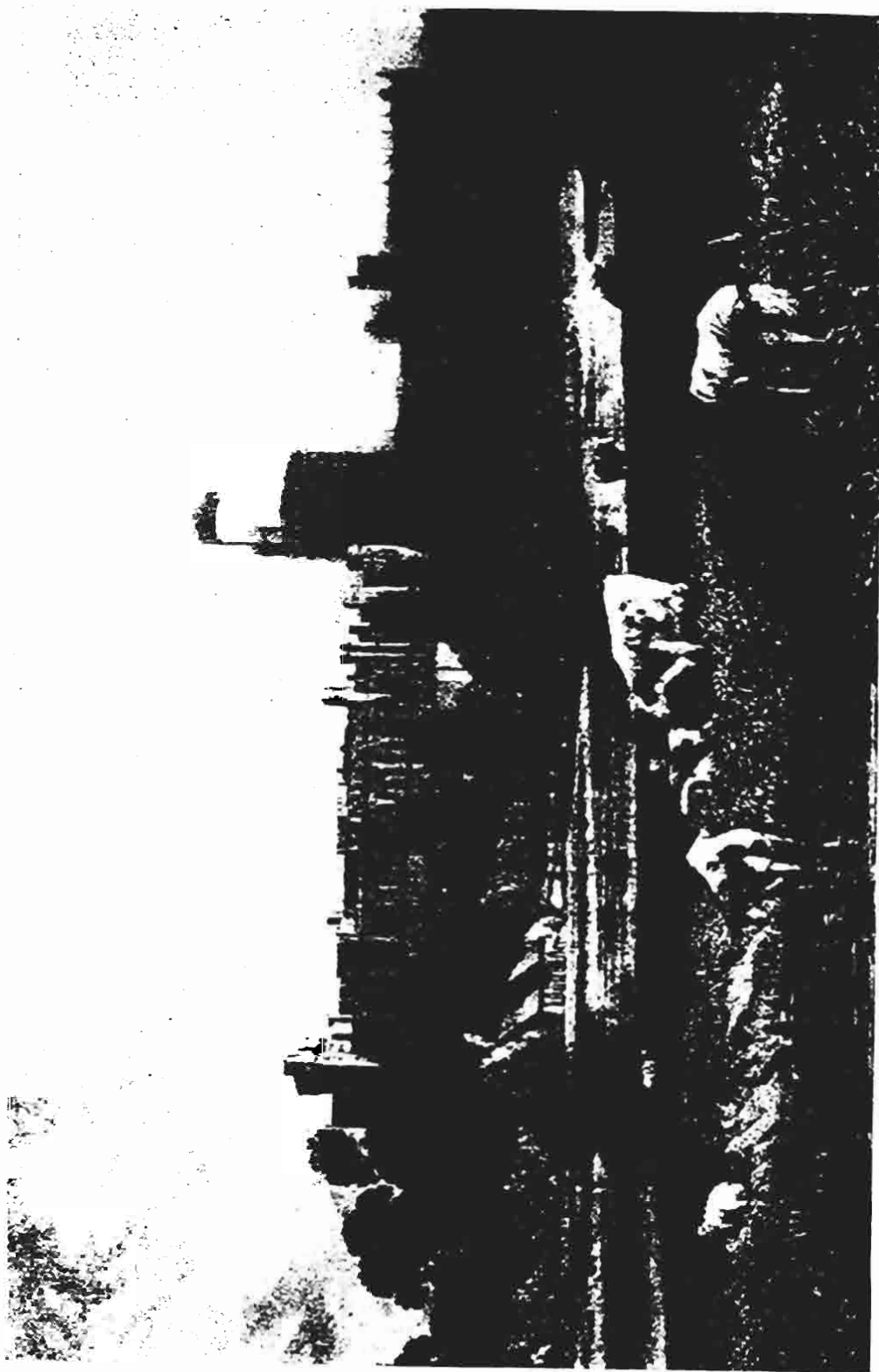
which the Duke's Laws were promulgated appears in Brodhead's *History of the State of New York*, Volume II, pages 62-76.

CHAPTER III

THE LONG ISLAND FISHERIES

IT appears that "As early as 1771 the Trustees of Brookhaven ordered 'that no oysters or clams shall be taken out of ye South Bay, opposite our town, within our patent, unless first obtaining liberty of us, ye Trustees, or from our order, and whoever shall go contrary to this act shall pay for every such offence ye sum of Twenty Shillings, to be recovered before any Justice of the Peace as any other debt.' In 1788 the Trustees fixed the charge for each ton of oysters taken out of the bay, at 1 shilling 6 pence, and soon afterwards in the same year amended it by making the charge '2 pence per tub of oysters or clams.'" (*Bi-Centennial. History of Suffolk County, Comprising the Addresses Delivered at the Celebration of the Bi-Centennial of Suffolk County, N. Y., in Riverhead, November 15, 1883. Babylon, N. Y., Budget Steam Print, 1885, Appendix C, entitled "Incidents of the Fisheries," pp. 103-106 of the volume, at p. 106.*)

One of the addresses in the volume last cited is entitled "The Commerce, Navigation and Fisheries of Suffolk County," and was made by the Honorable Henry A. Reeves. (*Ibid.*, pp. 55-78.) The last part of this address is devoted "to the Fisheries of Suffolk County." (*Ibid.*, pp. 65-78.)



WINDSOR CASTLE, FROM THE ETON PLAYING FIELDS (PLATE 4)

Under the heading, "The Bay Fisheries," a history of the regulations of "the trustees of the town" of Brookhaven, relative to these fisheries, appears in Munsell's *History of Suffolk County, New York*, "The Town of Brookhaven," pages 36-38. On the theory that it may have been the publishing of Blackstone's *Commentaries*, or the earlier publishing of his lectures, that gave rise to the difficulties that appear to have been had in the latter part of that century, and throughout nearly all of the next one, with the fisheries in the Eastern Long Island towns, the following, from the authority last cited, may or may not have a bearing:

"Previous to the Revolution the trustees of the town appear to have given but little attention to their claims upon the waters and shores over which their patent gave them jurisdiction. At the same time the successive occupants of the South Bay proprietorship experienced much difficulty in enforcing their claims to that water and its bottom. Under the partnership agreement of 1767 and 1790 the managing control of the south side bays fell to the charge of the trustees, and they have ever since continued to exercise that power. By that arrangement the limits of their jurisdiction were enlarged so as to cover all the salt waters embraced within the patent lines of the town." (*Ibid.*, p. 36, being the first of fourteen paragraphs under the heading, "The Bay Fisheries.")

The Nicolls patent of Brookhaven, dated March 7, 1666/7, and the Dongan patent of Brookhaven, dated December 27, 1686, are set forth in the published records of the town of Brookhaven. (*Records, Town of Brookhaven, Up to 1800*, pp. 18, 19, 52-61.)

The Dongan patent of Easthampton, dated December 9, 1686, reciting very fully the Nicolls patent of Easthampton, dated March 13, 1666/7, is set forth in Hedges' *A History of the Town of Easthampton, N. Y.* . . . pages 210-215. Both of these patents, from the originals, are set forth in *Records of the Town of Easthampton* . . . five volumes, Sag-Harbor, John H. Hunt, Printer, 1887-1905, Volume I, pages 253-255, and Volume II, pages 194-204, and from that work are reproduced in Part II of this.

The Huntington town patents by Governors Nicolls, Dongan, and Fletcher, respectively, dated November 30, 1666, August 2, 1688, and October 5, 1694, respectively, appear in a work entitled *Huntington Town Records, Including Babylon, Long Island, N. Y., 1653-1873*, With Introduction, Notes and Index By Charles R. Street, Transcribed, Compiled and Published by Authority and at the Expense of the Two Towns, 1887-9, three volumes, Volume I, pages 92-96, 532-543, and Volume II, pages 140-151.

Mr. Street, the compiler of the publication last cited, was the author of the history of the town of Huntington in Munsell's *History of Suffolk County, New York*. In that work, under the heading, "Title

and Products of Land under Water," Mr. Street says among other things:

" . . . For 200 years the town granted leases for docks, leased or sold the land under tide-water mill-ponds, and prohibited non-residents from taking clams, oysters, etc., from the tide waters of the town. . . . Lands were sold in some instances running to the channel. . . .

"About 1848 large oyster beds were discovered in Northport Bay, and fleets of vessels came from abroad and took many of the oysters. The town resisted, and an exciting oyster war followed, though no one was killed or wounded. Finally Connecticut parties assumed control over parts of the best oyster grounds, planted oysters and excluded the people from the premises so occupied. . . .

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" . . . the Connecticut parties still occupy their extensive oyster beds here and bid defiance to the town. . . ." (Munsell's *History of Suffolk County, New York*, "The Town of Huntington," pp. 46, 47.)

The Andros patent of Southampton, dated November 1, 1676, and the Dongan patent of Southampton, dated December 6, 1686, appear in *The Early History of Southampton, L. I., New York, With Genealogies*, Revised, Corrected and Enlarged, By George Rogers Howell, M.A., Yale University, Member of the Albany Institute, Corresponding Member of the

Troy Scientific Association, New York Historical Society, New York Genealogical and Biographical Society, New England Historic Genealogical Society, Historical Society of Pennsylvania, and State Historical Society of Wisconsin, Second Edition, Albany, Weed, Parsons and Company, 1887, pages 458-464, Appendix; and also in Dr. James Truslow Adams' *History of the Town of Southampton (East of Canoe Place)*, pages 279-287, Appendix X.

The Andros patent of Southampton is set forth in *The Second Book of Records of the Town of Southampton, Long Island, N.Y., With Other Ancient Documents of Historic Value, Including the Records from 1660 to 1717 . . .* Sag-Harbor, John H. Hunt, Printer, 1877, pages 347-349, Appendix, evidently from the original in the Town Clerk's Office (*Ibid.*, p. iv). Except that the word *of* in one place was apparently left out of the record, and that the spelling, punctuation, and capitalization in the patent as thus published are modernized, the habendum in it agrees with the habendum in the following from the present author's certified copy of the record of this patent:

“A Patent or Confirmacon Graunted to the
Inhabitants of the Towne of South Hampton./.

“Edmond Andros Esqr &c

“Whereas there is a Certaine Towne in the East
Riding of Yorkshire upon Long Island commonly

called and knowne by the name of Southampton
. . . Now for a Confirmacon . . . Know Yee . . .
To have and to hold all and Singular their said Lands
Hereditaments and p^rmisses with their and every of
their Appurtenances and [of] every Parte and Parcell
thereof to the said Patentees and their Associates their
Heirs, Successo^{rs} and Assignes to the proper use and
behoofe of the said Patentees and their Associates
their Heires Successo^{rs} and Assignes forever the
Tenure . . . Provided . . . I do hereby likewise
Confirme . . . And Yeilding . . . Given under my
Hand . . . the first day of November . . . 1676.

“E. Andross.

“Examined by me

M. Nicolls Secr.”

(PATENTS, IV, p. 100.)

Dr. James Truslow Adams, in setting forth the Andros patent of Southampton, cites “Southampton Town Records, Vol. II, pp. 347-9.” (Adams, *History of the Town of Southampton (East of Canoe Place)*, p. 280.) The habendum in this patent as set forth in the work last cited is a copy of the habendum in the same patent as published in *The Second Book of Records of the Town of Southampton* . . . pages 347-349. From memory, which may be at fault, both of the town patents of this town appear in the printed record in one of the cases involving the construction of these instruments.

Under the heading, "Whaling Squadron," Mr. Howell says in his work cited above:

"... In 1687 (Footnote: MSS., State Library, Albany.) there were fourteen whaling companies of twelve men each in the town of Southampton who reported an estimate of oil then in their possession, the result probably of the catch of one season.

[Here follows a table]

"Total2,148 bbls.

"April 15, 1687, East Hampton reports also 1,456 barrels on hand.

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"... As appears in the State records at Albany Governor Hunter in 1711 claimed and took one-half of the oil and bone of the whales captured by the companies in Southampton licensed by himself. . . ." (Howell, *The Early History of Southampton, L.I.*, 2nd ed., pp. 180-186, at pp. 180, 181.)

On the same authority the habendum in the Dongan patent of Southampton reads, except the paragraphing:

"... To have and to hold all the aforerecited tract and parcell of land and premises with their and every of their appurtennces unto the said Major John Howell Thomas Hallsey Senior Edward Howell John Jagger John Foster Francis Sayers

Joseph Fordham Henry Pierson Samuell Clarke
Job Sayers William Barker Isaac Halsey ffreehold-
ers and comonalty of the towne of Southampton and
their Successors forever to and for the severall and
Respective uses following and to no other use intent
and purpose whatsoever

“That is to say as for and concerning all and singu-
lar the severall respective parcells of Land and
meadow part of the granted premises in any wayes
taken up and appropriated before the day of the date
hereof unto the severall and respective present ffree-
holders and Inhabitants of the said towne of South-
ampton by virtue of the aforerecited deed or Patent
to the only use benefite and behoofe of the said re-
spective present freeholders and Inhabitants and to
their severall and respective heires and Assignes
forever

“And as for and concerning all and every such
parcell or parcells tract or tracts of land Remainder
of the Granted premises not yet taken up or appro-
priated to any particular person or persons by virtue
of the aforerecited deed or Patent to the use benefite
and behoofe of such as have been purchasers thereof
and their heires and assigns forever in proporcon to
their severall and respective purchases thereof made
as tenants in Comon without any lett hindrance or
molestation to be had or reserved upon pretence of
joynt tenancy or survivorship any thing contained
herein to the contrary in any ways notwithstanding

. . .” (*Ibid.*, pp. 461, 462; and also Adams, *History of Southampton (East of Canoe Place)*, pp. 283, 284; with paragraphing added.)

The patent mentioned in this habendum is the Andros patent of Southampton, which is in substantially the same form as the Andros patent of Southold, dated the day before, and hereinafter mentioned. The Andros patent of Southampton is recited in the Dongan patent of Southampton in substantially the same manner in which the Nicolls patent of Easthampton is recited in the Dongan patent of Easthampton. The tenendum, the reddendum, and what are taken to have been articles of incorporation in the Dongan patent of Southampton are in substantially the same forms as the respective forms of the tenendum, the reddendum, and what are taken to have been articles of incorporation in the Dongan patent of Easthampton.

The habendum in the Dongan patent of Brookhaven as published reads, except the paragraphing:

“ . . . To have and to hold all the before recited tract of land & premissess, with their and every of their appurtenances, unto the said John Palmer, Richard Woodhull, Samuell Eburne, Andrew Gibbs, William Satterly, Thomas Jenner & Thomas Helmne, trustees of the freeholders & comonalty of the towne of Brookhaven, and their Successors forever, to and for the severall & Respective uses following, and to

no other uses, intents & purposes whatsoever, that is to say, as for & concerning all and singular, the severall & respective parsells of lande & meadow, part of the Granted premisses in any wayes taken up and appropriated, either by pattent under the hand of any of his Majestyes Governours in this province, and sealed with the seale thereof, or by perticuler divisions and Allotments before the day of the date hereof, unto the Severall & respective present freeholders or Inhabitants of the said towne of Brookhaven, by virtue of the aforecited Deed or pattent, to the use and behoofe of the said freeholders or inhabitants respectively, & their severall & respective heires & assignes forever.

“And as for and concerning all and every such parcell or parcells, tract or tracts of land, Remainder of the granted premissess, not taken up or appropriated to any perticuler person or persons, by virtue of the Afore-recited deed or pattent, to the use and behoofe of the present freeholders & inhabitants, their heires, Successors and Assigns forever, in proportion to their Severall & respective Settlements, Divisions & Allottments, as tennants in comon, without any lett, hindrance or molestation, to be had or reserved, upon pretence of joint tennancy or survivorship, any thing contained herein to the contrary in any wise notwithstanding, allways saving unto his most Sacred majesty aforesaid, his heires and successors the severall Rents & Quitt Rents reserved, due & payable, from severall persons inhabiting within the limitts & bounds afore-

said, by virtue of former grants, to them made and given, and also saveing to his most sacred majesty Aforesaid, his heires & Successors, all the tracts & necks of land that lye to the South, within the limitts and bounds aforesaid, that remaine unpurchased from the native Indians, any thing contained herein to the contrary in any wise notwithstanding . . .” (*Records, Town of Brookhaven, Up to 1800*, pp. 55, 56, with paragraphing added.)

The habendum in the Dongan patent of Huntington as published reads:

“. . . to have and to hold all and singular ye before cited Tract of Land and premises within ye bounds and limits afforementioned, with their and every of their appurtenances unto ye said Thomas Fleet senior, Epenetus Platt, Jonas Wood senior, James Chichester senior, Thomas Powell, senior, Joseph Baily, Thomas ———, John Samnes and Isaac Platt, Trustees of ye Freeholders and Comonalty of ye Towne of Huntington and their Successors forever to and for ye severall and respective uses following and to noe other uses, intents and purposes whatsoever, that is to say as for and concerning all and singular ye severall and respective parcell of Land and Meadows, part of ye granted premises in any wayes taken up and appropriated eighter [*sic*] by Pattent under ye hand of any of his Majestys Gov-

ernors in this Province and sealed with y^e seale thereof or by perticular divisions and allotments before y^e day of y^e date hereof unto y^e severall and respective present Freeholders or Inhabitants of y^e said Towne of Huntingtown by vertue of y^e before recited Deed or Patent, to y^e use and behoofe of y^e said Freeholders and Inhabitants respectively and to their severall and respective Heires and Assigns forever and as for and concerning all and every such parcell or parcells, Tract, or Tracts of Land, remainder of y^e granted premises, not taken upp or appropriated to any perticular person or persons by vertue of y^e before recited Deed or patent, to y^e use and behoofe of y^e present Freeholders and Inhabitants and their Heires, Successors, and assigns forever in proportion to their severall and respective settlements, Divisions and allotments as Tenants in common without any manner of Lett, Hinderance, or Molestation to be had or reserved upon pretence of joynt Tennancy or survivorshipp, anything contained to y^e contrary in anywise notwithstanding, alwaies, saveing to his most sacred Majestie aforesaid, his Heires and successors, ye several rents and Quitt-rents reserved, due and payable from severall persons inhabiting within y^e Limitts and Bounds afforesaid by vertue of former Grants to them made, and Given and alsoe saveing to his most sacred majestie aforesaid, his Heirs and Successors, all ye Necks of Land y^t lye to the South within y^e limitts and Bounds aforesaid, and ye Lands

to y^e Northward of y^e same, y^t remaines unpurchased from y^e Native Indians, anything contained hereinto ye contrary in any wayes not withstanding . . .” (*Huntington Town Records* . . . Vol. I, pp. 535-537.)

The habendum in the Fletcher patent of Huntington as published reads:

“ . . . to have and to hold all and singular the before recited tracts and necks of land and premises, within the limits and bounds next above mentioned, with their and every of their appurtenances, unto the said Joseph Bayly, Thomas Wicks, Thomas Brush, Jonas Wood, John Wood, John Wicks, and John Adams, Trustees of the Freeholders and Commonalty of our said town of Huntington, and their successors, forever, with the sole license of purchasing from the natives any land or meadow within the limits and bounds next aforementioned, to and for the several and respective uses following, and to no other uses, intents, and purposes whatsoever; (that is to say) as, for, and to concerning all and singular the several and respective parcels of land and meadow, part of the grant, and premises in anyways taken up and unappropriated [*sic*] by particular divisions and allotments, before the day of the date hereof, unto the several and respective present Freeholders and Inhabitants of our said town of Huntington, by virtue

of the before recited deed or patent, to the only use, benefit, and behoof of the freeholders or inhabitants respectively, and to their several and respective heirs and assigns, forever; and as, for, and concerning all and every such parcel or parcels, tract or tracts, neck or necks of land, remainder of the granted premises, not taken up or appropriated to any particular person or persons, by virtue of the before recited deed or patent, to the use, and behoof of the present freeholders and inhabitants, their heirs successors, and assigns, forever, in proportion to their several respective settlements, divisions and allotments, as tenants in common, without any manner of let, hindrance, or molestation, had or reserved, upon pretense of joint tenantry or survivorship — anything contained to the contrary in anywise notwithstanding . . .” (*Ibid.*, Vol. II, pp. 144, 145.)

The patent mentioned in the habendum in the Dongan patent of Brookhaven is the Nicolls patent of Brookhaven; the patent mentioned in the habendum in the Dongan patent of Huntington is the Nicolls patent of Huntington; and the patent mentioned in the habendum in the Fletcher patent of Huntington is the Nicolls patent of Huntington (the date being recited as November 13, 1666, instead of November 30, 1666). The Nicolls patent of Brookhaven and the Nicolls patent of Huntington are each of them in substantially the same form as the Nicolls

patent of Easthampton. For brevity, it is thought that for the purpose of the present work it may be said that the Dongan patents of Brookhaven, Huntington, and Southampton, respectively, and the Fletcher patent of Huntington, are all four of them in substantially the same form as the Dongan patent of Easthampton, with some minor differences not thought to be material enough to require notice in this work, except that the Dongan patent of Easthampton is the only one of these five patents that has an habendum in which the uses are expressed separately with respect to three classes of premises. Governor Dongan appears not to have attested his patent of Huntington, and this may have been the reason for the making of the Fletcher patent of that town.

The New York Public Library has in pamphlet form the Dongan patent of Southampton, published by order of the Town. That publication is apparently referred to in *The Second Book of Records of the Town of Southampton* . . . page v, note. A few years ago the present author, without assistance, compared this patent as published in this pamphlet with his certified copy of the record of this patent, and found the two to differ, but his notes of the differences found are not at hand at this writing.

That what are taken to have been articles of incorporation in the Dongan patents of Brookhaven, Easthampton, Huntington, and Southampton, respectively, and in the Fletcher patent of Huntington,

followed an ancient legal form or precedent, is thought to be indicated by the fact that in this Fletcher patent the quit rent was payable on "the first day of the Annunciation of our Blessed Virgin Mary." (*Huntington Town Records* . . . Vol. II, pp. 145, 150.) For obvious reasons Lady Day was referred to in the Dongan patents by giving the day of the month only. The Catholics in the city of New York in or about June, 1696, were officially reported to be "Maj^r Anthony Brockholes. M^r Thomas Howarding M^r William Douglas John Caveleir Peter Cavileir John Cooly. John Patte Christiane Lowrance John Fenny. Phillip Cunningham." (*New York Colonial Documents*, Vol. IV, p. 166.)

The history of the town of Shelter Island in Munsell's *History of Suffolk County, New York*, was written by William S. Pelletreau. Under the heading, "Title to the Soil," after first tracing the title to Shelter Island from William, Earl of Stirling, and the Indians into Constant and Nathaniel Sylvester, Mr. Pelletreau quotes in full an instrument dated May 25, 1666, by which Governor Nicolls recited that "'Nathaniel Sylvester of Shelter Island, Merchant, ffor and on the behalfe of himselfe and his brother Constant Sylvester of Barbadoes, Esq., hath, of his own voluntary free will and good affection to this government, advanced and paid toward ye support and maintenance thereof the sum of £150, the receipt whereof I do hereby acknowledge,'" and there-

upon granted “‘unto ye said Nathaniel and Constant Sylvester, and to their heirs and assigns forever, That ye said Island called Shelter Island is and forever hereafter shall bee by these presents discharged, ex-honored and acquitted from all taxes and rates either civill or military . . .’” (Munsell’s *History of Suffolk County, New York*, “The Town of Shelter Island,” pp. 1, 2.)

Mr. Pelletreau then says:

“Within a short time a patent or confirmation of their rights to the island was granted by Governor Nicolls to the two brothers Sylvester, conveying the following:

“‘A tract of Land lying and being in a certain bite, bay or arm of the sea, which runneth between the lands of East Hampton, Southampton and Southold, in the East Riding of Yorkshire upon Long Island, heretofore purchased from the Indians by James ffaret, agent to William Earl of Sterling [*sic*], and which hath since came by several deeds, conveyances and grants to the said Constant Sylvester of the Island of Barbadoes, Esq., and Nathaniel Sylvester, then inhabiting and residing in Shelter Island aforesaid, merchant; and which island shall be held, reputed, taken, and be an entire infranchised town ship, manor and place of itself, and forever have, hold and enjoy like and equal privileges and immunities with any

other town, infranchised place or manor within this government; but not to extend to the protecting of any traitor, malefactor, fugitive or debtor flying into the said island, to the damage of any person or the obstruction of the laws. The same to be held as of his Majesty the King of England, in free and common soccage and by fealty only, yielding and paying yearly one lamb on the first day of May, if the same shall be demanded.'” (*Ibid.*, p. 2, apparently copied, but not completely, in *Historical Papers on Shelter Island and Its Presbyterian Church, With Genealogical Tables of the Descendants of . . .* By the Rev. Jacob E. Mallman, “Pastor Presbyterian Church, Shelter Island, N. Y.,” 1899, Printed for the Author by The A. M. Bustard Co., New York, pp. 27, 28. Shelter Island was organized as a town in 1730. — *Ibid.*, pp. 28, 39, 40.)

The Nicolls patent of Smithtown, dated March 3, 1665/6, and the Andros patent of Smithtown, dated March 25, 1677, are set forth in Munsell's *History of Suffolk County, New York*, “The Town of Smithtown,” pages 4 and 8. Both of these patents are set forth in Part II hereof from *Records of the Town of Smithtown, Long Island, N. Y., With Other Ancient Documents of Historic Value*, Transcribed from the Originals in the Town Clerk's Office, With Notes and Introduction By William S. Pelletreau, A.M., And Published by Authority of the Town,

1898, pages 6-8, and 20-22, respectively. Town officers were elected for Smithtown, on May 3, 1715. (*Ibid.*, pp. 78, 79.)

The author of the history of the town of Smithtown in Munsell's work last mentioned was "J. Lawrence Smith." Under the heading, "Fish and Game," Judge Smith says:

" . . . The patent to Huntington also covers the bays and harbors, and they too are navigable, like the waters of Smithtown, where the tide ebbs and flows. In both of those towns the exclusive right of fishery has been held by our courts to be covered by their patents and vested in the town. A glance at the patent of Smithtown, elsewhere recited, shows conclusively that it covers the waters of Smithtown and Stony Brook Harbors, and includes under the decisions of the courts the right of fishery, and a non-resident of the town has no more right to take shell-fish in those waters than he would have to take corn growing in the fields. Jurisdiction has been exercised over the fisheries by the town for more than 100 years; but the right, as well as the undivided land, belongs to the descendants of the patentee.

" . . . All these facts indicate that certainly no person not a proprietor, or an inhabitant of the town, has a right to fish there." (Munsell's *History of Suffolk County, New York*, "The Town of Smithtown," p. 30.)

In Munsell's work last cited, none of the patents to the proprietors for parts of the town of Islip are set forth, but the patent dated September 20, 1697, by "William, the third . . . King of England . . . unto the said William Nicoll . . ." executed by Governor Fletcher, is set forth in Werner's Thompson's *History of Long Island* (3 vol. ed.), Volume II, pages 351-353, without giving in full the category of general words in the granting and confirming clause. The habendum reads:

" . . . To have and to hold all the said certaine tract of land and Raconchony Pond aforesaid, limited and bounded as aforesaid, together with all and singular the messuages, tenements, buildings, barns, houses, outhouses, stables, edifices, orchards, gardens, enclosures, fences, pastures, fields, feedings, woods, underwoods, trees, timber, swamps, meadows, marshes, pools, ponds, lakes, fountains, water, water courses, rivers, rivulets, runns, streams, brooks, creeks, harbours, coves, inlets, outlets, islands of land and meadow, necks of land and meadow, peninsulas of land and meadow fishing, fowling, hunting and hawking, and the beach as far as the said land extends upon the sea, quarries, mines, minerals (silver and gold mines excepted) and all other the rights, members, liberties, privileges, jurisdictions, prehominencys, emoluments, royalties, profits, benefits, advantages, hereditaments, and appurtenances whatsoever, unto

the afore recited certain tract of land and pond, within the limits and bounds aforesaid, belonging, or in any wise appertaining or accepted, reputed, taken, known, or occupied as part, parcel, or member thereof, unto the said William Nicoll, his heirs, and assigns, to the sole and only proper use, benefit and behoofe of him, the said William Nicoll, his heirs and assigns forever, to be holden of us, our heirs and successors, in free and common soccage, as of our mannour of East Greenwich, in our county of Kent, within our realme of England . . .” (*Ibid.*, pp. 352, 353.)

The anonymous author of the history of the town of Islip in Munsell’s *History of Suffolk County, New York*, says:

“The first action taken by the town for the protection of fisheries in the bay was recorded in 1765, as follows: ‘It is also Concluded upon the majority of voats that If any one of the Inhabitants of the precincts of Islip Shall Give Leave to any furriner to fish in the bay or also in the creek that He Shall forfeit the Sum of forty Shillings to the overseers of the poor for the use of the poor of the Said town.’ In 1767 the ‘fishing act that was made in the year 1765 is Continued, with an addition of the overseers of the poor of the town Recovering the fine by Law.’” (Munsell’s *History of Suffolk County, New York*, “The Town of Islip,” p. 5.)

“No further laws concerning fisheries appear to have been enacted by the town till 1815, when it was ‘voted that any person not being a resident in the town of Islip Shall not Catch or Carry out of the town any Clams under the penalty of ten dollars for Every offense.’ The same penalty was prescribed for taking and carrying away fish and ‘horsefeet’ and for shooting and carrying ‘out of the town any foul.’ In 1822 a resolution was adopted restricting the privilege of taking clams or fish to residents of Suffolk County. In more recent times the regulation of these fisheries has been made the subject of legislative action, and difficulties have arisen between Islip and the neighboring towns concerning them.” (*Ibid.*, pp. 5, 6.)

Under the heading, “Land Titles,” in the work last cited, the several patents for parts of the town of Islip are mentioned. They were, on this authority, (1) Governor Dongan to William Nicoll, dated December 5, 1684; (2) the same to the same, dated November 1, 1686; (3) “June 4th 1688 a patent made to Mr. Nicoll conveying what have since been known as the Fire Islands . . .”; (4) Governor Fletcher to William Nicoll, dated September 20, 1697; (5) Governor Ingoldsby to Andrew Gibb, dated March 26, 1692; (6) Governor Fletcher to Thomas and Richard Willets, dated October 10, 1695; (7) the same to Stephen Van Cortland, dated June 2, 1697; (8) Indians to Van Cortland, purchase on November 20,

1699, perfected . . . under an act . . . passed the 30th of October 1710"; and (9) a patent to John Mowbray, granted October 19, 1708. (*Ibid.*, pp. 2, 3.) For the purpose of the present work the purchase and legislative act mentioned in subdivision (8) in the foregoing list are classed as a patent.

Possibly an examination of these patents or the records of them would show that Islip could not be included in the class of towns to which it is thought Shelter Island and Smithtown may have belonged and to which they have been assigned—whether rightly or wrongly—in the classification that seemed to answer the purpose or object of the present work, as that object is expressed in the foregoing Chapter I. It is inferred that in the English period the corporate name of Shelter Island was the Town of Shelter Island; the corporate name of Smithtown was the Town of Smithtown; and the corporate name of Hempstead was the Town of Hempstead. If Islip belonged to the class numbered (3) in the classification last mentioned, possibly a separate subdivision would be needed in that class for this town.

The Andros patent of Southold, dated October 31, 1676, appears in the *History of Southold, L.I., Its First Century*, By the Reverend Ephraim Whitaker, D.D., "Pastor of the First Church of Southold, Councilor of the Long Island Historical Society, Corresponding Member of the New York Genealogical and Biographical Society, etc.," Southold, Printed for the

Author, 1881, pages 204-207, followed by a "deed of confirmation," dated December 27, 1676, and two legislative acts, one "Passed the 8th of April, 1796," and the other "Passed November 26, 1847." (*Ibid.*, pp. 207-211.) The patent and the deed appear also in *Southold Town Records*, Copied and Explanatory Notes Added By J. Wickham Case, in two volumes, Printed by Order of the Towns of Southold and Riverhead, 1882-1884, Volume II, pages 8-12. In that publication, as in Dr. Whitaker's work, the deed appears at the end of the patent, which is set forth in Part II hereof from Dr. Whitaker's work.

The history of the town of Southold in Munsell's *History of Suffolk County, New York*, was written by William S. Pelletreau, A.M. Under the heading, "The Andros Patent," Mr. Pelletreau gives the history of the obtaining of the Andros patent of that town, and sets forth an abstract of the patent. He then mentions the deed of confirmation, and sets it forth. His next heading is "Commonage Rights," and of his three paragraphs under this heading the last two read:

"By an act passed April 8th 1796 the owners of the undivided lands were incorporated and certain powers given them. [The correctness of this conclusion is not gone into in the present tract.] Previous to that it seems to have been the practice when a person wished to buy a piece of the undivided lands to get a

deed signed by a majority of the shareholders, and the commoners at a meeting would appoint a committee to act for the whole.

“In a suit between the commoners and William B. Horton the general term [*sic*] decided that the act of 1796 gave the trustees no power to sue an outside party. This defect was remedied by an amendment passed November 26th 1847.” (Munsell’s *History of Suffolk County, New York*, “The Town of Southold,” pp. 14-16, the two paragraphs quoted appearing on p. 16.)

The Andros patent of Oyster Bay, dated September 29, 1677, appears in Munsell’s *History of Queens County, New York*, page 470, and in *Oyster Bay Town Records, Volume I, 1653-1690*, With an Appendix . . . Published by Order of the Town . . . Compared, Annotated and Indexed by John Cox, Jr., New York, Tobias A. Wright, 1916, pages 307-309, and is in substantially the same form as the Andros patent of Southold. Mr. John H. Jones, in his *The Jones Family of Long Island*, already cited, mentions this Oyster Bay patent, and refers to the patentees as “the same who had received the Indian deed,” which according to Mr. Jones was dated March 17, 1658. (*The Jones Family of Long Island . . . And Allied Families*, p. 40.) Mr. Jones says:

“In the Indian deed no mention is made of the

southerly boundary, but in the Patent the south bounds are particularly described as being the 'South Sea.'

"In 1771 this 'South Sea' bound became the source of a long lawsuit between the town of Oyster Bay and the Jackson and Jones families. The town claimed that the South Sea meant what we now call the Great South Bay, and not the Atlantic Ocean as claimed by the Jacksons and the Joneses, the former of whom had a patent from Gov. Cornbury, on 12 Sept., 1708, for 'Beach and meadow land, bounded on the south by the sea on the south side of the beach to low water mark, and on the north by the Bay,' extending from the town of Hempstead on the west to the town of Huntington on the east. . . ." (Jones, *The Jones Family of Long Island, Descendants of Major Thomas Jones . . . And Allied Families*, p. 40.)

Mr. Jones gives a brief history of this controversy. (*Ibid.*, pp. 40-43.)

Under the heading, "Private Land Ownership and Exchanges," in Munsell's *History of Queens County, New York*, the anonymous author of the history of the town of Oyster Bay quotes the following:

"A town meeting held the 1st day of May 1677 there confirmed, by name, every freeholder which hath a free vote for giving and granting of common rights, and not otherwise; and that from hencefor-

ward no grant of township or common rights shall be confirmed, or held legal grants, without every freeholder hath legal warning that such a meeting is to be appointed, or that there are lands to be given out; and, after legal warning given them by the officer appointed, it shall be held legal, to all intents and purposes, all gifts or grants of common rights to either man or men, given by the majority of freeholders that doth appear at the time and place appointed. And it is further agreed that for every town right that any freeholder doth possess he shall have so many votes in the giving and granting land and common rights, and not otherwise to be understood, but to grant and divide, as they shall see cause.'” (Munsell’s *History of Queens County, New York*, pp. 473, 474, at p. 474.)

The Kieft patent of Flushing, dated October 10, 1645, is set forth in *Laws and Ordinances of New Netherland, 1638-1674*, Compiled and Translated from the Original Dutch Records in the Office of the Secretary of State, Albany, N. Y., By E. B. O’Callaghan, Albany, Weed, Parsons and Company, Printers and Stereotypers, 1868, pages 48-51, the words and figures “[N. Y. Deed Book, II. 178] ” appearing on page 48 at the head of the patent. Additional privileges were granted to Flushing on April 27, 1648. (*Ibid.*, pp. x and 97.) It may be that this Kieft patent and these additional privileges constituted Flush-

ing a corporation under the Dutch, and that the Ordinance of May 16, 1661, relating to Wildwyck (*Ibid.*, pp. 395-401) constituted the community later known as Kingston a corporation under the Dutch. The "Date of the original charter of" Amersfoort (*Ibid.*, p. 528) appears to have been "the 6 March, 1654" (*Ibid.*, pp. x and 391). Flushing was the subject of an Ordinance in 1658. (*Ibid.*, pp. xiv and 338-342.)

In the history of the town of Flushing in Munsell's *History of Queens County, New York*, an extract from the Dongan patent of that town is set forth, and judging from this extract it may be that in and by this patent, which appears to have been granted in 1685, Governor Dongan incorporated the freeholders and inhabitants of that town. (Munsell's *History of Queens County, New York*, pp. 75, 76.)

The history of the town of Jamaica in the same work has a subdivision with the heading, "Jamaica Bay and its Fisheries." (*Ibid.*, pp. 198, 199.) Under this heading it is said:

"This bay has always been a place of resort for procuring clams, crabs, and oysters. The first recorded action by the town prohibiting the indiscriminate taking of these shellfish was taken in 1763. . . .

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"The following is found in the colonial manuscripts:

“May 31 1704 Tunis Johnson, Derick Johnson Amberman and Derick Longstreet, fishermen, of Flatlands, were brought prisoners to Jamaica for tresspassing in Jamaica Bay by fishing with nets without consent of the freeholders. They were let off on their giving a bond for £100 not to do so again. But in May 1707 Governor Cornbury ordered them to attend him at Rockaway Beach, with their boats and nets, and bid them, when there, to fish and draw their nets. After Cornbury was out of office (May 1709) the people of Jamaica sued the fishermen for the penalty of their bond which they had forfeited. The prisoners petition for a release from their bond.’

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“In 1863 the trustees of the town . . . granted to . . . ‘the privilege of planting oysters under the waters of Jamaica Bay . . .’

“At the annual town meeting in 1869 the exclusion of non-residents from the fisheries in the bay was recommended, and at the town meeting in 1871 the trustees were instructed to remove all stakes and other obstructions illegally standing in the waters of the bay, or in the marshes thereof.

“In 1871 an act was passed by the Legislature authorizing the board of auditors to lease to actual residents of the town, on certain prescribed conditions, portions of land under the waters of the bay for planting oysters, and prescribing penalties for any trespass on lands so leased.” (*Ibid.*, p. 199.)

In Part II of the present work the Kieft patent of Hempstead is set forth from Dr. O'Callaghan's *Laws and Ordinances of New Netherland, 1638-1674*; the Nicolls and Dongan patents, respectively, of that town, as well as the Nicolls and Dongan patents, respectively, of Flatlands, the Lovelace Patent of a part of Flatlands, the Nicolls patent to Elbert Elbertsen, and two of the patents involved in Ex-Surrogate Fowler's authorities hereinbefore mentioned, are all set forth from the present author's certified copies of the respective records.

CHAPTER IV

NEW YORK COLONIAL STATUTES

AN act entitled "An Act for the more Easy Collecting of His Majesty's Quit Rents in the Colony of New York and for Partition of Lands in order thereto, Passed July 5, 1755," "Expired January 1, 1762," appears in *Colonial Laws of New York*, Volume III, pages 1107-1121. An act entitled "An Act for the more Effectual Collecting of his majesty's Quit Rents in the Colony of New York and the Partition of Lands in order thereto, Passed January 8, 1762" (*Ibid.*, IV, pp. 584-601), was explained by an act "Passed March 20, 1762" (*Ibid.*, pp. 612-614), and was continued in force from and after the "last Day of December, which will be in the Year" 1769, "until the first Day of January which will be in the Year" 1780, by an act "Passed December 31, 1768" (*Ibid.*, pp. 1036-1038).

An act entitled "An Act for the Setling, Quieting and Confirming unto the Cities, Towns, Mannors and freeholders within this Province, their several Grants, Pattents and Rights Respectively, Passed May 6, 1691," appears in *Colonial Laws of New York*, I, pages 224, 225.

The following is an act "Confirmed by the King, May 11, 1697" (*Ibid.*, Vol. I, p. 321, note prefixed to



THE CASTLES OF NASSAU AND STEIN (PLATE 5)

the act by the Commissioners who prepared the publication, *Colonial Laws of N. Y.*, 5 vols., Albany, 1894.):

“AN ACT for calling Long Island the Island of Nassaw.

“ [Passed. April 10, 1693.]

“ BE IT ENACTED by the Governour Councill and Representatives, [*sic*] convened in General Assembly, and by the authority of the SAME that the Island, comonlly called and knowne by the Name of Long Island, shall from hence forth be called the ISLAND OF NASSAW. And that after the publication hereof all their Majesties loveing Subjects are hereby required in all grants, Pattents Deeds Conveyances bargaines of Sale Bills, Bonds Records, and other Instruments in Writeing that shall hereafter be made granted, Conveyed, bargained, sold and executed for or Concerning the said Island or any part or place within the same OR in any County thereof to call and Denominate the Said Island in all such Deeds and Escripts as aforesaid the ISLAND OF NASSAW any thing contained in any former Act to the contrary hereof in any wayes notwithstanding.” (*Colonial Laws of N. Y.*, I, p. 321.)

It appears from *The Encyclopædia Britannica* that

“ . . . The founder of the house of Nassau is usually regarded as a certain Drutwin (d. 1076), who built

a castle on a hill overlooking the Lahn, near the present town of Nassau. Drutwin's descendant Walram (d. 1198) took the title of count of Nassau. . . ." (*The Encyclopædia Britannica*, 14th ed., Topic, "Nassau.")

". . . In the female line he is now represented by the queen of the Netherlands." (*Ibid.*)

An act entitled "An Act for the better Regulateing the Elections of Trustees & Magistrats for ye Town of Kings Town in the County of Ulster. [Passed. May 1, 1702.]," recites that in a patent under the great seal of "this Province dated" May 19, 1688, "it is amongst other things ordained that there be yearly and every year on the first Tuesday of . . . March Elected . . . twelve Trustees for the Said Town by the Maj'r Vote of the Inhabitants and ffreemen of the Said Town and that the Trustees So Elected . . . shall out of their Number Chose & Elect five to be Magistrats of the said Town for the hearing and determining of all Civill Causes to the value or Damage of ffive pounds"; that several persons "have of late taken upon themselves to Execute the offices of Trustees and Magistrates of the said Town without being thereunto Elected and Sworn . . .";

And thereupon "for the preventing whereof for the future" provides that "there be yearly and every year pursuant to the said Pattent Elected twelve Trustees for the said Town of Kings town and that

five thereof be the magistrates aforesaid and that they be Chosen & Elected on the first Tuesday of March in the Town House of said Town by the Majority of the Votes of the Freeholders & ffreemen of the said Town, & for the more regular & better proceeding in the Elecon aforesaid" makes certain provisions for the electing of such trustees and for their being sworn;

And after reciting further that several persons did in 1701 "illegally take upon themselves the offices of Trustees & Magistrates as aforesaid to the great Damage & manifest Disturbance of the Peace of the said Corporacon without being Elected or Sworn," provides "that all the Acts proceedings & Judgements had made given or Executed in ye Town of Kingstown in the year 1701, 1701 1-2 in the name and by the Authority of the Trustees or Magistrates of the Corporacon of Kings Town or either of them be for the reasons aforesaid held illegal and Void & the same are hereby declared Illegal and void accordingly any Law usage or Custom to the Contrary hereof notwithstanding." (*Colonial Laws of N.Y.*, I, pp. 488, 489.)

The work last cited bears on the title-page to each of the five volumes of which the work consists the statement: "Transmitted to the Legislature by the Commissioners of Statutory Revision, pursuant to Chapter 125 of the Laws of 1891." The work is in form a "Report of the Commissioners of Statutory

Revision." (*Ibid.*, p. iii.) In an "Explanatory Note" the Commissioners say:

"There has never been a complete publication of the colonial laws of New York . . ." (*Ibid.*, p. v.)

The Commissioners then proceed to give an account of the several publications of some of these laws, such as Bradford's Laws, published in 1694. (*Ibid.*) The "Explanatory Note" by the Commissioners (*Ibid.*, pp. v-vii) is followed by an "Historical Note, By Robert C. Cumming" (*Ibid.*, pp. ix-xxi), "Esq., of Albany, N. Y., chief clerk of the Commission, an experienced lawyer and a thorough student" (*Ibid.*, p. xxiii, "Note by the Commissioners," dated Albany, October, 1896), who "was given special charge of the work. [The republication of the colonial statutes. — *Ibid.*] He examined every available source of information, in an effort to furnish an accurate reprint of the early legislation, and also used great care in the preparation of the notes to the laws, as well as the foregoing general notes and the index. These volumes, prepared under his supervision, and embodying the results of his exhaustive research, contain a substantially complete history of the colonial legislation in New York, and are an invaluable addition to the legal literature of the State." (*Ibid.*)

In their "Explanatory Note" mentioned the Commissioners say:

“The acts of the colonial legislature, except as affected by amendment or subsequent repeal, continued in force until 1828, when it was enacted by chapter 21 of the laws of that year, that ‘no statutes passed by the government of the late Colony of New York, shall be considered as a law of this state.’ As affecting titles to real estate or as constituting irrevocable contracts, some of the laws may however, still be in force; but for the most part this publication is of a greater value from a historical than from a legal standpoint.” (*Ibid.*, p. vii.)

An ordinance of May 16, 1661, relating to Wildwyck, later known as Kingston, has been referred to in the foregoing Chapter III as appearing in Dr. O’Callaghan’s *Laws and Ordinances of New Netherland, 1638-1674*, pages 395-401. Another translation of the ordinance appears in *The History of Kingston, New York, From its Early Settlement to the Year 1820*, By Marius Schoonmaker, of Kingston, Burr Printing House, New York, 1888, pages 503-506, Appendix. The Dongan patent of Kingston is set forth in the same work, pages 510-516, Appendix, and, judging from certain italicized words in the patent, may have been set forth from a certified copy of the record of this instrument.

The patent bears date May 19, 1687, not 1688, and in it Governor Dongan recites that the “ffreeholders and Inhabitants of a Certaine Place or Towne Called

Kingston in the County of Ulster . . . are Possessed of Divers Tracts of Land and Hereditam^{ts} . . . in the County . . . aforesaid, and . . . have made itt knowne unto me that the Lands & Hereditam^{ts} . . . whereof they are so in Possession as abovesaid are not Sufficient *for* the Support & Maintenance of such a Number of People as are already Inhabitants thereof & have . . . made their applycacon unto me that I would . . . Grant unto the said ffreeholders & Inhabitants . . . other lands . . . as also that I would Erect and make the said ffreeholders and Inhabitants . . . and their Successors into one Body Corporate and Politique in Name & in Deed with such Powers Libertyes Privilidges & Immunityes as might be Convenient & Necessary as well for the Regulating and Well Governing the ffreehold's & Inhabitants of Kingston aforesaid as for their well being beinifitt and advantage. . . ." (*Ibid.*)

Thereupon Governor Dongan in this patent, in substantially the same form as that in the Dongan patents of Brookhaven, Easthampton, Huntington, and Southampton, respectively, and in the Fletcher patent of Huntington (except that the uses in the habendum in the Kingston patent are not expressed separately with respect to two or more classes of premises), grants, ratifies, and confirms unto twelve men named, "ffreeholders & Inhabitants of Kingston aforesaid hereinafter Erected & made one Body Corporate & Politique & Willed & Determined to bee

Called by the Name of the Trustees of the ffreeholders & Comonalty of the Town of Kingston their Heirs & Successors forever all that Tract of Land," with a particular description of it followed by a category of general words. (*Ibid.*)

Then follow provisions that, with the exception of the habendum and some details of corporate powers and management, resemble closely the corresponding provisions of the Long Island patents last mentioned. The category of general words resembles closely that in each of these Long Island patents. It includes the word "ffranchizes" but not the word "beaches," and includes the word "Royalties" (*Ibid.*), which is not in the corresponding category in any of these Long Island town patents, but is in the corresponding category in the patent to Colonel William Smith. (*Ante*, pp. 27, 28.)

Whether the last-mentioned patent was a conveyance of a several fishery for royal fish is a question that might be readily answered in the negative if it were found that the patentee or his successors in interest took out licenses for whaling on the part of the seacoast included in the patent. The habendum in the Dongan patent of Kingston as published by Mr. Schoonmaker reads:

" . . . to have & to hold all the before recited Tract of Land & Premissess with all & every the Hereditm^{ts} & appurtences unto the said" twelve men, naming

them," the Trustees of the Freeholders & Commonalty of Kingston aforesaid their Heirs and Successors forever to the Sole & only Proper use benefitt & behoofe of them the s'd" twelve men, naming them, "the Trustees of the freeholders & Commonalty of Kingston abovesaid their Heires & Successors forever to the Sole & only Proper use benefitt & behoofe of them the s'd" twelve men, naming them, "the Trustees of the freeholders & Commonality of Kingston abovesaid their Heires & Successors forever . . ." (Schoonmaker, *The History of Kingston, New York* . . . pp. 510-516, Appendix, at p. 511.)

The Kingston fisheries in the Hudson River for shad and herring receive attention in the same work, pages 373-375. It appears that

"The trustees, after their organization, assumed the right to control the fisheries, and leased the fishing grounds to individuals, and protected them as far as possible in their assumed rights . . . and many of the privileges thus acquired are enjoyed to the present day . . ." (*Ibid.*, pp. 373, 374.)

An entry in the trustees' minutes, under date of April 1, 1782, of "a complaint against persons for infringing on the liberties of fishing at the fishing place" (*Ibid.*, p. 374), is the first entry of the kind noted by Mr. Schoonmaker on the subject of these fisheries.

A translation of an Ordinance, "Passed 14 February, 1664," "for the Recording of Deeds and Mortgages in Breuckelen, Midwout, Amesfoort and New Utrecht," appears in Dr. O'Callaghan's *Laws and Ordinances of New Netherland, 1638-1674*, pages 459, 460.

A memoir of Governor Andros appears in the *Dictionary of National Biography*, Volume I, page 411; another appears in *The Publications of the Prince Society*, Established May 25th, 1858, *The Andros Tracts*, three volumes, Boston, 1868-1874, Volume First, pages i-xlix; another in *The History of Guernsey . . .* by Jonathan Duncan, Esq., B. A. . . . London, Longman . . . Guernsey, Henry Brouard, 1841, pages 588-590; and another in *New York Colonial Documents*, Volume II, page 740, note. The memoir last mentioned was by Dr. E. B. O'Callaghan, and reappears in part in 2 Gowans' *Bibliotheca Americana*, in a note to a new edition of Wolley's *A Two Years Journal in New York . . .* pages 65-67. Dr. O'Callaghan says in this note in 2 Gowans' *Bibliotheca Americana*:

"Sir Edmund Andros, Knight, Seigneur of Sausmarez, was born in London 6th December, 1637. His ancestors were from Northamptonshire. John Andros, the first of them connected with Guernsey, was Lieutenant to Sir Peter Meautis, the Governor, and married, in 1543, Judith de Sausmarez, the heiress, who

brought the fief Sausmarez into the family. . . .”
(2 Gowans' *Bibliotheca Americana*, p. 65.)

A history of the fief Sausmarez appears in *The History of the Island of Guernsey* . . . By William Berry, Late of the College of Arms, London. . . . London, Longman . . . and also John Hatchard, pages 137, 138. An engraving entitled “Sausmarez Manor . . .” appears in the same work. (*Ibid.*, Plate facing p. 137.) “Sausmarez, the Seat of Admiral Sir James Saumarez, Bart K.B. &c. &c. &c.,” is also shown. (*Ibid.*, Plate facing p. 140.)

Admiral Saumarez was second in command under Nelson at the Nile, and received a contusion from a splinter near the end of the battle. (*Ibid.*, p. 335.) In 1831 he was elevated to the peerage under the title, “Baron De Saumarez, of Saumarez, in the island of Guernsey.” (Duncan, *History of Guernsey*, p. 641.) The name Saumarez or Sausmarez is pronounced “2. sō” ma-re’.” (*New Standard Dictionary*.) An engraving, entitled “Sir Edmund Andros, Knt. From the original in the possession of Amias Charles Andros, Esq., London,” appears in *Publications of the Prince Society, The Andros Tracts*, Volume First, Frontispiece.

The lordship of Sausmarez was held by the de Sausmarez family before 1313. (Berry, *The History of the Island of Guernsey*, p. 137.) A recent memoir of Governor Andros appears in the *Diction-*

ary of American Biography, Under the Auspices of the American Council of Learned Societies, Edited by Allen Johnson, New York, Charles Scribner's Sons, 1928-, Volume I, pages 300, 301.

The work last cited, completed to and including Volume XIV, 1934, is copyrighted by the American Council of Learned Societies, and bears on the reverse of the title-page leaf of each volume the following:

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Dr. O'Callaghan's memoir of Governor Nicolls appears in 2 Gowans' *Bibliotheca Americana*, pages 71-75. A picture of Ampthill Church, “in the north-east corner of the chancel of” which is “a white marble monument to” the memory of Governor Nicolls (*Ibid.*, p. 75), appears in *The Victoria History of the County of Bedford*, four volumes, 1904-1914, Volume III, Edited by William Page, F.S.A., and published in 1912 by Constable and Company, Limited, London, page 274, and on a plate opposite

that page are two views of the interior of the church. A recent memoir of Governor Nicolls appears in the *Dictionary of American Biography* . . . Volume XIII, 1934, Edited by Dumas Malone, pages 515, 516.

A recent memoir of Governor Francis Lovelace, by Mr. Victor Hugo Paltsits, appears in the *Dictionary of American Biography* . . . Volume XI, 1933, Edited by Dumas Malone, pages 436, 437. It appears from this memoir, contrary to the conclusions of earlier writers on the subject (*Dictionary of National Biography*, Edited by Sidney Lee, London, Smith, Elder, & Co., Vol. XXXIV, published in 1893, pp. 165, 166; Wilson's *Memorial History of the City of New York*, Vol. I, pp. 342, 343), that Governor Francis Lovelace was a member of the Lovelace family of "Lovelace Place at Bethersden, Kent," and Woolwich, and was only distantly related to the Lovelace family of Lady Place, Hurley, Berkshire, England. The earlier conclusion has afforded pleasure to the present author by directing attention in former years to that part of the Thames valley which included the three ancient religious houses of Lady Place, Medmenham, and Bisham. Medmenham has been referred to as "One of the most beautiful places on one of the most beautiful rivers in the world . . . on the Thames, hard by Marlow." (*A History of the Four Georges*. By Justin McCarthy, M.P. . . . In Four Volumes, Harper and Brothers, New York, 1885-1901, Vol. III, p. 46.)

It is intended to devote a separate work to the subject of Governor Dongan.

Reproductions of maps showing Jamaica Bay or the vicinity appear in Werner's Thompson's *History of Long Island* (3 vol. ed.), Volume III, folding map facing page 118; *Narrative and Critical History of America*, Edited by Justin Winsor, Librarian of Harvard University, Corresponding Secretary Massachusetts Historical Society, Houghton, Mifflin and Company, Boston and New York, The Riverside Press, Cambridge, eight volumes, quarto, illustrated, 1889, Volume IV, pages 433, 436, 438, 439, 440, Volume V, page 254, Volume VI, pages 327, 340, 343, 344; and in *The Iconography of Manhattan Island, 1498-1909*, Compiled from Original Sources, and Illustrated by Photo-Intaglio Reproductions of Important Maps, Plans, Views, and Documents in Public and Private Collections, By I. N. Phelps Stokes, New York, Robert H. Dodd, six volumes, quarto, 1915-1928, Volume I, Plates 7-a, 7-b, 7-A, 9, 16-a, 16-b, 21, 27-A, 29, 45-b, Volume II, all Plates marked C., and of these, 22-A, 23, 24, 25, 26, 27, both parts, 28, *idem*, 29, 30, both parts, 31, *idem*, 32, 33, both parts, 34, *idem*, 35, 36, 37, both parts, 38, 39, 40, 41, 42, 43, 44, 45, both parts, 46, *idem*, 47, 48, 49, 51, 52, 53, 54, 55, 56, Volume III, Plates 82, 157-b, 162, A.1-a, A.1-b, and Volume VI, Plate 81-b.

PART II



MARY, QUEEN OF SCOTS (PLATE 6)

SUBDIVISION I

EASTHAMPTON PATENTS

“[Original Patent.] RICHARD NICOLLS ESQR.

“Governor Generall, under his Royall Highnesse, James Duke of York & Albany and of all his Territoryes in America, To all to whom these presents shall come, sendeth Greeting:

“Whereas there is a certaine Towne, in the East Riding of Yorkshire, upon Long Island, Scituate, lying and being, in the Eastermost part of the said Island, commonly called and knowne by the name of East Hampton, now in the Tenure or occupaton of severall ffreeholders and Inhabitants, who having heretofore made Lawfull Purchase, of the Lands there unto belonging, have likewise manured and Improved, a considerable part thereof, and settled a competent Number of ffamilyes there upon;

“Now for a Confirmation, unto the said ffreeholders and Inhabitants, in their Enjoyment and Possession of the pr'misses;

“Know yee That by vertue of the Commission and Authority, unto me given by his Royall Highnesse, I have Ratified, Confirmed and Graunted, And by these prsents, do Ratify, Confirme and Graunt, unto Mr

John Mulford, Justice of the Peace, Mr Thomas Backer, Thomas Chatfield, Jeremiah Concklyne, Stephen Hedges, Thomas Osburne, Senior, and John Osburne, as

“Patentees, for and on the behalfe of themselves and their Associates, the ffreeholders and Inhabitants of the said Towne, their Heires, Successors and Assignes, All that Tract of Land, which already hath beene, or that hereafter shall bee Purchased for & on the behalf of the said Towne, whether from the natives — (Indyan Proprietors), or others within the Bounds and Limitts, hereafter sett forth and exprest, (vizt)

“That is to say, Their west Bounds begining from the East Limitts of the Bounds of Soutpton (as they are now laid out, and Stak’t, according to Agreement and consent) so to stretch East, to a certaine Pond, commonly called the Fort Pond, which lyes within the old Bounds of the Lands belonging to the Muntauke Indyans, and from thence to go on still East, to the utmost extent of the Island; On the North, they are Bounded by the Bay, and on the South by the Sea, or Maine Ocean, All which said Tract of Land, within the Bounds and Limitts before mentioned, And all, or any Plantation thereupon, from hence forth, are to belong and appertain, to the said Towne, and bee within the Jurisdiction thereof;

“Together with all Havens, Harbors, Creekes, Quarryes, woodlands, Meadows, Pastures, Marshes, waters, Lakes, Rivers, ffishing, Hawking, Hunting

and fflowing, And all other Proffitts, Commodities, Emoluments and hereditaments, to the said Tract of Land and pr'misses wthin the Limitts and Bounds afore mentioned described, belonging, or in any wise appertaining;

“To have and to hold, all and singular, the said Lands, hereditaments and pr'misses, with their and every of their appurtenances, and of every part & parcell thereof, to the said

“Patentees and their Associates, their heires, Successors and Assignes, to the proper use and behoofe of the said Patentees and their Associates, their heires, Successors, and Assignes for ever:

“Moreover, I do hereby Ratify, Confirme and Graunt, unto the said Patentees and their Associates, their heires, Successors & Assignes, All the Priviledges belonging to a Towne within this Governmt., and that the place of their pr'sent Habitation shall continue and retaine the name of East Hampton, by wch name and Stile, it shall bee distinguished and knowne, in all Bargaines and Sales, Deeds, Records and writings;

“They the said Patentees and their heires, Successors and Assignes, Rendring & Paying such Dutyes and Acknowledgmnts, as now are, or hereafter shall be Constituted and Established, by the Lawes of this Governmt, under the obedience of his Royall Highnesse, his heires & Successors,

“Given under my hand & Seale, at ffort James in

New Yorke, the 13th day of March in the 19th yeare
of his majties Raigne, Annoq Domini 1666.

“ RICHARD NICOLLS.

“ Recorded by Order of the Govrnr
the day and yeare above written.

“ MATTHIAS NICOLLS Secr.

“(Entered Into the Records for the County of Suffolk folio 172-173).

“ JOHN HOWELL, Junr Clk.”

(*Records of the Town of Easthampton* . . . I, pp. 253-255, with additional paragraphing.)

“[Original Parchment.] — THOMAS DONGAN,
Capt-Generall Governour in Chiefe and Vice Admirall of the Province of New yorke and its Dependencies Under his Majesty James the Second by the grace of God of England Scotland ffrance and Ireland King Defender of the faith &c

“To all to whome this shall come Sendeth Greeting
Whereas Richard Nicolls Esquire Governor Generall under his then Royall Highness James Duke of Yorke & Albany &c now his present Majesty of all his Territoryes in America did by a certaine writing or Patent under his hand and seale bearing Date the thirteenth day of March in the ninetenth yeare of his Late Majestyes Reigne and in the yeare of our Lord One thousand six hundred sixty six Ratifie confirme and grant unto Mr John Mullford Justice of the peace Mr Thomas Backer Thomas Chatfield

Jeremiah Conckling Steven Hedges Thomas Osborne Senior & John Osborne as

“Patentees for and in the behalfe of themselves and their associates the ffreeholders and Inhabitants of the towne of Easthampton scituate lyeing and being in the East rideing of Yorkshire upon long Island in the eastermost part of the said Island and to their heires Successors and Assignes all that tract of Land which already hath been or that hereafter shall be Purchased for and on the behalfe of the said Towne whether from the natives Indyan Proprietors or others within the bounds and Limitts hereafter set forth and exprest

“That is to say their west bounds begining from the East Limitts of the bounds of Southampton as they are now laid out and staked according to agreement & consent so to stretch east to a certaine Pond comonly called the ffortpond which lyes within the old bounds of the lands belonging to the Muntauk Indyans and from thence to go on still east to the outmost extent of the Island on the north they are bounded by the Bay and on the South by the sea or Maine Ocean all which said tract of land within the bounds and limitts beforemenconed and all or any plantacon thereupon from henceforth are to belong and appertaine to the said Towne and be within the Jurisdiccon thereof

“Together with all havens harbours Creeks Quarries woodlands meadows pastures marshes waters

lakes rivers fishing hawking hunting and fowling and all other profits Comodities Emoluments & hereditaments to the said tract of land and premisses within the limitts and bounds afore menconed described belonging or in any wise appurtaineing.

“To have and to hold all and singular the said lands hereditaments and premisses with their & every of their appurtenances and of every part and parcell thereof to the said

“Patentees and their associates their heires Successors and assignes to the propper use and behoofe of the said Patentees and their associates their heires Successors & assignes forever

“Moreover the sd Richard Nicolls Esqr Governor as aforesaid did thereby Ratifye confirme and grant unto the said Patentees and their associates their heires Successors and assignes all the Priviledges belonging to a towne within this Government and that the place of their present habitacon shall continue and retaine the name of Easthampton by which name and stile it shall be distinguished and knowne in all bargaines and sales Deeds Records & writeings

“They the said Patentees and their associates their heires Successors and associates their heires Successors and assignes Rendring and paying such dutyes and acknowledgments as now are or hereafter shall be constituted and established by the laws of this Government under the obedience of his Royall Highness his heires and Successors as by the said writeing

or Patent Recorded in the Secr^yes Office relacon being thereunto had may more fully appeare

“And Whereas There is part of a certaine Tract of land within the bounds and limitts aforesaid Comonly called Mountack which remaines yett unpurchased from the Indyans

“And Whereas Samuell Mullford and Thomas James some of the ffreeholders of the said towne of Easthampton by the request of the rest of the ffreeholders of said towne have made applicacon unto me that I would grant liberty unto the ffreeholders of said towne to purchase said tract of land off the Indyans and that the ffee and inheritance thereof may only belong unto the ffreeholders of said towne their heires Successors and assignes ferever

“And that I would confirme the premisses by Patent under the seale of the Province

“Now Know Yee That I the said Thomas Dongan by virtue of the power and authority to me derived from his most Sacred Majesty aforesaid and in pursuance of the same for and in consideracon of the Quittrent herein after reserved and other good and lawfull consideracons me thereunto moveing have granted ratified released and confirmed and by these presents do grant ratifye release and confirme unto Thomas James Capt Josiah Hobart Capt Thomas Talmage Lieut John Wheeler Ensigne Samuell Mullford John Mullford Thomas Chatfield Senior Jeremiah Conkline Stephen Hand Robert Dayton Mr

Thomas Backer & Thomas Osborne ffreeholders and Inhabitants of Easthampton herein after erected and made one body Corporate and politique and willed and determined to be called by the name of the trustees of the ffreeholders and Comonalty of the towne of Easthampton and their Successors all the afore-recited tracts and neckes of lands within the limitts and bounds aforesaid with all and singular the houses messuages Tenements buildings milnes milnedams fencings inclosures gardens Orchards fields pastures woods underwoods trees timber feedings Comon of pasture meadows marshes Swamps plaines . rivers Rivolets waters lakes ponds brookes streames beaches Quarries mines mineralls Creekes harbours highwayes and easements fishing hawking hunting and fowling (Silver and gold mines Excepted) and all other ffranchizes Profitts Comodityes & hereditaments whatsoever to the said tracts and necks of land and premisses belonging or in any wise appartaining or therewithall used accepted reputed or taken to belong or in any wise to appurtaine to all intents purposes and constructions whatsoever as also all and singular the rents arreareadges of rents issues and profitts of the said tract of land and premisses heretofore due and payable

“As also I do by these presents give and grant full power lycence and authority unto the said Trustees of the ffreeholders and Comonalty of the towne of Easthampton and their Successors to purchase the

said tract of land of the native Indyans Comonly called Mountack and if it should so happen that the said Indyans should be unwilling to make sale of the said tract of Land comonly called Mountack within the Limitts aforesaid Then I further will and determine on behalfe of his most Sacred Majesty his heires & Successors that the sd Trustees of the ffreeholders and Comonalty of the towne of Easthampton aforesaid and their Successors forever shall at all times hereafter be the only persons capable in the law for the purchase of the said tract of land Comonly called Mountack and none others

“To have and to hold all the beforerecited tract of land and premisses with their and every of their appurtenances unto the said Thomas James Capt Josiah Hobart Capt Thomas Talmage Lievt John Wheeler Ensigne Samuel Mullford John Mullford Thomas Chatfield Senior Jeremiah Conkline Stephen Hand Robert Dayton Mr Thomas Backer Thomas Osborne Trustees of the freeholders and Comonalty of the towne of Easthampton and their successors for ever to and for the Severall and respective uses following and to no other use intent and purpose whatsoever that is to say as for and concerning all and Singular the severall and respective parcells of land and meadow part of the granted premisses in any wise taken up & appriated before the day of the date hereof unto the severall and respective present ffreeholders or Inhabitants of the said towne of Easthampton by

virtue of the before recited Deed or Patent To the only use benefite and behoofe of the said respective present freeholders and Inhabitants and their severall and respective heires and assignes forever

“And as for and concerning all and every such parcell or parcells tract or tracts of land remainder of the granted premises not yet taken up or appropriated to any particular person or persons by virtue of the beforerecited deed or Patent to the use benefite and behoof of such as have beene purchasers thereof and their heires and assignes forever in proporcon to their severall and respective purchases thereof made as Tennants in Comon without any lett hinderance or molestacon to be had or reserved upon pretence of joynt Tennancy or survivorship any thing contained herein to the contrary thereof in any ways notwithstanding

“And as for & concerning that part of the afore-recited tract of land that remaines as yet unpurchased of the Indyans comonly called Montack together with all & singular the appurtenances thereto belonging unto the only proper use benefite and behoofe of the said Trustees of the ffreeholders and Comonalty of the towne of East-Hampton & their Successors forever

“To be holden of his said Majesty his heires and Successors in free and Comon Soccage according to the Mannor of East Greenwich in the County of Kent within his Matyes Realme of England

“Yeilding rendring and paying therefore yearly



RICHMOND HILL AND BRIDGE, SURREY (PLATE 7)

and every yeare from henceforth unto our Sovereigne Lord the King his heires and Successors or to such officer or Officers as shall be appointed to receive the same the sume of one lamb or the value thereof in Currant money of this Province upon the five & twentyeth day of march at Newyorke in full of all rents or former reserved rents services acknowledgments and demands whatsoever.

“And further by vertue of the power and authority to me the said Thomas Dongan Given as aforesaid and in pursuance of the same and for the reasons and consideracons aboverecited I have willed determined declared and granted and by these presents do will declare determine and grant that the said Inhabitants and ffreeholders the ffreemen of Easthampton aforesaid Comonly called by the name of the ffreeholders and Inhabitants of the towne of Easthampton or by whatever name or names they are called or named and their heires and Successors forever henceforward are and shall be one body Corporate and politique in Deed and name by the name of the Trustees of the ffreeholders and Comonalty of the towne of Easthampton and them by the name of the Trustees of the ffreeholders and Comonalty of the town of Easthampton one body corporate and Politique in Deed and name I have really and fully for his said

“Majesty his heires & Successors Erected made ordained constituted and declared by these presents and that by the same name they have succession forever

and that they and their successors by the name of the Trustees of the ffreeholders and Comonalty of the towne of Easthampton be and shall be forever in future times persons able and Capable in law to have perceive receive and possess not only all and singular the premisses but other messuages lands Tenements Priviledges Juridicions ffranchises and hereditaments of whatsoever kinds or species they shall be to them and their Successors in ffee forever or for the terme of a yeare or years or otherwise whatsoever manner it be and also goods Chattells and all other things of whatsoever name nature quality or Species they shall be and also ro [to?] give grant release aliene assigne and dispose of lands tenements hereditaments and all and every other thing and things act and acts to do and execute by the name aforesaid and that by the same name of the Trustees of the ffreeholders and Comonalty of the towne of Easthampton to plead and be impleaded answer and be answered unto defend and be defended they are and may be capable in whatsoever place and places and before whatsoever judges & Justices or other persons or officialls of his said Majesty his heires and Successors in all and all manner of actions plaints suites Complaints causes matters and demands whatsoever of what kind quality and species the same be and shall be in manner and forme as any other of his Majestyes Liedge people within this Province can or are able to have require receive possess enjoy retaine give grant re-

lease aliene assigne and dispose plead and be impleaded answer and be answered unto defend and be defended do permitt or execute

“And for the better enabling the Trustees of the ffreeholders and Comonalty of the towne of Easthampton aforesaid in doeing and executeing all and singular the premisses I have willed granted & determined and by these presents do will grant and determine that from henceforward and forever hereafter the said Trustees of the freeholders & comonalty of the towne of Easthampton do & may have and use a Comon seale which shall serve to Execute the causes and affaires whatsoever of them and their Successors

“And further I will and by these presents in be halfe of his said Majesty his heires and Successors that henceforward forevermore there be and shall be Trustees of the ffreeholders & comonalty of the towne of Easthampton aforesaid to be chosen and elected as in these presents hereafter in [*sic*] menconed who shall be and shall be called the Trustees of the ffreeholders & comonalty of the towne of Easthampton and they and their Successors shall and may at all convenient times hereafter upon a publique Sumons to be obtained at the request of any three of the Trustees aforesaid from any of his Matyes Justices of the peace of the said Towne or for default thereof from any of the Justices of the County of Suffolke for the time being assemble and meet together in the towne house of the said towne or in such other publique

place as shall be from time to time appointed to make such acts and orders in writeing for the more orderly doing of the premisses as they the said Trustees of the free holders and Comonalty of the towne of Easthampton aforesaid and their Successors from time to time shall and may think convenient so alwayes as the said acts and order be in nowayes repugnant to the laws of England and of this Province which now are or hereafter may be established and that they be not in any wise against the true intent and meaning of these presents

“And also I will ordaine and determine that all and singular the aforesaid acts & orders from time to time shall be made and ordered by the vote of the Major part of the said Trustees of the ffreeholders and comonalty of the towne of Easthampton aforesaid or at least by the Major part of such of them as shall from time to time assemble and meet together in manner as aforesaid so alwayes there be not fewer in number then seven of the said trustees present at such meetings so to be held as aforesaid

“And for the better Execuon of this grant in this behalfe I have assigned nominated created constituted and made and by these presents do assigne nominate Create constitute and make Thomas James Capt Josiah Hobart Capt Thomas Talmage Lievt John Wheeler Ensigne Samuell Mullford John Mullford Thomas Chatfield Senior Jeremiah Conkline Stephen Hand Robert Dayton Mr Thomas Backer

Thomas Osborne to Stand and be the first moderne Trustees of the ffreeholders & Comonality of the towne of Easthampton to continue in the aforesaid office from and after the date of these presents untill the time that others be elected and chosen in their stead According to the manner and forme herein after expressed

“And moreover I do by these presents for and on behalfe of his most Sacred Majesty aforesaid his heires and Succesorss appoint that the Trustees of the ffreeholders & Comonalty of the towne of Easthampton Constables and assessors within the towne of Easthampton aforesaid Be yearly chosen on the first tuesday of Aprill forever (Vigt:) twelve Trustees of the ffreeholders and Comonalty of the towne of Easthampton two Constables and two Assessors in such publique place as the Trustees for the time being shall appoint and direct and that the Trustees Constables and Assessors be Chosen by the Majority of voices of the ffreeholders and freemen of the towne of Easthampton aforesaid

“And Lastly I give and grant For and on behalfe of his said Majesty his heires and Successors by those presents to all and every person and persons and to whatsoever person subject to his said Majesty his heires and Successors free and lawfull power ability and authority that they or any of them any messuages Tenements lands meadows feedings pastures woods underwoods rents revercons services and other here-

ditaments whatsoever within the said County of Suffolke which they hold of his said Majesty his heires & Successors unto the aforesaid Trustees of the ffreeholders and Comonalty of the towne of Easthampton and their Successors shall and may give grant bargain sell and alienate

“To have hold & enjoy unto the said Trustees of the freeholders and Comonalty of the towne of Easthampton and their Successors forever

“Yeilding and paying therefore unto his said Majesty his heires and Successors on the said twenty fifth day of march yearly and every yeare forever the full and just sume of forty shillings Currant money of this Province at New Yorke

“Wherefore by virtue of the power and authority aforesaid I do will and command for and behalfe of his said Majesty his heires and Successors that the aforesaid trustees of the ffreeholders and Comonalty of the towne of Easthampton and their Successors have hold use & enjoy

“And that they shall and may forever have hold use and enjoy all the libertyes authorityes Customes orders ordinances ffranchizes acquittances lands tenements & and hereditaments goods and Chattells aforesaid according to the tenure and effect of these presents without the lett or hinderance of any person or persons whatsoever

“ In Testimony Whereof I have caused the seale of

the said Province to be hereunto affixed and these presents to be entered in the Secretaryes Office

“Wittness my hand at Fort James the ninth day of December One thousand six hundred Eighty six and in the second yeare of the Raigne of said Sovereigne Lord James the Second King of England Scotland ffrance & Ireland Defender of the faith &c:

“THOMAS [L. S.] DONGAN

“By his exclyes comand

“J. S. SWINTON

“At a Council held at Fort James in New yorke the 9th day December 1686

“Present His Excellency the Governor

“MAJOR ANTHONY BROCKHOLTS

MR FREDERICK PHILLIPS

MR STEPH: V: CORTLANDT

MR JOHN SPRAGGE

MAJOR JARVIS BAXTER

“This Patent was approved off

“J. S. SWINTON CK concil

“May it Please yor Excelley

“The Attorney Genll Hath perused this Patent And Finds Nothing Contained therein prejudiciall to his Majtys Interest Examd dcember 9 1686

“JA GRAHAM

“Recorded in the Secryes office for the Province of
New yorke Lib: No 2 Book of Patents begunn 1686

“J. S. SWINTON

D. SECRÝ

“Januarie 24th 1686-7”

(*Records of the Town of Easthampton* . . . II, pp.
194-204, with additional paragraphing.)



RICHMOND TERRACE, SURREY (PLATE 8)

SUBDIVISION II

FLATLANDS PATENTS

A Pattent Graunted to Elbert Elberts & Govert Lockermans &c for Severall Tracts of Land at Flatlands./.

Richard Nicolls Esqr &c Whereas there is a Certain Towne wthin this Governmt scituate lyeing & being in y^e West Ryding of Yorkshire upon Long Island comonly called or knowne by y^e Name of Amesford als Flatlands w^{ch} said Towne is now in y^e tenure or occupation of Severall Freehold^{rs} & Inhabitants who having heretofore beene seated there by Authority & likewise made Lawfull purchase of y^e Greatest parte of y^e Lands thereunto belonging have also improved a Considerable proportion thereof & Setled a Competent Number of Familyes thereupon

Now for a Confirmation unto y^e said Freehold^{rs} & Inhabitants in their possession & Enjoymt of y^e p^rmisses

Know Yee That by vertue of y^e Comission & Authority unto me given by his Royall Highness I Have given Ratified Confirmed & Graunted & by theise p^rsents do give Ratifye Confirme & Graunt unto Elbert Elberts, Govert Lockermans, Roeloffe Martens, Pieter Claes, Willem Garrits, Tho: Killebrants, Steven Coersten, Coert Stevens as

Patentees for & on y^e behalfe of themselves & their Associates y^e Freehold^{rs} & Inhabitants of y^e said Towne their Heires Successor^{rs} & Assignes All That Tract togeth^r wth y^e Severall Parcells of Land w^{ch} already have or hereaft^r shall be Purchased or Procured for & on y^e behalfe of y^e said Towne wheth^r from y^e Native Indian Proprietors or oth^{rs} wthin y^e Bounds & Lymitts Hereaft^r sett forth & Exprest (vizt.)

That is to say from their Westernne Bounds w^{ch} begins at a Certaine Creek or Kill comonly called y^e stramme Kill they Stretch to ffrkins or varckens Hook w^{ch} is also included wthin their Lymitts neare whereunto comes a Certaine point of Land out of y^e Woods w^{ch} divides y^e Meadowes of y^e Towne of New Utrecht & those belonging to this Towne wth this distinction That Flattland Meadowes or Valley runnes about y^e end of y^e said Point as well as on y^e one syde of it & New Utrecht Meadowes lye on y^e North East syde onely then from y^e Lymitts of Middewont als Flattbush w^{ch} lye about Northwest from y^e said Towne of Flattland beginning at a certaine Tree Standing upon y^e Little Flatts Markt by y^e Ord^r & determination of Severall Arbitrators appointed by me to view & issue y^e difference between y^e two Townes concerning y^e same w^{ch} accordingly they did upon y^e 17th day of Octobr 1666 A Lyne Stretching Southeast to Canarise it includes wthin its Bounds & Lymitts severall other Parcells of Land in perticular that

Parcell or Tract of Land Graunted by Pattent or Groundbriefe from y^e Dutch Governo^r Petrus Stuyvesant unto Jacob Steendam & Welkin Jans bearing date y^e 12th day of Novembr^r 1652 & upon y^e 30th day of Novembr^r 1662 transported & made over to y^e Towne aforementioned

As also all those Lands at Canarise parte of w^{ch} y^e Native Indian Proprieto^r did heretofore permitt & give their Consent that y^e Inhabitants of y^e said Towne of Flatt Lands should manure & plant & since have for a valuable consideration sould y^e same unto them wth its appurtenances as by their Deed bearing date y^e 16th day of Aprill 1665 acknowledged by some of them before me doth & may appeare

Togeth^r wth all that meadow Ground or Valley lying & being at Canarise divided between y^e said Towne & y^e Towne of Flatt bush aforementioned by an East Lyne to run halfe a Point Northerly w^{thout} variation of y^e Compasse & so to goe to y^e mouth of y^e Creek or Kill w^{ch} said Meadowes were upon y^e 20th day of Aprill last by Comon Consent Staked out & by my approbation allowed of all w^{ch} said Tract or Parcells of Land Meadow Ground & p^rmisses wthin y^e bounds & Lymitts aforementioned described & all or any Plantation or Plantations there upon from henceforth are to be appertaine & belonge to y^e said Towne of Amesfort als Flattlands

Togeth^r wth all Havens Harbours Creekes Quarryes woodlands Meadow Ground Reed land or Valley of

all Sorts Pastures Marshes Waters Rivers Lakes fishing hawking hunting & fowling & all other profitts Comodityes Emolum^{ts} & Hereditam^{ts} to y^e said Lands & p^rmisses wthin y^e said Bounds & Lymitts sett forth belonging or in any wise apperteyning

And also freedome of Comonage for Range & feed of Cattle & Horses into y^e Woods as well wthout as wthin their Bounds & Lymitts wth y^e rest of their Neighbours

To have & to hould all & Singular y^e said Tract & Parcells of Lands Comonage Hereditam^{ts} & p^rmisses wth their & every of their appurtenances & of every parte & Parcell thereof to y^e said

Patentees & their Associates their Heires Successors & Assignes to y^e proper use & behoof of y^e said Patentees & their Associates their Heires & Assignes forever.

Moreover I doe hereby give Ratifye Confirme & Graunt unto y^e said Patentees & their Associates their Heires Successors & Assignes all y^e Rights & Privileges belonging to a Towne wthin this Governm^t & that y^e place of their p^rsent habitation shall continue & retaine y^e name of Amesfort als Flattlands by w^{ch} name or names & Stile it shall be distinguisht & knowne in all bargaines & Sales Deeds Wrytings & R^ecords they y^e said

Patentees & their Associates their Heires Successors & Assignes Rendring & Paying such Dutyes & acknowledgm^{ts} as now are or hereaft^r shall be Con-

stituted & Establisht by y^e Lawes of this Governmt
und^r y^e obedience of his Royall Highness his Heires
& successors

Given under my hand & Seale at Fort James in
New Yorke y^e 4th day of Octobr^r in y^e 19th Yeare of
his Maties Raigne Annoq Domini 1667./.

I do hereby Certify the foregoing to be a true Copy
of the Original Record. Compared therewith By Me.

Lewis A. Scott. Secretary.

(PATENTS, IV, p. 44, with additional paragraphing.)

A Confirmation of a Parcell of Land Graunted unto
Elbert Elbertsen./.

Richard Nicolls Esq^r Governo^r Gen^{all} under his
Royall Highnesse James Duke of Yorke and Albany
&c of all his Territoryes in America To all to whom
these p^rsents shall come sendeth Greeting

Whereas there was a Patent or Groundbriefe here-
tofore Graunted by y^e Dutch Governo^r William Van
Twiller unto Andries Hudden and Wolphert Ger-
ritsen for a Certaine Parcell or Tract of Land being
the Westernmost of the three fflatts by y^e Indyans
commonly Called Kaskuteusuhane lying and being on
the westerne part of Long Island betwixt the Bay of
the North River and the East River that runs by the
Manhatans Striking in Length from a Certaine Kill
or Creeke coming out of the Sea and so runs almost
North into the woodland and in Breadth from a Cer-

taine Piece of Meadow Ground or Valley (which is Included within those Lands) and runs neare upon a west Line into the woods which said Patent or Groundbriefe so Graunted as aforesaid for the said Parcell or Tract of Land bearing Date the 6th day of June 1636 was by the Govern^r afore named Graunted unto the said Andries Hudden and Wolphert Gerrits upon y^e Acknowledgement of the Sachems and other Indyan Proprietors to have received a valuable Consideracon and Satisfaccon of them for the same

And whereas Wolphert Gerrits having made Improvement of and being in Possession of the premisses Govern^r Stuyvesant did upon the 24th Day of August 1658 Ratify and Confirme the said Parcell and Tract of Land unto the said Wolphert Gerrits and his Heires alone

And y^e said Wolphert Gerrits being since Deceased and leaving the said Land to his Sons, and Elbert Elberts having Bought and made Purchase of the right and Interest of Pieter and Jacob Wolphertsen the Younger Sons as also the Right and Title of the Children of Gerrit Wolpherts the Eldest Sonne of the Deceased whose widdow and Relict the said Elbert Elberts hath likewise Married

That is to say the said Elbert Elberts having Purchased all the Right, Title, Interest or Clayme which they or either of them had unto the premises ffor a Confirmacon therefore unto him the said Elbert

Elbertsen in his Enjoyment and Possession of the Premises

Know Yee That by vertue of the Commission and Authority unto mee given by his Royall Highnesse I have Ratified Confirmed & Graunted And by these presents do Ratify Confirme and Graunt unto Elbert Elbertsen his Heires and Assignes all the fore recited Parcell or Tract of Land

Together with all the Lands Soyles Woods Meadows fflatts Pastures Marshes Creekes Waters Lakes ffishing Hawking Hunting and ffowling And all other Proffitts Commodities Emolum^{ts} and Hereditaments to the said Parcell or Tract of Land & p^rmisses belonging or in any wise appertaining with their and every of their Appurtenances and of every Part and Parcell thereof

To have and to hold the said Parcell or Tract of Land & p^rmisses unto the said Elbert Elberts his Heires and Assignes unto the proper use and behoofe of y^e said

Elbert Elberts his Heires and Assignes forever Rendring and Paying such Dutyes & acknowledgments as now are or hereafter shall bee Constituted and Establisht by the Lawes of this Governm^t under the obedience of his Royall Highnesse his Heires and Successors.

Given under my hand and Seale at ffort James in New Yorke the 1st day of November in the 19th Yeare of his Ma^{ties} Raigne Annoq Dm 1667.

Rich^d Nicolls./.

I do hereby Certify the foregoing to be a true Copy of the Original Record. Part of the word *Wolphert* ninth line and the Character & forty fifth line being written on razures, and the word *Woods* between eighteenth and nineteenth lines being interlined. Compared therewith By Me.

Lewis A : Scott Secretary.

(PATENTS, I, p. 91, with additional paragraphing.)

A Confirmation Graunted unto Elbert Elbertse &c Inhabitants of flattlands for a Parcell of Land neare Canarite./.

Francis Lovelace Esqr &c Whereas the Inhabitants of the Towne of Amesford als Flattlands did wth y^e consent & Approbacon of y^e late Governo^r Coll Richard Nicolls make Purchase of a certaine Parcell of Land from y^e Indian Native Proprietors as by y^e Deed of Purchase bearing date y^e 23th day of Aprill 1665 doth & may appeare lying & being in y^e West Ryding of Yorkshire upon Long Island at Canarite w^{ch} in Gen^{rl}l Termes is Confirmed unto them in the Grand Pattent of their Towne by y^e said Governo^{rs} but y^e Inhabitants of the said Towne having requested me that y^e Bounds of y^e said Purchase may be Expressly Confirmed as sett forth in the Deed of Purchase for an Encouragem^t to y^e Inhabitants of the said Towne in their further manuring & improving the said Land I have thought fitt to ratifye confirme & Graunt & by theise p^rsents doe hereby Ratifye Con-

firme & Graunt unto Elbert Elberts, Govert Lockermans, Roeloffe Martens, Pieter Claes, William Gerrits, Thomas Hillebrants Steven Coerten, Coert Stevens, as

Pattentees for & on y^e behalfe of themselves & other Associates y^e freehold^{rs} & Inhabitants of y^e said Towne their Heires Successor^s & Assignes all that Parcell of Land lying & being at Canarite as afore-said neare unto y^e said Towne of Amesford begining from y^e West syde of y^e Muskytehole from certaine marked trees & Stretching from thence over y^e end of y^e fflatt Land by y^e two Trees on y^e North syde of y^e said fflatt Land to certaine other marked Trees & from thence to y^e vale of y^e fresh Creek stopping at y^e Path w^{ch} goes to y^e Great Plaines & y^e vale of y^e fresh Creek & then stretching along y^e fflatt Ground by y^e Creek by w^{ch} it is there Lockt up & Bounded Togeth^r wth all y^e Meadow Ground or valley Land Kills or Creeks therein comprehended wth all oth^r profitts Comodityes Emolum^{ts} & Hereditam^{ts} to y^e said Parcell of Land p^rmisses belonging or in any apperteyning To have &c. Febr^y 5th 1668.

I do hereby Certify the foregoing to be a true Copy of the Original Record Words *but y^e between 11th and twelfth lines interlined and words rendring &c* last line obliterated as in said Record. Compared therewith By Me.

Lewis A : Scott. Secretary.

(PATENTS, IV, p. 168, with additional paragraphing.)

Recorded for the Inhabitants of Flatt-
Lands the 11th Day of March 168 $\frac{1}{2}$

Thomas Dongan Lievtenant Governor and Vice
Admirall of New Yorke and its Dependencies under
his Majesty James the Second by the Grace of God
of England, Scotland, France and Ireland King
Defender of the faith &c Supreame Lord and Pro-
prietor of the Colony and Province of New Yorke &c
To all to whom this shall come Sendeth Greeting

Whereas there is a Certaine Towne in Kings County
upon Long Island Called and knowne by the Name
of Amesfort or flattlands haveing a Certaine Tract
of Land thereunto belonging whose Bounds beginn
ffrom the Beach Called the Storm Kill to the Head
of the said Creeke or kill and from thence along the
Valley to Gravesend Path to a White Oake Brush
and soe from thence along the ffence to Utrecht Path
to a White Oake Tree and from thence with a Streight
Line to the ffence of flattbush by the marked Trees
and then along the flattbush ffence up to a Certaine
marked Tree which was marked by Arbitrators Ap-
pointed by the Honourable Collonell Richard Nicolls
formerly Governor of this Province on the Seaven-
teenth Day of October Anno Dom one thousand six
Hundred Sixty and Six and from the said marked
Tree Eastward by the North side of a ffresh Swamp
to a Certaine marked Tree Called Amnsketahole and
from thence with a Streight Line over the End of the
Little flattts by two Certaine marked Trees and soe

from thence with a Streight Line to a Certaine marked Tree Standing upon Hempstead Path and soe along the Lane untill it Comes to the Hollow and soe along the Hollow on the ffresh Creeke up to the Beach and soe along the ffence or Ditch according to the Patent Granted to the Inhabitants of fflattbush in this Present Yeare of our Lord one thousand six hundred and Eighty five as by

Severall Writeings or Pattents from the former Governors Richard Nicolls and Francis Lovelace Esq^{rs} and the Agreements made by the Inhabitants of fflattlands with the Townes of fflattbush and Gravesend Relacon to them being had Doth fully and at Large Appeare and the said

Towne being now in the Tenure or Occupacon of Severall ffreeholders and Inhabitants Seated there by Authority and haveing by Mr Roeloffe Martensen and Coert Stevensen Persons Deputed by them Desired a Confirmacon from mee of the aforesaid Land

Now for a Confirmacon unto the said ffreeholders and Inhabitants in theire Quiett Possession and Enjoyment of the Premissess

Know Yee that by Virtue of the Comission and Authority to mee Given for and in Consideracon of the Quitt Rent herein after menconed and Reserved I have Granted Rattified and Confirmed and by these Presents Doe Grant Rattify and Confirme unto Elbert Elberts Roeloffe Martens Pieter Claessen William

Gerretsen Coert Stevensen Leucas Stevensen and John Teunissen as

Pattentees for and on the behalfe of themselves and their Associates the Present freeholders and Inhabitants of the said Towne their Heires Successors and Assignes all the aforerecited Tract and Parcels of Land and Premissess Butted and Bounded as aforesaid with their and every of their

Appurtenances together with all and all manner of Edifices, Buildings, Havens, Harbours Rivers, Rivollets, Runnes, Streames, feedings, Pastures, Woods, Underwoods, Trees, Waters, Watercourses, Ponds, Pooles, Pitts, Swamps, Moores, Marshes, Meadows, Redd Land Valleys, Easements, Proffitts, Emoluments, Comodityes and Hereditamnets, fishing, fowling, Hawkeing, Hunting and other Appurtenances whatsoever to the said Tract and Parcell of Land within the Bounds and Limitts aforesaid belonging or in any wise Appertaining

To have and to hold the said Tract and Parcels of Land and all and Singular other the Premissess with their and every of their Appurtenances unto the said Elbert Elberts, Roeloffe Martensen, Pieter Claessen, William Gerretsen, Coert Stevensen, Lucas Stevensen, and Jan Teunissen as

Pattentees and their Associates the Present freeholders and Inhabitants of the said Towne their Heires Successours and Assignes to the sole and only Proper use benefitt and behoofe of them the said

Pattentees and their Associates their Heires Successours and Assignes forever to be holden in free and Comon Soccage According to the Tenure of East Greenwich in his Majestyes Kingdome of England

Yeilding Rendring and Paying therefore Yearly and every Yeare for the use of our Sovereigne Lord James the Second by the Grace of God over England, Scotland, ffraunce and Ireland King Defender of the faith &c Supreame Lord and Proprietor of the Colony and Province of New Yorke &c his Heires Successors and Assignes or to such Officer or Officers as by him or them shall bee Appointed to Receive the same fourteene Bushells of Good Winter Merchantable Wheate Yearly on the twenty fifth Day of March at the Citty of New Yorke and for the better

Preserveing the Title of the beforerecited Land and Premisses I have Caused these Presents to be Entred in the Secretaryes Office of this Province

Given under my hand and Sealed with the Seale of the Province at Fortt James in New Yorke this Eleventh Day of March Anno Dom one thousand six hundred Eighty and five and in the Second Yeare of his said Majestys Reigne over England &c

Thomas Dongan —

May it Please your Honor./.

The Attorney Generall hath Perused this Pattent and finds nothing Contained therein Prejudiciall to his Majestyes Interest.

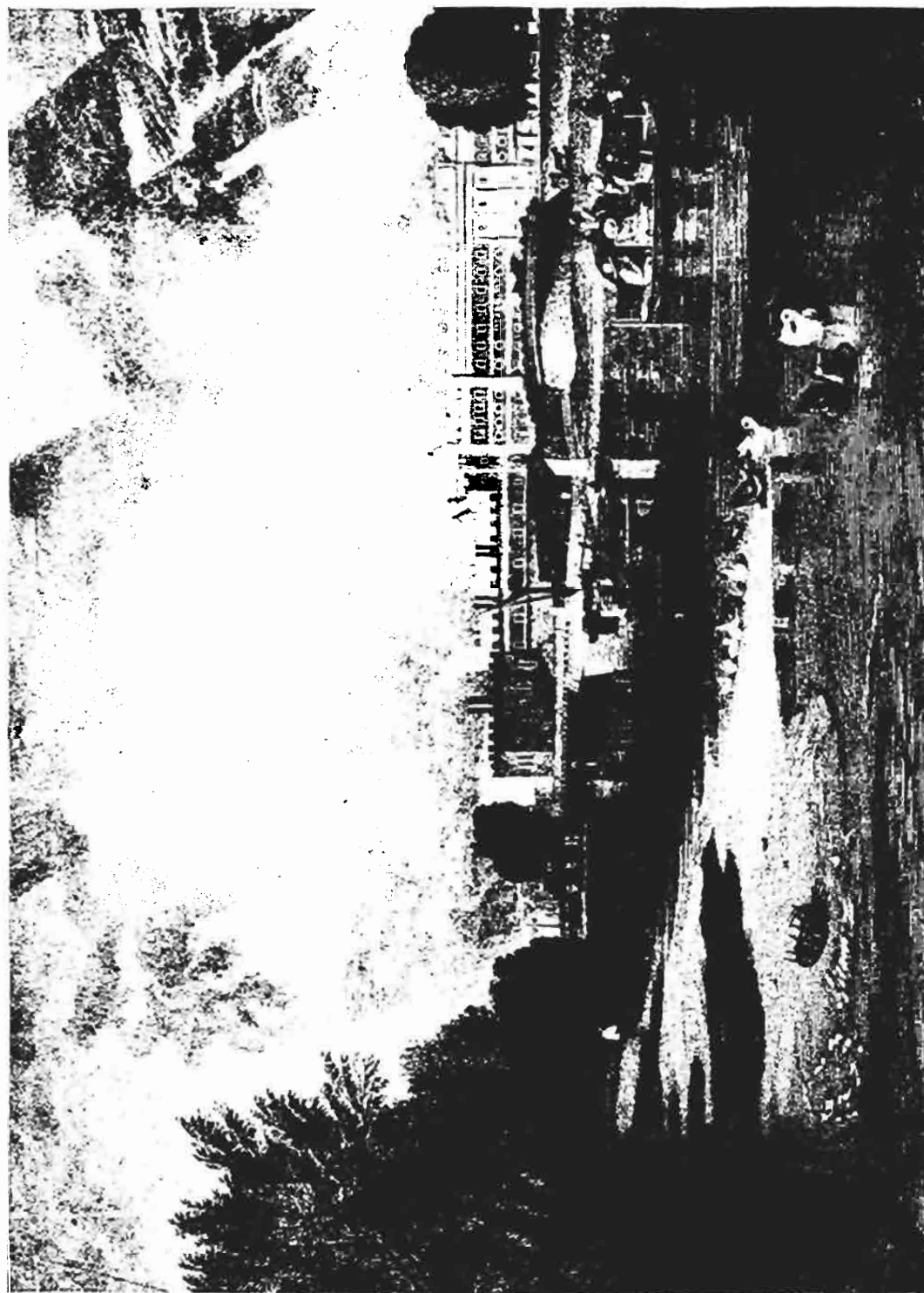
Examined March 11th 1685./.

Ia: Graham —

I do hereby certify the foregoing to be a true Copy of the Original Record Word *John* 23d line of page 186 obliterated and about three lines struck out between word *assignes* last line of page 186 and word *to* fourth line of page 187 all as in said Record. Compared therewith By Me

Lewis A: Scott. Secretary.

(PATENTS, V, p. 300, with additional paragraphing.)



HAMPTON COURT PALACE (PLATE 9)

SUBDIVISION III

HEMPSTEAD PATENTS

“KNOW all men whom these P^rsents may any wayes concerne, That Wee, *William Kieft*, Esq^r Governo^r Gen^{all} of the Province called the *New Netherlands*, with the Councell of State there established, by Vertue of a Commission under the hand and Seale of the High and Mighty Lords, the Estates Generall, of the *united Belgick Provinces*, and from his Highnesse, *Fredrick Hendrick*, Prince of Orange, and the Right Hono^{ble} Lords, the Lords Bewint Hebbbers of the west India Company, Have given and graunted, and by vertue of these p^rsents, Wee do give and graunt unto *Robert Fordham, John Stickland, John Ogden, John Carman, John Laurence and Jonas Wood*, with their Heires, Executors, Administrato^{rs} Successo^{rs} or Associates, or any they shall joyne in associacon with them, a certaine quantity of Land, with all the Havens, Harbo^{rs} Rivers, Creekes, Woodland, Marshes, and all other Appurtenances there unto belonging, lying and being upon, and about a certaine place, called *The Great Plaines* on *Long Island*, from the East River to the South Sea, and from a certaine Harbo^r now comonly called and knowne by y^e name of *Hempsteed Bay*, and so westward as farr as *Mathew Garretson's Bay*, to begin at the head of the

said two Bayes, and so to run in direct Lines, that there may bee the same Latitude in breath on the South side as on the North, for them the said Patentees, Actually, really, and perpetually to Enjoy, in as large and ample manner as their own free Land of Inheritance, and as farre Eastward, in case the said Patentees and their Associates shall procure One hundred ffamelyes to settle downe wth in the said Limitts, five year^s after the date hereof;

“ Giving and Graunting, And by Vertue of these P^rsents, wee do give and graunt unto the said Patentees and their Associates, with their Heires and Successor^s full Power and Authority, upon the said Land to Build a Towne or Townes with such necessary ffortifications as to them shall seem expedient, with Temple or Temples, and to use & Exercize the reformed Religion, which they professe, with the Ecclesiasticall Discipline there unto belonging;

“ Likewise giving and graunting, and by vertue of these p^rsents wee do give and graunt, to the said Patentees, their Associates, Heires and Successor^s full Power and Authority to Erect a Body Politique, or Civill Combinacōn, amongst themselves, and to nominate certaine Magistrates, one or more, under the number of Eight, of the Ablest, discreetest, approved honest men, and him, or them, annually to present to y^e Governo^r of this Province, for the time being, for him the said, the Governo^r Gen^{all} for the time being, to Elect and Establish them, for the Execucōn of

Government amongst them, as well Civill, Politicall as Juridicall, with full Power and Authority for them, the said Magistrate, or Magistrates, to call a Court, or Courts, so often as they shall thinke expedient, and to hold Pleas in all Cases, as Criminall as Civill, and to make an Officer under them to keepe a Record of their proceedings, with Power likewise for them, the said Magistrate, or Magistrates, with the consent of their associates or ffree Inhabitants, to make and Establish Civill Ordinances amongst themselves, Likewise to make an officer of Justice under them for y^e Execucōn of their warrants, precepts and injunctions; Likewise to Examine upon Oath, or by way of Interrogatories, all witnesses, concerning matters depending before them, and to give the first Sentence for the deprivacōn of Life, Limbe, Stigmatizing or Burne marking of any Malefactor, if they, in their Consciences, shall adjudge them worthy, and to cause the Execution of the said sentence, if the party so condemned maketh not their Appeale to the Chiefe Court, most commonly holden weekly in the *ffort Amsterdam*; In which Cases of deprivation of Life, Limbe, Member, Stigmatizing or Burne marking, the party so condemned, shall have free Liberty, of his or her Appeale to our Court as aforesaid, And bee thether conveyed, by Order of the Magistrate or Magistrates, for the time being, of the Towne of *Hempsteed*; And their Magistrate, or Magistrates, shall have Power to sitt in our said Court, and to Vote in such Causes;

“Likewise giving and graunting, And by vertue of these presents, wee do give and graunt, to the above said Patentees, their Associates, Heires and Successors full Power and Authority absolutely to determine without appeale, all Actions as well for Debt, Trespasse or ffine, not exceeding ffifty Holland Guildrs and to Arrest the Body or Goods of any that shall (in the Penalty of the said Summe) refuse to stand to their Award, But in causes exceeding the said Sume, p^rties have likewise Liberty of Appeale to our Court as aforesaid;

“Wee do likewise give and graunt unto the above said Patentees, their Associates, Heires and Successors to use and exercize the free Liberty of Hunting, Hawking, ffishing and ffowling within the abovesaid Limits, And to use and exercize all manner of Commerce, according as the Inhabitants of the Province may, or can do, by Vertue of the Priviledges graunted to them, induing all and singular the said Patentees, their associates, heires and Successors wth all and singular the immunities and Priviledges graunted to the Inhabitants of this Province, or hereafter to bee graunted, as if they were natives of the *united Provinces*;

“ffurther given and graunting to the said Patentees, their Associates, Heires and Successors That in case they cannot procure One hundred ffamilyes to settle down within the abovesaid Limitts, within the abovesaid time of five yeares, to have and Enjoy in as

ample manner, sufficient Land *Ratum pro Rato*, the like quantity of Land, according to the number of ffamilyes they shall procure, with all the Priviledges above written;

“Likewise binding my selfe and Successors for and in the behalfe of the High and mighty Lords, the Estates Generall of the *united Belgick Provinces* his Highnesse, *ffrederick Hendrick*, Prince of Orange, and the Right Hon^{ble} Lords, the Lords Bewint Hebbbers of the west India Company, and their Successors that in case the Title of propriety, to the said Land, shall bee controverted by any other Prince or State, to make all damages that may thereby accrew unto them, Always Provided the said Patentees, their Heires, Successors and Associates, shall reverently respect the abovenamed High and mighty Lords, the Estates Generall of the *united Belgick Provinces*, his Highnesse, *ffrederick Hendricke*, Prince of Orange and the Right Hon^{ble} the Lords Bewint Hebbbers of the west India Company, and their Successors for their Superior Lords and Patrons, so long as they shall Inhabit in the Jurisdiction of the said Province, And at the Expiration of ten yeares, to begin from the day the first generall Peace with the Indiyans shall bee concluded on, to pay or cause to bee paid to an officer there unto deputed by the Govern^r of this Province for the time being, the tenth part of all the Revenue that shall arise by the Ground manured wth the Plough, or Howe, in case it bee demanded, to bee

paid to the said Officer, in the ffield, before it bee Housed, Gardens or Orchards, not exceeding one Hollands Acre, being excepted;

“And in case any of the said Patentees, their Associates, Heires and Succesor^{rs} shall onely improve their Stock in grasing or breeding of Cattle, then the Party so doing shall at the end of the aforesaid ten yeares, Pay, or cause to be paid, to an Officer there unto deputed as aforesaid, such reasonable satisfaction in Butter or Cheese, as hee and the said Officer shall Agree unto, with the advice of the Magistrate or Magistrates of y^e said place for the time being; injoyning likewise, the Patentees, their Associates, Heires and Successor^{rs} in the dating of all Publique Instruments, to use the New Stile, with the Weights and Measures of the place.

“Given under my Hand and Seale of this Province, this 16th of November, 1644, Stilo novo.

“WILLIAM KIEFT.

“By order of the Governo^r and Councell,

“CORNELYS VAN TIENHOVEN, *Secret.*

GEO. BAXTER.”

(O’Callaghan, *Laws and Ordinances of New Netherland*, 1638-1674, pp. 42-46.)

HEMPSTEED PATTENT

Richard Nicolls Esq^r &c Whereas there is a Certaine Towne in y^e North Ryding of Yorkshire upon Long Island Co^monly called & knowne by y^e name of

Hempsteed Scituate lyeing & being on y^e South syde of y^e Great Plaines having a Certaine Tract of Land thereunto belonging The Bounds whereof on y^e North East syde begin at that parte of the Sound or East Ryver w^{ch} lyes North & opposite to y^e North West bounds of y^e Land co^monly called Robert Williams his Purchase so runnes in a direct South Lyne to y^e *South West parte* of the said Lands (which by Computation is y^e middle of y^e Greate Plaines) and then Extends East to the uttermost Lymitts of the said Plaines and so againe South to y^e Sea ffrom y^e North East bounds aforementioned a Lyne being runn West to y^e head or middle of Mathew Gerretsons Bay it makes their North Bounds & includes wthin it a parte of Matini cock Lands yet wth this Reservation that y^e said Towne shall p^rtend no Propiety therein untill such tyme as they shall make Lawfull Purchase of the same from the Indian Natives which they have Liberty to doe ffrom y^e North West Bounds afore-specified a Lyne is to Run crosse y^e Land by the East Lymitts of the Towne of Flushing & Jamaica & so to goe South to the Sea or Maine Ocean ffor a great part of which said Tract of Land wth th'appurtenances there was heretofore a Patent Graunted from the Dutch Governor William Kieft bearing date y^e 16th day of November 1644 Stilo Novo unto Severall Patentees their Heires Executors Adm^{rs} Successo^{rs} or Associates for them to Improve manure & Settle a Certaine Number of ffamilies thereupon

Now for a Confirmation unto y^e p^rsent Freeholders & Inhabitants of the said Towne in their possession & Enjoyment of the p^rmisses

Know Yee that by vertue of the Commission and Authority unto me given by his Royall Highness I Have Ratified Confirmed & Graunted and by theise p^rsents do Ratifye Confirme & Graunt unto M^r John Hicks Justice of the Peace Captⁿ John Seaman, Richard Gildersleeve, Robert Jackson James Pyne, John Carrman, John Smith. R. & John Smith. B. as

Pateentees for and on the behalfe of themselves and their Associates the ffreeholders and Inhabitants of the said Towne their Heires Successors and Assignes All th'afore mentioned Tract & Neck of Land sett forth & bounded as aforesaid

Togeth^r wth all Havens Harbours Creeks Quarryes Woodlands Plaines Meadows Pastures Marshes Waters Lakes Ryvers Fishing Hawking Hunting and fflowling and all oth^r profitts Comodityes Emolum^{ts} & Hereditam^{ts} to y^e said Towne Tract of Land & p^rmisses wthin y^e Lymitts & bounds aforementioned described belonging or in any wise apperteyning

To have & to hould all & singular y^e said Lands Hereditaments & p^rmisses with their & every of their Appurtenances and of every parte & Parcell thereof to the said

Patentees and their Associates their Heires Successors & Assignes to the proper use & behoof of the

said Patentees & their Associates their Heires Successors & Assignes forever

Provided always notwithstanding that the Extent of the bounds before recited doe no wayes prejudice or infringe the perticuler propriety of any person or persons who have Right by Patent or other Lawfull Clayme to any parte or Parcell of Lands or Tenements within ye Lymitts aforesaid but onely that all the Lands & Plantations within the said Lymitts shall have relation to the Towne in Generall

Moreover I Doe hereby likewise Confirme & Graunt unto ye said Patentees & their Associates their Heires Successors & Assignes All the Privileges belonging to a Towne wthin this Governmt And that the place of their p^rsent Habitation shall continue & retaine ye name of Hempsteed by w^{ch} name & stile it shall be distinguisht & Knowne in all bargaines & Sales Deeds Records & Wrytings they the said

Patentees & their Associates their Heires Successors & Assignes Rendring & paying &c The Patent is Dated the Sixth day of March 1667./.

The above Pattent for Hempsteed Recalled./.

I do hereby Certify the foregoing to be
a true Copy of the Original Record
Compared therewith By Me

Lewis A. Scott. Secretary.

(PATENTS, IV, p. 55, with additional paragraphing.)

A Patent Graunted unto the
Inhabitants of Hempstead./.

Richard Nicolls Esq^r Govern^r Gen^{all} under his
Royall Highnesse James Duke of Yorke and Albany
&c of all his Territoryes in America To all to whome
these pñts shall come sendeth Greeting

Whereas there is a Certaine Towne in the North
Riding of Yorkshire upon Long Island commonly
called and knowne by the Name of Hempstead Scitu-
ate lying and being on the South side of the Greate
Plaines having a Certaine Tract of Land thereunto
belonging the Bounds whereof on the North East side
begin at the North west Part of the Lands commonly
called Robert Williams Purchase so runing on a
direct South Line to the Southermost Part of the said
Lands (which by computacon is to the Middle of the
Great Plainses) it extends thence East to the utmost
Limitts of the said Plainses and so Stretcheth againe
South to the Sea ffrom the North East Bounds afore-
mentioned a west Line being rune to the head or
middle of Mathew Garretsons Bay it makes their
North Bounds from whence runing Southward to
the Sea They are bounded to the West by the East
Limitts of the Townes of fflushing and Jamaica and
South by the Sea or Maine Ocan ffor a great Part of
which said Tract of Land wth the appurtenances
There was heretofore a Patent Graunted from the
Dutch Govern^r William Kieft bearing Date the
16th Day of November 1644. Stilo Novo unto Rob-

ert ffordham, John Stickland, John Ogden John Carman, John Laurence, and Jonas Wood, their Heires Executors Admto^{rs} Successors or Associates for them to improve manure and Settle a Certain Number of ffamilyes there upon

Now for a Confirmacon unto the p^rsent ffreehold^{rs} and Inhabitants of the said Towne in their Possession and Enjoymt of the p^rmisses

Know Yee That by vertue of the Commission and Authority unto mee given by his Royall Highnesse I have Ratified Confirmed and Graunted And by these pnts Do Ratify Confirme and Graunt unto M^r John Hicks Justice of the Peace Cap^t Jn^o Seaman, Richard Gildersleeve, Robert Jackson, John Carman, John Smith Senior and John Smith Junior as

Patentees for and on the behalfe of themselves and their Associates the ffreehold^{rs} and Inhabitants of the said Towne their Heires Successors and Assignes All the aforemencōned Tract and Neck of Land set forth and Bounded as aforesaid

Together with all Havens Harbours Creekes Quarryes Woodlands, Playnes Meadows Pastures Marshes Waters Lakes Rivers ffishing Hawking Hunting and ffowling And all other Proffitts Commodities Emolum^{ts} and Hereditam^{ts} to the said Towne, Tract of Land and p^rmisses within the Limitts and Bounds aforementioned described belonging or in any wise appertaining

To have and to hold all & Singular the said Lands

hereditam^{ts} and p^rmisses wth their and every of their Appurtenances and of every Part and Parcell thereof to the said

Patentees and their Associates their Heires Successors^{rs} and Assignes to the proper use and behoofe of the said Patentees and their Associates their Heires Successors^{rs} and Assignes forever

Provided alwayes Notwthstanding that the extent of the Bounds before recited do noway p^rjudice or infringe the Particular Propriety of any Person or Persons who have Right by Patent or other Lawfull Clayme to any Part or Parcell of Land or Tenem^{ts} within the Limitts aforesaid but onely that all the Lands and Plantacons within the said Limitts shall have relacon to the Towne in Generall

Moreover I do likewise hereby Confirme and Graunt unto the said Patentees and their Associates their Heires Successors^{rs} & Assignes All the Priviledges belonging to a Towne wthin this Governm^t And that the Place of their p^rsent Habitacon shall continue & retaine y^e Name of Hempsted by w^{ch} name and Stile it shall bee distinguish and knowne in all Bargaines and Sales Deedes Records and Writings they the said

Patentees and their Associates their Heires Successors^{rs} and Assignes Rendring and Paying such Dutyes and acknowledgm^{ts} as now are or hereafter shall bee Constituted & Establisht by the Lawes of this Governm^t under y^e obedience of his Royall Highnesse his Heires and Successors^{rs}

Given under my hand and Seale at ffort James in
New Yorke this Sixth Day of March in the 19th Yeare
of the Raigne of Our Sovereigne Lord Charles the
Second by the Grace of God of England Scotland
ffrance and Ireland King Defender of the ffaith &c
And in the Yeare of our Lord God 1666.

Rich^d Nicolls

I do hereby Certify the aforegoing to
be a true Copy of the Original Record
Compared therewith By Me

Lewis A. Scott. Secretary.

(PATENTS, I, p. 76, with additional paragraphing.)

This following Pattent Record^d for
the Towne of Hempstead the 17th Day
of Aprill 1685:

Thomas Dongan Leiv^t and Governour and Vice
Admirall under his Roy^{ll} High^{ss} James Duke of
Yorke &c of New Yorke and its Dependencyes in
America To all to whom these presents shall come
Sendeth Greeting,

Whereas there is a Certaine Towne in Queens
County Called and knowne by the name of Hemp-
stead upon Long Island, Scituate Lyeing and being
on the South side of the Greate Plaines haveing a
Certaine Tract of Land thereunto belonging, the
Bounds whereof begin att a marked Tree standing
att the Head of Mattagarretts Bay and soe runing
from thence upon a Direct South Line due South to

the maine sea, and from the said Tree a Direct North Line to the Sound or East River and soe round the Points of the Necks till it comes to Hempstead Harbour and soe up the Harbour to a Certaine Barr or sandy Beach and from thence up a Direct Line till it comes to a marked Tree on the east side of Contiagge Point and from thence a Southerly Line to the Middle of the Plaines and from thence, a due East Line to the utmost extent of the Greate Plaines and from thence upon a Streight Line to a Certaine Tree marked in a neck called Maskachoung and soe from thence upon a due South Line to the South Sea and the said South Sea is to be the South Bounds from the East Line to the West Line and the sound or east River to be the Northerly Bounds as According to Severall Deeds, or Purchasess from the Indian Owners and the Pattent from the Dutch Governour William Kieft Relacon thereto being had doth more fully and att Large Appeare,

Now Know Yee that by virtue of the Commission and Authority unto me Given by his Roy^{ll} High^{ss} James Duke of Yorke and Albany &c Lord Proprietor of this Province in Consideracon of the Premisess and the Quitt Rents herein after Reserved, I have Given Granted Rattified and Confirmed and by these p^rsents Doe Give Grant Rattifie and Confirme unto Cap^t John Seaman, Symon Sareing, John Jackson, James Pine Senior Richard Gildersleeve, senior and Nathaniell Pearsall as

Pattentees for and on the Behalfe of themselves and their Associates the ffreeholders and Inhabitants of the said Towne of Hempstead their Heires Successors and Assignes forever all the before Recited Tract and Tracts Parcell and Parcells of Land and Islands within the said Bounds and Limitts together with all and Singular the Woods, underwoods, Plaines, Meadows, Pastures, Quarries, Marshes, Waters, Lakes, Causewayes, Rivers, Beaches, ffishing, Hawking, Hunting and fowleing with all Libertyes Priviledges, Hereditaments and Appurtenneces to the said Tract of Land and Premissess belonging or in any wise Appurteineing,

To have and to hold the said Tract of Land and Premissess with all and Singular the Appurtenneces before menconed and Intended to be Given Granted Rattified and Confirmed unto the said Cap^t John Seaman Symon Sareing, John Jackson, James Pine, Senior, Richard Gildersleeve senior And Nathaniell Pearsall the said

Pattentees and their Associates their Heires Successors and Assignes to the proper use benefitt and behoofe of them the said Pattentees and their Associates their Heires Successors and Assignes forever to be holden of his said Roy^{ll} High^{ss} his Heires and Assignes in free and Comon Soccage According to the tenure of East Greenwich in the County of Kent in his Mat^{ies} Kingdom of England

Provided alwayes that neither this Pattent nor any

thing herein Contained shall be Construed or Intended to the Prejudice or Infringment of any Right Clayme or Pretence which his Roy^{ll} High^{ss} James Duke of Yorke &c his Heires and Successors now hath or hereafter may have to a Certaine Tract of Land lyeing within the Bounds of this said Pattent Commonly Called or knowne by the Hempstead Little Plaines and all the WoodLand and Meadows between the said Little Plaines and the Bay w^{ch} lyes betwext Rockaway Meadows and the said Meadows Bounded on the East with ffosters Meadow River, and on the West with Hempstead West Line and likewise one Intire Peice of Land Containeing seaven hundred Acres lyeing and being on Cow neck, and

I Doe hereby likewise Confirme and Grant unto the said Pattentees and their Associates their Heires Successors and Assignes all the Privilidges and Immunityes belonging to a Towne within this Government

Yeilding Rendring and Paying Yearly and every Yeare att the City of New Yorke unto his roy^{ll} High^{ss} or to such Officer or Officers as by him shall be Appointed to Receive the same twenty Bushells of Good Winter Wheate or fouer Pounds in Good Currant Mony of New Yorke on or before the twenty fifth day of March.

In Testimony whereof I have Caused these Presents to be entred upon Record in the Secretaryes office of the said Province and the Publick seale

thereof have hereunto Affixed and Signed my Hand
this Seavententh Day of Aprill in the 37th Yeare of
his Maj^{ties} Reigne and in the Yeare of our Lord 1685

Tho: Dongan

I do hereby Certify the foregoing to be a true
Copy of the Original Record. Word *know* 31st
line and between five and six lines in this page
between the word *Government* in ninth line
and word *Yeilding* seventeenth line all struck
out as in said Record. Compared therewith
By Me

Lewis A: Scott. Secretary.

(PATENTS, V, p. 182, with additional paragraphing.)

SUBDIVISION IV
SMITHTOWN PATENTS

“A Confirmation of a tract of land called Nesequauke granted unto Richard Smith of Long Island.

“Richard Nicolls E^{sqr} Governor under his Royall highness James, Duke of Yorke &c. of all his Territories in America, To all to whome these presents shall come sendeth greeting.

“Whereas there is a certain parcel or tract of land situate lying and being in the East Riding of Yorkshire upon Long Island, Commonly called or known by the name of Nesaquauke Land. Bounded Eastward with the line lately runne by the Inhabitants of Seatalcott as the bounds of their town, bearing Southward to a certaine fresh Pond called Raconkamuck, from thence southwestward to the Head of Nesaquauke River, and on the west side of the said River so farr as is at this present in ye possession of Richard Smith as his proper right and not any wayes claymed or in controversy betweene any other persons; which said parcell or tract of land (amongst others) was heretofore given and granted by the Sachems or Indyan proprietors to Lyon Gardiner of Gardiner's Island deceased, and his heirs: whose interest and estate therein hath beene sold and conveyed unto Richard Smith and his Heires, by virtue of which



TREMATON CASTLE, CORNWALL (PLATE 10)

hee claymes his propriety; and whereas the Commissioners authorised by a Genrall Court held at Hartford in His Majestyes Colony of Conecticott did heretofore, That is to say in ye Month of June 1664, make an agreement with the said Richard Smith, That upon the conditions therin exprest hee the said Richard Smith should place Twenty families upon the said land,

“Now know yee that by vertue of the Commission and authority given unto mee by his Royall Highness the Duke of Yorke, I do ratify and confirme the said agreement, and do likewise hereby give confirme and grant unto the said Richard Smith his heirs and assigns the said Parcell or Tract of land, called or knowne by the name of Nesaquauke Lands bounded as aforesaid together with all the lands, woods, meadows, Pastures, Marshes, Waters, Lakes, fishings, Hunting and fowling, and all other profitts, comodities and Emoluments to the said parcell or tract of Land and Premises belonging, with their and every of their appurtenances, and of every part and parcell thereof.

“To have and to hold the said Parcell or Tract of Land with all and singular the appurtenances, unto the said Richard Smith his Heirs and Assigns, to the proper use and behoofe of the said Richard Smith his Heires and assigns for ever.

“Upon the conditions & Termes hereafter exprest, That is to say, That in Regard there hath arisen some dispute and controversy between the Inhabitants of

the town of Hunttington and Captaine Robt Ceely of the same place, concerning that Parcell of land lying to ye westward of Nesaquauke River which for the consideracons therein mentioned, the said Richard Smith by vertue of the aforementioned Agreemt was to enjoy, but now is molested and hindered in the quiet Possession thereof, The said Richard Smith shall be obliged to Settle onlely ten families on the lands before mentioned within the space of three years after the date hereof.

“ But if it shall hereafter happen that the said Richard Smith shall cleere his Title and be lawfully possessest of the premises as aforesaid that then hee the said Richard Smith shall settle the full number of Twenty families within Five yeares after such Clearing of his Title, and being lawfully Possessed as aforesaid, and shall fulfill whatsoever in the said Agreemt is required.

“ And for an encouragement to the said Richard Smith in his settling the ffamilyes aforementioned, the Plantations upon the said Nassequauke Lands shall from the first settlement until the expiration of the Terme or Termes of years bee free from all Rates or Taxes, and shall have no dependence upon any other place, but in all respects have like and equall priviledges with any Town within this Government,

“ Provided always, That the said Richard Smith his Heirs and assigns shall render and pay such other acknowledgements and dutyes as are or shall be Con-

stituted and Ordained, by his Royall Highness the Duke of York and his Heires or such Governor or Governors as shall from time to time be appointed and sett over them.

“Given under my hand and seale at Fort James, in New York this 3d day of march in the Eighteenth year of the Rayne of our Soverign Lord Charles the Second by the Grace of God, King of England, Scotland France and Ireland, Defender of the Faith &c And in the year of our Lord God, 1665.

“Richard Nicolls.”

(*Records of the Town of Smithtown . . .* pp. 6-8, with additional paragraphing.)

“Edmund Andros Esquire, Seigneur of Sausmares, Lieutenant and Governor Genral undr his Royall Highness, James Duke of York and Albany, of all his territories in America, To all to whom these presents shall come sendeth greeting

“Whereas there is a certain parcell of land situate lying and being in the East riding of Yorkshire upon Long Island, commonly called or known by the name of Nesaquake lands, bounded east ward by a certain runn of water called Stony Brook, stretching north to the Sound, and southward bearing to a certaine fresh water pond called Raconkamuck, being Setalcott west bounds, from thence south west ward to the head of Nesaquake River, and so along the said river as it runs unto the Sound.

“Also another parcell or tract of land on the West side of the said river, extending to the westernmost part of Joseph Whitman’s Hollow, as also to the west side of Leading Hollow to the fresh pond Unshe-mamuck, and the west of that pond att high water mark, and so to the Sound, being Huntington east bounds: which said parcell or tract of land, on the East side of Nesaquake River was heretofore granted by Patent unto Richard Smith, the pesent possessor; by Col. Richard Nicolls, and to his heyres and assigns forever, as also that on the west side of said river, with some provisoes and restrictions, the which has since by due course of law, att the General Court of Assizes held in the year 1675, been recovered by the said Richard Smith from the town of Huntington.

“Know ye that by virtue of his Majesties letters Patent, and the Commission and authority unto me given by his Roya^l Highness, have rattified confirmed and granted, and by these presents do ratify confirm and grant unto the said Richard Smith his heyres and assigns, the aforesaid parcels or tracts of land on both side of the Nesaquake River.

“Together with all the lands, soyles, woods, meadows, pastures, marshes, lakes, waters, fishing, hawking, hunting and fowling, and all other profits commodities and emoluments to the said parcells of land and premises belonging; with their and every of their appurtenances, and every part and parcell thereof.

“To Have and To Hold, the sayd parcels or tracts

of land and premises, with all and singular the appurtenances, unto the said Richard Smith his heyres and assigns, to the proper use and behoof of him the said Richard Smith his heyres and assigns forever.

“The tenure of the said land and premises to bee according to the custom of the manor of East Greenwich, in the County of Kent in England in free and common soccage and by fealty only.

“As also that the place bee established as a township and bee called and known by the name of Smithfield or Smithtown, by which name to be distinguished in all bargains and sales, deeds records and writings.

“The said Richard Smith his heyres and assigns making due improvement on the [land] afore mentioned, and continuing in obedience, and conforming himself according to the laws of ther government, and yielding and paying therefor yearly and every year unto his Royall Highness’s use as an acknowledgement or quit rent one good fatt lamb, unto such officer or officers as shall be impowered to receive the same.

“Given under my hand and sealed with the seal of the Province in New York, this 25th day of march in the twenty ninth year of his Majesties reign, Anno Dom. 1677.

“E. Andross.”

(*Records of the Town of Smithtown . . .* pp. 20-22, with additional paragraphing.)

SUBDIVISION V

THE SOUTHOLD PATENT

“Edmund Andross, Esq., Seigneur of Sansmares, Lieut. and Governour Gen’ll under his Royal highnesse James, Duke of Yorke and Albany, and of all his territory in America.

“Whereas there is a certain Towne in the East Riding of Yorke Shire, upon Long Island, comonly called and known by the name of South Hold, scituate, lying and being on the North side of the said Island, towards the Sound, haveing a certain Tract of land thereunto belonging, the Western bounds whereof extend to a certain river or Creeke called the Wading Creeke, in the Indian tongue Panquacunsuck, and bounded to the Eastward by Plumb Island, together with the said Island on the North with the Sound or North Sea, and on the South with an arme of ye Sea, or river which runneth up between Southampton Land and the aforesaid Tract of Land, unto a certain Creek which fresh water runneth into called in English the Red Creek, by the Indians, Toyongs, together with the Sd Creek and meadows belonging thereunto, (not contradicting the agreement made between their Towne and the Towne of Southton, after their Tryall at ye Assizes,) So running on a straight line from the head of the aforementioned fresh water,



ETON, FROM WINDSOR CASTLE TERRACE (PLATE II)

to the head of the small brook that runneth into the Creek called Panquacunsuk, including all the necks of Land and Islands within the afore described bounds and limitts, now for a confirmacon unto the present ffreeholders Inhabitants of the said Towne and pre-cints.

“Know yee that by virtue of his Ma’ties Letters Pattents and the Commission and authority unto me given by his Royal highness, I have Ratified, confirmed and granted, and by these presents do hereby Ratify, confirme and grant unto Isaack Arnold, Justice of the Peace, Capt. John Young, Joshua Horton, Constable, Barnabas Horton, Benjamin Young, Samuel Glover and Jacob Corey, Overseers as

“Patentees, for and on the behalf of themselves and their associates, the ffreeholders and Inhabitants of the Sd Towne, their heires, Successors and Assigns, all that aforemenconed Tract of land, with the necks and Islands within the Sd bounds, sett forth and described as afores’d,

“Together with all Rivers, Lakes, waters, Quarryes, Timber, woods, woodland, Plaines, meadows, broaken pieces of meadows, Pastures, Marshes, ffishing, hawking, hunting and ffowling, and all other proffits, commodities, emoluments and hereditaments to the sd towne, tract of land and premises, within the Limitts and Bounds aforemenconed, described, belonging, or in any wise appertaining;

“To have and to hold, all and singular the sd lands,

hereditaments and premises, with their and every of their Appurtenances, and of every part and parcell thereof to the Sd

“Patentees and their Associates, their heirs, Successors and Assigns, to the proper use and behoofes of the said Patentees, their Associates, their heirs, Successors and Assignes forever.

“The tenure of the Sd Lands and premises to bee according to the custome of the manner of East Greenwich, in the County of Kent, in England, in free and Common Soccage, and by fealty onely,

“Provided, allwayes notwithstanding, That the extent of the Bounds before recited, do no way prejudice or infringe the particular propriety of any person or persons who have Right by Patent, or other Lawfull claime to any part or parcell of land or Tenements within the Limitts afores’d, onely that all the sd Lands and Plantacons, within the sd Limitts or Bounds, shall have relacon to Towne in Generall for the well government thereof; and if it shall so happen that any part or parcel of the Sd Lands, within the bounds and Limmitts aforescribed, be not already Purchased of the Indyans, it may bee purchased (as occation) according to Law.

“I do hereby likewise confirme and grant unto the Sd Patentees and their Associates, the heires, Successors and Assignes, all the priviledges and Immunities belonging to a Towne within this Governm’t and that the place of their present habitacon and abode

shall continue and retaine the name of South Hold, by which name and stile it shall be distinguished and knowne in all bargains and sales, Deeds, Records and writings,

“They making improvement on the Sd land, and conforming themselves according to law, and yielding and paying therefore, yearly and every year, unto his Royall highnesse use as a Quit Rent, one fatt Lamb, unto such officer or officers there in authority, as shall be empowered to receive the same.

“Given under my hand, and Sealed with the Seale of the Province in New York, the 31st day of October, in the 28th yeare of his Ma'ties Raigne, Anno of Domini, 1676.

“E. ANDROSS.

“Examined by me,

“MATTHIAS NICOLLS, Sec'y.”

(Whitaker, *History of Southold, L. I., Its First Century*, pp. 204-207, with additional paragraphing.)

SUBDIVISION VI

TWO MANHATTAN PATENTS

A Confirmation of a Parcell of Land on Manhatans Island Graunted to y^e Children of Anneke Bogardus./.

Richard Nicolls Esq^r &c Whereas there is a Certaine Parcell of Land lying on this Island Manhatans towards the North River which in the Yeare 1636 was the Land and Bowery of Anna Bogardus to whom and her Husband Roeloffe Jansen it was first Graunted by the then Dutch Governo^r Walter van Twiller at which time the said Roeloffe Jansen first began to Manure the said Lands and to Build there upon the Limitts whereof did then begine from the ffence of the House by the Strand side so runing North East to the ffence of old Jans Land its in Length two hundred and ten Rod then going along the ffence of the sd old Jans Land South East it reacheth to a certaine Swamp & is in Breadth one hundred Rod and Striking along y^e Swamp South West its in Length one hundred and Sixty Rod And from the Swamp to the Strand going West its in Breadth fifty Rod the Land lying on the South side of the House to y^e ffence of the Land belonging to the Company and so to the East side begins at the



ETON, FROM THE PLAYING FIELDS (PLATE 12)

ffence and goes South to the Posts and Rayles of the Companys Land without any hindrance of the Path its in Breadth Sixty Rod in Length on the Southside along the Posts and Rayles one hundred and Sixty Rod on the Eastside to the Entrance of the Chalke Hooke in Breadth thirty Rod and along the said Chalkie Hooke on the Northside to the ffence of the Land before menconed going West is in Length one hundred Rod Amounting in all to about Sixty two Acres ffor which said Parcell of Land Anneke Jans the Widdow and Relict of Domini Everardus Bogardus had heretofore a Patent or Groundbriefe from the late Dutch Governo^r Petrus Stuyvesant bearing date the 4th day of July 1654

Now for a Confirmacon unto the Children and Heires of the sd Anneke Bogardus in their Possession and Enjoym^t of the p^rmisses Know Yee that by vertue of the Commission and Authority unto mee given by his Royall Highnesse I have Ratified Confirmed & Graunted and by these pnts do Ratify Confirme & Graunt unto y^e Children and Heires of Anneke Bogardus decd the aforerecited Parcell of Land & p^rmisses with all and Singular their Appurtenances

To have and to hold the said Parcell of Land and p^rmisses unto y^e Children and Heires of the said Anneke Bogardus their Heires and Assignes unto the proper use and behoofe of the said Children and Heires their Heires and Assignes forever Rendring & Paying &c

Dated the 27th March 1667./.

R. Nicolls./.

I do hereby Certify the foregoing to be
a true Copy of the Original Record.

Compared therewith By Me

Lewis A: Scott. Secretary.

(PATENTS, IV, p. 28, with additional paragraphing.)

A Confirmacon Graunted unto Govert Lockermans & Cornelys Leenders for a Certain House upon y^e Island Manhatens./.

Richard Nicolls Esqr &c Whereas there was heretofore a Patent or Ground briefe graunted by the Dutch Governo^r William Kieft unto Govert Lockermans & Cornelys Leenders for a Certain House Scituate & being upon this Island Manhatans towards the East River together with a Pcell of Land thereunto belonging formerly enclosed with a Fence by David Provoost which sd fence beginning at the Creeke where the fresh water runs into the East River and it goes along towards the Land then belonging to Cornelys Van Tienhoven whose Rayles or Pallisadoes run from the Highway towards the sd River as by the marks set up by him doth Appeare the sd Land (from the sd fence to the great Tree) abutting all along on the sd Tienhovens Pallisadoes and further from the sd great Tree a line Stretching North East and by East and East North East (between both) along by the Pallisadoes of Phillip de Truiex it Extends unto

Bestevaers Swamp & from the River upon a Northwest & North Northwest Course it likewise comes to the sd Swamp. The sd Patent or Ground briefe graunted as aforesd bearing date the 26th day of March 1642

Now for a Confirmacon unto the sd Govert Lockermans in his possession and Enjoyment of so much of the p^rmisses as remains untransported Know Yee that by virtue of the Commission &c I have Ratified Confirmed & Graunted & by these p^rsents doe hereby Ratifye Confirme & Graunt unto Govert Loockerman his Heires and Assignes all that remaining pt of the forecited pcell of Land and p^rmisses (which hath not been conveyd away & transported as aforesd) with all and Singular the Apptences

And I doe likewise Confirme and Ratifye unto the psons concerned their pticular pcells of Land which have been transported out of the sd Groundbriefe

To have & to hold the Remainder of the sd Land & p^rmisses

The Patent is dated the 18 Apr. 1667./.

I do hereby Certify the foregoing to be
a true Copy of the Original Record

Compared therewith By Me

Lewis A: Scott. Secretary.

On the margin stands, "Manhatans Govert Loockermans Cornelys Leenders."

(PATENTS, II, p. 11, with additional paragraphing.)