

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

BRIEF FOR THE CITY OF FALL RIVER.

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

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

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

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

Peirce, Indian History, (1878), p. 238

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

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

Peirce, Indian History, p. 243. 1pp.

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

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

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

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

St. 1804, *Ch.* 2.

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

St. 1834, *Ch.* 14.

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

First city charter:

St. 1854, *Ch.* 257.

Second city charter:

St. 1885, *Ch.* 269.

Third city charter:

St. 1902, *Ch.* 393.

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

St. 1871, *Ch.* 133.

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

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

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

St. 1891, *Ch.* 114.

St. 1892, *Ch.* 362.

St. 1895, *Ch.* 478.

St. 1897, *Ch.* 285.

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

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

Fall River Revised Ordinances, Ch. 45.

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

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

Fall River City Doc., 1905, pp. 651-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Constitutional Law.

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

U. S. Const. Art. 1 § 8.

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

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

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

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

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

McLean, J. in

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

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

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

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

(1871) *Dan-ell v. Webquish*, 108 *Mass.* 133.

Title to Indian Lands.

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

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

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

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

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

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

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

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

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

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

14. Speaking of the St. 1869, C. 463, which enfranchised the Indians in Massachusetts, and removed all disabilities to which they had theretofore been subject, the present Chief Justice of our Supreme Court, then associate justice, said:

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

(1891) *Drew v. Carroll*, 154 *Mass.* 181, 183.

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

(1837) *Clark v. Williams*, 19 *Pick.* 199;

(1873) *United States v. Cook*, 19 *Wall.* 591;

(1831) *Cherokee Nation v. Georgia*, 5 *Peters* 1

(1823) *Johnson v. McIntosh*, 8 *Wheaton* 541;

(1889) *Cherokee Nation v. Southern Kansas Ry. Co.*, 135 *U. S.* 611

(1871) *Danrell v. Webquish*, 108 *Mass.* 133

1 *Kent, Commentaries*, p. 258 (14th ed., 1896)

Sutherland, Notes on U. S. Const., p. 138 (1904)

Title to Indian Lands in Fall River.

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

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

This land was thereafter (in 1709) conveyed by the Province to Benjamin Church in exchange for lands constituting the present Indian Reservation, which said Church conveyed to the Province of Massachusetts Bay at the same time. This latter conveyance of Church stated that the land consisted of 160 acres. Zebedee Terry who surveyed it in 1763 found 190 acres, 64 rods; whereas we find actually to-day that it amounts to 195 7-10 acres.

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

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

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

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

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

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

Bigelow, C. J. said:

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

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

(1860) *Packard v. Ames*, 16 Gray, 327, 328-9.

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

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

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

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

(1863) *Ransom v. Inhabitants Sch. Dist. Cambridge*, 7 Gray 125, 127-8-9-30.

See also (1871) *Sutton v. Town of Cambridge*, 109 Mass., 1.

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

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

In 1764, the Province of Massachusetts Bay made a partition or allotment of the land described in the Church deed, among various members of the tribe to be held in severalty.

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

And also reprinted in

Mass. House Doc. No. 215, 1862.

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

15. The Special Report of J. M. Earle, on the claim of Zurviah Gould Mitchell of Abington, Mass., discusses generally the title of the Commonwealth, but more particularly the title of the persons among whom a division was made in 1764.

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

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

C. 463, it emancipated the Indians and removed all their disabilities.

16. Since it appears that many families of the original grantees in severalty under the division of 1764 have become extinct, it would seem that the Commonwealth may have acquired title by reversion or escheat to some of the lands in question.

Mass. Rev. L. Ch. 133 § 1

and previous statutes cited in margin running back to 1692.

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

Mass. Declaration of Rights, Art. 10.

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

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

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

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

See, Governor Claflin's Inaugural Address in

Acts & Resolves 1869, p. 843.

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

St. 1869, Ch. 463.

"An Act to enfranchise the Indians of the Commonwealth."

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

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

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

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

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

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

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

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

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

It was stated by Putnam J. that:

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

(1840) *Thaxter v. Grinnell*, 2 *McL.* 13, 14, 15.

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

Knowlton J. in

(1891) *Drew v. Carroll*, 154 *Mass.* 181, 184.

In the course of the same decision it was said:

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

Ibid. p. 183.

Referring to the same subject, Gray J. said:

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

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

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

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

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

(1871) *Dan.ell v. Webquish*, 108 *Mass.* 133.

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

St. 1870, *C.* 293, §§ 1, 2.

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

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

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

HISTORY OF TITLE TO FALL RIVER INDIAN RESERVATION.

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

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

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

Bk. 1, P. 361, Fall River Cop. Records: same in Bk. 3, P. 416-117 Bristol Co., No. Dist. Rec. Same in Fenner's Hist. Fall River, 1906, p. 4-5.

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

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

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

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

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

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

Signed sealed & Delivered

In the presence of us

ISRAEL HUBART (Seale)

witnesses vizt.

Simon Davis

JONATHAN DODSON (seale)

Jno. Cary

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

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

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

the mark of (V O) RALPH EARLE

JAMES BURROUGHS

the mark of (2) JOHN ALLEN''

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

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

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

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

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

Deed of Latham Clarke and Wife to Benjamin Church.

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

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

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

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

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

Signed Sealed & Delivered

In presence of us	LATHUM CLARKE	{ SEALE }
Benj ^a Newberry		
John Scot	ANN CLARKE	{ SEALE }
Tho: ffox:		

The above Named Lathum Clarke & Ann Clarke his Now wife acknowledged this Instrument above written to be their Act and Deed the Ninth day of January 1700
.70.1

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

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

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

November 27, 1701, Daniel Wilcox conveys to Province of Massachusetts Bay, the 14th “Six Score Acre Lot” in Second

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

Deed of Daniel Wilcox to the Province.

"To all People unto whom these presents shall Come Daniel Wilcox of Little Compton in y^e County of Bristoll within his Maj^{ties} Province of the Masachusetts Bay in New England Yeoman sendeth Greeting Whereas the said Daniel Wilcox being at a Superior Court of Judicature Court of Assize & Generall Goal Delivery holden at Bristoll in the County of Bristoll aforesaid in the month of August Anno Domini 1693 Convicted of High misdemeanors was by the said Court sentenced to pay unto his Maj^{ties} a fine of one Hundred & fifty pounds which he hath never yett payd having made his Escape out of the Sheiriffs hand sometime after the said sentance or Judgement was given and thereupon Removed out of the Province abovesd. And whereas the said Daniel Wilcox being Desireous of a Peaceable Return to his ffamilie which was Removed from Little Compton aforesaid to Tiverton in the County of Bristoll aforesd Did by a Pittion presented on his behalfe by Maj^r Benjamin Church unto the Generall Court or Assembly sitting at Boston in y^e Province abovesd in the month of March Last past before the date hereof make a propossall that for y^e Satisfaction of the fine ordered to be payd by him as aforesd he would give a firme Deed of sale to the Province as should be Directed of the severall Tracts of land hereunder mentioned y^t is to say of an one Hundred & Twenty acre lott being the fourteenth in numb^r and of one forty acre lott being the second in Number as appeares on Record in the Purchassers Booke of Records in Tiverton and a Thirtyeth part or a whole share of a Tract of land that is undivided belonging to Tiverton Bounded as followeth viz^t Southerly by the lands of Dartmouth west by lands of Tiverton & ffreetown & Northerly by lands of Middleborough Extending East to a place Known by the Name of Quitticus And hath prayed that upon his the sd wilcox compleating a Deed for y^e said lands he might be set at Libertie to goe home to his ffamilie & Whereas the great and Generall Court or Assembly setting in the sd month of march last in answer to the aforesd Pittion Did pass a Resolve that the Prayer therein be Granted and Appointed Ebenezer Brenton Esq^r the said Maj^r Benjamin Church

& m^r William Pabodie A Committee to take Care that Suffeient Deeds of Conveyance of the severall p^{er}cells of land above mentioned be made & Executed by the sd Daniel Wilcox.

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

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

In witness whereof the said Daniel Wilcox hath hereunto sett his hand & seale the Twenty Seventh Day of Novemb^r Anno Domini 1701. Annoq^{ue} R. Rs. Gulielmi Tertii Anglie; &c Decimo tertio:
Signed sealed & Delivered Signum
In presence of us DANIEL (D) WILCOX (SEAL)
Ebenezer Brenton
John Mulder
Benjamin Ellery

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

Before me JOSEPH SHEFFIELD Assistant

On Feb. 18, 1704, the General Court of Massachusetts Bay Province assigns the above mentioned Wilcox land as a Plantation or Reservation for the Indians.

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

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

Deed of Province of Massachusetts Bay to Benj. Church.

“Ye seal of ye Joseph Dudley Esq^r Capt Gen^l & Gov^r in Cheife in Province of ye
 Masachuset & over Her Maj^{ties} Province of the Massachusett
 Bay in N. E. Bay in New England in America To all towhom these
 presents shall come Greeting—Whereas the Great and General Court of her Majesties Province of the Masachuset Bay in New England at their Session held at Boston the eighteenth of febr^y 1704 upon application to them, before made by the Indians Resideing in the Southern parts of the County of Bristol Divers of whome have been very serviceable to ye Crown in the Late warrs with the Indians, and some of them brought up in English famalies; viz^t That a Conveinient Tract of land may be Assigned to them for a Plantation where they may settle together in an Orderly way and have the benefit of enjoying the Ministry & settleing a school for the teeching & Instructing of the Children And there being a Tract of land within the Township of Tiverton lately Granted to ye Government by Daniel Wilcox. Resolved and Ordered that the sd Indians be Accomidated with a settlemt for a Plantation upon the aforesaid Lands to be holden by them of his Majesties Government with in this Province Dureing the pleasure of the Government And Ebenezer Brenton Esq^r Maj^r Benj^a Church & m^r William ffoabes are appointed to be the first Committee to Direct Order and Regulate the said settlement or Plantation in Assigneing and setting forth Due allotments or proportions of land to each ffamilye of the Indians that shall or may come to Inhabitt or settle within the said Plantation To be severally Occupied & Improved and to do all

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

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

J DUDLEY

This Instrument passed by order of the Gov^r Councill & Assembly
ISAAC ADDINGTON, Secretary

April 4, 1709, Benjamin Church (in exchange for the Wilcox land described in last deed) conveys to the Province of Massachusetts Bay the full width of the northerly Quarter of the *Second Share* and the full width of the South Half of the *Third Share* Freemen's Purchase, from North Watuppa Pond easterly to Proprietor's Way or Head of Lots. Bk. 5, pages 488-489, No. Dist.; Bk. 2, p. 140-141, F. R. Cop. Rec. The deed reads as follows:

Deed of Benj. Church to Province for Indians.

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

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

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

Signed sealed and Delivered BENJA CHURCH (Seal)

In the presence of us

Benjamin Dyer

Thomas Maccarty

"Suffolk ss— Boston Aprill ye 4th 1709 The within named Benj^a Church p^esonally appearing before me ye subscriber One of her Majesties Justices of the Peace Acknowledged the within and above written Instrum^t to be his Act and Deed

ISAAC ADDINTON."



ONLY BUILDINGS ON FALL RIVER INDIAN RESERVATION IN 1907.