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*Who Owned America?*

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INTERNATIONAL law has never been anything better than a delicate flower surrounded by the weeds of greed, wilfulness, shrewdness and strategy.<sup>a</sup> So it was after discovery of America, when various European monarchs issued edicts which they aimed, by force of arms, to mask as international law.

A search for the owners of the land in Colonial America leads far beyond the race of American Indians, who undoubtedly migrated from Asia; to the moundbuilders; and before them to the basketmakers who lived, at best estimates, as far back as 1,500 B.C.; and to races yet ages before them.

It is known that man lived in Europe at the time of the mammoth, after the last ice age, twenty-five thousand years ago. Recent discoveries in New Mexico seem to indicate that he lived in America during the same period.<sup>b</sup>

But none of these races passed down to succeeding races parchment deeds upon which legal ownership of land can today be based.

Hugo Grotius (1583-1645), an eminent Dutch jurist who was widely recognized as an advocate of international law, declared: "The particular right we have to a thing is either by original or derivative acquisition. It is called original when a thing which before belonged to no man begins to be the property of some particular person. It is derivative when the right of property already established passes from one to another."

<sup>a</sup>Editorial, Newark Ledger

<sup>b</sup>E. B. Howard, Acad. Nat. Sc. Philadelphia

Some authorities have represented a right from discovery as being of so imperfect a nature as to be nearly incapable of distinct existence. [105]

Discovery of an island by Columbus did not give all islands to the Spanish monarchs. Sighting land by Cabot from the deck of his ship did not give British monarchs an entire continent.

It must be allowed that the Right of Discovery of an hitherto unknown land is generally but a slender right unless promptly followed by occupancy. But between the time of the Cabot voyages, the basis of the British claim to land in America, and the first British settlement in the Western Hemisphere, a century and a quarter passed.

Dr. O'Callaghan [111] wrote: "The principle, that mere discovery of a country does not confer title unless followed by actual possession, was laid down and acted upon by Queen Elizabeth as far back as 1580, when resisting the pretensions of Spain to the exclusive ownership of the Western Hemisphere through donation by Pope Alexander VI.

"Elizabeth thus refused to recognize any right to places other than those of which the Spaniards were in actual possession, for their having touched only here and there upon a coast, and given names to a few rivers and capes, were such insignificant things as could in no way entitle them to a propriety farther than in the parts where they actually settled and continued to inhabit.

"But in the next century England realized that what had been good logic for England against Spain, was bad logic for England as against the Dutch in America.

"The assumed right of England which rested on the voyages of Cabot, who had not even 'touched here and there on a coast,' thus fell to the ground. The only claim that England could make to the American continent prior to the settlement of the Dutch on Manhattan Island and on the Connecticut and Delaware Rivers, was based on the precarious English settlement on the James River in Virginia.

"The Dutch had as good right to reclaim the American wilderness as any other European nation, and so long as the Dutch could show all the prerequisites insisted upon by England in 1580 for establishing a title, theirs must be considered unobjectionable."

This view of the case is only strengthened by the wording of the New England grant by James I to the Plymouth Company (Council of New England), November 3, 1620, as herein given. This charter conveyed to the Council all the country between 40° and 48° N. lat. (Philadelphia-Newfoundland), with the express reservation which read: "Provided, always, that the said islands or any of the said premises hereinbefore mentioned . . . be not actually possessed or inhabited by any other Christian Prince or Estate." The Dutch were then in actual possession of Manhattan Island and had been for several years before the date of this grant by King James.