
The Indians and Land

HOW the immigrants were received by the strange race of natives they found upon arrival in America; the attitude of each towards the other, and the methods by which the early settlers obtained access to the land, are of interest.

It has been estimated that at the beginning of the European settlement period there were in the present United States somewhat less than 800,000 Indians, in 330 tribes. There are now 361,816, in 180 tribes, and the tendency is toward increase.

The first contact of Europeans with American Indians was made when Columbus, on his initial voyage, landed at San Salvador. "They are," he reported, "so ingenuous and free with all they have, that no one would believe it who had not seen it; of anything they possess, if it be asked of them they never say no; on the contrary, they invite you to share it, and they show as much love as if their hearts went with it."

The first European settlement north of the Gulf of Mexico seems to have been that of Jean Ribault, who, in command of two French ships carrying a colony of Huguenots landed in 1562 at St. John's River, Florida. There they planted the arms of France and were welcomed with presents by the Indians. Subsequently they proceeded to Port Royal in South Carolina, where they found the Indians friendly. [126]

Ribault, who spent three years in Florida, reported the Indians as "good, and of gentle, courteous and amiable nature, and willingly they obey, yea be contented to serve those that shall with gentleness and humanity go about to allure them, as it is

necessary for those that be sent thither hereafter so to do."

Rene Laudonniere, a French naval officer who succeeded Ribault, arrived at St. John's River three years after Ribault. When he visited the fort he found the stone pillar which Ribault had erected garlanded with wreaths and maize, while fruit lay at its base. [169]

He sent one of his ships to Port Royal, where the Indian chief offered land if they would settle there. [126]

Laudonniere wrote that the savages assured him that so long as their corn fields yielded harvests, he and his friends should not want. "I praise God continually for the great love I have found in these savages." [114]

The first Virginia colony on the first sight of land, went ashore for the day at Cape Henry, and was there attacked by Indians. In view of the previous and subsequent reception of settlers by the natives it is not improbable that this attack was an act of retaliation by Indians of the tribe warred on by the English settlers at Roanoke, eighty miles distant.

John Smith, in his book, *The True Relation*, wrote that the Susquehannock Indians, in Virginia, who made war on other tribes, seemed of an honest but simple disposition towards the first English settlers.

Samoset, chief of the Pemaquid Indians, who had learned some English from migratory fishermen along the Maine coast, greeted the Pilgrims upon their arrival at Cape Cod in 1620, with: "Welcome Englishmen."

The Pilgrims, becoming possessed in the following spring of some land which had been previously cultivated by the Indians, planted twenty acres in corn, and were "instructed by the Indian, 'Squanto,' how to fertilize the land with fish, showing them both ye manner how to set it, and after how to dress and tend it." They were also instructed in the arts of woodcraft and the stream. The first settlers in Maryland reported receiving similar help.

A treaty of alliance made in New England that year between the Pilgrims and the Sachem, Massasoit, was kept for more than half a century. [5]

Soon after arrival of a Dutch ship at Manhattan, in 1623,

Indian tribes of the Five Nations "came and made covenants of friendship, bringing presents of beaver." For several years afterwards the Indians "were all as quiet as lambs" and came and traded with the Dutch.

It would have been easy at that early day for the Indians to have exterminated any of these bands of immigrants but, instead, they usually welcomed them with friendship and hospitality. [7]

A colonist in Maryland, one year after arrival of the first English settlers there, wrote: "Experience has taught us that, by kind and fair usage, the natives are not only become peaceable, but friendly, and have upon all occasions performed as many friendly offices to the English in Maryland and New England as any neighbor or friend does in the more civil parts of Christendom." [60]

Thirteen years after the English settled in New Jersey a settler wrote: "The natives are very loving to us except when one has got in his head liquor, which is supplied by white men." [139] A company of 360 colonists arriving at Rancocas Creek in New Jersey five years afterward, sent ten miles to an Indian settlement for food. The sachem directed his people to take it to them.

The proprietors of East Jersey at that time stated that the Indians so far from being injurious, "are really serviceable to the English in hunting food animals and in fishing, and in killing bears, wolves and foxes, which they sell at less price than the value of the time an Englishman must spend to take them." [139]

Rev. Eric Biork, the Swedish pastor, fifty-eight years after the first Swedish settlement in Delaware wrote: "The Indians and we are as one people; we live in much greater friendship with them than with the English. They are very courteous in their behavior and fond of obliging the Swedes; they take great pains to help them, and prevent any harm happening to them."

The chief of the Hackensack Indians repeatedly complained, in 1656, that whole ankers (ten gallons each) of brandy were peddled among his tribe by white men from the Dutch Settlement, in exchange for furs, and that if it were not stopped many troubles would arise.

The actions of the migratory fishermen along the Maine coast

towards the Indians were often disreputable: making the men drunk, taking advantage of them in trade, and outraging their women—all gave the Indians reasons for seeking revenge. [80]

Mohawk chiefs, in 1659, appealed at Fort Orange (Albany) that no more brandy be sold to their people; that their warriors got drunk and could not fight the French. Sale of liquor to the Indians became a crying evil throughout East Jersey in the 1670s.

Indians in Pennsylvania, in 1681, complained to the newly-arrived deputy-governor that their people bought rum at New Castle and became debauched.

A disgusted settler, in 1692, wrote: "Instead of converting the Indians to the Gospel, we have, among other sins, taught them to be drunkards." [62]

The proprietors in England, in 1671, wrote their governor in Carolina: "It is ordered by the grand council that if the Indian tribe wishes to ransom any of our Indian captives they may do so; such ransom to be shared equally among the company of soldiers that took them captive." Some of these captives were sold as slaves to the West India English sugar-planters as the cheapest means of encouraging the soldiers of their infant colony. The council, in accord with the policy of the Carolina proprietors, later freed those held as slaves by the whites in the colony. [126]

But Indian slavery was not eradicated. Years later, a letter to the lords proprietors of Carolina, in London, signed by 150 of the principal inhabitants of Carolina including some members of the assembly, said: "Notwithstanding your lordships' repeated commands to be neighborly with the Indians, the late Governor Moore engaged in the Indian fur trade for his own profit and turned it into Indian catching or slave making. He granted licenses to others to kill, or take captive, as many Indians as they could, the profit and produce of the slaves being turned to his own profit. This will likely draw upon us an Indian war with all the consequences."

Other colonies where, as noted in the chapters on those regions, there occasionally was Indian slavery, were: in New England, by the English; in New Netherland, by the Dutch; and in Louisiana by the French.

The haughty spirit of the Indian made him a poor worker under the lash. [10]

King Louis XIV of France ordered De La Barre, his governor in Canada, to "diminish as much as possible the number of Iroquois; and moreover, as the savages who are very strong and robust will serve usefully in my galleys, I will that you do everything in your power to make a great number of them prisoners of war and have them conveyed to France."

The lords proprietors based their ownership of the land not upon consent of the natives, but upon the grants made them by various kings and rulers in Britain, France, Holland and Sweden. These grants gave to the proprietary grantees a strict monopoly of all the land in America, and this monopoly was maintained by force based upon monarchial edicts which satisfied the public conscience.

In an affidavit in 1664, Edward Sackville, gent, said: "To my certain knowledge Governor Philip Carteret of New Jersey gave to the Indians goods that the lords proprietors might enjoy their land quietly, otherwise they could not have inhabited the same."

The proprietors of East Jersey, four years later ordered in London: "When it is proposed to take over land of the natives the commissioners shall give the natives what present they shall agree upon, for their good will or consent."

Stuyvesant, in 1652, forbade the settlers buying land from the Indians without the consent of the Dutch West India Company. In 1683 an act of the East Jersey council forbade the purchase of land from the Indians without license from the governor, except in the name of the lords proprietors, "upon pain of being prosecuted as seditious persons and as breakers of the king's peace." And twenty years later, "if any one, except in the name of the lords proprietors, should make a purchase of land from the Indians such a one shall forfeit 40s per acre for every acre so purchased." Similar ruling prevailed in all the proprietary colonies.

Queen Anne of England, in 1702, instructed her newly-appointed governor of New York and New Jersey: "You shall not permit any person besides the lords proprietors to purchase any land whatsoever in New Jersey from the natives. Further, you

are to take care that all lands purchased from these proprietors shall be cultivated and improved by the possessors thereof." The latter was a wise provision, but the craze for land speculation, even at that early day, was too great to admit of its enforcement.

Ownership of land by the Indians, although they had been in possession of it for immemorial ages, was not recognized by European monarchs.

In some colonies, "making terms" with the Indians was a prerequisite to obtain a grant of land from the English or Dutch overlord. But, by decision of the United States Supreme Court, purchase of land from Indians has never been recognized in any part of the United States as giving a legal title to such purchaser.

Governor Yeardley of Virginia made a grant of land to one Barkham in 1620, on condition that Barkham obtain the consent of the Indian chief. The officers of the company in London, grantees of the crown, repudiated and condemned this as a recognition that the Indians had a title to the land, and declared it to be "dishonorable and prejudicial to the company." As late as 1646, an Indian chief was obliged by the governor of Virginia to acknowledge that he held his land under authority of the King of England. [20]

A reply on the part of Charles I and the Lords Commissioners of England, in 1632, in support of the British claim to those parts of North America then in possession of the Dutch West India Company, said: "It is denied, first, that the savages were possessors *bona fide* of those countries so as to be able to dispose thereof either by sale or gift, their habitations being changeable, uncertain and only in common. Secondly, it cannot be proved, *de facto*, that all the natives of said countries were parties to the said pretended sale"

The Massachusetts general court, in 1636, declared that the Indians had a natural right to only that land which they could improve, and that other land was open to those who could and would use it. Such men as Cotton Mather deemed it unnecessary to recognize in any way an Indian title to land.

Roger Williams, on the contrary, contended that settlers could have no just land title except it were derived from the Indians. So strong was public opinion against recognizing aboriginal

ownership, and in upholding ownership by the crown, that Williams was summoned before the court and condemned to banishment by a council of ministers. [42]

An opinion of eight English lawyers stated: "Though it is the practice of all lords proprietors to give the Indians some recompense for their land it so seems to purchase it of them, it is not done for want of sufficient title from the king, but out of prudence, otherwise the Indians might have destroyed the first settlers (who are usually too few to defend themselves), or refused all commerce or conversation with them." [162]

The proprietors of East Jersey in December, 1700, stated to the Lords Commissioners of Trade in London: "Purchase of the land from the Indians (which is done for a trifle) is not for defect of sufficient title in the crown, or its grantees, but merely to avoid wars with the savage nations. This method of purchasing is not practiced in all the English plantations, and not at all in Virginia and Maryland, the planters there, locating on land by virtue of the governor's warrant only, without leave or consent of the natives." [162]

Much has been said in American history of the righteousness and magnanimity of the royal grantees and colonists in buying the land of the Indians before occupying it. This is pure fiction and ennobling reading for children. Written history often is not history at all. And the pity is that school children learn a great deal of such history which takes them years to unlearn. Later they have no inclination to examine history. [72]

The lands occupied by the Indians were disposed of by European monarchs to their court favorites as if the lands had been found uninhabited.

Agents of the Federal government, as late as 1850, made treaties with Indians as if they had a title to the land, but the United States Senate rejected these, and as Spain and Mexico had done, ignored the Indian claim of land ownership.

In some colonies rum and trinkets and, in few instances, fish hooks, clothing and utensils, all of insignificant pecuniary value, were given the Indians, not for purchase of land—to which the Indians could not give a legal title—but for reasons as will appear.

Fiske [49] said: "To an Indian, the selling of land meant little more than granting permission to pass over it unhindered. The Indians had not arrived at the point where the sale of land conveys to the vendee the right to exclude the vendor; but his mind was open to a suggestion of Father Rale, that no sale of land by an Indian sachem could be other than void, because the land was the property of the tribe, and must be kept in trust for the children born to the tribe."

Early travelers in the colonies have declared that the Indians had no conception of the meaning of private ownership or sale of land. The colonists themselves presently realized this, and the expression "buying" the land gradually gave way to that of "making presents" to the Indians.

And these payments, whether expressed as payments for land or as presents, were, in the last analysis, for the sole purpose of securing safety for the settlers from being scalped or otherwise murdered by the irate natives who were being driven from their habitations. Without this protection the lords proprietors would have had difficulty in inducing colonists to cross the ocean to settle on their land grants.

Because the word "purchase," to indicate consent by the Indians for others to occupy the land, is fixed in common usage it is so used in this writing.

Contrary to the contention of the British government (and to popular belief) that the Indians had no fixed habitation, Sir William Johnson, Indian agent in the Mohawk Valley and fully competent to speak on the subject, wrote in 1764 to the Lords of Trade: "Each Indian nation is perfectly well acquainted with its exact original bounds; the same is again divided into due proportions for each tribe and afterwards subdivided into shares to each family, with all which they are most particularly acquainted. Neither do they ever infringe upon one another or invade their neighbors' hunting grounds."

That the Cherokees, in Carolina, had a permanent abode is evident from their holding at the period of the American Revolution the same lands as they had held eighty-three years previously at the time they sent a deputation to Charles Town. [126]

Governor Kieft of New Netherland demanded some tribute of

furs from neighboring Indians "whom he had defended against their Indian enemies," and threatened, in case of their refusal, to "employ proper measures to remove their reluctance." [16]

To execute this threat, Kieft conceived the atrocious Pavonia, New Jersey, massacre, an account of which has been left us by De Vries, "the only man who durst go among the Indians." [16] De Vries enjoyed a high reputation for veracity, [49] and was a directing mind of the Dutch regime.

"It was two nights in February, 1643, that the soldiers executed their foul deeds . . . At midnight I heard loud shrieks. I looked towards Pavonia. I saw the flash of the guns and heard the yells and clamor of the Indians who were being butchered in their sleep. About day the soldiers returned to the fort, having murdered eighty Indians. Children were butchered in the possession of their parents and their mangled bodies thrown into the fire or water. Some were thrown into the river alive and when parents rushed to save them, the soldiers prevented their landing and let them all drown together. Those who escaped to the bushes, making their appearance in the morning to beg some food, were killed in cold blood."

Though De Vries had many losses by the Indians he had a good opinion of them, and said: "They will do no harm if no harm is done to them."

The council of eight, composed of representative citizens at Manhattan, addressed a memorial to the company in Holland, drafted by Andries Hudde, town surveyor, saying: "All right-thinking men have known that these Indians have lived as lambs among us, until a few years ago, injuring no man, affording every assistance to our nation. These hath the Director [Kieft], by various uncalled-for proceedings, from time to time, so estranged from us, and so embittered against the Netherland nation."

Lord Halifax declared that the Indians in New York, and in the Ohio region, had been systematically defrauded of their hunting grounds and cheated in trade; and that their lands had been occupied by settlers before making terms with the Indians.*

The same may be said of the early treatment of the natives in Virginia and South Carolina. In Maryland, instead of paying

*N. Y. Col. Doc.

them, Calvert took their lands, placed a tribe on a reservation and obliged them to pay land rent to him as owner of the land. Yet there was scarcely any Indian trouble in that colony.

General Sam Houston, a pioneer, and later, governor of Texas and United States Senator, said in 1846: "I have never known a treaty made with an Indian tribe first infringed or violated by them."

A federal commission to negotiate a treaty with California Indians declared, in 1851, that by far the greatest share of the Indian troubles could be traced to white aggression. [61]

Colonel E. Walters, for twenty-seven years the government public auctioneer of oil leases of Indian lands in Oklahoma, who has lived all his seventy-two years among the Indians, has said: "The Indians are the best and most honest race in the world. I can say more for the Indians than I can say for my own white people."

During the nineteenth century the government made treaties with the Indians by which they were moved to other locations where they were promised they could remain "so long as the stars shone and water ran." Few decades passed however, before they were again shunted farther west to approximately worthless lands.

The white population so increased and occupied the land that the natives were, year by year, driven inland from the tidewater region, away from the source of their food supply of fish, oysters, clams, crabs and water fowl and towards the domains of enemy tribes. Is it to be wondered at that they made an occasional attack on the whites who then designated them bloodthirsty savages? It is needless to suggest what the white race would have done under reversed circumstances. Land surveys presaged to many chiefs the taking of their lands by the white race.

Growing contempt by some of the whites toward the natives, ill usage, cheating by white traders, debts for goods sold at exorbitant prices with land subsequently taken in payment, naturally engender resentment. Gradually, a deep grudge was created in the Indian's mind, and presently he sought revenge in attacks on white settlers.

Unfenced growing corn of the Indians was often ruined by

stray cattle of the Dutch. The Indians sometimes killed the cattle, which led to reprisals. An Indian war began in 1641, and, except for five months, continued five years and threatened to terminate the existence of New Netherland.

Sale of weapons to the Indians had been forbidden. This was observed at Manhattan, but the white traders among the Mohawks disregarded it. Governor Kieft counseled extermination of the Indians, and, in two years, 1,600 were killed.

The English of Plymouth Colony, when Indians declined to sell them corn, took it from them by force, just as the English were doing in Virginia. When the natives at Plymouth threatened retaliation, Captain Miles Standish "dealt so fatally with some of them that the survivors remained pleasantly tractable for a considerable time."

Three years after the English settled in Connecticut a force of English, with Indian allies, made a surprise night attack on the Pequot Indians near Stonington, and as cited in the chapter on Connecticut, exterminated the entire Pequot nation and appropriated their land.

Dutch settlers complained to Director-General Stuyvesant that: "We are usually and every year full of apprehension that the natives, by the murders they commit because they have not been paid for their lands, may commence a new war against us."

In all the wars in which the Indians were involved with the English and Dutch it may be fairly doubted whether the Indians were in a single instance the aggressors.^b

Jeremiah van Rensselaer, a Dutch patroon, wrote that the Esopus Indian War was started by the Dutch who shot an Indian, and that "the cruelty of the natives towards the whites, will, when traced, be discovered in almost every case to have been provoked by oppression and aggression." The Esopus war in 1652 was the outcome of Thomas Chambers settling on a large tract of land in that section. In the militant contest that followed "the Indians were forced by the Dutch to directly depart thence without being permitted to return to plant."

Soon after the location of the first English settlement in Carolina the Spaniards on the south incited the Indians to resist the

^bScharf. Hist. West Chester County

English encroachments on their lands. These intrigues continued many years, resulting in frequent hostilities and the killing of many hundreds of whites and natives.

The French persuaded the Indians to join them in what became the French and Indian War against the British by the promise that their lands, taken by the whites, would be restored.

An Onandagas chief, Outreonti, in conference at Albany with Governor Dongan's envoy in 1684, said: "He who made the world has given me the land which I occupy. I am free." [16]

Outstanding Indian warriors resisting encroachment of the whites were Philip, Pontiac, Tecumseh and Black Hawk. The last named, in his *Life*, dictated by himself, said: "My reason teaches me that land cannot be sold. The Great Spirit gave it to his children to live upon and cultivate as far as is necessary for their subsistence; and so long as they occupy and cultivate it, they have the right to the soil."

Tecumseh, generations after great harm had been and continued to be done, is recorded, on August 12, 1810, as having said: "The land belongs to all for the use of each. No party has the right to sell, even to each other, much less to strangers. The only way to stop this evil is for the red men to unite in claiming a common and equal right in the land, as it was at first, and should be yet, for it never was divided."

President Hayes in his annual message to Congress in 1877, said: "They [the Indians] have been driven from place to place. In many instances when they had settled down upon land assigned to them by compact and began to support themselves by their own labor, they were rudely jostled off and thrust into the wilderness again. Many, if not most, of our Indian wars have had their origin in broken promises and acts of injustice upon our part."

The chairman of the South Dakota State Planning Board, Mr. W. R. Ronald, was quoted in 1936, as saying: "The greed of the whites has known no sense of justice to the Indian, with the result that he has been shunted along from one region to another until now, in South Dakota, which has a large share of the Indians living in this country, he is expected to make a living

from the very kind of land that the federal land-use section of the government is buying from whites because such land cannot support them."

No Indian policy which recognized that the Indians had any rights had ever been satisfactory to the American settlers. From the time the first colonists landed on the Atlantic seacoast until the first federal Indian reservation was opened in Oklahoma, the procedure has been the same. The white man wanted the Indian's lands and was going to have them. If his policy of intrusion aroused the red man to resentment and to reprisal, extermination of the red man was considered justified. [161]

As a rule the Indian was unprepared to cope with the pressure put upon him. Thus, partly by legal means, partly by fraud and graft, the Indians were stripped of their lands. This process was hastened by the discovery of oil on land on which they had been placed. The rights of civilized Indians were no more respected than those of "wild tribes." The land was there and the white men were determined to get it. In these circumstances there could be only one result.^o

In consenting to white occupancy of the land, for whatever pay they could get, the natives had in reality lost nothing the white man would not have taken anyway. [4]

The firm hold that the lords proprietors had on the monopoly of land is treated in the chapters on the different colonies.

For the United States Supreme Court, in the first important case before it dealing with Indian title to land, *Johnson vs McIntosh*, Chief Justice Marshall delivered the opinion covering some sixty pages, all summed up as follows: "The Indians were admitted to be the rightful occupants of the soil with a legal as well as a just claim to retain possession of it and to use it according to their own discretion; but . . . their power to dispose of the land 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.

"In the United States the rights of European discoverers having been succeeded to by the states or by the general government, the Indian title to the land is a right of possession and occupancy,

^oStanley Vestal

the fee being in the general government or in the state where the land is situated if it is one of the thirteen original states.

"A title to lands under grants to private individuals, made by Indian tribes or nations to the west of the River Ohio, in 1773 and 1775, cannot be recognized in the courts of the United States."

A New York decision, *Seneca Nation vs Christie*, declared: "The Indians were held to be incapable of alienating their lands except to the crown or to royal grantees, and all purchases made from the natives without such consent were regarded and treated as absolutely void."

Chief Justice Depue of the New Jersey Supreme Court, in 1892, in the case of the City of Newark *vs George Watson*, ruled: "By the law of nations, established by the consensus of all civilized nations and by the common law, title to the soil is obtained by discovery or conquest. By the English common law the title to lands in this state was vested in the English crown, and it is a fundamental principle in the English colonial jurisprudence that all titles to lands within this colony passed to individuals from the crown, through the colonial or proprietary authorities."