

CHAPTER IV.

CHARTERS, GRANTS AND INDIAN DEEDS.

Spanish Claims.—Cabot's Discoveries.—Plymouth Company.—Council of Plymouth.—The Pilgrims.—Patent of 1629-30.—Settlement of the Cape Towns and Purchases from the Indians.—Charter of 1691.

BY virtue of the discovery by Columbus, followed by a grant from the pope and a general treaty with Portugal, Spain made a claim to the whole continent of America, excepting Brazil, which was granted to Portugal in the treaty. This assumption excited the cupidity and curiosity of other European powers, and expeditions of discovery were at once fitted out by France and England. John Cabot, in 1496, set sail from Bristol, England, with full authority to take possession, in the name of the king, of all lands and islands he might discover. He sailed to the present coast of New England, and under the doctrine that newly discovered countries belong to the discoverers, England put forward a claim to extensive regions of North America, a portion of which they subsequently settled; but the colonization necessary to complete the title by discovery was delayed, and eight years elapsed before the English made attempts to settle these lands to which they had such a questionable right.

The first charter of Virginia, in 1606, contemplated the planting of two colonies. The persons mentioned in the charter of the second or northern colony were: Thomas Hanham, Raleigh Gilbert, William Parker and George Popham, while others not mentioned were active in the company. In 1607 futile attempts were made by this Plymouth Company—the name given to the one for the settlement of northern Virginia—to plant a colony at the mouth of the Kennebec river.

The French also put forward a claim to certain portions of the New England territory, and under a patent which France had granted to De Monts, they made a settlement at Port Royal; but Argall, for the English, burned it in 1613. Among these attempts to settle, under the patents of royalty, it was seemingly destined that a feeble band of persecuted religionists, providentially thrown upon its shores, should make the first permanent settlement within the limits of the new province.

The Virginia company having renewed their charter, in 1619—the first having been forfeited by the attainder of Sir Walter Raleigh—a company was formed at London which applied for a similar grant of the northern part of the so-called Virginia. This company, well known in law and in history as the Council of Plymouth, was composed of forty men, who had combined and engaged to invest money in this new enterprise. After nearly two years' solicitation this company succeeded, November 3, 1620, in obtaining a charter from King James I., which put that part of North America between the 40th and 48th degrees of north latitude, except "all places actually possessed by any other Christian prince or people," into their absolute control.

This company was composed of the Duke of Lenox, Marquis of Buckingham, Marquis of Hamilton, Earl of Arundel, Earl of Warwick, Sir Fernando Gorges and thirty-four merchants, incorporated as "The Council established at Plymouth, in the county of Devon, for the planting, ruling, ordering, and governing of New England, in America." This company, although formed prior to the departure of the *Mayflower*, did not receive from the crown the promised charter until about one week before that vessel had dropped anchor in Cape Cod harbor. The occupants of the *Mayflower*, finding themselves out of the jurisdiction of the Virginia company, under whose permission they had expected to form their settlement, they entered into the agreement in the cabin, as described in the previous chapter. The *Mayflower* returned to England in the spring of 1621, and the Council of Plymouth then learned that the pilgrims had formed a settlement upon territory included within their charter. The council were quite ready to take them under their protection, and the colonists were desirous of receiving it, if a grant of territory could be procured. When the *Mayflower* sailed from the Old World, many who came obtained aid from Thomas Weston and others, called Merchant Adventurers. This aid was to each man, or boy of sixteen, £10 for transportation and outfit, which sum entitled the Adventurers to one-half interest or share in all the lands, profits and labors of the person so aided for the term of seven years.

The first patent for the pilgrims, as promised by the Council of Plymouth, of which any record is given, bears date June 1, 1621. This was obtained by John Pierce and his associates ostensibly for the infant colony, but was never delivered. Its conditions were onerous; but in consideration that the pilgrims were hopefully settled, the same individual sought another patent, in 1623, which would insure a greater degree of success to his own selfishness. After two several attempts to cross the Atlantic with the second charter in his possession, upon his return to England he was persuaded to relinquish it to the council.

The pilgrims of 1620 received no patent for their lands until 1629-30. The accrued indebtedness to the Merchant Adventurers at the expiration of the seven years was £1,800, which was assumed in 1627, and bonds for payment given extending over a period of nine years. The eight of the colonists who assumed the indebtedness were Governor Bradford, Edward Winslow, Thomas Prince, Miles Standish, William Brewster, John Alden, John Howland and Isaac Allerton, and to these persons a patent was issued by the Council of Plymouth January 13, 1629-30, after three voyages by Mr. Allerton to England for its procurement.

“The Council of New England, in consideration that Wm. Bradford and his associates have for these nine years lived in New England, and there have planted a town called New Plymouth, at their own charges,—and now seeing that, by the special providence of God and their extraordinary care and industry, they have increased their plantation to near three hundred people * * * , do therefore seal a patent to the said Wm. Bradford, his heirs, associates, and assigns of all that part of New England on the east side of a line drawn northerly from the mouth of the Narraganset river and southerly of a line drawn westerly from the Cohasset rivulet to meet the other line at the uttermost limits of country called Pocanoket.” A tract on the Kennebec was also included. This grant comprised the entire Cape with all prerogatives, rights, royalties, jurisdictions and immunities; also marine franchises that the council had, or ought to have, with privileges of incorporation by laws and constitutions not contrary to those of England.

This, the first charter received giving the pilgrims any definite territory, was granted to Mr. Bradford and his associates who had bound themselves to pay the indebtedness of the colony. This patent was missing for many years, and is said to have been found in 1741 among Governor Bradford's papers.

In 1640 the general court desired that William Bradford should make to them a surrender of the charter, which he willingly did. In *Bradford's History of Plymouth Plantation*, page 372, these quaint words of the instrument may be found:

“Whereas William Bradford, and diverse others ye first instruments of God in the beginning of this great work of plantation, together with such as ye all adoring hand of God in his providence soone added unto them, have been at very great charges to procure ye lands, priviledges, & freedoms from all intanglements of grants, purchases, and payments of debts, &c., by reason whereof ye title to ye day of these presents remaineth in ye said William Bradford, his heires, associats, and assigns: now, for ye better settling of ye estate of the said lands (contained in ye grant or pattente,) the said William

Bradford, and those first instruments termed & called in sundry orders upon public recorde, ye Purchasers, or Old comers; witnes 2, in spetiall, the one bearing date ye 3. of March, 1639, the other in Des: the 1, Ano 1640, whereunto the presents have spetiall relation and agremente, and wherby they are distinguished from other ye freemen & inhabitants of ye said corporation. Be it knowne unto all men, therefore, by these presents, that the said William Bradford, for him selfe, his heires, together with ye said purchasers, doe only reserve unto them selves, their heires, and assignes, those 3 tractes of land mentioned in ye said resolution, order, and agremente, bearing date ye first of Des: 1640. viz. first, from ye bounds of Yarmouth 3 miles to ye eastward of Naem-schatet, and from sea to sea, cross the neck of land."

Two other tracts of land were also reserved, and the closing words of the long document are: "In witness wherof, the said William Bradford hath in publick courte surrendered the said letters patents actually into ye hands & power of ye said courte, binding him selfe, his heires, executors, administrators, and assignes to deliver up whatsoever spetialties are in his hands that doe or may concerne the same."

It was conceded that the Indians had a natural right or title in the lands, which must be obtained by the settlers after the court had granted them permission to establish a plantation. A verbal grant from the Indians was at first considered sufficient, but subsequently the title from the natives was passed by instruments, which were legal in their form, whether they were understood by the natives or not. Doctor Holmes in his annals quotes the words of Governor Winslow, "that the English did not possess one foot of land in the colony but was fairly obtained by honest purchase from the Indian proprietors."

The first permission to settle on the Cape was given by the Plymouth colony on the 3d of April, 1637, under which so-called grant the first settlement at Sandwich was begun, and a committee was appointed to procure of the Indians a title to the lands. Grants were given in 1639 for the settlement of Mattacheese—now Barnstable, Yarmouth and Dennis. In settling these plantations a suitable location was first purchased of the Indians; and subsequently, as occasion required, deeds of adjoining territory were obtained. Reservations were made for the Indians, provided that if they sell it be to the inhabitants of the plantation; and, although all purchases were carefully made by a committee appointed by court, misunderstandings arose between the whites and Indians. In 1641, after purchasing of Nepaiton lands in Barnstable, other agreements were made to build for him, "in addition to what said Nepaiton hath already had one dwel-

ling house with a chamber floored with boards, with a chimney and an oven therein."

A deed or receipt, probably written by Anthony Thacher, for lands in Yarmouth, will acquaint the reader with the form used when other claimants might appear: "Witnesseth these presents, that I, Masshantampaigne, Sagamore, doth acknowledge that I have received and had of Anthony Thacher, John Crow, and Thomas Howes, all and every particular thing and things that I was to have for all and every part and parcel of lands: * * * which said lands I sold to Mr. William Bradford. I say I acknowledge myself fully satisfied and paid * * and I do forever acquit the said Thatcher, Crow, and Howes. In witness whereof, etc., May 8, 1657." To this the sachem named made his mark in presence of witnesses, who also signed the deed as such; and one or more of these witnesses certified in 1674, before an officer, that the sachem "set his hand to it" and "he heard him own it." In similar form and import were deeds or receipts given by Iyanough and sachems of the South sea Indians. In 1640 a grant for the settlement of Nauset, and subsequently one for Monomoyick, were obtained from the Plymouth court. Deeds were obtained from the sachems Quason, Mattaquason and George, and the towns of Eastham, Orleans, Wellfleet and Chatham were subsequently organized. Falmouth and Harwich still later were purchased in the same manner. In 1660 a tract of 10,500 acres was granted for the exclusive use of the Massipees, and the following year a large tract was granted to Richard Bourne at the west of the Massipee lands. The court gave grants for many smaller portions of land during the growth of the towns on the Cape, and in 1655, by order of the court, every town was required to purchase a book in which all titles of land should be recorded. These were called "proprieters' records," and were very essential prior to the formation of the county and establishment of an office for the registry of deeds.

The usurpations of power by Andros in 1686, his declaration that "Indian deeds were no better than the scratch of a bear's paw," and his summons for the surrender of charters, occasioned alarm to the colonists of the Cape, as well as the main land. In 1690 the Rev. Ichabod Wiswall and others from this colony went to England to obtain a restoration of the old or solicit a new charter. The restoration of the old was refused and a new one promised. The towns of Barnstable county paid their proportion of the expenses to obtain a new charter.

The charter of October 7, 1691, granted by William and Mary, united the colonies of the Massachusetts Bay, the province of Maine, Acadia, and New Plymouth, including the Cape, into one province, called the Province of the Massachusetts Bay in New England. Four

of the twenty-eight councillors elected were to be from the former New Plymouth, which gave to the Cape its representation, and in 1692 the new privileges were enjoyed after the arrival of Sir William Phipps, the new governor, with the charter.

The only privilege reserved to the consolidated colonies by the new charter was the right of choosing representatives by the people, the crown reserving the right of appointing the governor, lieutenant governor and secretary. From the first settlement of the Cape until 1692 this part of the colony of Plymouth bore its full share of privileges under the charters enumerated; and then, when included in the Massachusetts charter, this county was ably represented in public affairs and responsibilities. The governors were appointed by the crown, during the existence of the last charter, until October 25, 1780, when the federal constitution became the supreme law, vesting all powers in the people and annulling all charters.