Town Lands and the Trust Doctrine: Huntington, New York as a case study 1653-1972

by

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Huntington, New York as a case study, 1653-1972. ©

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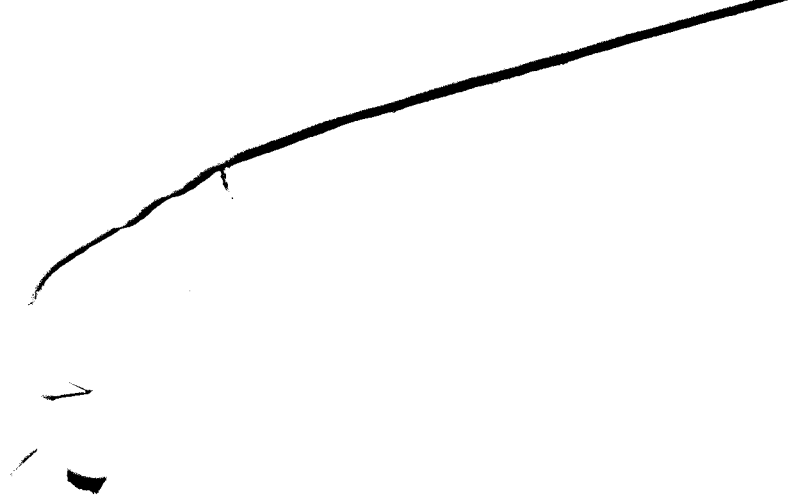

Introduction

This report is the result of a Board of Trustees resolution passed in April of 1971, which called for a detailed historical analysis of the origins and evolution of the Trustees of the Town of Huntington. Additionally the resolution called for a cataloguing of all existing and known Trustees land as well as that land which should belong to the Trustees. To accomplish this the resolution established a three-phase program: research into the history and legal status of the Board of Trustees, a detailed title search of all lands along the town's shorefront to determine whether the Trustees or private individuals had or should have a clear fee title to each parcel, and, finally, the initiation of legal action against all those on Trustees land who refused to enter into a lease agreement with the Board of Trustees.

To carry out the report the Trustees Advisory Committee was created, chaired by the author of this report. The Committee included the following individuals: John Panaseny of the Town Engineering Department who eventually took charge of all the mapping of property and was of invaluable service in this area; Gerald Sweeney, Assistant to the Supervisor, whose close council, gadflying, and words of encouragement have added immeasurable to whatever success the Committee and this report might claim in the future; Gregory Wujick, Tax Assessor, whose expertise and advise proved of crucial importance in the decisions on leases and rentals; Robert Halligan, Bay Constable, who contributed his personal knowledge and detailed memory of past events in the Town's harbors and bays thus helping avoid many errors of fact; Jacqueline Ingham, who, like Halligan, contributed quantities of information on the past history of local waterways, shorefront businesses and yacht clubs, as

well as her insights into current activities in the harbors; a Mr. Ingraham who, disliking the activities and purposes of the Committee, did not attend beyond the first meeting and neglected to inform anyone of his withdrawal; Rufus Langhans, Town Historian, who went out of his way to accommodate the chairman in allowing him unrestricted access to all his files and gave up needed space in his office for the use of the chairman and the Board of Trustees Research Clerk; George Stringer, Director of the Town Engineering Department, who appeared at some of the meetings during the summer of 1971; and Mrs. Williams, who was able to attend only two meetings of the Committee.

During the summer of 1971 Mrs. Grania Marcus, hired by the Chairman as his research assistant, labored mightily at the typewriter abstracting all the past deeds and leases of the Trustees. She was succeeded in September of that year by Charla Trachtenberg (now Rutherford), whose value as a research assistant cannot fully be put into words or adequately assessed. She had the task of tracking down all the names of property owners along the entire Town shorefront and then title searching each one to its point of origin. Working closely with John Panaseny, she supplied all the data that his office transposed to maps of each harbor. Without her assistance this phase of the project might never have been accomplished.

As for the report itself, the outgrowth of the labors of all those people, it is about as exciting as a Long Island Railroad timetable. Crammed with historical facts and brief discussions of relevant court cases, it makes for very dull reading. Historically, I think it is quite accurate; legally, it is adequate to the needs of the Board of Trustees; literarily, it is rather bad. It is important to point out here that all of the legal data included herein is a direct result of the research of Stephen Gebauer Davison, an attorney in Washington, D.C., who spent many hours in law libraries in that

city and at Yale University finding and abstracting all the appropriate cases. In any errors are discovered in the chapters on court cases, they are more likely than not the fault of the author and not of the legal researcher.

Originally this report was to include historical data and some legal material but its major thrust was to concentrate on a catalog of Trustees property. For two reasons this has not been followed exactly. First, the catalog must be a separate item simply because of its bulk and the many maps that are an indispensable part of it. Second, recent court decisions have been of such a serious threat to the existence of the Board of Trustees that the report, out of necessity, took on the character of an argumentative legal brief to be used in a court room.

To turn once again to individuals who helped make this report possible, it must be said that the secretaries in Supervisor Ambro's office proved to be the most considerate, efficient, and helpful group of lovely ladies I have ever had the opportunity to work with. Mrs. Jacqueline Liebl, secretary in the Institute for Colonial Studies of the State University of New York at Stony Brook, typed the final manuscript in her usual very efficient and expeditious manner. It goes without saying that I am indebted to Supervisor Jerome Ambro for giving his wholehearted support to the entire project. The Board of Trustees are to be commended for agreeing to finance the project.

Finally, and inevitably, it has to be said that errors of fact, omissions of important data or concepts, and any faults of logic are solely the fault and responsibility of the author.

W. Keith Kavenagh

Stony Brook, New York

June, 1972

Prologue

Early Years of Autonomy

On a clear day when a strong west wind dispels today's polluted air a person standing on the Connecticut shore near Stamford can look southward across the Sound and see Long Island as a thin line of distant hills. What one sees, in fact, is a long low sand bar, approximately one hundred twenty miles long, shaped like a fish with its mouth nibbling at Manhattan Island and its flukes extending eastward into the Atlantic Ocean toward Europe. The thin line of hills, the backbone of the fish, was formed more than twenty thousand years ago by the southern limits of the advance of the Wisconsin Glacier which dumped its accumulated New England rubble laterally from west to east along the Island's northern shore. Earlier glaciation had produced a line of low hills reaching from the northwestern corner of the township of Huntington southeasterly to form the southern fluke of South Fork. The Wisconsin Glacier, the most recent of the glacial advances, formed the northern perimeter of Long Island and created the northern fluke of North Fork. Between these two glacial moraines lies a broad level trace and an outwash plain spreads southward from the more southerly of the two to form the south shore, which is protected from the Atlantic Ocean by a series of barrier beaches.

Basically the soil is podzolic, ranging from dark brown stony loams and gravel along the northern backbone through gravelly course sandy loams to clay loams, fine sandy loams, and beach sand as one moves south and east through the Island.[1] The soils vary widely in quality with pockets

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1. Isaiah Bowman, Forest Physiography; Physiography of the United States and Principles of Soils in Relation to Forestry (New York: John Wiley and Sons, 1911), 506-514. The maps on p. 2 are reproduced from p. 155 of this book. See also Myron L. Fuller, The Geology of Long Island, New York (Washington, D.C.: United States Government Printing Office, Professional Paper No. 82, 1914).

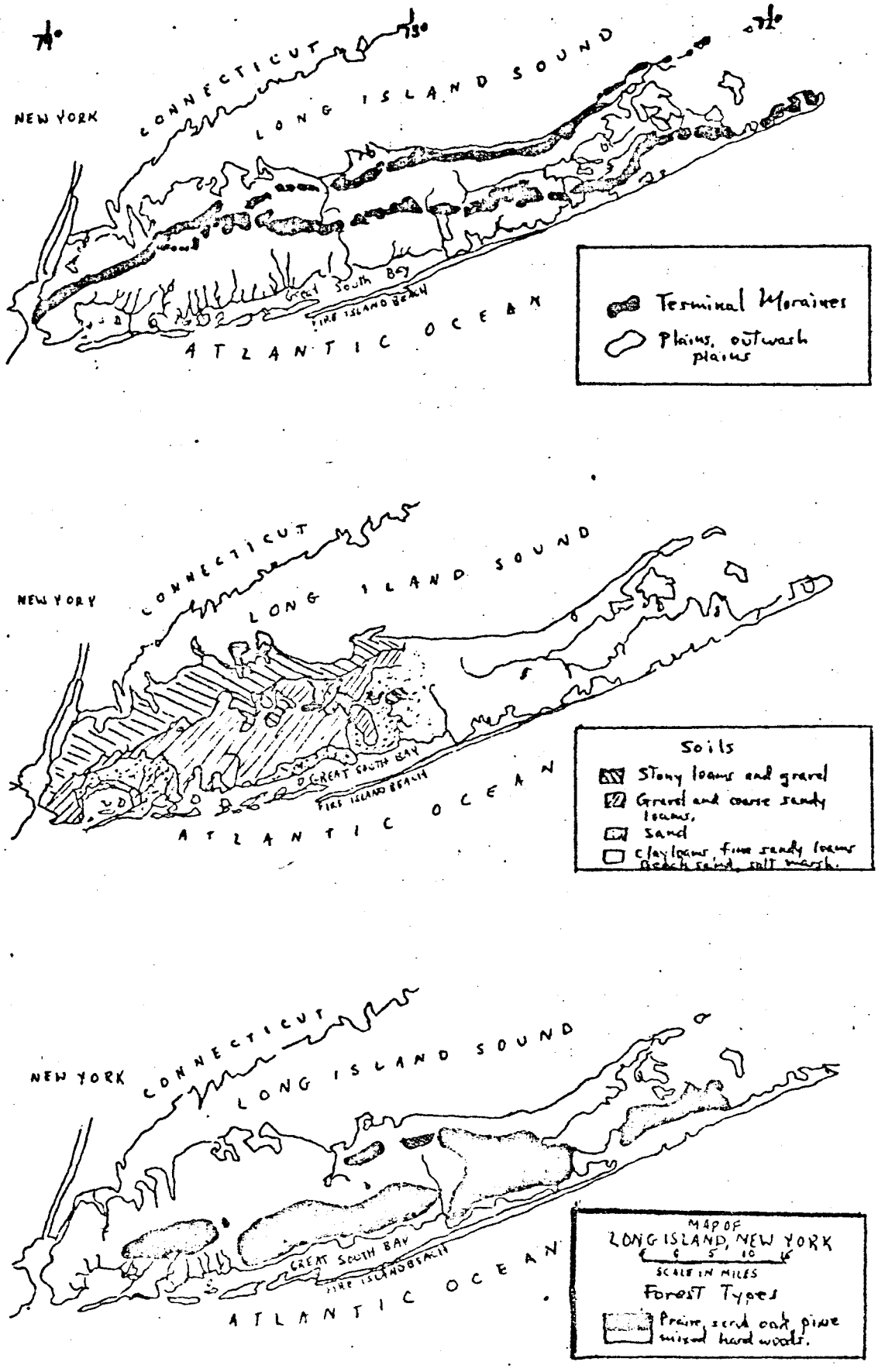

Figure 1. Physical Features of Long Island.

of good soil scattered among the more prevalent poorer types. About one-third of the land cannot be cultivated because it is either too sandy, too marshy, or on the sides of steep hills. Another one-third is inherently too porous and gravelly, allowing rain water to pass through the shallow surface rapidly and leaching out nutrients. Its productivity is poor without heavy yearly applications of manure or the use of irrigation. Only those few acres which have a fine sand or silt substrata hold enough water to produce good crop yields consistently. The remaining one-third of the land is so endowed.[2]

The top layer of the best soils is only eight inches in depth and the sub-soil consists of an additional sixteen to twenty-four inches of relatively infertile sand and gravel. The shallowness of the topsoil limits root development to horizontal spreading and causes crowding among closely planted crops of long growth like grains and grasses. It also limits the water storage capacity. The net effect of farming such land is that unless proper cultivation techniques and fertilizers are used, the initial high yields tend to decline because of erosion, leaching, and a too heavy demand on the natural water supply.[3]

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2. Jay A. Bonsteel, et al, Soil Survey of the Long Island Area, New York (Washington, D.C.: United States Department of Agriculture, Bureau of Soils, Government Printing Office, 1904), 9-11; and, A.F. Gustafson, et al, Soil, Field-Crop and Pasture Management for Suffolk and Nassau Counties, New York (Ithaca, N.Y.: Cornell University Agricultural Experiment Station, Bulletin No. 600, 1934), 11-15.

3. Since the basic soil profiles and agricultural conditions corroborate the earlier descriptions of the area by Timothy Dwight, Benjamin Thompson, John L. Gardiner, and Silas Wood at the end of the eighteenth century it is assumed that the more recent studies used herein are as valid for the colonial period as they are for today. See my doctoral dissertation, "An Economic History of Suffolk County, New York, 1783-1812." (New York University, 1966), 2-4 et passim.

The natural vegetation is characterized by mixed hardwoods in the northern portion while scrub oak, stunted oaks, and pitch pine dominate the southern plains.

The climate of the Island is well-suited to agriculture since the Atlantic Ocean moderates the temperature and prolongs the growing season more than in adjacent areas. Recent observations show that Setauket on the north shore has a frost-free period of 210 days and Southampton on the south shore has one of 187 days. Precipitation ranges from thirty-seven to forty-nine inches, with an island-wide yearly average of about forty-four inches.

The native inhabitants of the Huntington area on Long Island were descendants of Algonkian speaking Indians who had migrated to the New York-New England region in successive waves beginning well over five thousand years ago. The last major wave of Algonkians, which arrived before the year 1000, dominated the New York region for over three hundred years until they were challenged by invading Iroquois who pushed them farther eastward into the New England-Long Island areas.[4] Locally the Matinnecocks held the territory on the north side of Huntington to about the middle of the island while the Sucatogues occupied the southeastern and the Marsepagues the southwestern corners of the township.[5]

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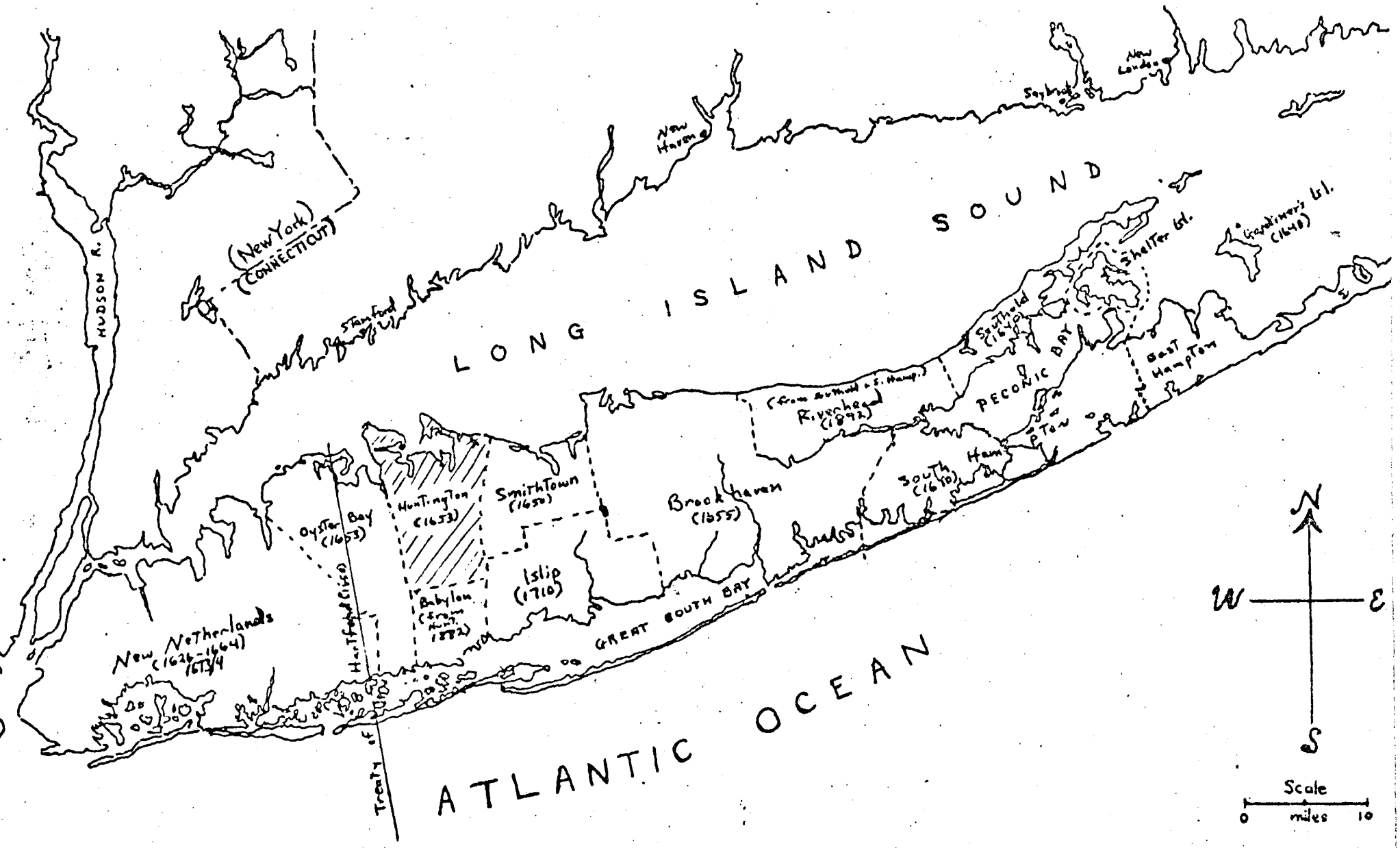
4. David M. Ellis, et al, A Short History of New York State (Ithaca: Cornell University Press, 1957), chapt. 1.

5. Charles R. Street, ed., Huntington Town Records, including Babylon, Long Island, N.Y., (Huntington, N.Y., 1887), I, xii-xiii, hereinafter cited as HTR. 2. See also, Romanah Sammis, Huntington-Babylon Town History (Huntington, N.Y., 1937), 4-5.

Fig. II: Dates of Founding of Towns on Long Island by The English



The Long Island Indians were fairly weak, small tribes whose numbers had been decimated by past struggles with their New England neighbors and to whom they were forced to pay tribute yearly. Although dominated by Wyandance, sachem of the Montauks who inhabited the east end of the Island, they were an easy prey to the acquisitive, land-hungry Europeans of the seventeenth century.

Evidence exists to prove that Englishmen had settled on Long Island considerably before the middle of the seventeenth century. In 1640 a group migrated from New England and attempted to begin a town in the Manhasset area. The Dutch, who had arrived in Manhattan twenty years earlier, forced them out and they moved to a permanent location in Southampton. Later, other small bands moved down from Connecticut and New Haven colonies to establish themselves along the north shore. Sometime between 1650 and 1653 a small group of four or five families found their way to what is now Cold Spring Harbor and built the first houses in Huntington. At the same time another group probably explored the area around Oyster Bay with a view to erecting a permanent settlement along the shoreline of that excellent harbor. Although prior purchases had been made by both Dutch and English of Indian lands in the vicinity of Oyster Bay[6] the one which resulted in a permanent settlement took place early in 1653.[7]

Immediately thereafter three men from Oyster Bay, Richard Houldbroke, Robert Williams, and Daniel Whitehead, undertook to buy from the Matinecock Indians all the land from Cold Spring Harbor eastward to a stream at the

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6. John Cox, Jr., ed., Oyster Bay Town Records (New York: Tobias A. Wright, 1916), I, 623-630.

7. Ibid., 670-671.

head of Northport Harbor. On the same day, April 2, 1653, they assigned all their rights and title in that purchase to those already settled at Cold Spring Harbor. Both the names of the assignees and the document itself are lost, but there is sufficient evidence to prove that they did in fact exist.[8]

Who the original English inhabitants were, where they came from, or why they did so cannot be determined from existing records. Nevertheless, several explanations offer themselves as being plausible. One can assume that they did not come directly from England to a wilderness shore. Invariably new arrivals entered the colonies by way of an established port town such as Boston, tarried awhile, and then moved on. It is conceivable that pure economic motives lured them from some New England community with the promise of a well-situated natural harbor and virgin land to farm. However likely this may seem it does not fit the accepted pattern of migration of New England's Puritans from settled areas into the wilderness.[9] A common pattern of movement had been established by the early settlers in Massachusetts and Connecticut soon after the first groups arrived and it persisted, with few deviations, throughout the seventeenth and early eighteenth centuries. That is to say, new towns were created but of a combination of residents and newcomers in existing towns who, because of the pressures of slowly constricted land supply or because

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8. HTR, I, 1-2.

9. Douglas E. Leach, The Northern Colonial Frontier, 1607-1763 (New York: Holt, Rinehart, and Winston, 1966), chapt. 3. See also, William Haller, Jr., The Puritan Frontier: Town-Planting in New England; Colonial Development 1630-1660; and Robert A. East, "Puritanism and New Settlement", New England Quarterly, XVII (June, 1944), 225-264.

of some religious difference with others in the community, selected a minister as their leader or spiritual guide. They would then send our exploratory parties to chose a town site, after which they would receive the permission of the general assembly to relocate. Then, as a church group bound by a covenant signed by all, they would make the move. Occasionally such groups consisted of Quakers, that determined sect of dissenters who were constantly being harried out of communities by the authorities because they challenged the established religious beliefs and practices.

One could assume that the first founders of Oyster Bay were indeed Quakers since Peter Wright, one of the first purchasers, was of that sect.[10] However, it cannot be assumed that the first Huntington men were Quakers, although they may have taken the unorthodox position as Congregationalists of being sympathetic to them. Within a short while after receiving the assignment they were joined by the Reverend William Leverich, a signer of both purchases. Reverend Leverich had arrived in New England as early as 1633 and preached in Boston, Sandwich, and various other places before deciding to journey to Long Island in 1653. He undoubtedly became the leader of a Connecticut congregation and went with some of them to Oyster Bay. Exactly why he remained so short a time in that town is unknown, but by 1657 he had moved to Huntington to become the minister there. Possibly he became uncomfortable with the Quakerish leanings of many residents in Oyster Bay and chose to align himself with an orthodox congregation which by that time had been augmented by immigrants from

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10. Cox, Oyster Bay Records, I, 629.

New Haven and Stamford in Connecticut and Wethersfield in Massachusetts Bay.[11]

Since Cold Spring Harbor is surrounded by hills and not really suited for farms and grazing land, the first settlers moved eastward toward Huntington Harbor where they found three valleys through which spring-fed streams flowed to the marshes at the head of the harbor. The hills to the east and west rose gently and there was ample space to lay out home lots, particularly in the easternmost valley which became the town spot.[12] The home lots themselves were relatively small, probably averaging one-quarter to one-third of an acre. This was in keeping with traditions both in Old and New England which dictated that the homes of townspeople be clustered along a single street and near a common water supply. Although inhabitants grew some vegetables and herbs on the lots, their pasture and farm land holdings were scattered farther out, but generally within walking distance.

The task of selecting the town spot, assigning home lots, and selecting the location for the first division of farm land fell to the first purchasers, since they were the assignees of the conveyance from the Oyster Bay men. Very probably they were small in number, but accepted as equals those who arrived within the next year or two. The land they acquired was bounded on the west by Cold Spring Harbor (Natchaguetack), on the north by Long Island Sound, on the east by a stream leading south from Northport Harbor (Opkatkowtycke), and on the

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11. HTR, I, xii.

12. Sammis, Huntington-Babylon Town History, 26-30.

south "to the utmost part of my (Raseokan, Sachem of the Matinecocks) bounds". The latter has been construed as being the road known as Country Path in 1887 when Charles Street edited the town records.[13] The sum invested seems triffling today but to them it was not inconsiderable,[14] so that when others arrived and offered to buy in by paying a proportionate share to those who made the initial investment the latter gladly accepted.

The method of dividing the land followed a pattern not uncommon to New England and other towns on Long Island. To illustrate, assume there were five individuals who contributed to the purchase price. The price itself was divided into five portions or shares or rights, each person contributing either a fraction of a share, a whole share, or more than a share. The next families to arrive (let us assume ten for the sake of discussion) would then pay to the original five, in coin, goods, or services such as surveying lots and roads or building houses, the equivalent of a share each or fraction thereof, thus making them associates of the first purchasers. As tenants in common[15] they were all "proprietors of the first purchase."

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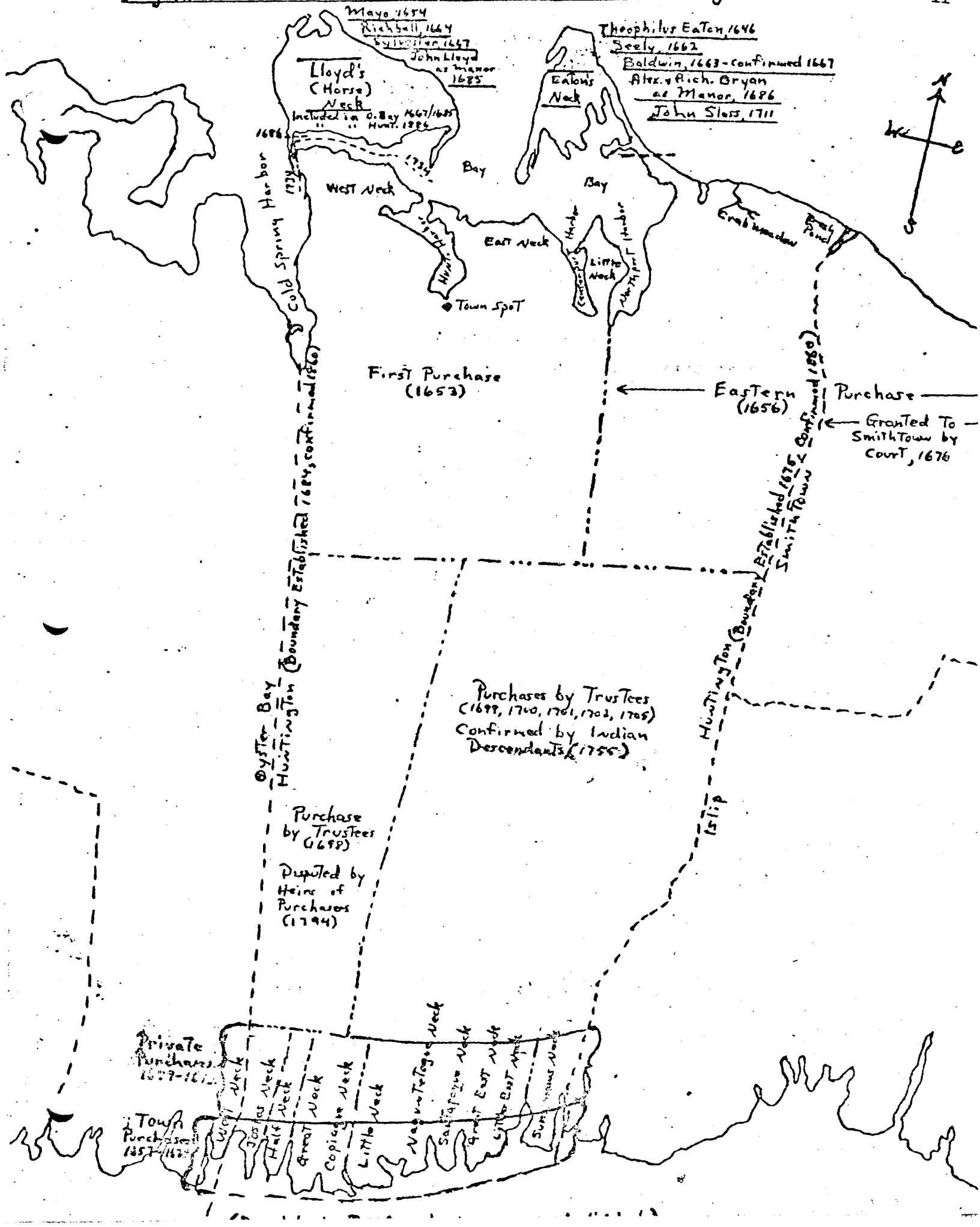
13. HTR, I, 1-2. See Figure III for the first and subsequent Indian purchases.

14. Ibid., 2. The price was 6 coats, 6 kettles, 6 hatchets, 6 hoes, 6 shirts, 10 knives, 6 fathom of wampum, 30 muxes, 30 needles.

15. They could not be joint tenants because, in law, that means that all of them held the land as a single fictitious person, received it at the same instant by the same instrument, and all paid exactly the same amount. There is no benefit of survivorship, precluding an individual tenant from passing his equal portion to his heirs, since the remaining tenants acquire his portion and, as a single entity, hold it. In contrast, tenants in common each hold an individual portion, can alienate or devise it, and the only essential to tenancy in common is unity of possession since such tenants can acquire unequal portions at different times and by different conveyances.

Fig. 11b Purchases of Indian Land in Huntington, 1646–1705



When the proprietors arrived at the town spot they laid out home lots which they granted to each proprietor either on the basis of contributions to the venture, which would determine first choice, or by drawing lots which randomly assigned an individual to a plot. The next step was to allot each person a portion of the common land for his private use. Only a relatively small area was chosen for this at the outset. Called the first division, it normally contained sufficient acreage so that each proprietor would receive enough land to plant for his family's needs. The settlers subdivided the division into equal plots called allotments and then assigned the entire tract a value expressed in hundreds of pounds, each allotment being designated as a one hundred pound right. Thus, if they decided that there should be fifteen subdivisions in the plot to be divided, because of the total number of first proprietors, then they would survey that many allotments of equal size and declare each allotment to be a hundred pound right regardless of how many acres each contained. As a result, one division might have allotments of five acres as its hundred pound right, while another might have three acre allotments because of an increase in the number of proprietors involved.

These hundred pound rights can be considered as shares in town lands, vaguely similar to stock in a corporation. They did not give the owner possession of the land immediately but did entitle him to receive additional acreage, based on the number of hundred pound right he held, at some time in the future when he requested it at a town meeting or when the town proprietors voted another division of the common lands. Such rights also permitted the holder of them to the use of and equity in the undivided common land equivalent to the number of hundred rights

held. These rights could be sold or willed to heirs either in their entirety or in fractions thereof. Such rights did not automatically assign a market value to the land since that was determined by local conditions of supply and demand. Thus, a hundred pound right might sell for from a few shillings up to three, five, or ten pounds.

The first proprietors who held purchased hundreds from the first settlement also, by virtue of their being first, held rights in all future divisions of the land. Later when other lands were bought from the Indians, only those who actually contributed goods, services, or money became entitled to any such rights to the exclusion of all others. These later acquisitions fell into two categories: those which were purchased by a few for themselves and those purchased by a few for and on behalf of the town. In the case of the latter, the first proprietors, or their assigns or heirs, as well as those who paid the price were entitled to hundreds.[16] They could, of course, relinquish their rights by voting to give the land to newcomers, so that these rights were not only equitable claims they were also a guarantee that those holding them had a voice in the use and distribution of the land.

Questions of land acquisition and distribution constituted as much of the business of town meetings as did criminal and civil actions at law. Such meetings followed established practices in use in the New England towns from which the Huntington men had migrated. At first they were held frequently and attended by all, with the right to hold office and vote reserved to property owners (freeholders) in the town. For a number of years this was the only form of government since the small settlement was outside the bounds of any other established authority.

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16. HTR, I, 19; II, 154-160. Land will be discussed in detail later.

Earlier local historians contend that the Dutch controlled the area from New Ansterdam and that there was friction between the Huntington men and the Dutch.[17] The record does not bear this out. Admittedly, the Dutch laid claim to all of Long Island ever since they settled a colony on Manhattan Island in the 1620's. However their effective control extended only over the westernmost portion of Long Island as evidenced in part by the freedom enjoyed by towns in the east end and even as far west as Oyster Bay.

Once the colony of Connecticut was founded the English and Dutch came into conflict over control of not only Long Island but also over the western portion of that colony. Friction persisted until 1650 when the Dutch governor, Peter Stuyvesant, negotiated with the New England Confederation to establish a permanent boundary line. The dispute was settled by the Treaty of Hartford in 1650 which established the Anglo-Dutch boundary on Long Island from the western part of Oyster Bay directly south across the Island to the ocean, and conceded to the English lands west of the Connecticut River.[18] Thus, Oyster Bay straddled the line while Huntington was situated a number of miles east of it. Partly as a result of the treaty and partly for other reasons Huntington

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17. Charles R. Street, editor of the town records, persists in this assumption throughout volume I of the records as well as in an extensive legal opinion given by him to the town in 1872. In each instance he refers to the "Dutch Period" as if the town were then under foreign control. HTR, I, x, 24, 26; "An Opinion Upon the Powers and Duties of the Trustees...of Huntington", (1872), 7-12. Romanah Sammis also continues the same error, Huntington-Babylon Town History, 10.

18. Alexander C. Flick, ed., History of the State of New York (Port Washington, N.Y.: Ira J. Friedman, Inc., 1962, Empire State Historical Publications), II, 55-57.

voted to accept the jurisdiction of Connecticut ten years later.

Town records are not extant for the first few years, but it is reasonable to assume that local officials were elected to carry on the day to day operations of the town. The first indication of what local offices existed occurs in the minutes of a town meeting on February 4, 1660, at which time three magistrates, a clerk, and a marshall were voted into office.[19] These officials acted as a justice of the peace court to decide disputes over land titles, civil actions for debt, criminal actions of theft, assault, slander, and other minor offenses.[20] They also probated wills and assigned the administration of intestate estates.

The town meetings served both a legislative and a judicial function in Huntington where, for almost ten years, there existed no superior outside authority. Here the townsmen passed ordinances for the general good and welfare of the community. They felt the business of the community was sufficiently important to require the attendance of all freeholders and imposed a fine upon those who neglected their civic duty.[21] This extended to those elected to office since many would have preferred to refuse public positions of authority and thus avoid antagonizing friends and neighbors when it came time for them to actually apply the law.[22] In this instance the traditional English concept of

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19. HTR, I, 23, 37.

20. HTR, I, 13, 24-27, 29-33, et passim.

21. HTR, I, 112.

22. HTR, I, 41.

the role of taxpaying freeholders controlled the decisions of the people. If one owned real property, no matter how mean his circumstances or small his holding, he had a vested interest in the nation's wealth and productivity. It followed that he had an obligation to participate in the affairs of the town and serve in public office when called upon to do so.

At these meetings the freeholders determined when and where roads and highways should be laid out and assigned an overseer to look after their maintenance. All men in the village contributed either labor or money to such projects.[23] It was at this time also that major questions of land divisions and acquisition of new lands from the Indians were decided. Elected committees handled the actual laying out of allotments, recording of them, and, in some cases, the actual disposal of home lots and meadows "so as may conduce to the most advancing of those as need land to improve and so lay out as it may not prove prejudicial to the commons (as near as they can) or town plat."[24] At first the fields and common lands remained open, but the increase in numbers of farm animals such as sheep, geese, horses, and cows and resultant damage to crops necessitated an ordinance requiring all to fence in their fields.[25] By 1663 it became necessary to fence in the town plat to keep calves, sheep, and horses confined in the village center and hogs out.[26]

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23. HTR, I, 30.

24. HTR, I, 46-47.

25. HTR, I, 45-46.

26. HTR, I, 47.

Those who did not maintain their fences in good repair and a sufficient height came under the scrutiny of the elected fence viewers who could impose fines to insure compliance.

Rudimentary conservation practices appeared early in the life of the town. Restrictions on the use of natural resources, with an eye to preserving them for the maximum benefit of all, were confined to the common and undivided lands of the town. In 1660 all inhabitants received permission, by vote at a town meeting, to fell white oaks in any part of the town for use as pipe staves. Within eight years overcutting had become so noticeable that the freeholders voted to halt any future cutting.[27] In like manner they moved to protect the local fisheries by restricting the killing of whales "or other fish within the limites of the town" in Great South Bay to town residents.[28] Indiscriminate use and abuse of common land was circumscribed by ordinances preventing anyone from mowing fresh or salt meadows without permission and requiring the inhabitants to burn the woods and underbrush only when ordered to do so by designated officials.[29] The latter had nothing to do with community concern over air pollution; it did, however, tend to prevent runaway brush fires.

In addition to ordering and regulating the everyday affairs of Huntington at town meetings, the freeholders also exercised their fundamental proprietary rights by passing upon the acceptability of newcomers and the introduction of new economic activities for the benefit

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27. HTR, I, 30, 131-132.

28. HTR, I, 179.

29. HTR, I, 72, 111-112.

of the community. As tenants in common on the land they could exercise this right initially in the case of anyone who wished to move to the village and take up land. They used this control to exclude undesirable individuals and to entice those craftsmen who they felt were essential to the very existence of the village. Contrarily, once a person had been accepted, he could be voted out of the community if found to be troublesome. Again, this adhered to a pattern already established in New England by church covenant communities whose primary concern was to maintain the purity of their religious body by asking all accepted newcomers to sign the church covenent and abode by its provisions. Those who did not sign or transgressed the covenant later were expelled. The first recorded expulsion from Huntington occurred on June 28, 1660. Shortly after the town joined the Connecticut colony one Richard Latting (Latten) objected and refused to recognize the jurisdiction of that colony, whereupon it was duly voted at a town meeting that he and his cattle should leave the town within a fortnight. Subsequently Connecticut ordered his expulsion from that colony for "turbulent conduct", but he proved to be obdurate and two years later Huntington had to pass yet another resolution ordering that no one give or sell him any "entertainment" for more than a week.[30] This precipitated the first formal local law about newcomers. On July 6, 1662, the town voted that no one could sell or lease houses or lands to anyone except those approved by men voted by the town to pass upon newcomers. Only those who were accepted could acquire land.[31]

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30. HTR, I, 27, 39.

31. HTR, I, 40-41.

While careful to exclude or expel undesirables the town took pains to offer favorable terms to those they wished to live among them for their spiritual, intellectual, and economic betterment. As early as 1657 when the first town meeting was recorded, Jonas Holdsworth contracted to "school such persons or children as shall be put to him for that end by the said inhabitants" in return for a quite comfortable salary, a house built for him by the town, and an accommodation of land.[32] His pay began at £25 a year and rose to £40 at the end of three years, payable in country produce such as wheat, corn, wampum, and young cattle. Those who sent their children to his school furnished him with firewood and Holdsworth had the liberty to select four townsmen each year to be bound to him for the collection of his salary. Within three years, however, support of the school became a public charge and the town voted to lay a general rate upon each real property owner to defray the costs.[33]

The spiritual and bodily needs of the community also concerned the proprietors. Their first minister joined them shortly after the founding of the town and was granted the right to follow his secular calling as a millright when the town allowed him to erect a mill at the head of Huntington Harbor on what is now Mill Dam Lane.[34] Following a common practice in New England the town set aside a plot in 1662 for the construction of a permanent house for a minister which would remain town

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32. HTR, I, 8-10.

33. HTR, I, 28.

34. HTR, I, 20.

property but be used exclusively for his use and benefit.[35] Mindful of more secular needs, the town voted to permit Goodman Brush to maintain an ordinary (inn) for transients, prominent wayfarers, and old persons with the stipulation that he could do so only during his and its "good behavior" and that the amount anyone could tipple be carefully regulated.[36]

Huntington remained an autonomous self-governing community for the first seven years of its existence. Begun by a small group of unknown New Englanders it adhered to the customs and practices of the puritan colonies in such matters as land ownership and the franchise. Although not as strict probably as others in the application of puritan theological principles to daily life, the town soon rid itself of any evidences of Quakerism. Even though the first settlers may have been somewhat more tolerant of that group than their former neighbors in Connecticut, they soon organized themselves along the lines of a typical congregational church. Even though Oyster Bay to the west and Smithtown to the east had fairly strong Quaker influence at first, Huntington soon sought out a minister to lead them and maintained a communal congregationalism for many years.[37] Until the town joined Connecticut in 1660 the people were answerable only to themselves for whatever went on within the limits of the town.

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35. HTR, I, 38-39.

36. HTR, I, 28, October 15, 1660.

37. HTR, I, 166, April 4, 1670; 218, January 16, 1676. For the existence of Quakers locally, see Rufus Jones, The Quakers in the American Colonies, (New York: W.W. Norton & Co., 1966), 139, 219; William S. Pelletreau, ed., Records of the Town of Smithtown, Long Island, N.Y., (Smithtown, 1898), 2.

Having no trained lawyers the people relied heavily on what they could remember of the English common law leavened somewhat by attention to the Bible as the customary guide for their conduct. Justice was meted out by three elected officials who could punish criminal offenders "according to the quality of the crime" and decide civil controversies between neighbor and neighbor through arbitration.[38] When word arrived that Charles II had been restored to the thrown of England, the town, apprehensive of its legal status and fearful that its claim to the land might not be acceptable as valid, voted to submit to the jurisdiction of Connecticut. For a brief four years Huntington conformed to the laws of that colony, sending delegates to the General Court in Hartford every year to participate in the government there.[39] Suddenly, however, and with little warning, Huntington learned in the last days of August in 1664 that they must adjust to yet another government - that of James Duke of York who had been given a vast tract of land, including the Dutch colony of New Netherland, earlier that year.

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38. HTR, I, 37, December 2, 1661.

39. HTR, I, 23, April 10, 1660; 39, February 19, 1662.

Chapter I

Local Government in Proprietary New York

The charter for New York that Charles II granted to James Duke of York gave the new proprietor virtually absolute control, at least on paper, of a widely scattered grouping of lands extending from northern Maine to Delaware. It included all of Maine from the St. Croix to the St. Lawrence River; Long Island, Martha's Vineyard, and Nantucket; and the entire territory from the Connecticut River south to the Delaware River and north as far as beyond Albany.[1] Within this area of widely differing climates, soils, and natural resources lived colonists of the Dutch, English, Swedish, and Finnish nations, each with their own forms of government, national customs, and religious predilections.

How to govern such a territory presented no problem insofar as the right of the Crown through the proprietor to abrogate other nation's laws and impose what he wished of English laws. This had been settled more than fifty years earlier in Calvin's Case.[2] Soon after James I ascended the thrown of England, Robert Calvin, a Scots national, initiated a suit of novel disseisin to recover lands in England by proving clearer title to it than the then current owner. Since Calvin was a native of Scotland, the real question became whether or not he could claim the protection of English law and being any real or personal action for any lands within the realm of England. The case eventually

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1. Most of the granted lands were given away by the Duke (the Jerseys to Berkeley and Carteret; the Delaware area to William Penn) leaving him New York and its adjacent islands and Penaquid in Maine.

2. 7 Coke 2a; Trin. 6 Jac. 1 (1609).

came before the Eschequer Chamber in 1609 where it was argued by England's eminent jurists, including Bacon the Solicitor-General, Coke the Chief Justice of the Common Pleas, Fleming the Chief Justice of the King's Bench, and Lord Ellesmere the Lord Chancellor of England.[3]

In its simplest terms, the opinion of the Court held that in a country conquered by England the law was what the king willed it to be.[4]

> ...there is a diversity between a conquest of a kingdom of a christian king and the conquest of a kingdom of an infidel; for if a king come to a christian kingdom by conquest, seeing that he had vitae et necis potestatem (power of life and death), he may at his pleasure alter and change the laws of that kingdom; but until he does make an alteration of those laws the ancient laws of that kingdom remain. But if a christian king should conquer a kingdom of an infidel, and bring them under his subjection, there ipso facto the laws of the infidel are abrogated, for that they be not only against Christianity, but against the law of God and of nature, contained in the decalogue; and in that case, until certain laws be established amongst them, the king by himself, and such judges as he shall appoint, shall judge them and their causes according to natural equity, in such sort as kings in ancient time did with their kingdoms, before any certain municipal laws were given, as before has been said. But if a king has a kingdom by title of descent, there seeing by the laws of that kingdom he does inherit the kingdom, he cannot change those laws of himself, without consent of Parliament. Also if a king has a christian kingdom by conquest, as King Henry the Second had Ireland, after King John had given unto them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding king could alter the same without Parliament. And in that case, while the realm of England and that of Ireland were governed by several laws, any that was born in Ireland was no alien to the realm of of England....Furthermore, in the case of a conquest of a christian kingdom, as well those that served in wars at the conquest as those that remained at home for the safety and peace of their country, and other the king's

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3. Julius Goebel, ed., Cases and Materials on the Development of Legal Institutions (New York: Columbia University, 1931), 294-299.

4. Ibid.

> subjects, as well antenati as postnati, are capable of lands in the kingdom or country conquered, and may maintain any real action, and have the like privileges and benefits there, as they may have in England....

Since the seventeenth century kings of England claimed they gained their lands in the New World by conquest (whether from other christian nations or from "infidel" Indian nations is of no consequence); they could, then, reassert the medieval doctrine that by such conquest the king could exercise his prerogative of legislating in them. Lands not of the realm (England) were dominions of the king so that regardless of what powers Parliament might be able to exercise over them later decisions with respect to law were vested in the first instance in him, and, "from the very first, as far as the courts were concerned, the question of title to the land and the law that was to obtain there were inextricably linked."[5]

In the case of New York Charles II justifiably arrogated to himself the disposition of the former Dutch colony and assumed, quite rightly, that he could delegate the legislative and law making powers to whomever he chose. One limitation on the absoluteness of his authority and the subsequent grant to James was that the laws should be, as nearly as they could be, agreeable to and not repugnant to the laws of England. It became quite clear from the outset that the Duke had every intention of imposing English law upon his new colony. Immediately after Colonel Nicolls, the Duke's deputy governor, arrived he issued a proclamation to all the inhabitants promising protection "in his Majesty's laws and

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5. Julius Goebel, Jr. presents an excellent case for the imposition of English law in New York in "The Courts and the Law in Colonial New York" in History of the State of New York, ed. Alexander C. Flick, III (New York, 1933), 3-43.

justice" to those who would submit. Later Nicolls eliminated the remaining vestiges of Dutch law from the colony when he issued a proclamation on June 12, 1665, converting all offices in the town of New York to the English system, "to the end that his Majesty's royal pleasure may be observed and for the more orderly establishment of his Majesty's royal authority as near as may be agreeable to the laws and customs of his Majesty's realm of England."[6]

The communities on Long Island presented a delicate problem unlike that posed by the conquered Dutch. The towns in the far western end had been under Dutch rule ever since they were founded; those in the eastern end, finding themselves beyond the reach of the Dutch and only indirectly under the jurisdiction of the older New England colonies, had produced an amalgam of old England customs, remembrances of the common law, and reliance on puritan biblicism in matters of social behavior and morals. To placate these towns Colonel Nicolls announced he would call an assembly for the enactment of laws under the new proprietary government. On the surface this was indeed a concession to the views that the Long Island communities inherited the traditional rights of Englishmen. In reality it was nothing of the sort. The Duke's charter vested in him or his deputies the exclusive right to make all laws, ordinances, and directives for the ruling of the colony with no provision that they be passed by and with the consent of an assembly of the freeholders as was the case in most of the other colonial charters. The sole limitations on this power, of course, were that such laws be not contrary to the laws, statutes, and government of England and that the king reserved

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6. Colonial Laws of New York, I, 100-101.

the right to hear and determine appeals against any judgment or sentence handed down as a result of the laws.[7]

On February 8, 1665, Governor Nicolls issued a call to all the Long Island and Westchester towns to send deputies to Hempstead to consult with him on a code of "good and known laws" for the colony. In preparation for the assembly Nicolls has consulted the laws of a number of colonies, principally those of Massachusetts and New Haven, and with the help of Matthias Nicolls the province's secretary who, like the Governor, was a trained lawyer, wrote a complete code of laws which he planned to present to the deputies. The code of laws, known as the Duke's Laws, was a compromise between the New England view of what a body of laws should be, as epitomized in the capital laws as restatements of rules found in the Pentateuch, and English common law and administrative practices. When the assembly covened three weeks later they could do little but accept the laws as stated, although Nicolls was shrewd enough to accept a few minor amendments. On March 1, 1665, the Duke's Laws were promulgated and, with a few amendments and additions by petition from the towns but more often by executive order, remained the basic law of the colony until 1691.

While the Dutch submitted rather gracefully to the authority of the new sovereign the English communities were vexed at the imposition of an outside authority and the lack of a permanent popular assembly. They showed little appreciation for Nicolls attempt at conciliation in calling the Hempstead Assembly and persisted in demands for a more permanent

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7. "The Charter of New York from Charles II to the Duke of York, March 12, 1663/64" in Colonial Laws of New York, I, 1-5.

arrangement. Yet however much Nicolls and his successors reiterated the demands of the towns for a representative assembly they were met with the same response from James, so succinctly stated in a letter to Governor Andros in January of 1676, that "...unless you had offered what qualifications are usual and proper to such assemblies, I cannot but suspect they would be of dangerous consequence, nothing being more known than the aptness of such bodies to assume to themselves many privileges which prove destructive to, or very often disturb, the peace of the government wherein they are allowed. Neither do I see any use of them which is not as well provided for, while you and your council govern according to the laws established....But howsoever if you continue of the same opinion, I shall be ready to consider of any proposals you shall send to that purpose."[8]

The Duke's Laws created a centralized court system, regulated economic activities, itemized capital offenses and their forms of punishment, and reorganized the local governments.[9] Whereas formerly each town had elected what local officials they felt to be necessary and desirable, now they must elect a constable, eight overseers, and one or more fenceviewers each year who were directly answerable to the governor.[10] Despite such centralization Nicolls did recognize the need for at least some local self-rule, and, with the concurrence of the Duke

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8. Quoted in Charles M. Andrews, The Colonial Period of American History, III (New Haven: Yale University Press, 1937), 113.

9. Colonial Laws of New York, I, 6-82.

10. Ibid., 28-30, 55-56, 21-24.

gave the towns more local freedom than they had any right to expect under the terms of the charter.[11]

> Whereas in particular towns many things do arise, which concern only themselves, and the well ordering their affairs, as the disposing, planting, building, and the like, of their own lands and woods, granting of lots, election of officers, assessing of rates with many other matters of a prudential nature, tending to the peace and good government of the respective towns, the constable, by and with the consent of five at least of the overseers for the time being, have power to ordain such or so many peculiar constitutions as are necessary to the welfare and improvement of their town; provided they be not of a criminal nature, and that the penalties exceed not twenty shillings for one offense, and that they be not repugnant to the public laws....Provided always that every such peculiar constitution be confirmed by the Court of Sessions within four months after the making thereof, otherwise to be void and of none effect....
>
> All votes in the private affairs of particular towns shall be given and determined by the inhabitants freeholders, householders, and in matters committed to arbitration or at Sessions either as to juries in all cases or to justices on the bench, where the law is not clear shall be carried by the major part of the suffrages, the minor to be concluded by the vote of the major.

To complete the process of bringing the colony completely under the control of the Duke's government Nicolls demanded that each town and land owner submit evidence of ownership to him for confirmation under a grant from the proprietor.[12] The object was not only to force each land owner to acknowledge the proprietorship of the Duke but also to confer upon each town certain obligations and privileges so that they could become responsible local units of political administration. This constituted the first recognition of the Long Island towns by English authority as legitimate entities. Huntington received its patent on

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11. Ibid., 63-64.

12. Ibid., 44; as amended in October, 1665, 80-81.

November 30, 1666.

The Nicolls patent to Huntington ratified and confirmed the first purchase from the Indians in 1653, the eastern purchase of 1656, and the acquisition of the nine necks of land bordering on the Great South Bay after 1657. While the northern, eastern, and western boundaries remained the same as those in the original conveyances from the Indians, the southern limit of the town was extended south as far as the Atlantic Ocean, including within these limits "all that land that already have been or hereafter shall be purchased for and in the behalf of the town of Huntington, either from the natives, proprietors, or others within the limits and bounds herein expressed." The entire area was given, in the name of his Royal Highness, to eight of the Huntington freeholders "in the behalf of themselves and their associates the freeholders and inhabitants of the said town, their heirs, successors, and assigns...to belong to the town of Huntington....to the proper use and behoof of the said patentees and their associates, their heirs, successors, and assigns forever." The patent also granted to the eight patentees and their associates any privileges belonging to a town within the government of New York.[13]

One of the vital features of both the Duke's Laws and the town patents appears to have been to remove the responsibility for the control of local affairs from the freeholders in general and concentrate

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13. HTR, I, 92-96. Because of the extent of its limits Huntington soon became involved in boundaries disputes with Smithtown, Oyster Bay, and the owners of Lloyd's (Horse) Neck and Eaton's Neck. These controversies and the history of land ownership in the town will be discussed in detail later.

it in the hands of a few of them as constables and overseers. Eight overseers were to be elected (reduced to four in 1666), of whom four would serve a two year term and four would be dismissed at the end of each year. From the latter group the constable was chosen by majority vote of the townspeople. These officials had the responsibility of drawing up a constitution for their town which would outline how the town expected to handle its own peculiar local affairs insofar as the disposition and use of land, the election of local officials, the assessing of local rates, and the management of livestock, hiring of ministers, and similar matters. By law a two-thirds vote decided all issues at town meetings. There is no evidence, however, in the local records of Huntington that they ever took the time to actually write such a document.

Rather than reduce everything to a written document, Huntington continued in its established pattern of holding town meetings with some regularity. Superimposed upon their traditional structure, however, were the constables and overseers who promulgated ordinances and saw to it that the townspeople abided by the Duke's Laws and their ordinances. The people submitted to this arrangement, but not without some grumbling as will be seen later. While the constable and overseers selected the times to fire and burn the woods, ordered that no more trees should be cut for staves, determined that it was detrimental for sheep and rams to cohabit out of season, and prohibit geese and ducks from running loose on the common,[14] the town meetings took it as their prerogative to vote to produce a minister, decide to drain the old mill pond and relocate

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14. Ibid., 112 (1667); 131-132 (Dec. 29, 1668); 288-289 (Feb. 23, 1682)

the mill, agree to settle some of their members in a disputed area between Huntington and Smithtown in order to secure the land, restricted the killing of whales and fish to town residents, and contracted with blacksmiths and other artisans to move into the town.[15] In a few areas the distinction between the two legislative bodies became blurred. The laying out of highways, a function of the officials by law, frequently was voted upon in town meetings[16] and in 1679 the voters directed the overseers to select up to five freeholders to assess the local tax rates "as they shall think best for the good of the town."[17]

Huntington and the other towns on Long Island continued to chafe under the authority of the Duke's governors. After Governor Nicolls departed in 1668, they kept up their demands for a representative assembly. During the administration of Colonel Francis Lovelace (1668-1673), Huntington took the opportunity to refuse to contribute to the cost of repairs to the fort guarding New York harbor. On February 21, 1670 they addressed a petition to the Court of Sessions listing their grievances. In addition to many local troubles and a lack of tax revenues to pay their portion of the costs of repairs, they felt that the town was simply too far removed from the fort to gain any benefits from it, that in fact they had received precious few benefits from the present laws of the colony, and as Englishmen they were being deprived of their fundamental liberties by being taxes without a representative assembly.[18]

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15. Ibid., 166 (April 4, 1670); 172-173 (Jan. 6, 1671); 176-177 (1671); 179 (April 12, 1671); 240 (April 1, 1679).

16. Ibid., I, 193 Sept. 18, 1671.

17. Ibid., I, 242 April 1, 1679.

18. Ibid., I, 163-164, February 1, 1670/71.

Although Lovelace took no action against the town he had the petition publicly burned and declared scandelous, illegal, and seditious.

The renewal of the Anglo-Dutch conflict in 1673 and the recapture of New York by the Dutch that year did little to affect Huntington directly. Within a year the English returned and the proprietorship of the Duke of York reestablished by a new charter in 1674. The new charter, new only in time and not in content, did nothing to alter conditions of the past ten years and made no concessions regarding a popular assembly. The new governor, Major Edmund Andros, was subjected to the same pressures as his predecessors to convince the Duke to authorize such an assembly. The towns themselves called assemblies at which protests were drawn up complaining they had no voice in the making of laws or levying of taxes.[19] Gradually the Duke and his personal advisors came to realize that the colony could not survive in its present form without an assembly and in 1681 James wrote the acting governor, Brockholls (Andros having left for England earlier in the year), that he had decided "to establish such a form of government at New York as shall have all the advantages and privileges to the inhabitants and traders there which his Majesty's other plantations in America do enjoy, particularly in the choosing of an assembly."[20]

Colonel Thomas Dongan succeeded Andros and, when he arrived in 1683, carried with him instructions that "there shall be a general assembly of all the freeholders by the persons who they shall choose

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19. Ibid., I, 340 (June 26, 1682). Huntington elected Epenetus Platt as their representative to carry their petition to such an assembly in New York.

20. Quoted in Andrews, The Colonial Period of American History, III, 114.

to represent them in order to consulting with yourself and the said Council what laws are fit and necessary to be made and established for the good weal and government of the said colony and its dependencies and of all the inhabitants thereof."[21] Laws passed by the assembly had to receive the assent of both the governor and the Duke, taxes could be levied but not disbursed by it, and the governor could summon, adjourn, and dissolve it as he saw fit. Writs for elections were sent out in September of 1683 and in October the first representative assembly in the colony's history met in New York. Until 1691 the colony's laws consisted of the Duke's Laws, those passed by the general assembly which sat from 1683 to 1685, and a number of measures passed by the governor and his council, none of which materially affected the role of the towns at the local level.

Soon after it convened the Assembly passed a number of laws and a charter of liberties and privileges, all of which were transmitted to the Duke for acceptance and confirmation. The Charter of Liberties and the laws arrived in England in December of 1683 and after due consideration received the approval of the Duke and his advisors. The Charter itself was possibly written in large measure by Matthias Nicolls, speaker of the Assembly, who had held a number of official positions in the colony and was a trained lawyer. It contained a bill of rights and a constitutional outline for New York which included "due process of law" provisions, protection for land owners, and the basic duties,

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21. Ibid.

obligations, and privileges of members of the Council and the Assembly.[22] The colony, however, could not put it into effect because the Assembly never received a confirmation copy from England and it was later vetoed by the Privy Council in 1685.

Political events moved rapidly during the next few years. Governor Dongan, who had frequently complained to the Duke about the loss of the Jerseys and parts of Delaware, and the lack of profits to be made from Long Island and Pemaquid under current economic activities and quit-rent provisions, succeeded only in firmly emplanting in James' mind the desire to have a larger, more centrally administered territory which would produce greater financial returns and be able to pay for its own defenses against Indian attacks. James' opportunity to implement such a scheme came when he ascended the thrown of England as James II on February 6, 1685, after the death of Charles II. Taking advantage of the fact that the Massachusetts charter had been vacated the previous year and now had a royal governor, James moved to consolidate most of the northern colonies into a dominion with a single governor. He accomplished this by appointing Sir Edmund Andros, Governor of Massachusetts, as Governor General of the newly formed Dominion of New England which brought under his single administration the New England colonies in 1686 and New York in 1688. Later efforts undertaken to include the Jerseys, Delaware, and Maryland through quo warranto proceedings to vacate their charters came to nothing because by 1689 James

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22. Merrill Jensen, ed., American Colonial Documents to 1776 in English Historical Documents, vol. IX (New York: Oxford University Press, 1964), 228-232. For a concise discussion of this period see Andrews, Colonial Period of American History, III, Chapter 3.

was without thrown or power to enforce his wishes on unwilling colonists. Nevertheless, the formation of the Dominion explains why the New York Charter of Liberties was never implemented - the creation of the Dominion made it useless.

While James as a duke and then king busied himself with formulating plans for the Dominion, he also concerned himself with seeing to the affairs of his colony and the income that might be derived from it. When he became king he instructed Dongan to prepare maps of all his holdings to determine what was his and what was held by others. One hoped-for outcome of this would be a reassessment of the quit-rents then being levied on the land granted to individuals and towns. During the proprietary period collection of such rents was lax and complicated by the original terms of surrender by the Dutch in which only nominal rents were assessed. Poor collection techniques and the lack of a designated place of payment resulted in very little income for the Duke.[23] To remedy this he took the steps necessary to rectify these past errors and, in addition to the map, instructed Dongan to call in all charters for review and reissuance with an eye to increasing the income from the colony.

James took such steps in part to gain a clearer picture of his territory and in part to determine if more income could be obtained. In large measure, however, his transition from duke to king probably prompted him to such measures, for once he became king the status of New York changed legally from a proprietary to a royal province. Its

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23. Beverley W. Bond, Jr., The Quit-Rent System in the American Colonies (New Haven: Yale University Press, 1919), 110-113, 254-285.

administration was removed from the Duke and his advisors to the King, the Privy Council, and various executive branches of the government of England.[24] Thus, the disallowance of the Charter of Liberties came from the Privy Council rather than from the Duke's secretary in May of 1686 and the calling in of town and private charters was a royal command instead of the whim of a proprietor.

When the order came from the Governor in March of 1686 to submit the patent for review and reissuance Huntington resisted it. At a town meeting early in April the freeholders voted not to give the patent to the Governor.[25] To protect themselves as best they knew how they entered into negotiations with the Indians during the next few months to establish the boundaries of the town in order to avoid questions of lawful title. By October the Governor lost his patience and sent two men to view the town's and the Indians' lands with an accompanying order that the town should proceed to purchase all unbought lands within its limits.[26] Naturally the town had to pay the governor a fee for the right to purchase the remaining Indian lands. Pleading poverty and the general infertility of the soil, the town offered Dongan £20 for purchase rights and suggested a quit-rent of 20s., at the same time steadfastly refusing to submit its patent for review.

The controversy over the issuance of the patent dragged on for over

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24. John R. Bradhead, ed., Documents Relative to the Colonial History of the State of New York (Albany, N.Y.: Weeds, Parsons and Co., 1853), III, 354, 359, 360. Journal of the Committee of Trade and Plantation, February 17, 1684/5.

25. HTR, I, 440, April 2, 1686.

26. Ibid., 468, 472-473. The maneuvering over Indian lands was a result of the Governor's power to grant unappropriated lands and, by inference, he could, if he wished, sell such land in Huntington to strangers.

a year. By March of 1687 the town came to the realization that their limited power could not withstand that of the Governor who could, if he so desired, apply sufficient legal and executive pressure to make their position untenable.[27] Reluctantly the freeholders agreed to send three delegates to the city with hat and patent in hand to bargain for as favorable terms as could be gotten for the town. After protracted negotiations a patent was issued to Huntington on August 2, 1688.

The Dongan Patent, as it is popularly known, differed in a number of respects from its predecessor the Nicolls Patent. First, it erected the town into a body corporate and politic with all the duties, obligations, and privileges of such a status, whereas the earlier patent had only vested in the town the rights and duties of "any town in the colony" as established by law. This more recent change gave to the town virtually the same status as similar towns in England and conferred on it powers more far reaching than had the patent of 1666. Second, the new charter named nine freeholders, those who represented the town in the negotiations, as Trustees of the Freeholders and Commonalty of the Town of Huntington, and granted to them all the land ennumerated in the Nicolls Patent,[28]

> together with all and singular the houses, messuages, tenements, buildings, mills, mill dams, fencing, enclosures, gardens, orchards, fields, pastures, woods, underwoods, trees, timbers, feedings and common of pasture, meadows, marshes, swamps, plains, rivers, rivulets, waters, lakes, ponds, brooks, streams, beaches, quarries, creeks, harbors, highways and easements, fishing, hawking, hunting and fowling, mines and minerals (silver and gold mines excepted), and all franchises, profits, commodities, and hereditaments whatsoever to the said tract of land and premises belonging...

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27. Ibid., 483-484. March 11, 1687.

28. Ibid. 532-543.

The question of why Dongan decided to call in the old charters and issue new ones cannot be answered satisfactorily by simply relying on the desire for increased income from quit-rents. Admittedly this had been a concern of the Governor ever since his arrival in New York. His first instructions in 1683 made no mention of town charters but did admonish him to tighten up on the collection of quit-rents.[29] In order to do this efficiently it became necessary to review patents and survey lands to determine what was in private hands and how much remained unappropriated. In February and March of 1684 he sent warrants to the sheriff of Richmond ordering him to survey the boundaries and lay them out according to the patents to ascertain how much land each person had. The sheriff was also to distrain against all those who had quit-rents in arrears.[30] On March 16, 1685, Dongan dispatched warrants to all the sheriffs in the colony ordering them to make inquiry of the inhabitants within their respective bailiwicks by what right, title, or pretence they enjoyed their possessions and to make a return of their findings in order to determine if such had been recorded.[31]

When Dongan received his new commission in May of 1686, he was able to intensify his efforts to collect the rents by virtue of a clause giving him the power to grant lands to persons "for such terms and under such moderate quit-rents, services, and acknowledgements to be thereupon

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29. Brodhead, ed., Documents of Colonial New York, III, 331-334.

30. Edmund B. O'Callaghan, ed., Calendar of British Historical Manuscripts in the Office of the Secretary of State, Albany, New York, 1664-1776 (Albany, N.Y.: Weed, Parsons, and Co., 1866), 133, 137, 154.

31. Ibid., 135.

reserved unto us as you by and with the advice (of the Council) shall think fit." In addition to the power to erect towns and impose taxes for the support of the government, militia, and forts, he could enter into agreements with planters and inhabitants about lands, tenements, and hereditaments "as are now or hereafter shall be in your power to dispose of..."[32] With this as a lever, Dongan quickly set about rightening collection procedures and recording patents that were too vague or questionable. To do this he applied both legal and political pressures to recalitrants, as he explained in a letter to the Committee of Trade and Plantations in a letter in December of 1686.[33]

> When I came to the government I found very little quit-rent reserved to his Majesty, however I have got the people with their own consent to the payment of a certainty as your Lordships may perceive by the aforementioned list of patents. Such as pay no quit-rent I bring into the aforementioned court (Court of Exchequer, also called Judicature) for his Majesty's rents and revenues where in a short time they are easily induced to it. And I hope his Majesty will have considerable revenue from it....As for the quit-rents at my arrival they were very inconsiderable (the previous governor, Andros, having merely recognized land purchases and charged a nominal rent)...These people have renewed their patents under a greater quit-rent....The methods that I took for the obliging them to this was finding several tracts of land in their townships not purchased of the Indians and so at his Majesty's disposal. They were willing rather to submit to a greater quit-rent than have that unpurchased land disposed of to others than themselves.

When Dongan justified his sweeping revisions of existing charters in terms of increased revenues he voiced only one reason for his actions, for at the same time he erected a number of manors and granted large

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32. Brodhead, ed., Documents of Colonial New York, III, 377-383; for Dongan's instructions see Ibid., 369-375.

33. Ibid., 397.

tracts of land to certain members of New York's aristocracy. To understand his motives more fully one must look to events in England. This requires a brief digression to discuss, in general terms, chartered corporations in seventeenth century England and certain incidents that occurred during the reigns of Charles II and James II.

Seventeenth century lawyers generally agreed that the privilege of incorporation, the creation of a fictitious person as a legal entity having perpetual succession such as a municipal body corporate and politic, could be obtained only by grant from the Crown. By the time of James II there existed in England approximately two hundred incorporated municipalities, each with its own peculiar privileges, jurisdictions, and rights. Their charters were highly valued by them because they conveyed not only real estate but also immunities, franchises, jurisdictions, and acquittances. Once the charter had been issued the character of the municipal corporation was left largely to shape itself according to the concessions it had been granted and the powers it possessed. Some had many jurisdictions such as local courts, freedom from county justices, powers of taxation, and the right to make by-laws; others had but one or two. The only feature common to all of them was the possession of corporate magistracy.[34]

An important power of most municipal corporations was that connected with real estate, which consisted of rights over land both within and outside the borough amounting to complete ownership in fee simple. Occasionally a borough might pay a fixed quit-rent in the form of a

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34. Sidney and Beatrice Webb, English Local Government, 11 volumes (London: Longmans, Green, and Co., 1908), II, 275-276.

vestigial burgage tenure harkening back to an earlier seignorial commutation of villein services into money payments, with accountability for such quit-rents to the Crown or other superior lord. Among the concessions obtained by many boroughs were certain rights associated with manorial customs such as administration of common fields, stinting of pastures, use of waste, rights to estrays, and escheats. These chartered corporations might also control real property acquired from religious houses, purchased from the Crown, or inherited from some public spirited individual for the fulfillment of a trust or for the common good. For these reasons the charters frequently expressly granted the corporations the right to hold, administer, and sell real property.

Originally the chartered boroughs usually had an interest in agriculture but frequently were communities of traders, craftsmen, and shopkeepers so that the association of producers in agriculture gradually became transformed into an association of producers in commerce and manufacturing. Because of this corporate jurisdiction over land gradually expanded to include control over trade. Partly because of this a great many boroughs became a "bundle of jurisdictions" relating not only to widely scattered territories but also to persons within the scope of their magistracy not necessarily associated with a specific geographic center. According to one authority on English local government, "It follows from our account of the aquittances, franchises, liberties, and immunities which comprised the total jurisdiction of a municipal corporation that the areas over which authority was exercised might differ widely for the different powers and might in some cases be susceptible of no geographical definition whatever."[35]

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35. Ibid., 288.

Throughout Europe and in England during the sixteenth and seventeenth centuries there existed a tendency toward absolute monarchies. It met resistance from two main sources: the aristocracy and the chartered corporations. In England the latter proved to be the more vigorous opponent as they strove to retain their independence from state control. For a time they succeeded in obstructing Crown policies in the latter seventeenth century through their control of parliamentary elections and by their judicial functions. After the restoration Parliament frequently found itself in opposition to royal policy as, for example, in the case of Charles II attempting to gain recognition for his right to grant exemptions from the Act of Uniformity in 1662 and ten years later in his efforts to establish toleration on his own authority. Later James II claimed far-reaching dispensing and suspending powers even beyond ecclesiastical affairs and pursued a policy of toleration strongly. In both instances Parliament resisted strenuously. Needless to say, the parliamentary forces recognized that the two monarchs were using every device to insure a loyal following. The first did so in the expectation of placing loyalists and Anglicans in important positions of power; the second to gain control of Parliament so that, through a policy of toleration, he could place Catholics in key positions of authority. Both kings were frustrated by a Parliament which could harken back to having gained new powers by deposing one king and restoring another and in which there was an inbred fear of a return to papal authority through the increasing catholicism of the Stuarts.

The position of the incorporated boroughs had one weakness: their privileges had been granted by charter and charters could be revoked by the same royal authority from which they came. To be revoked it had to

be proven legally that some limit of power had been exceeded. Human failing suggest that at one time or another every chartered municipality probably overstepped its authority if only on some minor technical point. Normally such actions could be overlooked as a pardonable error. In the context of the seventeenth century of the later Stuarts it was almost inevitable that Crown lawyers would assiduously seek for and uncover such trangressions in order to invalidate the charters of those boroughs which stood in opposition to Crown policies. They could then rewrite them and incorporate stricter controls over local offices, thereby insuring a favorable representation in Parliament.

A case in point is the revocation of the London charter in 1683. Quo warranto proceedings were brought against the city based on the alleged misuse and neglect of the powers of the mayor. The new charter permitted the king to remove local officials and subjected the appointment of new ones to his scrutiny. In this way he could control the selection of London's parliamentary representatives. The forfeiture of London's charter so upset most other corporations that they voluntarily surrendered their charters on the assumption that they were in some way negligent and thus open to a similar attack. During the last decade of Stuart rule a number of charters were thus renewed. In 1683-84 Charles II had many rewritten for boroughs which, by their actions, expressed dislike of his court; in 1686-87 James II repeated the process for those who proved to be hostile to the return of Roman Catholics to favor and objected to the dispensing powers of the Crown.[36]

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36. For a fuller discussion of this period in English history, see Sir George Clark, The Later Stuarts, 1660-1714 (2nd ed., Oxford, Clarendon

Given these circumstances, one does not have to look too far for reasons why Governor Dongan, a Catholic and friend of James II, initiated such sweeping changes in the colony of New York. By inclination he favored the upper classes and indicated this by granting large tracts of land to wealthy individuals, some of which were erected into manors such as Lloyd's Manor in the northwest corner of Huntington. He also favored the fur trading interests by granting Albany a new charter which gave that town a monopoly of the fur trade. At the same time he permitted the passage of a regulation in 1683 that all flour must be bolted or sifted in the town of New York, thus favoring the town's flour merchants by forcing the colony's farmers to market all their wheat and flour through a single channel. He further antagonized Long Island in 1686 when he imposed a ten per cent ad valorem duty on all European goods imported into the area from Boston. This especially affected the eastern towns of Southold, Southampton, and Easthampton which fell within the Boston trading sphere and which had found it more expedient to ship their products there in exchange for European goods than to New York. The net result was to bring into existence a strong group of aristocratic landholders and merchants favorable to his administration and, through reissuance of local charters, force the recalcitrant Long Island puritan oriented towns into submission.

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36 (cont.). Press, 1955), Chapt. IV, and Webb, English Local Government, vols. II, III. It should be mentioned that in 1688 James II had a son which gave rise to fears of the return of a Catholic monarchy. The invasion by William of Orange later in the year forced James to annul all the charters granted since 1679. London received back its old charter and other corporations then reverted to using their former charters. Only those which had been declared forfeit by legal judgments were irretrievably lost. On December 21, 1688 James II fled England.

This might explain also why Dongan introduced the trust concept into the charter of Huntington and other Long Island towns. Before giving control to a group of trustees, however, it was necessary to dispose of the interests of the first proprietors. This the charter did by recognizing the claims of the first settlers insofar as the land they had actually taken up and appropriated for their own purposes. As for all the rest of the land, "all and every such parcel or parcels, tract or tracts of land, remainder of the granted premises not taken up or appropriated to any particular person or persons by virtue of the before recited deed or patent (the Nicolls Patent)", it was to be held in trust "to the use and behoof of the present freeholders and inhabitants and their heirs, successors, and assigns forever in proportion to their several and respective settlements, divisions, and allotments as tenants in common..." Legal control of and responsibility for all the jurisdictions and real property was vested in a board of trustees whose perpetuity was insured by the provision that, "henceforth and forevermore there be and shall be trustees of the freeholders and commonalty of the town of Huntington aforesaid to be chosen and elected...who shall be and shall be called the Trustees of the Freeholders and Commonalty of the Town of Huntington..." Full authority was given to the trustees over all the property of the town, both real and personal, "to give, grant, release, alien, and assign and dispose of lands, tenements, hereditaments, and every other thing or things, act and acts, to do and execute by the name aforesaid..."[37] In effect, the trustees gained control over all the natural resources of the town of preserve or dispose of as they saw

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37. HTR, I, 532-543.

fit in the interests of the townspeople.

One must consider a variety of reasons why Dongan imposed a trust obligation on the town. Although there is little factual evidence by which to document his reasons, there is a sufficient number of rules in equity and legal practice regarding trusts to warrant their serious consideration. In passing it should be noted that Governor Dongan himself was familiar with the local customs and charters of English boroughs, and that he had access to sound legal advice in the person of Matthias Nicolls, former speaker of the Assembly, secretary of the province under Governor Nicolls, twice mayor of New York, judge in the court of assizes, and a lawyer by training.

When Dongan incorporated the trust into the Huntington charter he concentrated control of the town's property, and accountability for it, in the hands of nine individuals. In so doing he avoided the possibility of a few accumulating large land holdings, since the trustees were bound by law to act in the interests of the entire community and not just one or two in it. It is inconceivable that the beneficiaries of the trust, the freeholders, would allow the trustees to concentrate land ownership to their own exclusion. This would tend to work in favor of the governor who did not necessarily want to be confronted with a few powerful landholders on Long Island who might oppose his policies. The trust insured the perpetuation of a number of small landholders.

If, perchance, the trustees in some way acted contrary to the wishes of the govenor, whether it be in the nature of an obnoxious local ordinance or "misappropriation" of land, Dongan could take legal steps to "perfect" the trust. This is to say, he could bring an action in court, at least ostensibly in the interests of the cestui que trust (the beneficiaries),

to force the trustees to do or not to do something. In the same vein, he could, again through legal steps, have a trustee removed for cause. This might be in the nature of an action in chancery court for a breach of trust or some other good cause. In the extreme, he could move to have the trust revoked in the interests of all concerned to prevent an irreparable loss. In all these instances the burden of proof would rest with the governor. Nevertheless, it probably posed a sufficient threat to the community and enough of a guarantee in the mind of Dongan to justify the creation of a trust.[38]

Finally, with regard to trusts, such an arrangement would permit Dongan to collect delinquent quit-rents or taxes with greater assurance of success. If, for example, an individual account, or the town itself, was in arrears on payments of either sum, the governor could distrain against the property owned by the delinquent. If the amount collected in this manner proved to be inadequate to discharge the debt, action could be taken against the property held in trust. In earlier centuries as the concept of the trust gained acceptance and came under the jurisdiction of courts of equity, the trustee had legal ownership of any property held in trust; the beneficiary had only an equitable interest and, in essence, but a moral claim against the trustee. Lord Nottingham, Chancellor from 1675 to 1682 and known as the father of modern equity, modelled trusts on property rights at common law. One result was that claims against the beneficiary could be satisfied from the lands which others held in trust for him since they were then being considered, at least to some extent, as his own.[39]

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38. A detailed description of the Trust will be undertaken in a later chapter.

39. Alan Harding, A Social History of English Law (Baltimore, Md.: Penguin Books, 1966), 279-282.

In addition to the trustees the town government was enlarged to include a clerk, a constable, and two assessors, the latter taking their directions from the trustees themselves. Town meetings continued to be an outlet for the popular feelings and desires of the freeholders but the trustees did not have to seek out the consent of the townspeople for any actions they decided upon. Nevertheless, tradition prevailed and much of the town's business continued to be carried on in customary fashion, the basic restraint on the power of the trustees being yearly elections to maintain popular control.

The town did not immediately set about electing its first Board of Trustees because again events beyond its control intervened to forestall implementation of the charter provisions. Since 1686 James II had, through his governor, Edmund Andros, imposed an artificial and unwanted single colony status over much of New England, known as the Dominion of New England. New York was added to the Dominion in 1688 and in June of that year a son was born to the king and queen. In and of itself the latter event should have been a blessed one for the royal family but a general fear in England that the birth heralded the assurance of a Roman Catholic dynasty caused it to be otherwise.

With the birth of the prince relations between James and Parliament came near to the breaking point. Two years earlier the King had created an Ecclesiastical Commission to exercise jurisdiction in all cases having to do with spiritual or ecclesiastical matters and in 1688 that Commission found itself involved in a trial which was a direct challenge to James's toleration policies and efforts to return Roman Catholics to power. On April 27, 1688, the King issued a Declaration of Indulgence which, to all intents and purposes, suspended penal laws relating to

ecclesiastical affairs, and the Test Acts and oaths of allegiance were no longer to be applied to office holders. This exercise of the dispensing powers by the Crown opened the way for the appointment of dissenters, even Catholics, to high office and like its precedessor in 1687 relieved Quakers from continued oppression. Under the more recent proclamation seven bishops were ordered to trial for flaunting the authority of the king and for presenting a petition which strongly criticized James's actions. After a long and involved trial, which encompassed not only the alleged crime but also the royal powers of dispensation, the jury saw fit to return a verdict of not guilty. This together with the birth of the prince proved to be the catalyst which precipitated the Glorious Revolution.

Waiting across the Channel during all this was William of Orange and his wife Mary, the daughter of James II. During 1686 and 1687 William had become increasingly interested in affairs in England, primarily because of his long-standing dislike of the current alliance between Louis XIV of France and James II. Such an alliance coupled with Louis' intriques to dominate the Spanish empire of enfeebled Carlos IV spelled nothing but the extinction of the Netherlands in William's mind. Consequently when powerful men in England approached him with the proposal that he invade England and unseat James he did not discourage them. The birth of the prince and the acquital of the seven bishops convinced William he would have the popular support he needed to invade England successfully. The remaining months of 1688 were, therefore, taken up with organizing the necessary forces to cross the Channel and with keeping a careful eye on Louis XIV who, although he threatened the Netherlands, became increasingly preoccupied with larger events in

Europe.

It was not until late in September that James moved to save his shaky throne. In quick succession he dissolved the Ecclesiastical Commission and ordered the restoration of the charters of London and the other corporations which had forfeited them earlier. Unfortunately this did little to alter the worsening situation. Most people interpreted these moves as a temporary expedient in response to the fear of invasion and likely to be voided as soon as such fears had passed. On November 5 the threat of invasion became reality when William of Orange landed and assembled his forces at Exeter. Beset with indecisive counsel, a navy of questionable loyalty, and an army experiencing more desertions by the day, James left England on December 23, 1688. On February 12, 1689, William accepted the Declaration of Rights, later to become part of the Bill of Rights, and with it the crown of England then offered to him by the Lords and Commons.[40]

News of the revolt arrived in the colonies by way of a proclamation, dated in London February 16, requiring all subjects to declare their allegiance to King William and Queen Mary. The Massachusetts Bay colony reacted by arresting and imprisoning Governor Andros and dissolving the Dominion of New England; New York reacted with a revolt of its own. News of the overthrow of Andros arrived in New York on April 25, whereupon the provincial council held a series of meetings at which they determined to remain steadfast under Deputy Governor Nicolson.[41] However

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40. For an account of the reigns of James II and William III, see David Ogg, England in the Reigns of James II and William III (Oxford; Clarendon Press, 1955), especially chapt. VI-VIII.

41. New York Historical Society, Collections (1868), 272-290.

a number of towns in Westchester and on Long Island though otherwise. The abolition of the Assembly and the granting of commercial and trading monopolies to New York town had so embittered the small farmers and the commercial interests in the fledgeling seaports that they were ready for revolt.

On Long Island the eastend towns immediately dismissed the local officials appointed by the central government and elected others in their place. Huntington held a town meeting on May 3 at which time they elected Captain Thomas Fleet to discuss with Oyster Bay and Connecticut communities what course to take. They also selected Captain Epenetus Platt to act as the local military commander and voted that "in answer to Southold messenger that this town will readily comply with them to demand the fort and have provided a man to accompany and to join with them in the demand..."[42] Shortly thereafter the town joined Southampton and Easthampton in a declaration disavowing the recent government.[43] They were saved the trouble of further independent action when, on May 31, 1689, Jacob Leisler, an officer in the militia of New York, took possession of the fort in New York harbor and confronted the council with the demand that they relinquish the government to him until such time as proper authority was established by instructions from England.[44] Nicolson fled to England on June 11 to plead his cause, thus permitting Leisler to justify his actions by deriving his own authority from a letter of instructions to Nicolson which said, in part, that, "in his absence such as

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42. HTR, II, 29-31, May-June, 1689.

43. Ibid., 60, March 19, 1690.

44. Minutes of the Common Council of the City of New York, I, 207-213.

for the time being take care of preserving the peace and administrating the laws."

The Leisler Rebellion was essentially an internal struggle for control of the provincial government. It should not be interpreted as a democratic struggle against tyranny even thought Leisler had the support of merchants, artisans, and small farmers. Rather it should be looked upon as a violent reaction against a few who had become entrenched in positions of special advantage by those who simply wished to have similar advantages.[45] The new monarchy in England resolved the conflict, at least temporarily, by appointing a new governor, Colonel Henry Sloughter, who did not arrive in the colony until March of 1691. In the interim he dispatched Major Richard Ingoldsby with two companies of soldiers to reassert royal authority. Arriving in New York in January, 1691, Ingoldsby immediately issued a proclamation calling upon the people to recognize Governor Sloughter as the rightfully appointed authority and to disavow all rebellious elements. Leisler rejected Ingoldsby's demands claiming he was not acting with proper authorization, but, because of disaffection with his brief rule, the people failed to support him. In March Leisler was imprisoned. His trial on charges of treason followed quickly. Just as quickly he was found guilty and executed.

Huntington still had not received its new patent. On April 15, 1690

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45. Detailed accounts of the rebellion can be found in Charles M. Andrews, The Colonial Period of American History, III, 124-137; Charles M. Andrews, Narratives of the Insurrections, 167; Michael G. Hall et al, The Glorious Revolution in America (Chapel Hill, N.C., 1964), 9-79; Brodhead, ed., Documents Relative to the Colonial History of the State of New York, II; Laws of the Colony of New York, I, 219-220; Jerome R. Reich, Leisler's Rebellion: A Study of Democracy in New York, 1664-1720 (Chicago: University of Chicago Press, 1953).

the town had sent an address to Leisler submitting to his authority and in December petitioned him for issuance of their patent. On February 5, 1691, the Dongan patent was duly recorded by the council in New York.[46] Six weeks later Huntington selected Elephelet Jones and Epenetus Platt to go to the city to welcome the new royal governor. Although the town neither received its patent immediately nor set about electing trustees, its title to lands in Huntington was confirmed by an act of the new assembly on May 6, 1691, entitled, An Act for Settling, Quieting, and Confirming unto the Cities, Towns, Manors, and Freeholders Within This Province Their Several Grants, Patents, and Rights Respectively.[47] And, to amplify an earlier section of the Duke's Laws, the assembly of 1710 passed An Act for the Better Settlement and Assurance of Lands in This Colony, which stated that all deeds, conveyances, and writings having to do with title to real property would be good and effectual in law if they were duly acknowledged and recorded in the office of the Secretary of the colony or in the county records.[48] By virtue of the act of 1691 Huntington's patent of 1688 as well as the patents and deeds of other towns and individuals were "forever deemed, esteemed, and reputed good and effectual charters, patents, and grants authentic in the law against their Majesties, their heirs and successors, forever, notwithstanding of the want of form in the law, or the nonfeasance of any right, privilege, or custom which ought to have been done heretofore by the constitutions and directions contained in the respective charters,

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46. HTR, II, 73-74, 84-85, 89-90.

47. Laws of the Colony of New York, I, 224-225, May 6, 1691.

48. Ibid., II, , October 30, 1710.

patents, and grants aforesaid."

Huntington continued to feel uneasy about the fact that they had no tangible proof of their rights. The original Nicolls patent of 1666 had been superceded by the Dongan patent of 1688, but the latter, although recorded, had never been formally issued to the town. To the townspeople this was an untenable position the consequences of which might jeopardize their very existence. Therefore, they applied once again for a written confirmation of their most recent patent. In the interim, although the town had not yet elected trustees, it did continue to function under the terms of the two earlier patents and each year elected three townsmen, a constable, and two fenceviewers to run their affairs.[49] Finally, on October 5, 1694, Huntington received its last royal charter, which became the established basis of its government for the remainder of the colonial period.

The Fletcher patent of 1694 in essence repeated the terms of the Dongan patent without, however, referring to its immediate predecessor. It reiterated the Nicolls patent in its entirety and then in phrases identical with those of Dongan reaffirmed the town's boundaries, with specific reference to their altered limits as a result of the order of the Court of Assizes in 1676. Now the town was "bounded on the west by a river called and known by the name Cold Spring, a line running south from the head of the said Cold Spring to the south sea, and on the north by the Sound that runs between our said island of Nassau and the main continent, and on the east by a line running from the west side of a pond called and known by the name of Fresh Pond to the west side of

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49. HTR, II, 98, 106. April 2, 1692; April 3, 1693.

Whitman's dale or hollow, and from thence to a river on the south side of a neck called Sampawams, and from the said river running to the said south sea."[50] It conferred all the rights, privileges, and titles found in the patent of 1688 and added that the trustees of the town had the privilege of purchasing all lands then remaining in Indian hands. The earlier distinction between appropriated and unappropriated lands were restated and the powers, responsibilities, and perpetuity of the trustees reaffirmed, the only significant difference being that the trustees were reduced in number from nine to seven.

Even though the new patent was not executed until October, the town elected its first board of trustees on April 9, 1694 indicating that negotiations had progressing sufficiently well with the new governor to set the minds of the townspeople at ease. The new trustees chosen by the town had "the ordering and managing of all town business til the town does receive the patent if it be within the year."[51] At the same time a constable, a tax collector, two assessors, and a "supervisor to go down the Island about county affairs" were also elected.

To all intents and purposes the trustees seem to have acquired control of all the power in the town. Nevertheless, the town meetings persisted as a major vehicle of control and expression of the wishes of the freeholders and commonalty. This political mechanism had been

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50. HTR, II, 140-151.

51. HTR, II, 134-135; 140-160. The town records list eighty-four persons as having contributed to the cost of the patent, £56.18.03, among whom was one woman, Mrs. Platt, who paid in £2.14.03. This list is of value as an indicator of the adult male population of the town in 1694 and important in that a partial adjustment of hundred pound rights was made from it (151-154; 154-160).

formalized in 1691 when the General Assembly enacted that,[52]

> The freeholders in every respective town within this province are hereby empowered and authorized to meet and assembly themselves together at such times and places as are appointed and expressed in their respective grants and patents, and when so assembled to make, establish, constitute, and ordain, from time to time, such prudential orders and rules for the better improving of their respective lands in tillage, pasturage, or any other reasonable, as shall be by the majority of freeholders so assembled or convened as aforesaid to be thought good and convenient.

Neither the trustees nor the people gained exclusive control over town affairs and the distribution of land, even though the voters had delegated such authority to the trustees in 1694. There are innumerable references throughout the later history of the town that each regulated local affairs and each passed ordinances and authorized the taking up of land by individuals. Gradually, however, as the quantity of land owned by the trustees diminished, they assumed more and more the control of its use and distribution.[53]

Throughout the colonial period the trustees continued to govern many of the affairs of the town and manage and dispose of town property. Gradually, however, certain of their functions were taken over by officials whose duties were legislated by acts of the General Assembly. One of the first of these removed from the trustees the duty of laying out and maintaining local highways. By the latter part of the eighteenth century these powers were vested in three surveyors and a commissioner of highways. Other local offices were added as the need for them arose

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52. Colonial Laws of New York, I, 225-226.

53. HTR, II, 285-295; 300-302, 305-306 for the period from 1705-1711; 449-460 for the 1760's. See also HTR, III, 299, 566-568, 612 for examples in the nineteenth century.

so that by the end of the colonial period there were supervisors, tax assessors, overseers of the poor, overseers of highways, constables, fenceviewers, and sheriffs who frequently derived their authority from provincial legislation. Nevertheless, the trustees maintained firm control over the land and continued to convey the common lands, both in the interior and along the shore, by deed in fee or by lease to individuals, prescribing rules and regulations for the latter type of conveyance and use of such property, jealously guarding the town's interests and rights in them.

Chapter II

The Eighteenth Century Trustees and the Land

By the end of the seventeenth century the control of the government and of the unappropriated lands in Huntington had undergone a fundamental change. When the first proprietors acquired the title to the First Purchase from the Oyster Bay men they became not only the owners of the land but also the keepers of law and order in the little independent community. The proprietors exercised these dual functions through the town meetings, at which times they passed ordinances for the well-being and orderly functioning of the community, sat as a court to judge civil and criminal offenses, and parcelled out the unappropriated lands within the bounds of their purchase amongst themselves or to acceptable newcomers. All those in possession of any real property, the freeholders, had the franchise and could hold office, such offices being created to handle the daily affairs of Huntington subject to the majority decisions of all the proprietors in town meeting assembled.[1]

The Nicolls Patent of 1666 did little other than to formalize and legalize the situation. At the same time the Duke's Laws created certain local officials not unlike those already in existence and elaborated upon their duties and functions. Governor Nicolls' right to do this, of course, was founded in the 1664 charter from Charles II to James Duke of York, which gave to the royal proprietor,[2]

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1. The terms "freeholder" and "proprietor" are construed as being synonymous during the early years of Huntington since nonproperty holders were negligible and one could not live there without being accepted and given property, holding it in the same status as the original purchasers.

2. Colonial Laws of New York, I, 1-5.

> ...power and authority to correct, punish, pardon, govern, and rule all such the subjects of us, our heirs, and successors, as shall from time to time adventure themselves into any parts or places aforesaid or that shall or do at any time thereafter inhabit within the same, according to such laws, orders, ordinances, directions, and instruments as by our said dearest brother or his assigns shall be established, and in defect thereof in cases of necessity according to the good discretions of his deputies, commissioners, officers, or assigns, respectively...so always as the said statutes, ordinances, and proceedings be not contrary to but as near as conveniently may be agreeable to the laws, statutes, and government of this our realm of England.... Furthermore, it shall and may be lawful to and for our said dearest brother, his heirs and assigns, by these presents, from time to time, to nominate, make, constitute, ordain, and confirm by such name or names, style or styles as to him or them shall seem good and likewise to revoke, discharge, change, and alter as well all and singular governors, officers, and ministers...and also to make, ordain, and establish all manner of orders, laws, directions, instructions, forms, and ceremonies of government and magistracy fit and necessary for and concerning the government of the territories ...so always as the same be not contrary to the laws and statutes of this our realm of England but as near as may be agreeable thereto.

By proclamation on June 13, 1665, Deputy Governor Nicolls revoked the Dutch and established the English form of government and laws in accordance with the charter provisions.[3] Shortly thereafter he issued the first town charters. In the case of Huntington the proprietors were granted all the lands they claimed to be within the town's limits based on purchases from the Indians. Although the town was granted "all the privileges belonging to a town within this government", such privileges were not spelled out in the charter.

The Duke's Laws were the legal instrument whereby the town government became formalized and the "privileges" of each town defined. Whereas formerly three magistrates and the town meetings ordered town affairs now the offices of constable, overseers, fenceviewers, church wardens, a

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3. Ibid., 100-101.

captain, lieutenant, and ensign for the local train band, viewers of pipe staves and viewers of casks where applicable, and justices of the peace for the county.[4] All but the first two local officers were appointive. The town's "privileges" can only be construed, by implication from the body of laws, as consisting of the duties and powers of the various elected or appointed officials, the right to pass purely local ordinances (subject to the review of the Court of Assizes), and the rights of the proprietors to control the use and distribution of their lands. Nowhere in the charter or the laws is there mention of bodies corporate and politic in the sense of a traditional English chartered borough. In other words, the governor created in Huntington a "closed" borough in that no one could live in or own property in the community without the consent of the existing proprietors, and an "open" borough in that all but a very few in the town were freeholders and thus could vote in all town affairs.[5] Both town meetings and town courts regulated the affairs of the town. The former, presided over by the constable and overseers, concerned itself with local government and land distribution; the latter, made up of the constable and at least three overseers, sat as a civil and criminal court in petty causes.[6]

Only after Governor Fletcher issued a patent to Huntington in 1694 did local government and land management assume the form it would retain throughout the colonial period. One could argue that the intermediate

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4. Ibid., 21, 24-26, 43, 50, 56, 58.

5. For a complete description and analysis of closed and open boroughs see Webb, English Local Government, II.

6. Colonial Laws of New York, I, 63, 74.

patent, that from Thomas Dongan in 1688, set the trend, but the records of the town show that the Dongan patent was only belatedly recorded and even then it was done so by a renegade governor with little or no status under either the Duke's charters of 1664 and 1674 or for that matter subsequent royal instructions from James II. There is an element of confusion in the town records as to laws to follow and patents to abide by as a consequence of Leisler's Rebellion. Keeping in mind that the townsmen had voluntarily submitted their Nicolls patent to Dongan for reissuance and had agreed to the terms of the new patent but had not received a recorded copy of it, then it becomes clear why, during the unsettled years of the rebellion, they reverted to earlier laws, vacillated about supporting Leisler, and petitioned for a confirmatory charter from the new royal governor, Benjamin Fletcher. On May 3, 1689, the town voted full power to Captain Epenetus Platt "to act as civil and military head officer in this town, he applying himself for his rule to such of General Nicolls' laws as he...shall see cause to make use of...as to the administration of civil justice he is to apply himself to the English laws."[7] Later, in March of the following year, they sent representatives to confirm with other towns on the question of whether or not to submit to Leisler, but even then did not do so fully, as explained in a letter to the governor on April 5, 1690.[8] Further support for the contention that the town did not consider itself under the provisions of the Dongan charter are found in a petition to Leisler on December 16, 1690, requesting the return of their Nicolls patent and confirmation of it.[9]

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7. HTR, II, 30-31.

8. Ibid., 60, 73-74.

9. Ibid., 84-86.

Further doubt can be cast upon the legal status of the Dongan charter by reference to an order-in-council passed in New York on February 5, 1691, a few days before Leisler was unseated. Responding to the petitions of the town to return its patent, and there is every indication they meant the Nicolls patent, the Council ordered that, "Upon reading the request of Epenetus Platt, Esq., in behalf of the Town of Huntington relating the patent of said Town. Ordered that the said patents does remain in the Secretary's office and that it be recorded, if it is desired by the Town."[10] Because of this both the Nicolls and the Dongan patents are of record today in the New York State Secretary of State's office, but also because of the confusion at that time Huntington ignored the latter and continued to act as if only the earlier instrument existed. It is understandable, then, that the townspeople felt insecure about their patent rights, despite the passage of the law in 1691 confirming all patents and land grants, and voted to petition for a new patent on December 1, 1693.[11]

By April 9, 1694, negotiations for the new patent had progressed to the point where the town felt it could function under its provisions, even though the patent was not executed until October of that year.[12] Seven trustees were chosen to "have the ordering and managing of all town business til the town does receive the patent if it be within the year." In addition, a constable, a collector, two assessors, and a supervisor were elected, indicating that some of the older offices under the Duke's Laws

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10. Ibid., 89-90.

11. Ibid., 125-126.

12. Ibid., 134-135.

had been abolished and that the townsmen would be governed by the new board of trustees rather than the old form of a constable, who was now a law enforcement officer, and overseers.

It seems conclusive, then, that the Fletcher patent and not the Dongan patent is the proper one to consider as being the one to order the affairs of Huntington. Only sentiment built up over the centuries, and a lack of understanding of events surrounding the two instruments has permitted the Dongan patent to assume the stature it now has. In reality the Fletcher patent should be accorded that privilege and status. What, then, did this latter patent accomplish? It must be clearly understood before one can appreciate its significance in the affairs of Huntington during the eighteenth century and later.

It is quite possible that the Fletcher grant repeated the terms of the Nicolls patent as "entered and recorded in our Secretary's office of our said court", and not those of the Dongan patent simply because the legality of the latter was in question at that time. Nevertheless, the Dongan patent is preserved virtually in tact since the 1694 patent is modelled so closely on its 1688 predecessor as to be almost indistinguishable except for minor variations in wording which in no way alter the meaning and importance of the earlier document as reiterated in the 1694 version.

Specifically the Fletcher patent recognized that seven of the freeholders and inhabitants of Huntington, "in behalf of themselves and the rest of our loving subjects, the freeholders and inhabitants of our said town of Huntington", had petitioned for a grant and confirmation of the premises of the Nicolls patent, included in which was to be a redefinition of the town boundaries consistent with the 1676 court of assizes decision

granting certain eastern lands to Smithtown.[13] The petition requested the governor "to make, erect, and establish all our loving subjects, the inhabitants and freeholders of our said town of Huntington, within the limits and bounds next above expressed, into one body politic and corporate in deed and name."[14] The Governor recognized the reasonableness of the request, but rather than erect the entire body of freeholders and inhabitants into a body corporate and politic, he designated the seven petitioners as trustees and erected them, as such, into a body corporate and politic, thus repeating the Dongan patent in the following words,[15]

> Which reasonable request we being willing to grant, now know ye that of our especial grace, certain knowledge, and mere motion, we have given, granted, ratified, and confirmed, and by these presents do, for us, our heirs, and successors, give, grant, ratify, and confirm unto the said Joseph Bailey, Thomas Wickes, Jonas Wood, John Wood, John Wickes, Thomas Brush, and John Adams, freeholders and inhabitants of our said town of Huntington, hereby erected and made one body and politic and corporate, and willed and determined to be called by the name of the Trustees of the Freeholders and Commonalty of our said town of Huntington, and their successors, all the afore recited tracts and necks of land....together with all and singular the houses, messuages, tenements, buildings, mills, mill dams, fencings, enclosures, gardens, orchards, fields, pastures, feedings, woods, underwoods, trees, timbers, commons, or pastures, meadows, marshes, swamps, plains, rivers, rivulets, waters, lakes, ponds, brooks, streams, beaches, quarries, trees, harbors, highways and easements, fishing, fowling, hunting, and hawking, mines and minerals (silver and gold mines excepted), and all other franchises, profits, benefits, commodities, and hereditaments whatever to the said tracts of land, within the limits and bounds next above mentioned, belonging or in any way appurtaining or therewithal used, accepted, reputed, and taken to belong or in any ways appurtaining, to all intents and purposes and

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13. HTR, II, 142-143. The complete Fletcher patent is reproduced in Ibid., 140-151.

14. Ibid., 143.

15. Ibid., 143-144.

> constructions whatsoever; and also all and singular the rents, arrearages of rents, issues and profits of the said tracts of land and premises heretofore due and payable.

All this was granted to the seven in fee simple. In other words, they became the town proprietors, but superimposed upon the proprietorship was a trust obligation requiring them to act with respect to the grant for the use, benefit, and behoof of all the freeholders and commonalty of the town. These proprietors and their successors were granted the sole license to purchase from the Indians any land within the town and hold it, with all the other recited tracts of land and premises, as trustees,[16]

> to and for the several and respective uses following, and to no other uses, intents, and purposes whatsoever; that is to say, as, for, and to concerning all and singular the several and respective parcels of land and meadow, part of the grant, and premises in any ways taken up and unappropriated by particular divisions and allotments, before the day of the date hereof, unto the several and respective present freeholders and inhabitants of our said town of Huntington, by virtue of the before recited deed or patent, to the only use, benefit, and behoof of the freeholders or inhabitants respectively and to their several and respective heirs and assigns forever; and as, for, and concerning all and every such parcel or parcels, tract or tracts, neck or necks of land, remainder of the granted premises, not taken up or appropriated to any particular person or persons by virtue of the before recited deed or patent to the use and behoof of the present freeholders and inhabitants, their heirs, successors, and assigns, forever, in proportion to their several respective settlements, divisions, and allotments, as tenants in common without any manner of let, hindrance, or molestation had or reserved upon pretence of joint tenancy or survivorship...

Here a clear distinction is made between all lands actually appropriated and divided, those which had been taken up and not yet appropriated, and those yet to be bought from the Indians. The first category is, by inference, recognized as being held in fee by individuals in the town;

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16. Ibid., 144-145.

the second appears to be the remainder of all land previously acquired by the townsmen as proprietors in the name of the town and not yet parcelled out based on hundred rights; and the final category encompasses all that which would be bought after the date of the patent in the name of the town. Obviously what this clause did was to recognize that the trustees could buy land from the Indians in the name of the town, or grant permission to individuals to purchase Indian lands for themselves (as will be seen later). It also formalized the rights of all the townspeople in existing unappropriated land by recognizing such rights as equitable claims and not actual ownership of a given tract. In effect this approved the continuation of hundred pound rights and the practice of dividing up the land as the town had in the past.

The patent clearly distinguished between the seven selected as trustees and the whole town, the freeholders and commonalty (inhabitants), for whom they had been chosen trustees,[17]

> ...the said freeholders and inhabitants (the seven men), freemen of our town of Huntington aforesaid, commonly called by the name of the Freeholders and Inhabitants of our said town of Huntington, or by whatever name or names they are called or named, and their heirs and successors, forever hence forward, shall be one body corporate and politic in deed and name by the name of the Trustees of the Freeholders and Commonalty of our town of Huntington...and by these presents do, for us, our heirs and successors, really and fully make, erect, declare, constitute, and ordain that by the same name of the Freeholders and Commonalty of the town of Huntington they have succession forever and that they and their successors, by the name of the Trustees of the Freeholders and Commonalty of the town of Huntington, be and shall be forever in future time persons able and capable in the law to have, perceive, receive, possess, not only all and singular the premises but other messuages, lands, tenements, privileges, jurisdictions, franchises, and hereditaments of whatsoever kind or species they shall be,

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17. Ibid., 146.

> to them and their successors in fee forever or for a term of a year or years, or otherwise, of whatsoever manner it be;

This had the effect of making only the named trustees and their successors a body corporate and politic so that no other group in the town could be so construed. As such they could.[18]

> plead and be impleaded, answer and be answered unto, defend and defended, they are and may be capable in whatsoever place and places and before whatsoever judges or justices or other persons, officials of us, our heirs and successors, in all and all manner of actions, plaints, suits, complaints, causes, matters, and demands whatsoever...

The final striking feature of the Fletcher patent, one which was detailed also in the Dongan patent, is that the trustees were given control of the governing of the town for all practical purposes, thus displacing the older constable-overseers form.[19]

> the Trustees...shall and may...assemble and meet together in the town house of the said town or in such public place as shall be from time to time appointed to make such acts and orders in writing for the most orderly doing of the premises as they, the said Trustees of the Freeholders and Commonalty of our said town of Huntington, and their successors, from time to time shall and may think convenient; so always as the said acts and orders be in no way repugnant to the laws of our kingdom of England and of this our court which now are or hereafter shall be established and that be not in any ways against the true intent and meaning of these presents.

Such acts were to be approved by a majority of the trustees and no fewer than five were necessary for a quorum. The trustees, under the patent, became commissioners with the power to execute all functions of that office and to levy the taxes necessary to defray the town's expenses.[20]

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18. Ibid., 146-147.

19. Ibid., 147-148.

20. Ibid., 149.

The patent rounded out administrative structure of the town government by creating the positions of constable, town clerk, tax assessors, and treasurer as elective offices, with the exception of the last one which was, since the patent does not state otherwise, appointive.[21] These offices were subject to the authority of the trustees, the justices of the peace, and other provincial officials as the laws of the colony dictated.

To draw an analogy with traditional English practices, the Fletcher patent created in Huntington what was tantamont to an "open" municipal corporation in England. It included in its provisions the one universal feature of all English municipal corporations, whether they be open or closed, that of the possession of corporate magistracy. Yet it avoided creating a close corporation such as Penzance, Leeds, and Coventry wherein a small self-perpetuating clique exercised exclusive control over the affairs of the town and the real estate, beholden to none but themselves,[22] and, instead, made of it an open corporation, such as London and Norwich,[23] wherein the voice of the freeholders would be the determining factor in all decisions of the trustees who were answerable to the beneficiaries of the trust and replacable at yearly elections.

Even though the first election of trustees took place on April 9, 1694, the first official act of the board of trustees is not recorded until almost a year later. Finding that stray swine in the woods, marshes, and corn fields proved to be too destructive, on February 27, 1695, the trustees

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21. Ibid., 148-149.

22. Webb, English Local Government, III, ch. VIII.

23. Ibid., III, ch. IX.

ordered that all swine had to be kept confined and that the owners of those left to run loose would be liable for damages done by his swine to the property of others. The following month the order was extended to include rams and cattle. They also saw fit to pass an ordinance prohibiting the cutting of timber on common lands or peeling bark off trees, adding that firing the woods on any man's property must have prior approval of the trustees.[24] Apparently the trustees had moved quickly to assume their new duties and responsibilities under the new patent in taking over the functions formerly reserved to the town meeting. In years past the townspeople at their frequent town meetings passed all such orders and regulations; hereafter such meetings would be in the nature of advising the trustees and instructing them as to the desires of the people in the management of local affairs and the common lands. Under the new charter it is doubtful whether town meeting resolutions had any binding force.[25]

Throughout the eighteenth century the elected trustees continued to regulate the affairs of the town, involving themselves in matters ranging from hiring a person to keep the sheep for the town[26] to those having to do with the division of the proceeds from the sale of lands and the construction of a new church.[27] How completely the townsmen accepted the trustees is reflected in the controversy over the location of a new church. Normally one would expect such matters to be determined by the

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24. HTR, II, 169-171.

25. Ibid., 169n.

26. Ibid., 295; April 18, 1707.

27. Ibid., 305-306; May 1, 1711.

church members themselves. But, considering that during this period the church was the heart of the community and in a sense public and the concern of all, it is little wonder that the trustees approved the petitions of individuals to build galleries in the church[28] and the people voted to leave the management of the building of a new meeting house to them.[29] As late as 1773 the town voted to authorize the trustees to sell certain lands and use the proceeds to purchase new parsonage lands.[30]

Among the duties of the trustees can be numbered the laying out of new roads, since it necessarily involved common lands, and the regulation of local natural resources. Roadways usually developed by the simple process of the people constantly using certain convenient paths for their everyday comings and goings. After long usage they were assumed to be public ways and the trustees then formally ordered the surveyor of highways to lay out a clearly defined road.[31]

In their efforts to serve the public interest the trustees recognized that local natural resources were limited and, by virtue of their patent rights, their exploitation restricted to the inhabitants of the town. Chief among the patent rights in this respect was that of fishing, hawking, hunting, and fowling. By the middle of the century it became

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28. Ibid.

29. Ibid., 303-305; 321-327. This resulted in a sharp division between the east and west ends of town over the location of the new meeting house and was resolved only after three arbitrators from outside were chosen to settle the differences. Evidently the trustees were not absolute in their power, but very much subject to local pressure groups.

30. Ibid., 521-523; May 4, 1773.

31. Ibid., 350; February 8, 1723.

apparent to the trustees that outsiders freely made use of these resources for their own needs and besides reducing the quantity available to the inhabitants, encroached upon a purely local right. In 1757 and periodically thereafter the trustees passed ordinances imposing a fine on any outsider who fished or hunted within the town.[32] The first ordinance was broad in scope, prohibiting strangers from fishing and fowling anywhere in the town, but later ordinances became more specific in efforts to save shellfish for Huntington residents only.[33]

Probably the most important function of the trustees was the management of the common and unappropriated lands in the town. Of primary concern both to them and the town as a whole was the division of lands based on hundred pound rights. First, they must take into account the claims of the First Purchasers, their heirs and assigns; next they had to consider all lands purchased from the Indians but as yet unappropriated; and, finally, they had to make decisions as to additional acquisitions of Indian lands.

The Nicolls patent had recognized the claims of the first purchasers and their associates to "all that land that already have been or hereafter shall be purchased for and in the behalf of the town of Huntington." All the land within the patent limits was to "belong to the said town of Huntington, as also all havens, harbors, creeks, quarries, woodland, meadow, pastures, marshes, lakes, fishing, hawking, hunting, and fowling, and all other profits, commodities, emoluments, and hereditaments...to the

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32. Ibid., 434, May 3, 1757.

33. Ibid., 449-450, Nov. 10, 1761; 483, May 7, 1765; 503, May 2, 1769.

proper use and behoof of the said patentees and their associates, their heirs, successors, and assigns forever." In interpreting the extent of land ownership under this patent, it should be realized that there were two categories. First there was the original purchase of 1653 which embraced approximately six square miles in the northwest corner of the town. The first purchasers and whomever else they granted equal right with themselves had rights in this land as well as fee ownership of whatever portions of it had been divided amongst themselves as home lots or as hundred pound allotments. The remainder of the land mentioned in the patent belonged to all the patentees in Huntington, including lands other than the above and purchased from the Indians beginning with the 1656 acquisition of the northeast quarter of the town.

The Fletcher patent, as a confirmation and exemplification of the 1666 patent, took this into account. Since the land was held by certain named patentees for the use and behoof of all the patentees it became a simple process of elevating seven successors of the named patentees into the role of trustees who would then, as trustees, have the land for the use and behoof of the remaining patentees. Such a move did not materially alter the status quo. However the 1694 patent clearly distinguished between the original lands and those acquired later by reserving the lands already taken up but not yet appropriated prior to the date of the patent to the use, benefit, and behoof of the original freeholders or inhabitants respectively and to their several and respective heirs and assigns as administered by the trustees. The remainder of the granted premises not taken up or appropriated was to be administered to the use and behoof of the present freeholders and inhabitants. Strictly speaking, the trustees had to maintain a distinction between the

two areas and when dealing with the former to do so for the first purchasers, their heirs and assigns. Also they had to differentiate between those lands and the balance of the territory insofar as the equitable rights of all the freeholders, including the descendants and assigns of the first purchasers, might appear. It is questionable whether the first purchasers or their heirs and assigns could convey any of their common and undivided lands without the approval and permission of the trustees. Regardless of the lack of evidence in the town records, it is likely that the proprietors of the Old Purchase did in fact occasionally meet as a group and convey land as indicated by an entry on February 14, 1791, "At a meeting of the Original Proprietors of the Town of Huntington legally notified and held...", as which time they granted a gore of land south and east of Commack to John Hartt.[34]

The practice of keeping their lands distinct from other lands persisted into the nineteenth century and accounts of income from thatch grass leases were kept in a separate book.[35] The problem of ownership and control was resolved in 1810, presumably because the town trustees had conveyed large quantities of old purchase lands and it was becoming more difficult to keep records of all their heirs and assigns eligible to receive any of the profits of sales. In that year those holding rights in the undivided lands, meadows, and marshes quit claimed their rights, titles, and interests in all the lands sold by the trustees in which they might have any claims.[36] Further support for the contention

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34. HTR, III, 159-160.

35. "Thatch Draw, April 6, 1805, Belonging to the proprietors of the Old Purchase", in HTR, III, 220-221.

36. Ibid., 250-251, 1810.

that all individual claims by individuals in the Old Purchase were extinguished and vested in the trustees can be found in deeds of land in the Old Purchase to Prusil Woodward in 1810 and to Selah Wood in 1811 and in the many leases of marshes, thatch beds, and dock rights along the shoreline of the Old Purchase executed by the trustees.[37]

Acquisition of Indian lands spanned almost one hundred years, much of it accomplished before the creation of the trustees. During what can be termed the proprietary period most of the necks on the Great South Bay were purchased by either the town for all the freeholders or by individuals for their own use. In the case of the former, those who contributed to the purchase price participated in any divisions of the land; as for the latter, they obtained it for their own uses but only after either the town or the governor had given permission to buy the land.[38] Because of the confusion over such purchases, in 1689 a public protest was voiced at a town meeting against people buying Indian land without permission. At a subsequent meeting the townspeople voted that no person could purchase these lands without first obtaining the consent of the town.[39]

Once the trustees assumed control the pattern of land acquisition became one of town purchases. Only two purchases by private persons are recorded, that of Jacob Conklin in 1702 and of Joseph Wood the following

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37. Ibid., 251-254, June 7, 1810; April 30, 1811. Leases, generally, will be discussed in detail below.

38. HTR, I, 178, April 12, 1671; II, 33-37, July 12, 1689; 48-49, November 13, 1689; 54, December 8, 1689, for examples of private purchases. HTR, II, 39-40, October 31, 1689; 41, November 5, 1689; 55-56, December 9, 1689; and 95-97, September 25, 1691 for examples of town purchases of Indian lands.

39. HTR, II, 53, 56-57, December 7-10, 1689.

year for land along what is now the Babylon shore.[40] The normal procedure was for the trustees to designate one or more townsmen to negotiate with the Indians, reserving rights in such lands only to those who had contributed to the price. Successively, two purchases were made in 1698, one in 1699, two in 1700, one in 1701, two in 1702, three in 1705, and one in 1755.[41] Still not sure that all Indian titles to lands within Huntington had been extinguished or conveyed to the town, in 1762 the trustees sought out Ned and Charity Lane and Betty Squaw, the only known surviving descendants of Asharokan, Sachem of the Matinecocks in 1656, and had them quit-claim any rights they might still have in the lands between Cow Harbor (Northport) and the Smithtown River.[42] The few paltry rights that might have remained to these three Indians consisted of planting and hunting. The reasons for this act could only be to divest the three Indians of all their claims, however nebulous they were or however little they probably asserted them, since all the land mentioned in the conveyance, including Eaton's Neck, had long since been disposed of as a result of the original deed of 1656. Thus did the noble christians settlers finally divest the poor savage Indian of the vestiges of his independence. It took one hundred and six years to do it, but they did do it!

Once the trustees had taken title to land they then had to decide how it was to be divided amongst the purchasers according to hundred

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40. Ibid., 281, 282.

41. Ibid., 218, 221, 257, 259, 263, 264, 267, 272, 275, 278, 285, 289, 291, 419.

42. Ibid., 450-451.

pound rights. Previously such decisions had been arrived at in the town meetings based on the size of the division land, the number of purchasers, and the total price of the land. In 1689, for example, the town voted to grant to all those having hundred rights from the town an equal proportion with the first purchasers, which was to be four and a half acres per hundred. In addition they alloted twenty acres for each person besides his present holdings except for the "gift hundreds" which were to receive twelve and a half acres and then to be equal to all others thereafter.[43] A year later they voted to buy three necks of land in the South Bay and allow all freeholders in the town to have like proportions "provided they pay alike; but any person or persons that do not pay their full proportion according to time and specie engaged shall have no interest in it but those that pay for it shall have it."[44] The trustees adhered to established practices when it came to parcelling out the land. On October 4, 1698, a decision was reached to purchase the Baiting Place in the southwest corner of the town. They established an assessment rate on the existing hundred pound rights to raise the purchase money and eighty four persons were thus taxed. Many of them exercised their rights and took up land in the division so that by 1768 only thirty-six individuals still claimed rights, most of whom signed an agreement to divide the land according to each man's recorded equity.[45]

As the population increased and the undivided land dwindled the trustees found it necessary to change the value of hundred pound rights

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43. Ibid., 47, November 11, 1689.

44. Ibid., 81-82, October 15, 1690.

45. Ibid., 227-230, 493-494, 496-497, 500-501.

accordingly. Early in the century the divisions were generous, the trustees noting in a memorandum to themselves that former divisions consisted of forty-six acres to a hundred except for gift hundred which contained thirty-eight and a half acres. In 1717 they revised the figure to ten acres in the Old Division.[46] Subsequently they found it necessary to lower the figure even further for the area between Cold Spring Harbor and Cow Harbor (Northport) from ten acres in 1723 to five acres in 1738, four acres in 1739, and two acres in 1754.[47] Generally the same trend took place for the land east of Cow Harbor, so that by mid-century a sizable proportion of the first two purchases in the 1650's had come under private ownership.

On occasion the trustees either sold land to or acquired land from individuals in the town. As early as 1696 they agreed to exchange lands with Thomas Fleet and Samuel Smith since it involved hundred rights and Smith wished to have it in a place other than that allotted to Fleet.[48] In the same year they granted to Eliphalet Jones ten acres in the west neck at his request, "provided it be free from former grants and not prejudicial to highways or watering for cattle," the grant being made by and with the consent of the trustees.[49] Even the trustees found themselves party to a land exchange as in the case of Joseph Ridgeway who, in exchange for a parcel, conveyed to the trustees a meadow near a new dam at the head of Huntington Harbor, and in 1757 they agreed to

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46. Ibid., 332, 343.

47. Ibid., 350, 382, 384, 418; 349, 382, 384 for the trend in lands east of Cow Harbor.

48. Ibid., 192.

49. Ibid., 191, July 3, 1691.

an exchange of land with Dr. Zophar Platt so that he could consolidate his holdings around his dwelling house.[50] Naturally the proceeds of any land sales were eventually divided up in one way or another among all those claiming hundred pound rights. Such was the case in 1713 when the trustees divided among one hundred sixty-two owners of hundred rights the income of £79.19.11 from a sale of land to Jacob Conklin.[51]

Frequently the trustees were called upon to dedicate vital areas as perpetual commons in order to reserve them for the use of all the inhabitants of the town. This probably reflected the increasing private ownership of watering places and was an attempt to stop individuals from sequestering these areas for their own uses. In 1715 the trustees designated all the undivided land between Groundnut Hollow and Stony Brook to "remain to the town's use for perpetual common" and all the undivided land from the east side of Crooked Hollow "along by the path to the hollow ponds and so to the west side of the south hollow that goes down by Jeremiah Hubert's" also as a perpetual common. Two years later they decreed that all the undivided land adjoining the Round Swamp on the south side of Joseph Wood, Jr.'s land be left and remain a perpetual common "for the public benefit and good of the town and other his Majesty's leige people for water and other benefits."[52] And in 1739, because individuals insisted upon encroaching on public highways and common lands in the village itself, the trustees, with the concurrence of the property owners abutting the area, set aside approximately three

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50. Ibid., 458-459, May 7, 1763; 428-433, January 31, 1757.

51. Ibid., 312-317, December 14, 1713.

52. Ibid., 320-321, March 11, 1715; 331-332, March 16, 1717.

acres "never to be fenced nor enclosed nor any part thereof by any person or persons whatsoever but to remain according to the true intent and meaning hereof forever" as the town common.[53] And so it has remained.

The trustees, by virtue of the obligation imposed upon them, had to keep public convenience in mind in their management of the common and unappropriated lands. Some time previous to 1715 a dock had existed at the head of Huntington Harbor. In that year the trustees laid out highways along the water's edge to improve access to it, going so far as to extend one road from the dock to a nearby landing place and another one along a meadow adjacent to the harbor "for the convenience of coming at the crick thatch."[54] To encourage the expansion of economic activity, the trustees also granted rights to construct docks. Although not a fee simple grant of land for such purposes, in at least one instance it was virtually a perpetual grant based on the assumption that the dock would always be in that location, since the conveyance specifically states that,[55]

> Dr. Zophar Platt and Nathaniel Williams, Israel Wood, John Brush, Thomas Brush, and Capt. John Squire shall have liberty to build a dock the west side of Huntington Harbor against the point northward of John Brush his mill near where the clay is and to build it sixty feet or larger if they shall think it needful, running up towards the bank above high water mark, leaving room for a highway between that and the bank, also running into the harbor as far as they shall see it to be needful not stopping or intercepting the channel. This granted unto them and their heirs and assigns forever...

Two years later a grant for another dock was given John Brush granting him liberty to build it between the mill and the shore, extending sixty feet

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53. Ibid., 386-388, May 18, 1739.

54. Ibid., 327-328, September 19, 1715.

55. Ibid., 502, January 31, 1769.

along the shore but no farther than the channel and not hindering the highway.[56] It is not known if these were the same docks and that Brush proceeded with the venture where the others were unable to, but in any event both are apparently franchises for use rather than possession of the land, in keeping with the general tendency of the trustees to retain their ownership of certain resources, such as shorefront property, watering places, and marshes, as illustrated by the annual granting of thatch leases which came to dominate at least one meeting each year as the decades wore on.

Beginning in May of 1730 the town decided to lease its extensive thatch grass beds to the highest bidders on a yearly basis.[57] Thereafter in the spring of each year the beds were auctioned off to those who wished to use the grass for whatever purpose they chose. Usually the grass was cut once or twice during the lease period and used for mulch, feed for animals, or bedding. The rental prices ranged from a few pence to as high as three or four shillings depending upon the size and location of the bed. Table I suggests that there were choice beds in the vicinity of Huntington Harbor that were much in demand. Later as demand increased for the use of thatch grass (an indication that livestock herds were expanding) other areas found their way into the list until much of the accessible grass along Huntington's shores fell to the farmers' sickles each year.

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56. Ibid., 510, May 6, 1771.

57. Ibid., 362, May 5, 1730.

Table I. Thatch Grass Leases, 1730-1794*

Location of Thatch Grass	Year First Leased	Nr. Times Leased to 1776
Head of the Harbor	1730	53
East Side Harbor to Pear Point	1730	32
Sammis Cove	1730	45
West Side of Harbor and in Sammis Cove	1732	1
Horse Neck (word beach added later)	1732	43
Cow Harbor (called "head of" 1770)	1732	33
Duck Island	1738	1
North of Old Brick Kiln, Head of Harbor	1738	5
Clam Point to the Gut	1739	43
Page's Cove	1739	5
"Use of Piece of marsh which John Rogers fenced in at harbor which does not belong to him - leased to Samuel Stratton"	1740	2
Cold Spring (called head of, 1770)	1744	39
Crab Meadow (called "small island at first, then gut, then beach)	1744	6
Udall's Mill to Munger's Point	1744	4
Head of Cove to Cow Harbor Brook	1745	1
Little Neck	1745	5
Head of Harbor both sides	1745	1
Town meadow "within Joseph Ridgway's fence."	1749	1
Stony Brook Harbor	1753	6
Round Hole (called beach in 1774)	1757	16
Soper's Cove	1764	1
New Landing at Cow Harbor	1765	1
Mill Harbor	1766	7
"Pasonage" land in West Neck (24 acres) (To plant English hay)	1768	1
Squid Pond	1768	1
Abraham Jarvis Cove	1768	1
Great Lot at East Neck	1768	1
Reuben Point	1774	1
Below mill dam of Capt. Van Wycks	1794	4

*Source: Huntington Town Records, II, III. Two manuscript books of the accounts of thatch grass leases on a year-to-year basis are kept in the office of the Town Historian. The data in them covering this early period is included in this table. It should be noted that some of the above locations probably overlap. To avoid trying to locate each thatch bed (an impossible job in the twentieth century), the original designations were relied upon, if only to show the extent of the yearly leases, the continuity of the practice, and the varieties of designations. I believe few if any leases of beds on the south shore are included here; there appears to be a separate book kept of them and is more related to Babylon than to Huntington.

The terms used by the recorder to enter the yearly leases into the thatch book are somewhat misleading. Frequently the procedure of opening the areas to public bidding was referred to as a vendue sale and the phrase "sold to" was often used. This is not to be interpreted as actually selling the thatch bed itself, rather the reference is to the yearly selling of the grass with the title to the bed remaining with the town. Private encroachment on thatch beds did occur, but the town and the trustees guarded their rights jealously. More than once they called to account individuals like John Rogers for illegally fencing this valuable land.[58] Possibly Rogers followed what he considered a precedent set fifteen years earlier when the trustees allowed Benjamin Scudder to run a fence into the harbor on the south side of a sandy point on the east shore if he promised to maintain "a good pair of slip rails convenient for the passing and repassing of teams and carts."[59]

Generally speaking the trustees discharged their duties well, keeping in mind the common good and the need to hold certain lands for the use and benefit of all the townspeople. However, as is the case in all communities, they occasionally got caught up in a local controversy or were forced to decide which of two actions would be of greater benefit. In 1711 Alexander Bryant conveyed ownership of the Manor of Eaton's Neck to John Sloss, but evidently retained title, or so he thought, to Duck Island.[60] Thirty years later the question arose as to the ownership of

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58. Ibid., 391, May 6, 1740.

59. Ibid., 355-356, June 11, 1725.

60. Ibid., 306-307, September 11, 1711. The deed was for upland only, using the salt water as the boundaries.

that island, which was settled by a quit-claim deed from the trustees to Bryant for it, including the "thatch or meadow" lying on the west side of Eaton's Neck Beach "commonly called Duck Island."[61] In the same year he claimed the twenty-one acres on the island as his division land and agreed to accept it as his division land in the town. On three later occasions the trustees deeded away other thatch areas in the town, but this time they were torn between keeping them for the use of the people or selling them to raise money for new parsonage land for the Presbyterian Church. They chose the latter course, probably assuring themselves that a large enough quantity of thatch still remained in public hands to satisfy the needs of the town.[62]

Despite these sales the trustees were well aware of the public nature of such areas. A letter from William Nicolls, Senior, dated in Islip September 12, 1764, to Cornelius Hartt, outlined the conditions on which the Huntington trustees could lease part of the South Bay.[63]

> This must be done at a meeting of the trustees and that meeting entered in the books and a record made that the bay was then leased to these men and a trust reposed in them to hinder foreigners from fishing there, etc., but

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61. Ibid., 403-404, May 19, 1746.

62. Ibid., 440-442, December 25, 1758; 539-541, May 24, 1775; 541-543, May 25, 1775. The first, to Thomas Brush, conveyed sixty-seven square rods of "thatch or salt marsh" at the northeast corner of his property between the high and low water marks, reserving to the trustees the privilege of fishing, oystering, and fowling at all times forever; the second, to Jonathan Scudder, contained a salt marsh bordering his land as far south as it ran, extending west by the channel and north by thatch beds sold earlier to Thomas Scudder with no reservations; the third, to Joseph Conklin, was located near a place called the "Round" and bounded northerly by a beach, and contained no reservations of public rights.

63. Ibid., 481, September 21, 1764.

> to permit the townsmen to use it for their own use unless they abuse that liberty by making sale, in which case even they may be debarred.

In addition to ordinances against strangers clamming or fishing within the town limits, passed frequently during the century, the trustees saw fit in 1775 to enact that no foreigners could cut marsh grass in the portions of South Bay owned by the town.[64]

The trustees did not confine themselves to negotiating land conveyances and keeping little pigs off the streets of the town. They also took it upon themselves to issue franchises for certain public services. Although traffic between Huntington and Connecticut had gone on ever since the founding of the town, by 1765 the need arose to regularize the service across the Sound and make it frequently available to the public. In that year the trustees entered into an agreement with Elisha Gilbert to operate a ferry service between Huntington Harbor and Norwalk "at any time if the weather will permit" for a five year period at £5.2.0 per year. The ferry, able to hold six men and six horses, had to be prepared to carry all who demanded the service. If not, Gilbert would forfeit his ferry boat to the town.[65] Evidently he failed in his duty because two years later the franchise was turned over to Shobal Smith for the balance of the term and was renewed to him in 1772.[66]

The eighteenth century witnessed a slow but steady growth in the town's population accompanied by an increased need for more local officials to watch over local affairs. With the exception of the trustees, who

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64. Ibid., 544-545, August 26, 1775.

65. Ibid., 485-486, May 27, 1765.

66. Ibid., 490, April 7, 1767; 516-517, May 8, 1772.

managed the town, all the officials derived their authority from the provincial legislature which created them as the need arose to handle administrative affairs at the local level. In the decade prior to the granting of the Fletcher patent Huntington had one hundred twelve property owners on the assessment rolls who elected one constable, three overseers, a tax collector, and two surveyors to handle their affairs.[67] In 1694, the patent year, eighty-four freeholders contributed to the costs of the patent, and the town had seven trustees, one constable, a tax collector, two assessors, and a supervisor.[68] By 1716 the town had added a town clerk, two more surveyors, two persons to take care of interstate estates, a pound keeper, and a shepard[69] as regularly elected officers. During the next twenty years the town alternately combined and separated offices as the efficiency of administration suggested. The offices of constable and tax collector were combined in 1736 and a treasurer was added.[70] The following year the treasurer and clerk became one position but were separated again in 1739.[71] The commissioners of highways came into existence as a result of an act of assembly in 1740 and the town voted six into office that year.[72] A few years later the town again consolidated duties of four offices so that the constable also served

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67. Ibid., 18-23, 1688.

68. Ibid., 134-135, 1694.

69. Ibid., 329-330, May 1, 1716.

70. Ibid., 380-381, May 4, 1736.

71. Ibid., 381, 385, May 3, 1737; May 1, 1739.

72. Ibid., 390, May 6, 1740.

as tax collector and the clerk as treasurer,[73] and by 1764 the town offices had assumed the form they would retain for a number of years. At that time the assessment rolls had swelled to include three hundred sixty-two property owners who each year elected the seven trustees, a constable-tax collector, a treasurer-clerk, two assessors, one supervisor, three commissioners of highways, four surveyors, eight fenceviewers, two to handle intestate estates, twenty-seven overseers of highways, two overseers of the poor, and a committee of five to care for the school house.[74]

Huntington underwent a series of convolution because of the American Revolution. At first the majority of inhabitants seem to have been ardent supporters of the rebel cause, and on June 21, 1774, passed a "Declaration of Rights" in which they declaimed against the recent closing of the port of Boston, the "unconstitutional" imposition of taxes and duties by Parliament as "a plain violation of the most essential rights of British subjects", and indicated a willingness to abide by the decisions of the Continental Congress and to support the Articles of Association which called for an embargo on trade with England.[75] Their patriotic fervor, however, proved to be short-lived. By December of 1775 Gilbert Potter was forced to write to John Sloss Hobart, a delegate to the Continental Congress, concerning the "state of the town as to their slackness in military preparations, as also that we have great reason to believe all methods are used by our neighbors to make them

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73. Ibid., 397, May 3, 1743.

74. Ibid., 466-467, May 1, 1764.

75. Ibid., 535-536.

indifferent in this great contest."[76] Seven months later the early successes of American forces at Ticonderoga, Crown Point, and Boston, and the issuance of the Declaration of Independence induced the citizens to burn George III in effigy. But by the end of August, 1776, with the capture of Long Island by British forces and the retreat of General Washington, Huntington disbanded its militia[77] and on October 21 a committee of the town publicly revoked all acts and resolves in support of the rebel cause.[78]

By the end of 1776 the town had submitted to British authority and had even raised two companies of militia to serve in His Majesty's forces, one of them being led by Thomas Conkling who took his oath as captain from Zophar Platt, two prominent men in local affairs.[79] Two years later five hundred sixty-nine residents of Huntington took an oath of loyalty to the king.[80] Whether or not this is an indication of the true sympathies of the local residents can, of course, be questioned. The British commanding officers, General Erskine and Delancy, did issue threatening proclamations which promised to lay waste the area and drive out the inhabitants if they continued their resistance to His Majesty's rule and British naval and military forces did requisition

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76. HTR, III, 3. The neighbors referred to were probably residents of Oyster Bay and other communities in Queens County.

77. Ibid., 10-12, August 30, 1776.

78. Ibid., 20, October 21, 1776.

79. Ibid., 21, circa November, 1776.

80. Ibid., 35-45, 1778.

vast quantities of grain and livestock to say nothing of wood and food.[81] It is beyond the scope of this report to list the total number of inhabitants who fled to Connecticut or who joined the rebel forces, but it can be assumed from an earlier study of this subject that the number was considerably less than one-third.[82] One is left with the impression that the majority of inhabitants weather-vaned back and forth as the political winds blew from first one quarter then another. Obviously they felt the preservation of their homes and life-style was of greater importance than active support of the rebels, since it can be assumed that some of the supplies that found their way into the British military machine were sold voluntarily and there is little or no evidence of guerrilla activity on the part of those who chose to remain in Huntington.

With the coming of peace in 1783 Huntington resumed its normal life as best it could. Feeling they were now a part of a new nation they set about finding out how to participate in the political affairs of the new state by requesting information from Governor George Clinton on how to take part in upcoming gubernatorial elections, petitioned for return of their church bell taken by the British navy, and quickly submitted a long list of war claims.[83] A glance at tables II and III suggest that local politics was not seriously disrupted by the war, nor was there any vindictiveness on the part of the inhabitants with regard to selecting

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81. Ibid., 13, for Erskine's Proclamation of August 29, 1776; 14 for Delancy's proclamation of September 1, 1776; 19-103 gives a partial record of the period locally and the appendix to volume III lists all local claims for requisitioned and unpaid goods.

82. W. Keith Kavenagh, "An Economic History of Suffolk County, New York, 1783-1812", ms, doctoral dissertation, New York University, 1966.

83. Ibid., 104-111, 1783.

TABLE II: TENURE OF TRUSTEES: 176

Trustee	1763	1764	1765	1766	1767	1768	1769	1770/71	1772/5	1775/9	1
Reuben Brush	x	x	x								
Cornelius Hartt	x	x	x	x	x						
Captain Scudder	x	x	x		x						
John Wood	x					x	x	x	x		
Israel Wood	x	x	x						x	x	
Obediah Platt	x										
Jeremiah Wood	x	x	x	x							
Justice Williams		x					x	x			
Solomon Ketcham		x	x	x	x	x	x	x	x	x	
Thomas Wickes			x	x	x						
Nathaniel Ketcham				x	x	x	x	x			
Thomas Brush				x	x						
Joshua Wood				x							
Augustine Bryan					x						
Captain Timothy Scudder						x					
Doctor Potter						x					
John Wickes						x					
Timothy Conkling						x	x	x		x	
Zophar Platt							x				
Isaac Ketcham							x				
Mathew Bunce								x			
Henry Scudder								x	x		
Jonas Williams											

TABLE II: TENURE OF TRUSTEES: 1763 - 1793

1768	1769	1770/71	1772/5	1775/9	1780	1781	1782	1783	1784	1785	1786	1787	1788	1789/93
x	x	x	x											
			x	x										
	x	x				(died)								
x	x	x	x	x		x	(Also served as Town Clerk 1751-1780)							
x	x	x												
x														
x							x	x	x	x		x	x	x
x	x	x		x	x	x	x	x			x	x	x	
	x										x	x	x	
	x													
		x												
		x	x						x	x				x
			x											
											x	x	x	

TABLE III: TENURE OF SUPERVISORS

	1763	1764	1765	1766	1767	1768	1769	1770	1771	1772	17
Supervisors:											
Platt Conkline	x	x	x	x	x	x	x	x	x	x	
John Brush											
Timothy Carll											
Epenetus Conkling											
Constable/Collectors:											
Joseph Wickes	x										
Thomas Wickes		x									
John Platt			x	x							
Christopher Platt, Jr.					x						
Selah Platt						x					
Timothy Conkling							x				
Philip Conkling								x			
Nathaniel Harreson									x	x	
Ezekiel Conkling											
Jesse Whitman											
Isaac Carll Ketcham											

	1787	1788	1789	1790	1791	1792	1793
Supervisors:							
Timothy Carll		x	x	x			
Stephen Kelcy	x						
Jacamiah Brush					x	x	x(to Oct.)
Ebenezar Platt							x(after Oct.)
Constable/Collectors:							
Isaac Carll Ketcham	x	x	x				
Alexander Denton			x				
Obediah Platt				x			
Jonathan Titus					x	x	x

SERVORS AND CONSTABLE/COLLECTORS, 1763-1793

1773	1774	1775	1776	1777	1778	1779	1780	1781	1782	1783	1784	1785	1786
x	x	x	x	x	x	x	x	x	x	x	x	x	
													x
x	x	x	x	x	x	x	x	x	x	x			
											x	x	x

persons for high local office. Zophar Platt served as a trustee in 1769, as justice of the peace during the war, and again as a trustee from 1786 to 1793. Timothy Conkling, the captain of the militia under General Delancy, had been a trustee from 1768 to 1771, during the war years, and between 1786 and 1793. Stephen Kelcy's local political career followed almost the same pattern as did that of Solomon Ketcham and John Wickes.

Actually, discounting the aberrations of the war years, the American Revolution did little to change either the people of Huntington or their local political center of authority. By custom and tradition when a nation is conquered or experiences a successful revolution the laws and customs of the people remain in force only until the new sovereign sees fit to change or abrogate them (with or without the consent of the people depending on the type of revolution). Thus, after 1776 the new state of New York had every opportunity to completely wipe out its colonial past. It did not choose to do so. This is in keeping with the view that in a number of colonies the revolution was a conservative movement and a struggle to maintain the political and economic status quo against pressures from England to alter them. What radicalization that did take place occurred many years after 1776.

The new state of New York retained many of its colonial laws by reaffirming their validity in the first and subsequent state constitutions. Article 35 of the constitution of 1777 retained the English common law with appropriate modifications.[84]

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84. Laws of New York, 1969. This article became Article 1, section 17, in the constitution of 1846; Article 1, section 16 in 1894; and Article 1, section 14 in 1938.

> Such parts of the common law and of the acts of the legislature of the colony of New York as together did form the law of the said colony on the nineteenth day of April, one thousand seven hundred seventy-five, and the resolutions of the congress of the said colony and of the convention of the State of New York in force on the twentieth day of April, one thousand seven hundred seventy-seven, which have not since expired or been repealed or altered, and such acts of the legislature of this state as are now in force shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

The colonial charters, grants, and patents were preserved and fully protected by the first state constitution and, like the above article, repeated in successive constitutional revisions.[85]

> All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this constitution shall affect any grants of land within this state made by the authority of the said king or his predecessors, or shall annul any charter to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights or action, or other proceedings in courts of justice.

The Trustees of the Freeholders and Commonalty of the Town of Huntington could continue as they had been authorized to do ever since 1694 without fear of loss of power or property.[86]

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85. Ibid., Article 36, Constitution of 1777. This became Article 1, section 18 of the constitution of 1846; Article 1, section 17 of the constitution of 1894; and Article 1, section 15 of the constitution of 1938.

86. In 1828 there was an attempt to repeal these two constitutional provisions by legislation which would negate them. A year later the legislature reconsidered this action and by Chapter 21 of the laws of that year repealed the repealing acts of the preceding year. Laws of New York, 1828, 1829, 66.

Chapter III

The Nineteenth Century Trustees and the Land

Apparently the American Revolution did nothing to affect the activities of the Trustees of Huntington for they continued to act for many years thereafter as they had throughout the colonial period. Yet the nineteenth century did take its toll of the powers of that body by transferring certain administrative functions to other town officials. The granting away of much of the common lands to private individuals reduced its proprietary interests to a small fraction of its original extent. Generally speaking, this simply reflected the response of the Trustees to the slowly changing character of Huntington from a relatively isolated farm community to one with gradually diversifying economic interests as a result of a growing population and proximity to the expanding metropolis of New York City thirty odd miles to the west.

At a town meeting held a year after America gained its full independence from England the town elected its seven trustees, a clerk-treasurer, a constable-collector, two persons to handle intestate estates, three surveyors, a supervisor, three commissioners of highways, three assessors and inspectors of elections, two overseers of the poor, ten men to take care of fires, fourteen fence viewers, and twenty-four overseers of highways.[1] It is apparent from the town records of the period that at these yearly meetings, after the annual elections were consummated, the townspeople voted on certain measures which, since the Trustees were present and presumably gave their

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1. HTR, III, 122-123, April 6, 1784.

approval, became the ordinances for the ensuing year. For example, at this particular meeting the hog act was revived; strangers were forbidden to hunt, hawk, fowl, or fish within the town limits; any man found mowing grass on the common lands on the South Bay before September would be fined; the Trustees were authorized to lease the ferry to Norwalk for from three to five years; and the Trustees, if they thought proper, could build an addition to the local poor house at the town's expense. For many years the town functioned in this manner. Annual town meetings, at which the Trustees presided, passed local ordinances and elected the officials. Thereafter each official acted within the limits of his duties as outlined in whatever state legislation created his position and the Trustees continued to look after the general interests of the town and its common lands, passing ordinances during the year as the need arose.

Of particular concern to the Trustees, in addition to a fairly large quantity of common upland from the original and later purchases, was the management of the use of salt meadows or thatch grass and, as time went on, local shellfish resources. The first post-revolutionary record entry having to do with the yearly leasing of thatch grass appeared in 1785.[2] Thereafter the practice was to publicize a vendue sale each year at which the highest bidders would receive the right to cut grass during the year. Because of the changing patterns of life-style in the town thatch grass leases tended to be concentrated along the Great South Bay shore and adjacent islands. Although the Trustees maintained a careful yearly record of these rentals, known as the "Island Vendue Book", there is little evidence that the townspeople continued to use the thatch grass along the northern shore as they had during

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2. Ibid., 125, April 4, 1785, et passim.

the colonial period.[3] This does not mean that the northern shore went unused since as late as 1889 A.H. Daily rented the thatch grass at Huntington Harbor for one year for $5.00, "the same as in the year 1888."[4] There are two basic reasons why the town confined its leasing of thatch grass to the south shore. First, as early as 1805 the Trustees began leasing shore front property to individuals who wished to build docks either for private or commercial purposes; second, they actually sold certain thatch beds to persons owning property abutting the shore.

Appendix A lists 161 leases granted by the Trustees for use of the shore front and land under water at various locations along the town's northern shore. Two main purposes for these leases stand out and indicate the changing nature of the economic use of Huntington's natural resources, which included the land and land under water. One of the first docks constructed, Bryant's landing, was used to ship cord wood into New York City. Although there is no record of a lease earlier than May 18, 1802, (nr. 5)[5] the dock must have been in existence in some form in 1796 because the Trustees enacted an ordinance in that year which, in its preamble, complained that the residents of Smithtown continually used the landing to stack and ship cord wood while refusing to pay for the upkeep of it and the roads leading to it. To discourage this practice they levied a rate of four pence per cord for cord wood and two pence per wagon load for other types of wood, the proceeds to be used for road repairs.[6] It can be assumed that most of these docks were erected to

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3. "Island Vendue Book, 1793-1862." Ms, Town Historian's Office.

4. "Trustee Records, 1872-1893," 246. Ms, Town Historian's Office.

5. Hereafter in citing items in Appendix A the number of the lease as listed in that appendix will be used as reference.

6. HTR, III, 189-191, June 20, 1796.

facilitate the shipment of local farm products into the city; private pleasure docks did not come till the end of the century. Inferential evidence for this can be found in the lease to Divine Hewlett to build a steamboat dock in 1831 (number 19) and the one to Samuel Hartt for a docking area with railways to repair boats (number 28) in 1844. By 1854 at least some town residents recognized the value of mining and selling sand and gravel, although much of this activity was confined to the Eaton's Neck Beach area (number 33, 40, 41, 51, 63, 72, 77, 79, 84, 92, 103, 104). Only three leases to cut thatch grass (numbers 56, 66, 124) in 1869, 1875, and 1888-9 are recorded in the manuscript minutes of the Trustees. Not until 1882 is a lease recorded for the purely private purpose of constructing a dock and bathhouse for the exclusive use of the leasee as the owner of the upland adjoining the shore (number 85). This reflects a growing interest of people both in Huntington and in New York City in using the bays, harbors, and beaches of the town for recreational purposes. Undoubtedly this had been done before, but on a small scale, and it only took the improvements in rail transportation during the latter years of the century to open up these outlying areas. Yet it is not until 1892 that leases for docks for excursion boats and pleasure craft are expressly stated in the lease agreements (number 145, 146). It seems obvious that over the years such activity would greatly restrict the total extent of thatch grass beds available for lease from the town.

A peculiar feature of the majority of the leases granted by the Trustees is that having to do with the preservation of the rights of the public in areas considered to be unsusceptible of exclusive private ownership. Thus one finds clauses in almost all of the conveyances reserving to the public the right to cross and recross the leased area if it involves shore front property or land under water over which boats can pass. Frequently the

leasee was required to build his dock or buildings so as not to obstruct a road paralleling the shore, the lease to Samuel Fleet in 1805 being one of the early examples (number 7). Also the Trustees inserted a saving clause permitting them to reenter the leased premises in the event the lessee did not abide by its terms or neglected to pay the rent (number 16). Such provisions appear with great consistency throughout the period even to the point of designating just where the public's right of passage lay (number 59) or insisting that the lessee make arrangements such as a bridge for passage (number 61). And in cases when docks were to be constructed, the public's right to fish and shellfish were preserved in those areas of the water not actually covered by the docks (number 119).

The second reason for the decrease of and the decline in the use of thatch beds along the north shore was the granting of some of these areas to adjacent land owners by a bargain and sale or a quit-claim conveyance from the Trustees. Appendix C lists some, but not all, of the deeds from the Trustees to various townspeople. Of the twenty-seven deeds at least fourteen of them cover thatch beds, shore front around and under docks, and land under water. As in the case of the first such grant listed (number 5) in 1824, the Trustees followed the practice in leases of reserving to the public the rights of fishing, shellfishing, and passage over the area granted. As will be indicated later this raises the question of the finality of the sales. Were they, in fact, fee simple absolute deeds? If so, all that the Trustees had as to right, title, and interest would have to have been conveyed to the grantee. Anything less strongly suggests the Trustees gave less than all they had to give, again, as in the case of many of the leases, reserving to the townspeople that which they considered not to be susceptible of exclusive private ownership. In other words, they retained in the public

interest that which they felt had been and should continue to be for the public use along the shore and in the waters of the bays and harbors.

During this period the Trustees did continue to divest themselves, by fee simple conveyances, of upland still held in common. Even though they sold the rights on a yearly basis to cut timber from the common lands, these areas gradually passed into private hands. One of the largest single sales of town land recorded is that which took place in 1855. At a town meeting on April 4, 1854, the Trustees were authorized to sell 3,000 acres of the Pine Plains, the proceeds to be used to pay town expenses. They finally sold the land in two parcels to two bidders, the western portion consisting of 1,441 acres going to Selah and Edward A. Bunce and Francis M. Wicks for $7,784.90, or $5.40 per acre, and the eastern part or 1,559 acres to A.J. Bleecker for $8,574.50 or $5.50 per acre.[7] Actually this land did not fall within the boundaries of Huntington at this time but was in the Town of Islip. The confusion over ownership developed from the original grants to the town which claimed that under the first colonial patent the eastern boundary extended from the head of Nesequake River due south to the Atlantic Ocean. The Fletcher patent of 1694 moved the line farther west, running from Fresh Pond to the Sumpwams River and thence to the ocean. The land between the two lines south of Smithtown had been given to Islip for jurisdictional purposes. Subsequently ownership of the area was disputed between individuals and Huntington and eventually settled by a series of quit-claim deeds from the people to the Trustees of Huntington, the first such instrument being written in 1812 and the last in 1824.[8]

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7. HTR, III, 414-423, April 4, 1854 - Nov. 15, 1855.

8. Ibid., 258-259, Jacob Harned and Elias Smith to the Trustees, March 21, 1822; 266-267, Anning Moubray to the Trustees, Jan. 15, 1814; 319-321, Timothy Wheeler to the Trustees, Dec. 7, 1824.

It should be remembered that a number of people in the town, the descendants of the heirs and assigns of early land purchases, continued to claim ownership of large segments of land. Although occasional sharp disputes arose over who controlled the division of such lands they were eventually settled by compromise. Such was the case with the Baiting Place Purchase and portions of the Great East Neck on the south shore.[9] Of concern to both the Trustees and the descendents of the proprietors of the Old Purchase, of course, was who in fact owned and controlled the undivided lands in that area. Despite the fact that the Dongan and Fletcher patents seem to have vested ownership in the town, the descendants continued to sell and lease portions of it. Finally, in 1865, both parties moved to settle their differences. At a meeting in October of that year the Trustees voted to buy up the interests of Jarvis R. Rolph, a claimant to a sizable area in the Old Purchase. Finding that he had claims in Crab Meadow and between Centerport and Northport, they agreed to offer him $1,150.00, which he accepted. Attempts to straighten out the ownership muddle stem back at least as far as 1810 when the so-called proprietors of the Old Purchase quit-claimed to the town Trustees all their right, title, and interest in lands sold for them by the Trustees.[10] Later, in 1850, at the request of the "Committee of the Proprietors of the Old Purchase," the Trustees quit-claimed all their right, title, and interest in any of the original grants made to them. Since much of the land had come under private ownership it is likely that this was an effort to consolidate all that was left. Then, in 1866, Jarvis Rolph sold to the Trustees all the

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9. Ibid., 179-181, September-October, 1794; 432-435, December 4-19, 1857.

10. Ibid., 250-251, 1810. The legality of their ownership and of the conveyance is, of course, questionable.

land he thus acquired, including[11]

> all that certain tract of land, being upland, shore, thatch beds and marsh, situate on the east side of Huntington harbor and the creek in the town aforesaid, on the west side of the highway leading to the dock and on the east side and opposite to and in front of the homesteads of Gershom B. Scudder, deceased, William M. Hawthorne, deceased, and George W. Conklin, deceased, including forty feet wide of beach and shore lying in rear of the house and lot of Thomas A. Scudder and the house and lot of Isaiah Rogers, which said forty feet was reserved in George W. Conklin's deed for thatch-beds from the "Old Purchase", said described land being bounded east by said Isaiah Rogers, Thomas Scudder, and the said highway; southerly by salt meadow belonging to the said Trustees of the Town of Huntington, formerly owned by Abraham Van Wyck, and west by the centre of the main creek and Jacob Scudder's thatch-bed in part and partly by the aforesaid thatch-beds of the said George W. Conklin, and partly on the north by salt marsh of Thomas Scudder, adjoining his house lot and also...the upland bordering on the west side of the said highway from the above described land, southerly to the highway which crosses the creek near Daniel K. Young's house, formerly belonging to Elbert Walters...all the upland, shore landings, thatch beds, and beaches lying north of the said George W. Conklin's thatch beds; also in rear of the lot and store of Jacob Jarvis Johnson, and from thence on the north and east shore of said harbor all the way to Huntington Inlet, and around the beach at the said Inlet to Dr. Ward's land on the Bay side....the tract of land between Crabmeadow and Eaton's Neck, known as Eaton's Neck Beach...and also in and to all other tracts of land and proprietors' rights, which the parties of the first part now have or may claim by virtue of a deed of conveyance or release bearing date August 31, 1850, and executed by the Trustees of the freeholders and commonalty of the Town of Huntington in behalf of the committee of the proprietors of the "Old Purchase", so-called, of the first part, and the said Jarvis R. Rolph, as party of the second part (reserving sufficient space for the Soldier's Monument Association on the south side of Main Street)...

In earlier years the Trustees had acquired other marsh land in the general area of the head of Huntington Harbor. In 1824 Moses Scudder deeded to the Trustees a piece of thatch bed bounded easterly by the land of Thomas C. Hendrickson, northerly by the thatch bed of Thomas Scudder, westerly by the

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11. Ibid., 547-552, August 31, 1850, February 1, 1866.

channel, and as far southerly as the land of Hendrickson extended; and ten years later Selah Carll, James Nostram, and David Carll gave to the Trustees a parcel of salt meadow on the east side of the main creek beginning at the highway running west across the creek running by the upland on a course north 25 degrees east 26 rods, north 28 degrees west to the creek, then westerly and southerly by the creek to the highway and along the highway to the place of beginning.[12]

Before beginning a discussion of the innumerable arguments over leased land and conflicts over boundaries with the adjoining towns which plagued the Trustees during the period, a digression is in order to illustrate some of the various powers exercised by them in their capacity of trustees of the natural resources of the town for the benefit of the inhabitants. The first official national census taken by the new federal government in 1790 counted 1,013 males, 973 females, and 126 slaves in Huntington, or 1,986 free inhabitants.[13] Of these approximately 397 can be considered to have been property owners if one accepts the statistical average of five persons per family and assumes each head of the household did in fact own property and would appear in the local assessment rolls.[14] This is the group to whom the Trustees would have to be accountable in all their actions.

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12. Ibid., 315-316, March 1, 1824; 350-352, March 25, 1834. Of the latter, Mr. Street, editor of the town records in 1872, claims it was the same land given by arbitrators to John Rogers on August 27, 1717 (HTR, II, 236), a part of which was then sold later during the early 1870's.

13. Ibid., 147-158.

14. This figure compares favorably with an earlier assessment roll of 1782 when 405 freeholders were listed, which would give a free population of slightly over 2,000. The miniscule drop in population in the latter figure can be accounted for by either a slight birth over death decline, as a result of the war or a local siege of illness, or a few migrating westward. HTR, III, 85-96.

Most of the ordinances passed by the trustees and voted upon at town meetings reflect the bucolic atmosphere of Huntington during this period. With monotonous regularity each year they approved the Hog Act to prevent the creatures from wandering around the town, enacted that turkeys not be permitted to ramble into neighbor's yards, saw to it that certain public gates were kept in repair, and forbade the practice of allowing horses, oxen, and cows to run at large especially during the Sabbath services.[15] Periodically these acts were renewed and similar ordinances passed. In 1836 almost the same Hog Act and restrictions on livestock were still being passed and twenty years later they appear again at the yearly meeting presided over by the Trustees.[16] The Trustees also managed the Poor House and saw to it that it was kept in repair.[17] As late as 1896 they were involved in the expansion of the road system in the town.[18] They not only levied a duty on the storage of timber at Bryant's Landing and collected the fines paid by anyone caught cutting trees illegally on the common lands,[19] but also settled the tax rates of the town[20] as well as raised additional sums over and above anticipated expenses to maintain the poor.[21] And during the Civil War the Trustees and the Board of Town Auditors met to decide on an equitable method of paying

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15. Ibid., 129-130, April 4, 1786; 134-136, April 3, 1787 et passim.

16. Ibid., 358-360, April, 1836; 425-426, April 1, 1856.

17. Ibid., 123, April 6, 1784; 388, July 13, 1844; 584, May 28, 1870.

18. "Trustees Records, 1893-1914," 41-42, Aug. 17, 1895; 57, July 20, 1896; 61-62, Nov. 14, 1896.

19. HTR, III, 188, April 5, 1796.

20. Ibid., Jan. 28, 1802.

21. Ibid., 214, April 5, 1803.

support to those families whose men had joined the army.[22] Periodically the Trustees took note of individuals indiscriminately removing stones from the beaches or dumping refuse in local waters.[23]

One of the primary concerns of the Trustees had to do with the use of the harbors and bays within the town's limits. During the colonial period fishing and shellfishing in local waters came to be regarded as a means of supplementing the family diet. Accordingly the Trustees restricted this right to the inhabitants. The same held true during the nineteenth century but as the years passed and New York City developed as a market shellfishing slowly evolved into a major commercial activity. Beginning in 1785 the Trustees reenacted earlier ordinances prohibiting foreigners from hunting, fishing, and hawking within the town.[24] Each year thereafter the same ordinance was enacted, sometimes mentioning clamming as a separate activity.[25] And by 1842 shellfishing had become sufficiently widespread as an economic activity to cause some people to employ dredges. This practice remained unregulated until a number of people became concerned about its affect on the land under water, the beaches, and the oyster crop in general. In that year fifteen residents petitioned the Trustees to put a halt to dredging which was "destroying much property belonging to the town." The Trustees took action within a month and not only banned "draging in any way for oysters in the waters of this town" under penalty of $12.50 fines, but also saw fit to prohibit the

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22. Ibid., 487-488, Sept. 16, 1863.

23. Ibid., 186, Aug. 12, 1795; "Trustees Records, 1872-1893," 257-258, March 14, 1890.

24. HTR, III, 126, April 5, 1785 et passim.

25. Ibid., 170, June 3, 1793; 199, April 1, 1800; 298, April 6, 1819 et passim.

taking of any oysters during the summer months.[26] Thirty years later this ordinance gained support through a state law which banned the use of dredges or dragging devices in the South Bay.[27]

Increasingly both the town and the state legislature took an interest in local shellfishing. By 1858 individuals began marking off certain areas with stakes to designate their oyster beds, but the Trustees forbade such measures as detrimental to those fishing with nets.[28] Despite this seeming conflict of local interests the Trustees encouraging shellfishing by regulating it for the benefit of all and after the Civil War leases for oyster beds begin to dominate their annual meetings as had those for thatch grass years before. The state began its efforts to manage shellfishing in 1866 when the legislature enacted a residency requirement in Islip and Huntington of six months before anyone could plant and harvest oysters on a lot not to exceed two acres. This was amended in 1872 to permit any inhabitant of the town to engage in shellfishing, but in 1880, because of Huntington's colonial charters, these acts were again amended to apply to Islip only.[29]

Once shellfishing became sufficiently important the Trustees took steps to systematize it. The first formal moves to do so took place in 1875 when they passed a resolution to "proceed to lease the oyster grounds in appropriate

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26. Ibid., 384-385, Sept. 1-Oct. 1, 1842. See also Huntington Lease File, Town Historian's Office.

27. Laws of New York, 1870, 550, Chapt. 234. Some years earlier North Hempstead and Islip had also received legislative aid in restricting shellfishing to local residents to further strengthen their local ordinances. Laws of New York, 1849, 609, Chapt. 435 (North Hempstead); Ibid., 1857, 368, Chapt. 167 (Islip).

28. HTR, III, 442, April 6, 1858.

29. Laws of New York, 1866, Chapt. 306; Laws of New York, 1872, Chapt. 666; Laws of New York, 1880, Chapt. 240.

parcels and on reasonable terms, giving those persons having oysters planted in the grounds the first preference."[30] The following year they established a rate of fifty cents per acre for oyster grounds with a minimum fee of two dollars for less than four acres. Immediately ten persons applied for and were granted leases for land under water and at the next meeting forty-two others also received leases. Thereafter, virtually the entire meeting each month was taken up with the issuance of oyster ground leases.[31] Most of the leases were of short duration, five years or less, and proved to be less than profitable for the lessee due to the amount of time necessary to seed a bed and harvest it. The labor involved within the time span of the lease exceeded the anticipated income to the point that pressure developed on the Trustees to lengthen the terms. This they did in 1879 by extending all leases to a term of fifteen years. Within three weeks after their decision was publicized seventy-six persons applied for either new leases or renewal of existing leases.[32] Additional motivation for such a response came from the state legislature which authorized the formation of corporations in Suffolk County for the purpose of promoting the planting and cultivation of oysters. The act, passed in May, 1879, allowed five or more persons who leased or occupied oyster lots in the county to form a corporation and establish a board of trustees of from three to nine persons to superintend all lots of the corporation members, "for the purpose of promoting the planting, cultivation, taking up and protection of oysters, upon said several lots leased, occupied, or held by said persons..."[33]

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30. "Huntington Lease Files," April 6, 1875.

31. "Trustee Records, 1872-1893," 42-49.

32. Ibid., 59-70, June-July, 1879.

33. Laws of New York, 1879, 328-329. Chapt. 251.

The inevitable consequence of any undertaking which, because of its profitableness, expands explosively is that it comes into conflict with others who have been previously using its resources for other purposes. And so it was with the town's oyster beds. Those who had used the harbors for clamming, scalloping, and fishing found that large areas were now monopolized by oyster bed lessees. Matters came to a head on July 13, 1883, when Charles S. Sanford offered a resolution which, in effect, outlined the accumulated complaints of many residents. The voters, in a ballot, had expressed their strong discontent over the policy of leasing lands under water for oyster culture, declaring that the waters should be reserved for the public and as far as was consistent with the obligations of the Trustees. The resolution called for the reclaiming of the waters and lands under them from exclusive control by person not rightfully holding them since many regarded the outstanding leases as not valid. It went on to state that the experimental steam dredging of sand and gravel in Northport had proved to be injurious and destructive to the lands under water and declared that no further permits would be granted for such activities. It accused a number of lessees of either not using leased area yet preventing others from encroaching on them, claimed some areas were used for clamming and scalloping and not for oyster planting, and complained that some of the leases and the lessees extended the oyster activity into waters as shallow as less than four feet. This prevented the casual shellfisherman from wading into the waters accessible to him. Much of the latter area must, claimed the resolution, be held for the public since generally people had traditionally had free access there. And finally, if the lessees used areas for anything other than oyster cultivation it was in contravention of the policies of the Trustees and the explicit terms of

the lease and, therefore, such leases should be cancelled.[34] By vote, the Trustees affirmed the "will of the people" and refused to issue any more oyster leases. The following year they went one step farther and resolved that "fishing, clamming, and scalloping of natural growth shall be free to all citizens of Huntington" and added that wherever shellfish grew naturally there was to be a prohibition on the dumping of gravel and rocks. A moratorium was placed on any dredging for sand and gravel on Trustees land.[35]

The right of the Trustees to lease lands under the waters of the town's bays and harbors did not go unchallenged. The State of New York began to assert its alleged proprietary rights in the lands under water in 1840 when the legislature passed an act granting John H. Jones the right to erect and maintain a dock and wharf at Cold Spring Harbor adjacent to his land. This private act authorized Jones to construct a dock within a 650 feet space along the shore, extending westerly into the harbor no farther than the low water mark. The State reserved the right to regulate dockage rates, but permitted excavation of mud and sand in front of the dock and the clearing of the channel "subject to the permission of the Trustees of the Town of Huntington."[36] In 1850 the legislature expanded the powers of the Commissioners of the Land Office to include the granting in perpetuity or otherwise "so

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34. "Trustees Records, 1872-1893," 122-126.

35. Ibid., 139-141, Feb. 2, 1884. Six years later the Trustees had a change of heart and voted to permit the federal government to dredge to improve Huntington Harbor beside the town dock so that farmers could receive shipments of fertilizer and export their produce. The Town was to put up $30,000, the government $10,000. In 1892 they gave the government permission to dump dredged material on lots 54 through 59, leased to N.S. and I.M. Brush, in Huntington Bay. Ibid., 287-288, Dec. 15, 1890; 319, Sept. 6, 1892.

36. Laws of New York, 1840. 205, Chapt. 283, Jan. 7, 1840. There is no evidence in the Town Records that the Trustees ever questioned this act.

much of the land under water of navigable rivers or lakes as they deem necessary to promote commerce or for the beneficial enjoyment of the same by adjacent owners." Grants to other than adjacent owners were voided. In addition the granting powers of the Commissioners were "hereby extended to lands under water, and between high and low water mark in and adjacent to and surrounding Long Island and to all that part of the county of Westchester, lying on the East or Hudson River or Long Island Sound; but no grant made under this act shall extend beyond any permanent exterior water line, established by law."[37] Many years and a number of controversies later the Trustees voted to petition the legislature to exclude the town for the provisions of the law of 1850.[38]

> The undersigned the members of the Board of Trustees of the Town of Huntington, New York, respectfully represent that by virtue of colonial patents and grants this Board of Trustees is vested with title in fee to all the lands under water within the Bays and Harbors of this Town that as the law now stands the Commissioners of the Land Office claim to have jurisdiction to make grants of land under water all around Long Island including the waters above mentioned. We, therefore, petition that Section Two of Chapter 283 of the Laws of 1850 may be so amended as to exclude from the jurisdiction of said Commissioners the lands belonging to this Town and all other towns in the State of New York.

Ignoring the petition the State legislature reenacted the statute of 1850 in 1894, the provisions in the State constitution as well as the federal constitution against taking property without due process of law notwithstanding.[39]

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37. Laws of New York, 1850. 621, Chapt. 183, April 10, 1850. The law exempted from its provisions New York City and the property rights of the Hudson River Railroad Company.

38. "Trustees Records, 1872-1893," 242-243. March 30, 1889.

39. McKinney, Consolidated Laws of New York; Public Lands, vol. 45, sec. 75, 1894. It could be argued, of course, that the act was due process of law at least in terms of procedure. This, then, raises the question of procedural versus substantive due process which I am not prepared to answer.

After passage of the act of 1850 the question of ownership of the lands under the waters of Huntington's bays and harbors became a shambles of conflicting Trustees activities, State laws, and court decisions. The Trustees continued to grant leases for lands under water[40] and in some instances denied leases to individuals.[41] In the case of the latter the potential lessee, Alexander Sammis, took his case to court to force the Trustees to grant him a lease. The case was finally decided in the Supreme Court of the State of New York in favor of the Trustees, the Court holding that title to lands under water in Huntington was vested in the Trustees by virtue of its colonial grants and that "the Trustees had the power to make a lease of the premises for dock or other purposes, notwithstanding the claim of the upland owner."[42] Yet by 1871 the Trustees were in a quandary over how to react after the same court's decision in the case of Lowndes v. Dickerson.[43] That case involved a question of trespass in which Lowndes, a nonresident from Connecticut who had seeded a small portion of Northport Harbor with oysters, brought an action against Dickerson, a townsman, who harvested some of the crop. The court held that the harbor in question was not within the town limits and therefore town inhabitants did not have the exclusive right of fishing, that the right of fishing was a common right inherent in the people by common law, and that the British Crown did not have the power to grant to an individual the right to take fish in the sea and in an arm of the sea, stating that "the title to the lands under the waters of Northport Harbor in Long Island Sound

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40. Appendix A, nr. 32 et post.

41. HTR, III, 435-436, March 2, 1857. Petition of Alexander Sammis for a 21 year lease to the "old Dock."

42. Ibid., 436 n.

43. Lowndes v. Dickerson, 34 Barb. 586.

is not in the town of Huntington and the inhabitants thereof have not the exclusive right to take fish therein...(because) Northport Harbor being an indentation upon the southern shores of Long Island Sound is a part of the High Seas."[44]

Fearful that they might lose all, in 1871 the Trustees set out to investigate the Town's title to land under water because "some doubts exist in the minds of the Board as to its powers in regard to the right to lease the land under water for the purpose indicated in said resolution (planting oysters)."[45] Charles R. Street, a local attorney and editor of the printed town records, undertook the task. Within the year he produced a lengthy research paper which concluded that title to the soil under the waters of the bays and harbors along the coast of the town was vested in the Trustees, subject to the public right of navigation. Consequently, the Trustees did have the right, according to Street, to sell or lease the lands under water in spite of the Lowndes v. Dickerson decision.[46] Heartened by the report the Trustees continued to issue leases. The hand was strengthened three years later by the Court of Appeals of the State of New York in the case of The Trustees of Brookhaven et al v. Charles T. Strong.[47] The defendant had been

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44. Letter, Henry J. Scudder to Board of Trustees, Jan. 24, 1871, in which he quotes from the court decision. Scudder, a local attorney, then went on to advise the Trustees that they should evade the decision by passing a local ordinance authorizing the Town to lease land under water, at fifty cents an acre, with no mention of claim of title.

45. HTR, III, 603-604. May 6, 1871.

46. Charles R. Street and Henry C. Platt, An Opinion Upon the Powers and Duties of the Trustees of the Freeholders and Commonalty of the Town of Huntington, Especially with reference to lands under tide waters... (New York, John DeVries, 1872). See also HTR, III, 610-611, Dec. 23, 1871.

47. Brookhaven v. Strong, 60 N.Y. 56, February 16, 1875.

caught by the authorities of Brookhaven taking oysters from Great South Bay, an area over which the Trustees of Brookhaven claimed proprietary ownership by virtue of their colonial charters from Dongan in 1686 and Fletcher in 1694. Strong contested this, claiming by Bay was public by common right and open to all. The Court upheld the plaintiff stating that,[48]

> The objection that the general language of the patents should not be construed to include an exclusive right cannot be maintained. In the first place, the land under water is included within the boundaries of the grant. The rule is, that "when a patent or grant conveys a tract of land by metes and bounds the land under water, as well as other land, will pass if the land under water lies within the bounds of the grant" (Rogers v. Jones supra); and, as we have seen, the title of land under water confers the right of a several fishery. Besides, the language of the patents, "all rivers, waters, beaches, creeks, harbors, fishing," and all other "franchises to said tracts appertaining," is significant of an intention to convey this very right. There is no reason why these terms should not be construed according to their ordinary meaning, especially when applied to the land under water included within the boundaries.

Since the Trustee resolution of 1871 calling for an investigation of title to lands under water consisted of little more than reviewing existing and past leases, they went a step farther in 1874 and undertook not only a search of old titles but also voted to hire a good surveyor to survey and map the water front.[49] Almost ten years later they were evidently still at it. On May 12, 1883, the Trustees discussed the purchase of nine granite monuments to be placed at select locations for survey purposes in marking off the oyster lots.[50] Since the survey only encompassed Huntington Bay, four years

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48. Ibid., 71-72.

49. "Trustees Records, 1872-1893," 19.

50. Ibid., 118-119. The nine points were the old dock at Northport, Bluff Point, Eaton's Neck beach Oyster Point, Duck Island bluff, Winkle Point, Little Neck Point, Eckerson brickyard, Bouton's Point, Lloyd's Neck beach.

later they set out to do the same thing for Huntington Harbor. In May of 1887 they accepted bids for the job and on June 2nd voted on who should receive the $250.00 contract. Three surveyors had bid on the job: Jonathan Sammis, R.B. Wheeler, and Oscar Darling. Four Trustees voted to give it to Sammis and one backed Darling. Charles Sanford, a Trustee, moved to rescind the resolution granting the contract to Sammis on the grounds that his bid was higher than the amount budgeted, whereupon the Board decided to consider the matter further at its next meeting. For the next two meetings they haggled over this not too earth shaking issue and on June 17th resolved to grant the contract to Darling who had agreed to do it at the figure budgeted.[51]

Based on Darling's work the Trustees accepted a line beginning at a granite monument set at high water mark at the northwest point of Eaton's Neck, as shown in an oyster lots map drawn by Darling and filed in the Town Clerk's office on August 29, 1887, running south 69 degrees 20 minutes 25 second west to another monument set at the high water mark of Huntington Bay on the shores of Lloyd's Neck. They then resolved that, "the line above described is hereby declared to be the line of title between the Town of Huntington and lands under water belonging to the State of New York and that all lands under water in Huntington Bay and an exclusive right of fishery therein, southerly from said line as the same appears on said map, is claimed by this Board of Trustees in behalf of the Town of Huntington."[52]

Several years earlier the Town had challenged the right of the Commissioners of the Land Office to issue grants to land under water to local residents. They had the opportunity to do so again in 1880 when Charles H. Louis and Charles Jones both applied for state patents. In both instances the Trustees

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51. Ibid., 181-183, 185. June 2, 1887 - June 17, 1887. One can only guess at the amount of partisanship and mini power politics that went on at the time.

52. Ibid., 202-204. November 5, 1887.

fought back, first by passing a resolution protesting any grant to Louis[53] and then by retaining counsel to argue before the state's Attorney-General against any grant to Jones. At a hearing on the latter the Attorney-General reserved decision, at which point the Trustees then agreed to lease a large area of land under water in Cold Spring Harbor to Jones.[54]

Throughout the remainder of the decade the Trustees were kept busy protesting against individual applications for state grants of land under water. In 1887, hearing of three petitions for state patents for oyster grounds from Theodore S. Lowndes, John H. Lowndes, and Leander R. Devan, the Trustees again moved to block them. Claiming that John Lowndes was not a state resident since he lived in Connecticut, they argued against the granting of the patent. The Commissioners of the Land Office rejected this contention since, in their opinion, it was unimportant in terms of the basic contention between the town and the state over ownership. Even though the Trustees' representatives produced the colonial patents and other records showing the town had controlled the area for over two centuries, the commissioners decided to turn matters over to a special committee to study.[55] On December 10th the Trustees were informed that the commissioners had resolved that "the report of the committee on Huntington Bay be postponed and no grant be made on the debatable land till after notice to the Trustees of the Town."[56] Early the following year the Trustees retained Charles R. Street as counsel

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53. Ibid., 74-75. February 28, 1880.

54. Ibid., 76-82. Dec. 8-18, 1880.

55. Ibid., 204-212. Nov. 5-17, 1887.

56. Ibid., 216. December 10, 1887.

to conduct a suit to recover possession of the Bay, yet, contrarily, a month later they authorized Richard H. Poillon to request a State grant of land under water in front of his premises "for beneficial purposes."[57] Beginning in July the Trustees' counsel served notice, under section 441 of the Penal Code, that he would bring action against all nonresidents who had or would in the future plant oysters in the Town's waters, and on this basis in May of the following year the Trustees voted to take action against John and Charles Lowndes who had been planting and harvesting oysters.[58]

With some misgivings the Trustees continued to grant oyster leases and other leases to lands under water. At a meeting held in March of 1890 they extended the oyster lease terms to eleven years with rent payable in advance, adding the proviso that the Trustees would not warrant or covenant quiet possession and enjoyment nor could they be held liable in the event of any suits or litigation arising out of the leases and the claims of persons about having planted oysters in a given spot.[59] Apparently fed up with both the Board of Trustees and the Commissioners of the Land Office ninety-seven "electors of the Town of Huntington" petitioned the Trustees asking that a formal resolution be submitted at the next town meeting, the basis of which was to be that the Trustees would no longer lease beds for oyster cultivation but would sell acreage at public auction to the highest bidders, after which action all of it would be treated as private property."[60] Obviously a great

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57. Ibid., 220. Jan. 31, Feb. 10, 1888; 222-223, March 2, 1888.

58. Ibid., 227, July 17, 1888; 244-245, May 25, 1889.

59. Ibid., 259, March 21, 1890.

60. Huntington Lease File, Town Historian's Office, February 25, 1891.

many people in the town still held to the belief that the Trustees did, in fact, own the land under water despite the claims of the State.

The state legislators did little to reduce the confusion over ownership; if anything they compounded it. On August 12, 1881, they passed an act entitled "An Act Extending the Jurisdiction of Queens and Suffolk Counties and the Certain Towns Thereof Over the Waters of Long Island Sound."[61] The act extended the boundary between the two counties into Long Island Sound at right angles to the general trend of the coast until it intersected with the boundary line between New York and Connecticut as recently established by a commission of the two states and confirmed by their respective legislatures. The act went on to state that,

> 2. The boundary lines of the several towns in the counties of Queens and Suffolk that adjoin Long Island Sound are hereby extended northwardly into Long Island Sound at right angles to the general trend of the coast at their several respective points until they intersect the boundary line between the states of New York and Connecticut as lately established...
>
> 3. The jurisdiction of the legally constituted officers of Queens and Suffolk Counties and of the respective towns of the said counties on Long Island Sound is hereby extended over the waters of the said Sound to the Connecticut state line.

Since this act was for jurisdictional purposes only and did not mention proprietary claims, five years later the legislature ceded the lands under water of Huntington Bay to the Trustees of the Town of Huntington, and their successors in office, for the cultivation of shell-fish.[62]

> 1. All the right, title and interest which the people of the State of New York have, if any, in and to the lands outside of and beyond low water mark under the waters of Huntington bay, in the town of Huntington,

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61. Laws of New York, 1881. Chapt. 695.

62. Laws of New York, 1888. May 10, 1888.

> Suffolk County, southerly of a line drawn from a granite monument now set near high water mark on the northerly point of Eaton's Neck, and west of the United States Life Saving Station to a locust monument now set on Lloyd's Neck, which line runs on a course south, fifty-nine degrees, twenty minutes, and twenty-five seconds west, and which is the line claimed by the Trustees of the Town of Huntington as the northerly line of their grants under Colonial patents, is hereby ceded to the present Trustees of the Town of Huntington, Suffolk County, and their successors in office, for the purpose of oyster cultivation. Provided nothing in this act shall be held to interfere with the rights and powers of the Commissioners of the Land Office to grant all the right, title and interest of the State to lands under water in said bay, to the owners of adjacent uplands for purposes of commerce or beneficial enjoyment, and nothing herein contained shall be construed as interfering with the rights of riparian owners. Subject, however, and without prejudice to the legal rights, if any, of such persons as now have oysters planted on the lands aforesaid.

And, as pointed out previously, in 1894 the legislature reenacted the law of 1850 which allowed the State to grant lands under water "in and adjacent to and surrounding Long Island Sound between high and low water mark."[63]

During these years of controversy the Trustees continued to exercise their control over existing and new leases, although not always with laudable success. In 1863 an argument developed between them and Henry Williams who had had a lease on a dock on the east side of Huntington Harbor ever since 1828. However the lease lapsed in 1849 and was not renewed. The Trustees, in 1863, questioned Williams' right to remain on the property and at first refused to grant him a lease renewal as called for in the original lease. The case went to arbitration and the decision of the referees resulted in the renewal of the lease for twenty-one years plus the payment of one thousand dollars in damages to Williams.[64] Ten years later W. Wilton Wood

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63. Laws of New York, 1894. 588-589. Chapt. 317.

64. HTR, III, 490-493. November 5, 1863.

refused to pay the rent on a dock on the west side of the same harbor, claiming the lease was invalid since neither he nor his father had signed it. In addition, he questioned the rights and jurisdiction of the Trustees over the premises. He claimed that money was not necessarily the object, but that he simply wished to settle in his own mind the basic question of the rights of the Trustees and would be willing to negotiate a new lease if it were resolved in favor of them. Evidently, someone explained it to his satisfaction because a year later Wood agreed to pay all the arrears of rent on the property and to enter into a new lease for ten years at ten dollars per year.[65]

Occasionally individuals complained against the leasing policies and practices of the Trustees. A case in point is the protest of Hewlett Scudder in 1887 against a proposal to lease land to the south of the Scudder dock for the purposes of building a bulkhead and dock. This he claimed would impair the value of his dock and would be an infringement on his lease. The Trustees leased it anyway.[66] Later another member of the Scudder family ran afoul of the Trustees and attempted to lease all the unleased shore front in front of the premises of Moses L. Scudder. Moses, junior, complained that it should not be given to private individuals since it had been public for so long and he would like to continue it in that state. He also protested against the practice of leasing shore front properties that had traditionally been used by the townspeople as public and common areas. The Trustees denied his request.[67] In a final public spirited effort to clean up and preserve

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65. "Trustees Records, 1872-1893", 25-27, March 23, 1874; 36, December 7, 1875.

66. Huntington Lease File, Town Historian's Office, Letter from Hewlett Scudder to Trustees, June 30, 1887.

67. Ibid., letter from Moses L. Scudder to Trustees, July 3, 1891; July 28, 1891; "Trustees Records, 1872-1893," 296-297, July 30, 1891.

"a little piece of ground mostly under water" currently being used by many to dump rubbish and leave old boats on, by bulkheading and beautifying it, he appealed for a new lease covering the land adjoining the north side of the dock of H.S. and J.M. Brush on the east side of Huntington Harbor. The Trustees denied the application on the grounds that the existing Brush dock was open to the public and had to be accessible from all sides.[68]

During this period of controversy and confusion two court cases met the issues head-on. The first one of importance to the Trustees, Robins v. Ackerly,[69] attacked the doctrine enunciated in the Lowndes v. Dickerson decision, namely that the Trustees did not have a proprietary claim to the land under water and that the bays and harbors, as extensions of Long Island Sound, belonged to the State rather than the Town. The suit was initiated when Seth R. Robins accused Andrew Ackerly of trespassing upon and removing oysters from lands under water in Northport Harbor which Robins had leased from the Trustees of Huntington. Relying upon Brookhaven v. Strong the Court held that the issue was not res adjudicata, as would be the case if there were no defects in the Lowndes decision. Finding that the latter was based on insufficient data, subsequently remedied in the briefs submitted in the Brookhaven case, Justice Miller found there was overriding proof that by the colonial grants and long usage the Trustees did, both in fact and in law, have ownership of the land under water in Northport Harbor, which was not an arm of the Sound but rather a land locked harbor and well within the meaning of the words, "harbors, havens," included under the patents as inside the boundaries of the town.

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68. "Trustees Records, 1872-1893," 116-117, June 2, 1899.

69. Robins v. Ackerly, 91 N.Y. 98.

Of greater significance for the future of the Trustees was the decision handed down by the U.S. Supreme Court in 1894 in Lowndes v. Huntington.[70] In the decades preceding the Civil War a number of nonresidents, particularly from Connecticut, entered the waters of Huntington to shellfish. Although this had occurred occasionally throughout the town's history, and appropriate local ordinances had been passed to stop the practice, it usually involved individuals from nearby towns. Now they had to deal with out-of-staters as well. At a town meeting in 1784 it was voted to prohibit "any foreigners" from clamming, oystering, eeling, hawking, fishing and hunting in the town.[71] Successively thereafter the same or a similar ordinance was passed[72] until 1850 when the townspeople revised it in an effort to stop people from putting down stakes to mark off oyster beds.[73] The Trustees enacted similar ordinances beginning in 1795, although theirs were directed at regulating usage by local residents until 1798 when they expanded it to include nonresidents.[74] Not until 1859 did the Trustees take steps to actually eject nonresidents from the bays and harbors of Huntington. In that year they resolved to retain counsel to take whatever action he deemed necessary "to protect the rights of the inhabitants of the Town against assumption of claim on the part of such persons, and to bring the matter in controversy to as speedy a determination as possible before the legal tribunals of the State."[75] "Speedy

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70. Lowndes v. Huntington, 153 U.S. 1 (1894)

71. HTR, III, 123, April 6, 1784.

72. Ibid., 125, 129, 249, 279, 281, et passim.

73. Ibid., 403, April 2, 1850; 405, April 6, 1852, et passim.

74. Ibid., 185-186, June 1, 1795; 195, April 3, 1798, et passim.

75. Ibid., 442-443, March 16, 1859.

determination" in this instance is a relative term since it would be another thirty-five years before the Trustees could rest assured that the legal tribunals supported them.

During the Civil War the Lowndes brothers from Connecticut planted and harvested oysters in Huntington Bay. Because of the nagging question of the rights of the Trustees little seems to have been done until 1881 when the brothers applied for a lease from the town. The Trustees rejected the request on the grounds the applicants did not recognize that ownership rested in the Trustees.[76] In 1888 the issue was joined in the Supreme Court of New York and proceeded through the expected appeals to the U.S. Supreme Court in 1893.[77]

The Supreme Court disposed of the contention that Huntington Bay could only be recognized as part of Long Island Sound by pointing out that,[78]

> The northern boundaries in all these charters (Nicolls, Dongan, Fletcher) is given as "the Sound". That it was then, and is now, a well-known body of water. It opens into the Atlantic Ocean, but is separate and distinct therefrom. Into it flow many rivers, and open many bays, harbors, and inlets; but the fact of a connection between them and it does not make them a part of the Sound. If the words describing the appurtenances were omitted from this grant, should not its boundaries be understood to be the same as now? So the question is not whether this body of water (Huntington Bay) in which the tract in controversy is situated is strictly a harbor or a bay, but whether it is neither, and only a part of the Sound. If it was then known as an independent body of water, by whatsoever name called, that is enough to eliminate it in tracing the

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76. "Trustees Records, 1872-1893," 84-85, February 23, 1881.

77. Ibid., 302, Oct. 23, 1891; 327-328, Jan. 7, 1893. C.R. Street received a fee of $250.00 as special counsel and David B. Hill was retained for $500.00 to handle the case in the U.S. Supreme Court - fees about which present day lawyers would have fits of anguish and economic despair.

78. Lowndes v. Huntington, 153 U.S., 22-23.

> boundary of the grant. That it was so known is not open to question; it was not, therefore, a part of the Sound, and the boundary of the grant ran on the north of it.

The Court then went on to recognize the colonial grants by citing the act of May 6, 1691, "for settling, quieting, and confirming unto the Cities, Towns, Manors, and Freeholders within this Province their several Grants, Patents, and Rights respectively" section 36 of the New York State constitution of 1777, and section 18, article 1 of the state constitution of 1846, and concluded that, "No question exists as to the validity of these ancient grants, or that they were broad enough to include oyster rights in the waters within them".[79]

Taking immediate advantage of the decision the Trustees requested Theodore Lowndes, who had bought out all the rights of Stanley H. Lowndes the defendant in the action, to remove all oysters previously planted in a two hundred acre plot in Huntington Bay. They levied a fine of one thousand dollars plus costs of the suit with interest and demanded that he relinquish all claims he might have to the land under water.[80]

Boundary disputes also plagued Huntington. At one time or another during the first two hundred years of its existence the town's claims as to its extent came into conflict with the adjoining towns of Smithtown, Islip, and Oyster Bay. Frequently the disputes were settled by committees composed of representatives of Huntington and the town involved; at other times resort to the courts became necessary. Ownership of and jurisdiction over Lloyd's Neck and Eaton's Neck, both erected into manors in the 17th century, also

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79. Ibid., 26-27.

80. "Trustees Records, 1893-1914," 19, June 16, 1894.

proved to be points of contention which dragged on for years.

In the case of the boundary between Huntington and Smithtown the question of the eastward extend of Huntington developed out of the original Indian deeds and subsequent grants to the two towns. In 1656 the men of Huntington purchased the second, or eastern, purchase from the Indians, which extended the bounds eastward to the Nesaquake (Nissequogue) River. At about the same time Richard Smith had acquired by deed from the Indians the land west of the river as far as Fresh Pond or Unshemamuck. The Nicolls patent of 1666 ratified the Huntington boundary based on the Indians deeds. However Smith resisted the town's claims and determined to have the matter settled in the courts. In the meantime Huntington, to better assert it claims, divided the disputed area into ten farms and settled families there in 1672,[81] with the understanding that if they lost the suit the families would be compensated with lands elsewhere in the town.[82] On September 24, 1675, after considering the claims, testimony, and documents from both sides, the Court of Assizes awarded the land to Smith "between Nesaquaq River westward and Whitman's Hollow and so to fresh ponds...the said land to be within the jurisdiction of Huntington as within their patent, though the property adjudged to the plaintiff."[83] The Huntington settlers were given until the following May to remove themselves. At that time the boundary line was agreed to as on the "west most part of Joseph Whitman's Hollow and west side of the Leading

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81. HTR, I, 176-177, February 15, 1671.

82. Ibid., 215-216, December 7, 1675. Each family received a lot in town with the promise of additional meadow land when the town bought more lands from the Indians.

83. Ibid., 209-214, September, 1675.

Hollow to fresh pond Unthemamuck and the west side of this pond at high water mark."

Smithtown's claim received further confirmation in its patent from Governor Andros in 1677 when it included,[84]

> Also another parcel or tract of land on the west side of the said river (Nesaquake), extending to the westernmost part of Joseph Whitman's Hollow, as also to the west side of Leading Hollow to the fresh pond Unshemamuck, and the west of that pond at high water mark and so to the Sound, being Huntington east bounds; which said parcel or tract of land on the east side of Nesequake River was heretofore granted by patent unto Richard Smith, the present possessor, by Col. Richard Nicolls and to his heirs and assigns forever, as also that on the west side of said river, with some provisos and restrictions, the which has since by due course of law, at the General Court of Assizes held in the year 1675, been recovered by the said Richard Smith from the town of Huntington.

The Dongan Patent to Huntington continued to recognize the original eastern boundary as described by Nicolls, but Governor Fletcher corrected this in 1694[85]

> so only as that the limits and bounds of the said town of Huntington shall not be as abovementioned (in the Nicolls grant), but as hereafter expressed; that is to say,...and on the east by a line running from the west side of a pond called and known by the name of Fresh Pond to the west side of a neck called Sampawams, and from the said river running to the said south sea

Smithtown immediately quit-claimed to Huntington all the right, title, and interest it might have had in any lands to the west of the new line and established that the new boundary between the two towns[86]

> shall be and remain forever hereafter at the brook running into the said fresh pond, that is to say the chief and

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84. William S. Pelletreau, ed., Records of the Town of Smithtown (1898), 20-22, March 25, 1677.

85. HTR, II, 140-151.

86. Ibid., 160-161, Oct. 29, 1694.

> largest brook to divide the said bounds, and so otherwise as it bounded by the patent of the said town of Smithtown, viz., the west side of Bread and Cheese Hollow and the west side of Whitman's Hollow and the west side of the said pond

Thereafter the two towns paid little attention to the settled boundary until the middle of the following century when some descendants of the earlier inhabitants again questioned the ownership of land in the area, particularly around the Winecommack Purchase.[87] Finally in 1768 the two towns again tried to quiet any differences. Six heirs of Richard Smith, "to settle all disputes covenant and agree in consideration of £500," with the Huntington Trustees that the bounds between the towns should be,[88]

> at the brook running into the Fresh Pond called by the Indians Unshemanmuck (that is to say) the largest brook to divide the said towns, and so otherwise as is bounded by the Patent of Smithtown, viz., the west side of said pond at high water mark, thence to the Sound, the west side of Bread and Cheese Hollow to the head thereof, and the west side of Whitman's Hollow as it was formerly fenced, and from the southwesterly corner of said Whitman's Hollow as it was formerly fenced, running on a direct line to the southwest branch which is deemed the head of Nissequage River. Which said bounds shall be a perpetual bound.

Finally, in 1885, the state legislature defined the boundary line as agreed upon by the Suffolk County Board of Supervisors the previous year. Marble monuments were set, beginning at Fresh Pond, running generally south to the conjunction of the boundary lines of Huntington, Smithtown, and Islip.[89]

The north-south patent lines between Huntington and Smithtown also provoked

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87. Frequent mentions of the established line appear in various deeds in the Smithtown records, suggesting that at least as far as that town was concerned the matter had been decided. Pelletreau, Smithtown Records, 252-253, 281, 285-286, 290-291, 300-301, all in 1736; papers relating to Winnecommack, 367-372, 384-388, for 1701, 1703, and 1768.

88. Ibid., 443-444, October 1, 1768.

89. Laws of New York, 1885. 938-939, Chapt. 560, Jan. 23, 1885. For the sake of brevity the law is not repeated here.

disputes with the Town of Islip. The original line of 1666 extended the line due south from the Nissequogue River to the south sea; the alteration in 1694 shifted it westward to its present location. In between these two lines lay land which Huntington claimed under its Indian deeds and the Nicolls patent and residents of Islip claimed as belonging to them because of the westward shift of what came to be called the Confirmation Line or the line established by Huntington's Fletcher patent.

Beginning in 1763 a group of twenty-two Huntington freeholders met together to formulate plans to recover the lands between the patent and the confirmation lines.[90] This proved to be but a prelude to many years of litigation. Actually two areas were involved, that between the two lines and a number of islands in the Great South Bay. In the case of the former a settlement came about as a result of some Islip residents deeding their rights and titles to the Huntington Trustees.[91]

The islands in the Great South Bay proved to be more difficult. Matters dragged on for years until 1807 when Selah Strong, guardian of William Nicoll brought an action in the Court of Chancery to recover title to the islands for his ward on the basis of a grant to his ancestor, William Nicoll, on June 4, 1668. Chancellor Kent handed down his decision sever years later dismissing as without foundation the claims of Nicoll to either the islands or any beaches in the area in dispute.[92] Although on the surface a victory

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90. HTR, II, 461-463, June 27, 1763.

91. HTR, III, 258, 259, March 12, 1812, Jacob Harned and Elias Smith to the Trustees; 266-267, Jan. 15, 1814, Anning Moubray to the Trustees. The later sale of this area, over 3,000 acres, is discussed elsewhere in this chapter.

92. Ibid., 163-164, Jan. 28, 1972; 230-239, June-July, 1807; 261-264, Jan. 20, 1813; 269-271, April 29, 1814. The specific islands in question were Captree, Oak, and Grass Islands.

for the town, it was not one of substance since the question of whether or not the islands and beaches came within the Huntington patent of 1666 was left open. Shortly after this decision the town of Islip moved to have the state legislature give them a clear title to the islands.[93] Huntington also began maneuvering to obtain a grant by the same method, but a legislative committee report rejected both petitions, denying Islip a grant because they had no claim whatsoever to a legal title and hedging on whether or not Huntington had or could prove its title.[94] Having failed to acquire titles, the towns reached a compromise which consisted of the town of Islip quit-claiming to Huntington, for $1,000.00, all the islands and beaches to the Atlantic Ocean between the confirmation line and a line running through the middle of Brook Creek on Captree Island due south to the ocean.[95] The town of Brookhaven still had questions as to the extent of its patent rights westward in the Great South Bay, particularly with regard to fishing rights. Therefore, in 1834 commissioners from the three towns of Huntington, Islip, and Brookhaven met to settle the matter which resulted in a pole being set at the western extremity of Nicolls Bay and another due south across the South Bay on South Beach. All to the west fell within the bounds of Huntington and Islip, that to the east being Brookhaven's.[96]

On the north shore Huntington's eastern peninsula, Eaton's Neck, also gave rise to problems of ownership. Reputedly the first land sold by the

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93. Ibid., 275-277, December, 1816.

94. Ibid., 284-290, 1818.

95. Ibid., 295-296, July 13, 1818.

96. HTR, III, 355-356, December 15, 1834.

Indians to Englishmen in Huntington was acquired by Theophilus Eaton, Governor of the Colony of New Haven, in 1646. Although all traces of the original deed have vanished a confirmation deed was drawn up by the Indians in 1663 at the request of Robert Seely, indicating that Raseokan, Sachem of the Matinecocks, had sold to Eaton not only the neck but also a sizable portion of the land to the south as far as the middle of the island and four to five miles east of Northport Harbor.[97] Ten years after the original Eaton purchase Asharokan, supreme sachem in the area, sold to three Huntington men and their associates all the land east of Northport Harbor as far as the Nissequoque River, "and to the north side to as far as Asharokan's bounds go southwards as the neck called Eaton's Neck."[98] Subsequently William Jones, husband of Hannah one of Theophilus Eaton's daughters, sold the neck to Robert Seely.[99] Evidently the Huntington men had made their purchase good since Jones conveyed to Seely only the neck itself. Probably the Connecticut owners realized that no one had settled the granted area after 1646 until the Huntington men bought up much of it and actually used it. This plus the fact that the latter had received their grant from a superior Indian chief must have convinced them that their title to the southern portion of the original purchase was too tenuous to warrant a legal battle.

Nevertheless, Huntington decided to assert its ownership over the entire neck and sued Seely in an action of trespass in 1664 or 1665. A crucial point in the trial came when Samuel Titus, resident of Huntington, was forced to acknowledge that he signed the confirmatory deed as a witness. This added to

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97. HTR, I, 49, Aug. 17, 1663; see also New Haven Town Records.

98. Ibid., 6, July 30, 1656. This, of course, is the Eastern Purchase.

99. Ibid., 42-43, Dec. 22, 1662.

the testimony of a number of others, convinced the court that Jones had a good title and could convey to Seely. Therefore, on September 27, 1666 the General Court of Assizes in Manhattan awarded Eaton's Neck to Robert Seely, Huntington paying £20 damages and court costs.[100] Two months later Governor Nicolls issued his grant to Huntington which included the neck and the following spring gave a confirmation grant of Eaton's Neck to George Baldwin who had purchased it from Seely.[101] This latter grant set the boundaries of the neck "to the north, east, and south and on the west with Huntington Harbor, from whence it goes on east to the beach which divides it from Crab Meadow... containing by estimation about one thousand five hundred acres."

In 1668 Baldwin sold the neck to Alexander and Richard Bryant and several years later at the request of the Bryans Eaton's Neck was erected into a manor by Governor Dongan in 1686.[102] The grant included all rivers, rivulets, brooks, ponds, lakes, streams, creeks, harbors, beaches, fishing, hawking, hunting, and fowling and the right to hold a court leet and court baron, the power to tax and appoint officers. There is no record that the Bryans or any succeeding owners exercised the privileges of government on the neck and Huntington eventually acquired jurisdiction over it. As for proprietary ownership the town could claim only the land under water to the high water mark north of the East Beach. The Fletcher grant of 1694 confirmed the original boundaries of Huntington as amended by the suit with Richard Nicolls and gave

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100. Ibid., 86-89, Sept. 27, 1666.

101. Ibid., 92-96, Nov. 30, 1666 (Nicolls Patent to Huntington); Secretary of the State of New York, Deed Book 2, 237, July 29, 1663, Seely to Baldwin; HTR, I, 103-104, June 22, 1667, confirmation grant to Baldwin.

102. HTR, I, 124-126, July 11, 1668 (Baldwin to Bryan); 451-456, Aug. 23, 1686 (Dongan manorial grant to the Bryans).

the Trustees all the unappropriated land therein, thus excluding Eaton's Neck as land already granted and appropriated.

Thereafter Alexander Bryan sold the manor to John Sloss in 1711, but evidently retained for his own use a small spit of land known as Duck Island which extended into Huntington Bay at the northwest corner of East Beach which would be the southeast corner of the southerly extent of the manor itself.[103] This resulted in yet another conflict with the town which claimed ownership of Duck Island. In 1743 Bryan offered to compromise by paying the town £30 if they would deed the land to him and he would then relinquish all claims to any undivided lands remaining in the past land purchases of the town. The townspeople voted to accept the offer and in 1746 quit-claimed to Bryan "all that a certain tract of land and thatch or meadow lying on the west side of Eaton's Neck Beach commonly called Duck Island."[104]

There the matter of the ownership of the forty-seven and a half acre Duck Island rested until 1893 when the current owner Edward Thompson applied for a quit-claim deed from the Trustees for all the land between high and low water mark around it. Asserting that his title virtually covered it all he simply wished to clear any possible conflicting claims, but withdrew the request a year later when he sold all his right, title, and interest to others.[105] More recently the Trustees of Huntington tried to reestablish their ownership to Duck Island Beach, a small strip of sandy beach consisting of 3.3 acres along the southeasterly half of the island and leading into

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103. HTR, II, 302-303, Nov. 22, 1710; 306-307, Sept. 11, 1711.

104. Ibid., 397, May 3, 1743; 403-405, May 3, 1746.

105. "Trustees Records, 1893-1914," 7-8, 12-14, Feb. 9, 1893-Feb. 23, 1894.

East Beach. They brought suit against the Duck Island Corporation which had acquired title to the island from Aledo Realty Company and Anna L. Riese in 1922 and 1923 respectively. Both claimants produced documents to show, first, that the title in fee as far as the corporation was concerned had passed out of the hands of the Trustees in 1746, and, second, that this, in the case of the town, was not the case with regard to the beach since it and adjacent areas had been considered public land and subject to a number of lease arrangements over the years. The case finally arrived in the Appelate Division of the New York Supreme Court, second department, in 1937. Huntington lost the suit because the weight of evidence as shown through title searches indicated the area had been in private hands and that the town had not contested it for almost one hundred and ninety years.[106]

To the west on the opposite of Huntington Bay from Eaton's Neck lies Lloyd's Neck. A cursory study of its history suggests that questions of ownership of the neck followed the same path as had those concerning Eaton's Neck, yet attention to detail beings out the notion that, if anything, the path was more torturous and still leaves some aspects of the situation open to speculation. This is particularly true of Lloyd Harbor, that narrow inlet which to all intents and purposes separates the neck from the mainland except for a thin strip of beach at the far western end.

A year after the men from Oyster Bay bought the First Purchase from the Indian sacham Raseokon and turned it over to the Huntington families living in the area, one of the Oyster Bay men, Daniel Whitehead, purchased Lloyd's Neck from the same Indian.[107] This immediately raises the question of prior

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106. Town of Huntington v. Duck Island Corporation. 251 Appl. Div., 901; 297 N.Y. Suppl., 292.

107. HTR, I, 4-5, September 20, 1654.

title since Huntington's bounds, as set forth in the Indian deed, were "upon thw west side with a river commonly called by the Indians Nachaquetack, on the north side with the sea, and going eastward to a river called Opcatkontycke, on the south side to the utmost part of my bounds." Since the "sea" probably meant the Sound and it can be assumed that the English had full knowledge of the extent of the territory encompassed, one is left with the conclusion that Whitehead fell victim to a practice common amongst the Indians of selling the same land over again to another buyer regardless of whether or not they had made a sale to someone else earlier. The neck of land granted to Whitehead had as its bounds Oysterbay Harbor to the west, Cow Harbor to the east (Huntington Bay), and north by the Sound, with no mention of a southerly boundary. Despite the Whitehead purchase Huntington's inhabitants felt the neck was theirs since they used it as a common pasture for their horses, thus giving it the name of Horse Neck for a time.[108]

After Whitehead conveyed the neck to Samuel Andrews friction developed between the new owner and the townsmen over the practice of grazing horses there. The town decided to obtain a confirmatory title from Wyandanch, the supreme sachem on Long Island, who lived on Shelter Island, and dispatched a representative. Andrews got wind of this and set out himself with the same objective in mind. Andrews won the race and the title. Shortly thereafter Andrews sold out to John Richbell who brought an action of trespass against Huntington. A lower court awarded the neck to the town based on its more ancient deed of 1653, but the decision was appealed to the Court of Assizes in Manhattan which reversed it and declared Richbell to be the owner in fee.[109]

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108. Ibid., 68, May 30, 1665.

109. Ibid., 74-79, September 28, 1665.

The interesting thing about the decision was that it rested on not only a supposed earlier Indian deed but also upon the testimony of the first purchasers. Somehow during the trial the fact that the original Indian deed to Huntington gave the north boundary as the sea (or Sound) and that Whiteheads deed postdated it seems to have gotten lost. It is also interesting to speculate whether or not Whitehead himself, or even Andrews or Mayo gave testimony favorable to Richbell. If they did, one could reason that they had a partisan interest in seeing that the current owner received a favorable verdict. Finally, it could be argued that Wyandanch, who gave Andrews a confirmation rested on the original deed to Whitehead, then it simply reaffirmed a conveyance which in and of itself was questionable because of the earlier title held by the town.

In 1666 Richbell sold the neck to Nathaniel Sylvester and in the deed stated that the south boundary was the beach. In the same year Huntington received its patent from Governor Nicolls which gave as its north boundary "the Sound running betwixt Long Island and the Maine." The only construction that one can give to either of these documents is that Lloyd Harbor fell within the bounds of the town and that Sylvester had been given title only to the upland portion of the neck.[110] Later conveyances for property on the neck also gave the south beach as a boundary and when James Lloyd gained title to the entire area in 1684, the various assignments and conveyances continued to use the south beach as the boundary.[111] Once Lloyd came into possession

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110. New York Historical Society, Collections, Papers of the Lloyd Family of Lloyd's Neck, I, 32, 42. Governor Nicoll's Patent to Sylvester states "Towards the south with a beach extending to the head of a certain creek which parts or divides the bounds of the town of Huntington and the said neck." John Cox, Jr. Oyster Bay Town Records, I, 693-694, Nov. 20, 1662.

111. Ibid., 47 (1668); 56 (1678); 61 (1683); 63 (1684). See also Cox, Oyster Bay Town Records, 1653-1690, I, 188-190, heirs of N. Sylvestor to James Lloyd, Feb. 6, 1683/4.

of the neck he and the town came to an agreement over the southerly boundary on March 10, 1686.[112] This settlement indicated that the boundary had to do with meadow land and beach. An extrapolation of the line into the waters of Lloyd Harbor has been gratuitously done by later researchers in an effort to prove such a line dividing the waters of the harbor existed at this early date.

> An agreement made 10 day of March 1685/86 between Isaac Platt, James Chichester, Joseph Whitman, townsmen in behalf of themselves and the rest of the inhabitants of the town of Huntington and James Lloyd owner of Horse Neck for the stating and settling of the bounds of the Town of Huntington and the said neck. It is hereby mutually agreed and declared that the bounds between the said Town and Neck shall be between the south beach of Horse Neck and the upland of Huntington West Neck as follows: vizt, from the entrance said beach shall be sixteen poles or rods measured by the south creek side extending into the body of the beach or meadow from the upland of West Neck; and from the next point of said upland northeasterly shall be extended sixteen rods into the body of the said meadow also from the third point or station still northeasterly from West Neck upland shall be extended eighteen rods into the body of the meadow, also from the fourth point or station still northeastward from said West Neck upland shall be extended into the body of said meadow twenty rods which last point lies nigh and the northeast part of said meadow so that the bounds between Huntington and Horse Neck shall be from extended point to point successively and from the fourth or last the line to run into the river northerly sixteen rods to the westward of the upland of the bluff point of West Neck which lies toward the entrance of the upland of Horse Neck so far as shall include the remainder of said meadow on the West Neck shore on Huntington side. Moreover the Town and townsmen of Huntington aforesaid do grant unto said Lloyd, his heirs and assigns and tenants or those that may inhabit on Horse Neck free egress and regress for themselves, cattle, and creatures to use of the fresh water or run which runs at the entrance of the beach or meadow at the joining of Huntington West Neck, not encroaching or claiming any benefit, privilege, on any part of the upland on West Neck more than liberty of

112. Ibid., 438-439, March 10, 1686. The agreement was made by "Isaac Platt, James Chichester, and Joseph Whitman, townsmen on behalf of themselves and the rest of the inhabitants of the town of Huntington." It must be assumed that even with no mention of a town meeting granting these men the power to enter into such an agreement, the wording of it strongly suggests such was the case.

> watering at the foot thereof and highway to Horse Neck. In witness hereof we have hereunto set our hand and seals and delivered.

Apparently this satisfied no one for the controversy continued until 1691 when the assembly removed Lloyd's Neck from the jurisdiction of Suffolk County and placed it under that of Queens County. Prior to that, Lloyd had received a manorial grant from Governor Dongan which stated that the southern boundary was the beach, thus when the transfer took place it involved the upland and not the harbor. Still not content with the boundary lines the antagonists persisted in their separate claims until 1734 when yet another effort was made to resolve the issue.[113]

> The first bounds shall be at a stake stuck up in the body of the beach sixteen rods from the uplands of Huntington West Neck at the entrance on to the said beach from which stake the line to run northerly upon a straight line to another stake stuck up sixteen rods west from the next point of upland upon the West Neck from which stake still northerly upon a straight line to another stake stuck up eighteen rods west from the next point of uplands upon the West Neck from which stake still northerly upon a straight line to another stake stuck up twenty rods west from the next point of upland upon the West Neck from which stake still northerly upon a straight line to another stake which shall be stuck up sixteen rods west from the upland of the bluff point from which last stake so to be stuck up sixteen rods west from the upland of the bluff point the middle of the channel to be the bounds between the Manor of Queens Village and the town of Huntington til it comes to a certain weir erected by the inhabitants of Huntington for the taking or catching of fish from thence northerly to the middle of the inlet, river, or creek, between the upland of Queens Village and the upland of Huntington West Neck, from thence running easterly along the middle of the said inlet, river, or creek til it comes against a point on Queens Village shore called Conklins Point and a point on Huntington shore called Sandy Point almost opposite to the said Conklin Point and from thence upon a straight line to the middle of that part of the inlet, river, or creek that runs between the outward point of the east beach putting off from Queens Village shore and

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113. HTR, II, 376-377, May 30, 1734.

> the nighest land upon Huntington shore, then beginning again at the first stake standing the body of the beach at the entrance on to the said beach sixteen rods from the upland of the West Neck the line to run southerly into Fleets Hole, keeping the middle of said hole or inlet til it comes into the bay or harbor....The weir mentioned to be the boundary between Queens Village and Huntington lies fifty-seven rods eastward of John Conklin's Little Cove from the largest rock on the east point of said cove measured by Nathaniel Ketcham and Thomas Brush, trustees by agreement with (the trustees and Henry Lloyd)...

This then became the line accepted by both sides and immediately quit-claim deeds were exchanged with all to the south of the line to be vested in Huntington and all north of it to Lloyd.[114]

Oddly enough matters did not rest there. After the drawing of the compromise line the owners of Lloyd's Neck property began to convey title to and asserted ownership over the land under water without having received specific grants of the same. A careful search of the titles originating from Henry Lloyd onward does not clearly establish that, as the manor gradually became divided among private owners, the littoral owners actually were within their rights. Assuming that they were not the nagging question of ownership still remains for in 1776 Henry Lloyd, a tory, fled the country and thereby forfeited all his claims. The new state of New York acquired the manor by act of attainder and proceeded to auction it off in 1786 to the highest bidder. The Lloyd family had close ties and proved to be a tenacious lot because it was John Lloyd, Jr., nephew of Henry, who bought the land back. The deed returning the property to the family save the southern boundary as "south to the creek", evidently Lloyd's Harbor, and made no mention of the compromise line of 1734.[115] A later deed in 1826 confirms this boundary

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114. Lloyd Family Papers, I, 347; HTR, II, 373-375.

115. Secretary of State of New York, Deeds, Liber E, 474, March 3, 1786.

when it used the terms "southerly by the beach" and "southerly by the harbor".[116] Since all chains of title stem from John Lloyd, Jr., such later deeds are consistent with it vis-a-vis the southern boundary of Lloyd's Neck. It seems that the State did not grant the land under water to Lloyd in 1786, nor did he have the right to do so thereafter. In other words, if the line of 1734 is legally valid then the State of New York retained title to the lands under water north of that line and still holds title to them today.

Late in the nineteenth century Lloyd's neck was returned to the town of Huntington for jurisdictional purposes, thus removing it after almost two hundred years from the control of Queens County and Oyster Bay.[117]

> Sec. 1 All that part of the town of Oyster Bay, in Queens County, known and designated in the laws of this State as Lloyd's Neck, bounded as follows: Commencing at high-water mark west by Cold Spring harbor and Long Island sound; north by Long Island sound; east by Huntington bay, and southerly by the present boundary line between the towns of Huntington and Oyster Bay, is hereby set off and separated from the residue of said town of Oyster Bay, Queens County, and annexed to said town of Huntington, county of Suffolk; and from and after the passage of this act the territory thus set off shall be and constitute a part of the town of Huntington and a part of the county of Suffolk.
>
> Sec. 7 Nothing in this act contained shall impair or affect any title or property rights which the town of Oyster Bay may have to any common property within the town of Oyster Bay, within its limits as they exist prior to the passage of this act.
>
> Sec. 8 All acts or parts of acts inconsistent with this act, in so far as the same relate to or affect the territory so set off, are hereby repealed.

Consideration of the legal questions involved in the land under the waters of Lloyd Harbor, as well as other questions relating to similar lands elsewhere and the rights of the trustees will follow in a later chapter. For

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116. Lloyd Family Papers, II, 875-876.

117. Laws of New York, 1885, 956-957, Chapt. 667, June 15, 1886.

now, the status of the western boundary of Huntington must be analyzed since it falls within the present discussion.

The Oyster Bay - Huntington boundary produced as much trouble as all the others, if not more so, and it still persists in being vexacious today. Since Samuel Mayo, William Leverich, and Peter Wright purchased the Oyster Bay tract a few days before their associates Houldbroke, Williams, and Whitehead bought the Huntington land, that should be considered first. The purchase price is typical of the period, that is to say, a few farming implements, some clothing, knives, kettles, and hatchets. The description of what was bought is also typical of the times - somewhat vague yet specific enough to mention a few landmarks still identifiable today.[118]

> Anno Dni one thousand six hundred and fifty-three. This writing witnesseth that Assiapum alias Mohenes have sold unto Peter Wright, Samuel Mayo, William Leverich, their heirs, executors, administrators, and assigns all his land lying and scituate upon Oysterbay and bounded by Oyster River to the east side, and Papaquetuck River on the west side with all the woods, rivers, marshes, uplands, ponds, and all other the appurtenances lying between the bounds aforenamed, with all the islands lying to the seaward (excepting one island commonly called Hog Island) and bounded near southward by a point of trees called Cantiague...

In the conveyance itself there is the subscription that the word "Oyster" is interlined as are the words "all his land". In other words, they struck them out to indicate they were not to be considered a part of the deed and were to be understood as eliminated and having no meaning or importance. Oyster River, called by the Indians Nachaquetack, still exists as the small river flowing from the center of the island northward into Cold Spring Harbor. During the 1670's a mill dam was constructed across its mouth at the head of

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118. Cox; Oyster Bay Town Records, I, 354, (circa February/March, 1653)

the harbor forming three large ponds successively southward behind it. This river was the division line and western boundary of Oyster Bay as deeded by the Indians and is constantly referred to as a boundary line in deeds written during the colonial period. For example, Governor Nicolls issued a patent to Robert Williams, as a confirmation of some Indian land Williams had acquired some years earlier, in which the eastern line is described as,[119]

> then running east it goes to the end of the said plains and so enters into the woods at the Cart Path leading from Hempstead to Huntington [this path ran in a south-west-northeast direction] till you come to the swamp which lies below the head of Cold Spring or Oyster River by the Indians called Nackaquetack being the west bounds of the town of Huntington

Evidently the approximate center of the mill dam later created came to be considered the dividing line between the two towns. A series of transfers of title to the mill in the middle of the 18th century places the dividing line at the river, mentioning that part of the mill property was on the eastern or Huntington side and part on the western or Oyster Bay side.[120]

As with the other boundary lines questions arose as to lands straddling them. In 1673 the townspeople of Oyster Bay appointed a committee to meet with representatives from Huntington to run a line between the two towns.[121] The official designation of the line insofar as Oyster Bay was concerned came in 1677 when that town received a patent from Governor Andros in which its boundaries were set out as,[122]

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119. Ibid., 626-627, February 13, 1666.

120. Ibid., VI, 5-7, June 26, 1750; 94-101, March 12-September 20, 1753; 178-180, April 15, 1767; 175-177, February 12, 1785.

121. Ibid., I, 222-223, May 19, 1673.

122. Ibid., 307-308, September 29, 1677.

> Whereas there is a certain town in the North Riding of Yorkshire upon Long Island commonly called and known by the name of Oysterbay scituate, lying, and being on the north side of the said island towards the Sound having a certain tract of land thereunto belonging; the east bounds whereof begin at the head of the Cold Spring and so to range upon a southward line from the Sound or North Sea to the South Sea cross the island to the southeast bounds of their south meadows at a certain river called by the Indians Warrasketuck; thence running along the sea coast westerly and another certain river called Arrasqaung, then northerly to the easternmost extent of the Great Plains where the line divides Hempstead and Robert Williams bounds; from thence stretching westerly along the middle of the said plains till it bears south from the said Robert Williams marked tree at the point of trees called Cantiag, thence on a north line to the said marked tree; and then in a northwest line somewhat westerly to the head of Hempstead Harbor on the east side to the Sound; and from thence easterly along the Sound to the aforementioned north and south line which runs cross the island by the Cold Spring aforesaid; bounded on the north by the Sound, on the east by Huntington limits, on the south part by the sea and part by Hempstead limits, and on the west by the bounds of Hempstead, including all the necks of lands and islands within the afore described bounds and limits.

Of course the town of Huntington had had its limits described initially in the Indian deed of 1653 as "bounded upon the west side with a river commonly called by the Indians Natchaquetuck, on the north with the sea..." and the Nicolls patent of 1666 had interpreted this as being, "from a certain river or creek on the west commonly called by the Indians by the name of Nackaquatok and by the English the Cold Spring...on the north to be bounded by the Sound running betwixt Long Island and the Maine..." Both the Dongan and Fletcher patents use the same language to identify Huntington's western limits.

Needless to say none of these patents settled the matter in the minds of the local inhabitants. In 1684 both towns delegated representatives to meet and run a line acceptable to both. Each duly recorded the agreed upon line, as[123]

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123. Ibid., I, 30-31, February 18, 1685; HTR, I, 399-400, October 4, 1684.

> to begin at the head of the Cold Spring river at a white oak tree with mark H on the one side and O on the other side, and from thence to a white oak on the south side of Huntington Cart Path unto the plains, which is on the west side of the slow of water that the abovesaid cart path goes through, and so runs south, as near as we could marking trees with O and H until we came unto the middle of the island, as near as we could perceive or understand; and this above said line run by these men or inhabitants of both towns being fully empowered by the aforesaid towns for a perpetual line of division to remain so unto them and their heirs forever. This line run on the ninth day of August 1684 and assigned upon the 29th October ensuing.

Exactly one hundred years later, almost to the day, both towns again voted to run the line, but this time to carry it further south. Oyster Bay did not participate at that time so the Huntington men marked it off to their satisfaction and there matters rested generally until the middle of the 19th century.[124] At that time a state surveyor, called in to run a more accurate line, established a boundary which was accepted by both towns and recorded in the office of the Secretary of State of New York.[125]

> beginning at a point at the head of Cold Spring where formerly stood a white oak tree with H marked on one side and O on the other and now a heap of stones, as fixed on and determined by Thomas Townsend, Nathaniel Coles, and John Wicks, Commissioners appointed on the part of Oyster Bay, and Thomas Powell, and Abiel Titus, Commissioners appointed on the part of Huntington, in the year 1684, as the head of Cold Spring, from thence southerly in a direct and straight line to the head of the river on the south side of the Island called by the Indians name of Waunskituc and by the inhabitants Lattin's Creek.... and again beginning at the heap of stones at the head of Cold Spring and from thence northerly till it comes to the brook or flow of water, and thence northerly through the middle of the brook and mill pond till it comes to a monument on the lower or northernmost mill dam, and from thence northerly along the middle of the main channel of the Bay, on or near the eastern

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124. Cox, Oyster Bay Town Records, VII, 76, August 13, 1785; HTR, III, 128, September 5, 1785. Oyster Bay also took independent action in 1789 with respect to the line, VIII, 465, April 7, 1789.

125. HTR, III, 454-457, March 1, 1860.

> shore, until it comes to the middle of the channel between Oyster Bay beach and Huntington beach and so on northerly as the line now runs to a spot known and designated as Fleet's Hole, and thence northerly through the middle of Fleet's Hole till it comes to the boundaries between Henry Lloyd, of Queens Village, and the Township of Huntington on the beach, as established by Commissioners in 1734, and from thence easterly, the middle of the channel to be the bounds between the manor of Queens Village and the Town of Huntington, till it comes to a certain weir erected by the inhabitants of Huntington for the taking and catching of fish and from thence northerly to the middle of the inlet, river, or creek between the upland of Queens Village and the upland of Huntington, West Neck; from thence running easterly along the middle of said inlet, or river or creek until it comes against a point of Queens Village shore, called Conklin's Point, and from thence upon a straight line to that part of the river or creek that runs between the outward point of the east beach, putting off from Queens Village shore and the highest (nighest?) land upon Huntington shore...

As for the placement of monuments, W.J. Weeks noted that he erected one on the south side of the Hewlett mill dam at Cold Spring sixty links east from the middle of the south end of the bridge. In his opinion based on the evidence available to him at the time, "this bridge is directly or very nearly over the channel of the original stream, the true boundary, and the monument was placed where it was not likely to be disturbed by repairs to the bridge."[126]

This then became the established boundary between the two towns. Whether or not it was intended to be a jurisdictional or a title line, or both, is answered by the surveyor, Van R. Richmond,[127]

> I do hereby declare at the request of the before named gentlemen, Jones and Floyd, the representatives of the two Towns interested, as well as my conviction of the justice thereof and in conformity to the Statute in that case made and provided, that the line established as

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126. Ibid., 601, June 1, 1860.

127. Ibid., 457.

> aforesaid, shall not affect the title or possession of any person or persons along the said line either in the confirmation of title or in impairing the same, but for the purpose of jurisdiction only; that property now or heretofore bounded by the Suffolk or Queens County line or Oyster Bay or Huntington line shall continue to be bounded by the line as heretobefore supposed to exist and not by the line herein established.

If one looks behind this statement to the historical documents on record, it is difficult to avoid the conclusion that Richmond had in fact drawn both a jurisdictional and a title line virtually the same as that set forth in the seventeenth century patents. Consider for a moment the sequence of these documents. The Indians gave each town land as far as the Oyster River. In neither grant is Cold Spring Harbor even mentioned, although Long Island Sound is referred to as the northerly boundary of both towns. The harbor remained an open and undivided body of water.

A digression is necessary at this point to consider the value and importance of these Indian deeds since they have been brought into question in more than one recent court decision, notably in the case of Trustees of Town of Southampton v. Mecox Bay Oyster Co. in which the court declared that titles based purely on grants from the Indians were not cognizable in law.[128] In the light of English practices in the 17th and 18th centuries, especially in the northern colonies, this is strange indeed. For centuries it had been a commonly held belief of all ranks of Englishmen that every parcel of land in the kingdom had a tenant and was held by some form of tenure. It follows that each parcel, therefore, had to have a proprietor. Although antecedents of this belief can be traced back to the Anglo-Saxon period, its major origins began with the conquest of the Anglo-Saxons by William of Normandy in 1066.

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128. Trustees of the Town of Southampton v. Mecox Bay Oyster Co., 116 New York 1.

All land in England and the proprietary rights to it were held by a formula established in the eleventh century by William I. The king himself held land which was in every sense his own. Exclusive of this royal demesne all land was held of the king and was in the nature of a private contract conditional upon services rendered or duties performed. The nature of these duties determined the type of tenure. When William I conquered England in 1066 all of the land, with very few exceptions, became his royal demesne. To insure continued support and military aid he parcelled out the land to certain earls, bishops, rich abbeys, and the like who held it in capite as tenants-in-chief holding immediately of the king. They in turn did what the king had done to them and sub-infeudated their holdings. That which they retained they held in demesne; that which they enfeoffed (gave as a gift in return for services) they became mesne lords of and the tenants held by mesne tenure. By 1086 the whole country was thus divided among more than 1,500 tenants in capite with innumerable sub-tenants holding by knight service tenure or some lesser form of tenure arrangement. Necessity and custom combined to make men become accustomed to thinking that every occupant of land had to have a tenure defined by some form of service. As Sir William Holdsworth explained it.[129]

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129. Sir William Holdsworth, An Historical Introduction to the Land Law (Oxford: Clarendon Press, 1927), 21. For a further expansion of this see Holdsworth, A History of English Law (London: Methuen and Co., 1956, 14 vols.), I; David Ogg, England in the Reigns of James II and William III (Oxford: Clarendon Press, 1955), 54-60; Alan Harding, A Social History of English Law, (Middlesex, England: Penguin Books, 1966), 31-32; Sir Frederick Pollock and Frederic W. Maitland, The History of English Law before the time of Edward I (Cambridge, University Press, 1968), 2 vols.; Theodore F.T. Plucknett, Taswell-Langmead's English Constitutional History (London: Sweet and Maxwell, 1960); Plucknett, A Concise History of the Common Law (London: Buterworth & Co. 1948).

> Every acre of English soil and every proprietary right therein have been brought within the compass of a single formula which may be expressed thus: Z tenet terram illam de domino Rege. The king himself holds land which is in every sense his own; no one else has any proprietary right in it; but if we leave out of account these royal demesnes, then it is true that every acre of land is held of the king.

As a matter of course the English, upon arrival in the New World felt they had to seek out the then proprietors of land they desired and obtain a legal conveyance from him. Otherwise, in their minds, they had no proof of ownership which would be cognizable in a court of law other than long possession and use. They knew that the latter would be a tenuous legal stance because of the acquisitiveness and unscrupulousness of their fellow countrymen. Such an attitude and long standing legal tradition was exemplified in the first laws, the Duke's Laws, passed in the colony after the English conquest in 1664.[130]

> No purchase of lands from Indians after the first day of March, 1664, shall be esteemed a good title without leave first had and obtained from the Governor and after leave so obtained the purchasers shall bring the Sachem and right owner of such lands before the Governor to acknowledge satisfaction and payment for the said lands; whereupon they shall have a grant from the Governor and the purchase so made and prosecuted is to be entered upon record in the office and from that time to be valid to all intents and purposes.
>
> To the end all former purchases may be ascertained to the present possessor or right owner they shall bring in their former grants and take out new patents for the same from the present Governor in the behalf of his Royal Highness the Duke of York.

A careful reading of a number of patents issued to towns on Long Island,

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130. Colonial Laws of New York, I, 40, 44. The reference to former purchases and former grants undoubtedly included both purchases from Indians and grants from the Dutch governors, depending upon which was applicable to a given situation.

especially those in Suffolk County, brings out the fact that the first governor, Richard Nicolls, fully recognized the proprietorship of the Indians. Both the Huntington and Easthampton patents from Nicolls include the phrase "all that tract of land which already has been or that hereafter shall be purchased for and on the behalf of the said town whether from the natives (Indian proprietors) (the word "Indian is missing from the Huntington patent) or others..."[131] The Andros patent to Southold and Southampton in 1676 use approximately the same language, as do the later Dongan patents. The latter patents, as did the Dongan and Fletcher patents to Huntington, expressly stated that the patentees could purchase lands from the Indians who were the recognized proprietors of whatever land yet remained unpurchased within the town limits.[132] Given the existence of these legal documents and the law of the time, it seems rather presumptuous of the court in the Town of Southampton v. Mecox decision to accept the former and deny the latter. That is bad law.

To return to the western boundary of Huntington and the dispute with Oyster Bay. The Nicolls patents to each town recognized the earlier Indian grant and its boundaries as best they could be described in 1666. However, the eastern boundary of Oyster Bay was described more accurately as a line run due north from the head of Cold Spring Harbor into the Sound where it intersected a line drawn due east from the northwest corner of the town. The patent then summarized Oyster Bay's boundaries as "Bounded on the north by the

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131. State of New York, Department of State, Letters Patent, Book I, 83-86, Easthampton, March 13, 1666; HTR, I, 92-96, November 30, 1666.

132. State of New York, Department of State, Letters Patent, Book 4, 100-102, Southampton patent of November 1, 1676; 102-104, Southold patent of October 30, 1676; Book 6, 35-44, Southampton patent of December 6, 1686; 48-57, Easthampton patent of December 9, 1686.

Sound, on the east by Huntington limits, on the south part by the sea and part by Hempstead limits, and on the west by the bounds of Hempstead..." (my emphasis). Clearly Oyster Bay's eastern limit gave it title to at lease some of the land under the waters of Cold Spring Harbor. But it did not give all of it since a definite line was established so as to run through the harbor itself at some point between the two shores. The mention of "on the east by Huntington limits" strongly implies that the eastern town had title to all lands immediately east of the line. This contention is further buttressed by the words in the Huntington patent "all havens...harbors...waters...and all other hereditaments to the said land and premises within the limits and bounds aforementioned described, belonging or in anywise appertaining." Obviously the harbor appertains to the land abutting it. Since the western town was granted all the harbor to a specified line and the Huntington patent gives their bounds as the river on the east and the Sound on the north, then Huntington ipso facto by the language in both patents gained title to the lands under water westward from the shore to the Oyster Bay line. No more, no less.

Why, then belabor the point? In recent years (to step out of the nineteenth century emphasis of this chapter for a moment) there have been three cases tried before the courts of this state which questioned the westernmost boundary of Huntington: Tiffany v. Oyster Bay et al (1913); Jennings et al v. Watts (1933); and Nance v. Oyster Bay (1965).[133] Each case in turn involved the right of an individual or firm to make use of the lands under the water of Cold Spring Harbor, which right had to be based on an interpretation of

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133. 209 N.Y. 1; 264 N.Y. 306; 258 N.Y. Sup. 2nd 156.

whether Oyster Bay, Huntington, or the State of New York was the owner in fee of such lands.

In the Tiffany case one Louis C. Tiffany, owning land on Cove Neck, received from the state a patent in 1905 for land under water in which to build a boat house and dock. Subsequently he constructed a bathhouse, bulkheads, and jetties, some of which extended beyond the highwater mark. At that point officials of Oyster Bay undertook to demolish those portions which they claimed encroached on town land, with the inevitable result that a suit was undertaken by Tiffany to obtain a permanent restraining order. The case proceeded through the lower court and came before the New York Supreme Court, Appellate Division, in December, 1910. This court held that the northern point of beginning of the line running south from the head of the harbor was the farthest northward that that line could possibly go, given no other language in the early patents to the contrary. They then considered the north boundary of Oyster Bay as beginning at the northeast corner of Hempstead Harbor, Matinicock Point, as running along the shore line, "along the Sound", easterly. At that point the majority decision worked itself into a quandry. What to do with the line running east to cause it to meet the north-south line at its starting point? Rather than extend it farther to where it could intersect with a line projected northerly from the point of beginning at the head of Cold Spring Harbor, the judges who wrote the opinion agreed that in order to do this the line must bend in a southeasterly direction to be able to meet the northern terminus of the east line at the head of the harbor. In other words, they forced the line to run in a south and southeasterly direction rather than easterly,[134] thus not giving either Oyster Bay or Huntington any

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134. 126 N.Y. Sup. 913.

land beyond the high water mark on either shore. By its decision the majority vested title to all land under water in the state.

One judge dissented and, relying in part upon his opinion, the Court of Appeals reversed the lower court's decision and gave all the land under water to Oyster Bay, leaving Huntington with nothing more than title to the land only as far as the high water mark on the eastern shore of the harbor. Concentrating on the northern boundary of Oyster Bay as a line running easterly from a point such as Matinicock Point at the northwest corner the dissenting opinion had recognized that, although not a straight line because it followed the coast first easterly then northeasterly then southeasterly in order to conform to the high water mark of the shore line, it did maintain a consistent "easterly" direction as mandated by the patent from Andros. Furthermore, that patent laid down that the line must intersect with a north-south line at its eastern terminus.[135]

> Although it be necessary that this northerly line shall follow the changing directions of the north shore, still its trend must be easterly, and so, while running easterly, it must meet the range line across the island. The northern seashore has a series of windings. but from Matinicock Point to Center Island Point it has a general bearing to the eastward and not to the northeast or to the southeast, and, for the reason that some of the curves of the north shore depart more or less in their directions from an easterly course, it is not excusable to change the directed easterly coarse of the north boundary line, and at Center Island Point bend it into another permanent direction, and cause it to become southeasterly or south southeasterly, inasmuch as it was directed to join the range line upon an easterly course. It cannot be claimed that this easterly line would be equally disturbed in its course, if carried to meet the range line running southwardly from sea to sea. Upon reaching Center Island Point, it would be carried easterly to the western limit of Huntington. Although this might not be a direct east

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135. Ibid., 915.

> line, it was not required to be such. It is difficult that it is more easterly than southeasterly.

Concluding that any reference to the Lloyd Neck patent is irrelevant because the neck was granted away prior to the Andros papers, and was, in fact, incorporated in the earlier Huntington patent, the dissenting opinion pointed out that the construction of the majority actually destroyed a portion of the eastern boundary by running it along the west shore line to meet the beginning point at the head of the harbor. The proper interpretation of the patent requires that the easterly line maintain its eastward course until it meets the line ranging across the island since "The line which this easterly line shall meet runs 'by'--that is, through--'Cold Spring aforesaid.'" The Court of Appeals accepted this reasoning and then went on to interpret the north-south line as running along the eastern high water mark of the harbor. This gave title to all the lands under the waters of the harbor to Oyster Bay.[136]

In arriving at this conclusion the judges neglected one important point. They failed to take into account the precise point at the head of the harbor where the south line began and then ranged north and south. In the original Indian deeds the river which empties into the head of the harbor was designated as the boundary between the two towns. Thereafter, and as repeatedly mentioned by the courts, Huntington's west line was the river, presumably to the high water mark since no language in the deed or later patents can be so construed as to include the river. Yet the Andros patent to Oyster Bay began the line at the head of the harbor and ran it south, always keeping in mind the western limit of Huntington, which was the west bank of the river. The argument should have reduced itself to a question of where the river entered

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136. Ibid., 11-12.

the harbor. If it did so on the extreme eastern side of the head of the harbor, then the line drawn by the dissenting judge and later the Court of Appeals is correct. Anywhere west of that point and they are in error. Evidence cited previously in this chapter leads one to believe that the river entered the harbor somewhere midway between the eastern and western extremities of the mill dam built across it in the seventeenth century by Hawxhurst. The 1860 line drawn by Richmond accepted this; so too did the State engineers and surveyors in 1875 when they again determined this to be the dividing line based on a survey made by Shipman and Whitney two years earlier at the request of two commissioners each from Suffolk and Queens Counties. Admittedly these lines were for jurisdictional purposes. Nevertheless, the surveyors in both instances relied upon ancient documents as their guide and those documents settled not only jurisdictional but also proprietary boundaries. Why the learned judges chose to ignore this fact in 1913 is a question which cannot be answered.

Fortunately for Huntington this did not end the matter. Twenty years later certain residents in the town of Huntington petitioned to be annexed to the village of Lloyd Harbor. The town rejected the petition on the grounds that part of the land to be annexed was in the town of Oyster Bay. So again the question of the boundary came before the courts.[137] And again the same documents were hashed over along with additional documents not considered by the Tiffany court, that is, the Indian deeds and the surveyed line of 1875. Basing its conclusion on the acceptance of the 1860/1875 lines as conferring both title and jurisdiction, the court held that both towns owned land under water in Cold Spring Harbor, one to the west of it and the other to the east,

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137. Jennings et al v. Watts et al, 264 New York 306.

and that the line established by the Tiffany decision was more than the case required. Consequently the court repudiated the Tiffany line and declared that that case should not have involved itself in a discussion and determination of the ownership of the land under water except insofar as it had to do with the actual land in question in the immediate vicinity of Tiffany's docks and jetties.

Did this decision lay the matter to rest? No it did not. Another thirty years passed and the vexacious and persistent question found its way back into the courts. This time the cause celebre was a dredging operation being carried on in Cold Spring Harbor during the late 1950's and early 1960's. In 1954 the United States Dredging Corporation entered into a contract with the town of Huntington to dredge sand and gravel from various locations in the harbors and bays in the town. Beginning in the spring of 1955 the company commenced operations in the inner harbor of Cold Spring Harbor. In October of 1959 John W. Nance instituted an action against the company claiming it was removing material from the harbor that properly belonged to the town of Oyster Bay.[138] The town of Huntington constituting the Board of Trustees of the town became a party to the action as a defendant.[139]

Naturally the determination of the boundary line between the two towns must be paramont in the court's decision--much more so than in the Tiffany suit of 1913. The case came before the State Supreme Court, Appellate Division, Second Department, in the spring of 1965. That court stated the boundary dispute when it said,[140]

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138. It is alleged by some persons that Nance took this action primarily because he was seeking election to a local office and felt this suit would advance his political career.

139. Nance v. Town of Oyster Bay et al., 258 N.Y. Suppl. 2nd 156.

140. Ibid., 159-160. The Indian grants statement has been discussed ante.

> Land titles and political boundaries of "nearly all the Long Island towns were created by royal charters" or patents; such grants by the English rulers "rested upon the right of discovery;" and titles based purely on grants from the Indians were not cognizable in law (Trustees, etc. of Town of Southampton v. Mecox Bay Oyster Co., 116 N.Y. 1, 5-7, 22 N.E. 387, 388-389). However, the territorial descriptions in "the early grants to the two towns [Oyster Bay and Huntington] were ambiguous;" and since "the earliest colonial days" these towns have disputed the boundary line which divides them. But wherever the line truly lies, it is the same one that divides the counties of Nassau and Suffolk (Matter of Jennings v. Watt, 264 N.Y. 306, 310-311, 313, 190 N.E. 650-651, 652).

The court then proceeded to take into account the three possible lines: a line in the Belcher-Hyde atlas of 1914; the surveyed line drawn in 1860 and again in 1873 as accepted in 1875 (referred to as the Jennings line since it played so prominent a part in the suit); and the high water mark on the easterly side of the harbor (dubbed the Tiffany line because it was approved of in that suit). Sweeping aside the contentions of the various parties to the suit, because each had changed its mind during the entire proceedings depending on which line proved most advantageous at the time, the court set out to establish its own line based on the evidence presented in this and previous cases. In other words, they did not consider the question moot or res adjudicata.

The court concluded that "both towns own underwater land in the inner harbor on the respective sides of a single line, which governs both as to title and as to jurisdiction of the towns." It then chose the Jennings line, that of 1860 as confirmed in 1873-5, as the correct line. The court considered the principle of law in Matter of Mayor, etc., of City of New York,[141] which is that the king "will not be presumed to have [conveyed title to the

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141. 182 New York, 361, 365-369, 75 N.E. 156, 157-158.

tideway in navigable waters] by merely bounding the conveyance upon the sea or the river." The conveyance would carry only to the high water mark unless "other words must be employed in the conveyance which would clearly indicate his [the king's] purpose and intent to convey the lands under water."[142] In the same case it was indicated that where the grantee was a local government subordinate to the royal grantor certain matters in the grant could constitute "other words" which could not be considered if it were a grant to a private party. These "other words" became "belonging or in any wise appertaining", and were so construed as to include abutting waterways since it was inconceivable to the court that, given the circumstances, the royal governor would not have granted a body of water, such as a bay or harbor, to one public municipality to the exclusion of another which might also border it.

The court then dismissed the contention that the 1860/1875 line was one of jurisdiction only, holding that even though they were considered to be purely jurisdictional in nature at the time they had in fact followed the single jurisdictional and title line as laid down in the royal grants. In consequence of this the Nance decision fully supported the Jennings decision which set aside the Tiffany line as being incorrect and even beyond the scope of that court to determine.[143]

After arriving in its argument at the point where it felt that both towns had a good case to claim at least some of the lands under the waters of Cold Spring Harbor, and after taking into account the evidence presented as well as prior court decisions, the court reached the conclusion that,[144]

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142. Nance v. Town of Oyster Bay, 166

143. Ibid., 168. See Table IV, following page, for Oyster Bay-Huntington boundaries.

144. Ibid., 169.

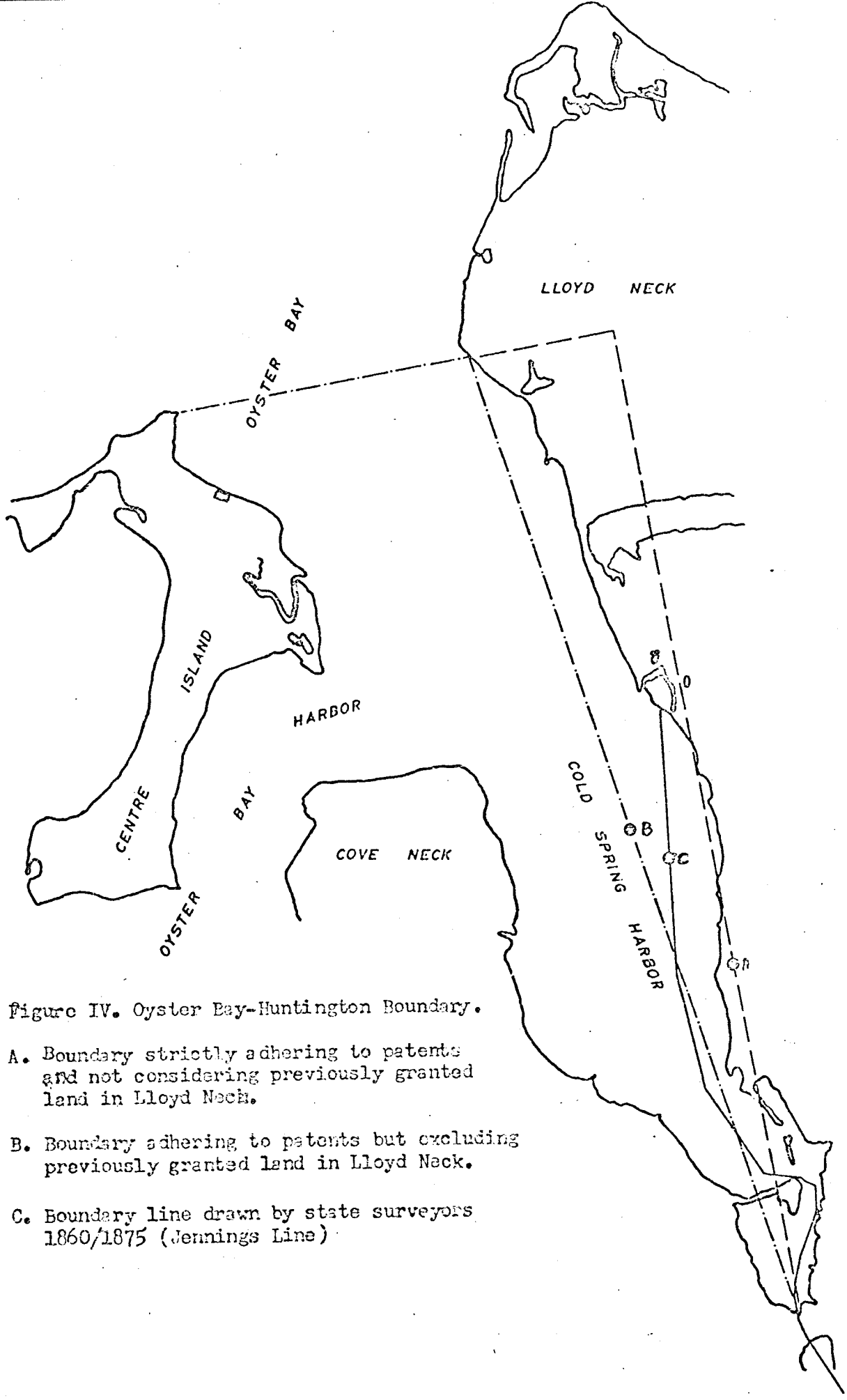

Figure IV. Oyster Bay-Huntington Boundary.

A. Boundary strictly adhering to patents and not considering previously granted land in Lloyd Neck.

B. Boundary adhering to patents but excluding previously granted land in Lloyd Neck.

C. Boundary line drawn by state surveyors 1860/1875 (Jennings Line)

> We hold, therefore, that for all purposes, governmental and title, the Jennings line is the line between the Towns of Oyster Bay and Huntington. This is the logical and reasonable conclusions dictated by the evidence and by the prior decisions. From the point of view of town and county administration, we note that it is practical and feasible that this should be the line. It is well off the shorelines of both these towns; and neither town is subjected to undue limitations with respect to the use of its shoreline which would be present if the line were at high water mark on its side of the Harbor.

All that remains to be said about the nineteenth century and Huntington is that toward the end of the century the town was subdivided and its Trustees abolished. Both events took place in the year 1872 and, at least on the surface, materially altered both the physical and the administrative topography of the town.

At that time there were two centers of population in Huntington, one along the north shore and the other concentrated on the shore of the Great South Bay. This internal difference precipitated conflicting views as to the management of town affairs which culminated in an act of the state legislature to divide the town and create a new one in the southern portion called Babylon.[145] The new town boundaries were established as,

> On the north by a line commencing at the boundary line between the towns of Oyster Bay and Huntington, one mile north of the line of the Long Island railroad, and running thence easterly and parallel with said Long Island railroad, until it reaches a point on the boundary line between the towns of Huntington and Islip; one mile north of the Long Island railroad; on the east by the town of Islip; on the south by the Atlantic Ocean; and on the west by the town of Oyster Bay; the eastern and western boundaries being by the lines now established and recognized as the town divisions of the said several towns respectively.

As for the personal property of Huntington, including monies, it was to be apportioned between the two towns according to the taxable property in each

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145. Laws of New York, 1872, 248-252, Chapt. 105, March 13, 1872.

town as it existed immediately prior to the division and as ascertained by the last assessment list of the town. Real estate presented another problem since it involved the proprietorship of the Trustees of the Town of Huntington.[146]

> 6. The real estate belonging to the said town of Huntington is hereby divided and apportioned, and shall henceforth be held in severalty by the town of Babylon and the town of Huntington, as hereby continued, so that the said two towns shall each respectively be entitled, and shall own, exercise, control and enjoy all that part of the said real estate which is situated within the limits defined as aforesaid, except the real estate known as the town farm, situated at Long Swamp, which is hereby directed to be sold, and the proceeds thereof apportioned between the said two towns, according to the manner and rule of apportionment described in the last preceding section. The supervisor and justices of the peace of the said town of Babylon and their successors are hereby designated and created ex officio trustees of the town of Babylon, to hold, manage, control, convey, and dispose of the real estate of said town of Babylon. The trustees of the freeholders and commonalty of the town of Huntington are hereby empowered and directed to make and execute all releases and conveyances necessary to carry into effect the provisions of this section.

The Board of Trustees of Huntington complied with this directive early the following year and authorized the president of the board to make and execute the necessary quit-claim deed.[147] Due to a fire in the Babylon town clerk's office in 1897, that town's attorney requested the Trustees to furnish him with new quit-claim deeds covering all that conveyed to the town in 1873. The Huntington trustees obligingly agreed to quit-claim, once again, "all the rights and interests of this town in the lands and land under water now in possession of the said town of Babylon."[148]

Two months after the legislature passed the act dividing the town it

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146. Ibid., 249-250.

147. HTR, III, 624, January 3, 1873.

148. "Trustees Records, 1893-1914," 85-86, October 1, 1897. The same request was made again in 1902. Ibid., 173, May 27, 1902.

enacted "An act to abolish the office of the trustees of the freeholders and commonalty of the town of Huntington, in the town of Huntington, County of Suffolk, and to create their successors."[149]

> The people of the State of New York, represented in Senate and Assembly, do enact as follows:
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> Section 1. On and after the first Tuesday in April in the year one thousand, eight hundred and seventy-two, the office of Trustees of the freeholders and commonalty of the Town of Huntington, in the town of Huntington, in the County of Suffolk, shall be abolished and cease to exist.
>
> Section 2. The Supervisor, Town Clerk, and Assessors of the Town of Huntington and their successors, are hereby created ex-officio, the Board of Trustees of the Town of Huntington, and legal successors of the Trustees of the freeholders and commonalty of the Town of Huntington, and vested with all the rights, privileges, powers, duties and jurisdiction heretofore enjoyed and exercised by such Trustees, over the real and personal property of the Town of Huntington. The Supervisor of the Town shall be ex-officio, President of the Board of Trustees of the Town of Huntington, hereby created.
>
> Section 3. The President of the Trustees of the freeholders and commonalty of the Town of Huntington, shall upon demand, deliver to the President of the Board of Trustees of the Town of Huntington hereby created, and after the date aforesaid, all records, books, papers, documents, moneys and property belonging to said Town and then in his possession or under his control.
>
> Section 4. All Acts inconsistent with this Act are hereby repealed.

On July 15, 1872, Supervisor J. Amherst Woodhull made a formal demand upon the Trustees to relinquish all their records to him, in the name of the Town of Huntington, "and put in our possession, as being the proper custodians thereof, on or before the 20th day of July, 1872." This the Trustees did.

Did this eliminate the trustees and their trust? Obviously not. So

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149. Laws of New York, 1872, 1159, Chapt. 492, May 3, 1872. See also HTR III, 619.

long as property remained in trust the obligation itself could not be abolished except by quit-claiming it all to other individuals. Furthermore, the act was one of administrative efficiency rather than one to completely obliterate all traces of the trustees and their trust obligation. Heretofore, two administrative groups existed in Huntington; one made up of the Supervisor, Town Clerk, and the Assessors, the other the Trustees composed of seven elected members. The former handled all the political functions of the town; the latter owned and controlled the town's real property. Apparently because of the vestigial remains of the original all-encompassing duties and powers of the Trustees as derived from the Fletcher patent of 1694 they frequently overlapped the governmental officials and performed duplicate functions. To overcome this the legislature accepted the simplest solution and merged the two bodies into one. The members of what later became the town board now could wear two hats. When acting upon administrative matters for the town they wore their usual official hats; when dealing with trustees' lands and matters relating thereto they exchanged the official for the trustee hat. In each case they acted in a separate and distinct capacity. In fact they maintained two separate books of proceedings and accounts and divided their meeting between town affairs and trustees business, even during a single sitting, as if they were in reality two distinct groups.

The Trustees, therefore, although stripped of large quantities of their property and badgered by law suits, entered the twentieth century very much alive and in good health.

Chapter IV

The Twentieth Century Trustees and the Land

The Board of Trustees may have entered the twentieth century very much alive and thriving in an historical-legal sense, but the coming years would prove to be a test of their ability to survive the onslaught of private encroachment on their powers and property rights. This invasion of Trustees land was geared more to the rampant natural resources exploitation of the "public be damned" attitude of the nineteenth century than to the needs of a community whose population was increasing in geometric proportions while its natural resources of land and water remained static. Yet there were those who recognized the trend and fought it, even to the point of being vociferous and bellicose in their efforts to support the Trustees or, in some instances, to bludgeon them into corrective action.

First, a sampling of the many activities of the Trustees might be in order if only to illustrate the stresses to which they became subject. It will also offer a broad picture of the activities of individuals and the reactions of groups within the community for, in the final analysis, they were all the beneficiaries of the trust whether or not they disregarded it for their own reasons or vehemently supported it as a means to benefit the entire town.

Early in the century the Trustees undertook to establish a bulkhead line along the east side of Huntington Harbor, beyond which none could install new bulkheading or retaining walls.[1] Evidently this move was necessitated by

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1. "Trustees Records, 1893-1914," 219-220, December 16, 1904; It began at the northwest corner of the old town dock and ran northerly to a point on the south side of the dock or bulkhead of the Huntington Yacht Club. They also projected

the rapid expansion of shorefront private and commercial facilities to the point where some form of regulation appeared essential to halt indiscriminate extension into the harbor. A test of the rights of the Trustees to control the use of the shore came in 1914 when an R.F. Cohen and Nicola Juliano began construction of a dock at Centerport Harbor. Upon being notified that the Trustees did not approve of their actions the two applied for a permit to build a 150 foot dock, which was denied. Under pressure from the Trustees they agreed to cease construction and remove spilings already in place.[2] However the matter did not end there. In the spring of 1915, Rowland Miles, an attorney retained by the Trustees, reported that even though others involved in the dock construction had begun removing the offensive spilings Cohen himself had refused to pay for the project and all of them refused to recognize the rights of the Trustees to the lands under water, "which they did openly and defiantly," thus raising a question "that the town cannot regard lightly." Upon the advise of Miles the Trustees voted to proceed with legal action on its merits to force the defendants to acknowledge the interests of the Trustees.[3] Whether or not anything further was done is not shown in the records beyond this point.

During this early period the attention of the Trustees came to be centered on vast unoccupied areas in the center of the island which had remained in their natural state for generations. These included some of the land

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1. cont. one for a portion of Northport Harbor in 1911 from the northwest corner of the Independent Yacht and Boat Club to the southwest corner of the steamboat dock. Ibid., 327-328, November 3, 1911.

2. "Trustees Records, 1914-1928," 5-6, September 14, 1914; 6-7, October 2, 1914; 10, December 1, 1914.

3. Ibid., 10-12, May 7, 1915.

purchased earlier from the Indians either in the name of the Trustees or by groups of private proprietors. In a number of cases records of land divisions had been lost so that many people could not trace their titles back sufficiently far to establish a clear chain of ownership. The problem of how to dispose of such lands and avoid the inevitable suits that might result came before the Trustees in 1911 when the heirs of John D. Sammis applied for a quit-claim deed to a large tract of woodland on Pigeon Hill, claiming occupation of the area for at least eighty years. They wished to sell the land to Robert D. Edler, Jr., of Cranford, New Jersey, who refused to consumate the sale until he could be assured of a clear title. Counsel advised the Trustees that the New York Court of Appeals in Miller v. Long Island R.R. Co.[4] decided that in the case of unenclosed, unimproved, and unoccupied woodland title had to be traceable back to the original patentee or sovereign source and that title to such land could not be claimed by adverse possession since in Wiecker v. McCormick[5] such title could not be acquired by occasional entries upon the land to cut timber by alleged owners who lived several miles away; but title to these woodlands could be obtained by cutting of wood by an actual occupant. Counsel went on to say that these were technical questions and not necessarily applicable since the predecessors of John Sammis had not been disputed, questioned, or in any way disturbed for over eighty years, and then advised that the Trustees issue a quit-claim deed since the town had not really claimed ownership. The Trustees went a step farther and resolved that, in addition to granting a quit-claim to the Sammis heirs, "they desire to assist if possible in making such woodland titles marketable in order to facilitate the buying and selling of real estate in the town of

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4. 74 N.Y. Court of Appeals Reports, 380.

5. 122 App. Div. Reports, 860.

Huntington."[6] Over the next year or two a number of such quit-claims were thus granted to individuals who lay claim to large tracts of land in the same area.

For the next two decades the Board of Trustees went about its business of granting leases for use of land under water and some upland properties. Then, in 1930 both the Board and certain private citizens became concerned over the encroachments into the harbors and bays which had been going on for some time. This shift in attitude is not surprising since it appears to recur in a cyclical pattern. Back in the 1850's the Trustees took notice of nonresidents moving in on the shellfish areas by passing restrictive ordinances; in the 1870's they commenced legal action against those who persisted in ignoring local regulations; and toward the end of the nineteenth century they focused their attention on supporting and regulating the rapidly expanding oyster industry. After a spate of interest in bulkhead lines just prior to World War I and a brief flurry of activity in harbor dredging after 1915, they remained relatively complaisant until the Depression Decade. Later it will be seen that the Trustees again became quite active in attempting to preserve their identity and powers during the 1960's. In other words, approximately every twenty or thirty years the Board of Trustees would gather its forces together to battle against infringements of their rights and encroachments on their lands.

On January 24, 1930, the Trustees passed a resolution taking due note of the fact that improvements to the harbors and bays were planned, but that a number of bulkheads and docks had already been built without permission. Therefore, they resolved to engage a competent engineer to determine the

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6. "Trustees Records, 1893-1914," 318-321, August 4, 1911.

extent of such private, unauthorized activity.[7] Concurrently local residents took notice of what was going on around them and proceeded to petition the Town Board demanding that steps be taken against certain commercial firms which were polluting the harbors. In August the Northport Yacht Club complained that the tug "Bonita", owned by G.B. Huntley, had been driven up on a sand bar on the west side of Northport Harbor where the rising and falling of the tides washed oil into the waters. The oil found its way to the beaches making swimming impossible and boating hazardous.[8] A year later a number of residents along the shore of Huntington Harbor petitioned to have the lease of the Marine Oil Company cancelled because of the carelessness of the firm in allowing oil to saturate the shore and run off into the harbor. The Town Board took action on the latter to the extent of inspecting the area and reporting that the company had complied with all regulations. Apparently a barge from another oil company had been the cause of the oil spill.[9] They pointed out that the public had full use of the docking area when barges were not tied to it--and let the matter drop.

Incidentally, at this time the Town Board and the Town Trustees underwent a modification as the result of a law passed by the legislature in 1929. The act amended Chapter 492 of the Laws of 1872 to make the supervisor, the town clerk, and the justices of the peace successors to the Board of Trustees with "the same rights...as the Trustees of the Freeholders and Commonalty of Town of Huntington." The assessors were to be displaced by the justices.[10]

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7. "Town Board Minutes, 1929-1933," 44.

8. Ibid., 123, August 1, 1930.

9. Ibid., 281-282, August 21, 1931.

10. Laws of New York, 1929, I, 323.

For a number of years thereafter this new board merged all its records so that those of the Trustees and of the Board became thoroughly intermixed. By the end of the decade, however, they reverted to the older, more legal, practice of maintaining separate records of minutes of meetings to clearly distinguish the activities of each.

It was during this period of merger that a minor incident occurred which, if taken superficially, measures the quality of the men who served as town officials cum trustees. In 1929 the Town Board voted its members a salary increase, in most cases increasing each by one-third. This year, of course, heard the final depressing belch from the glutted depths of the country's economic stomach. By 1932 public resentment against the general malaise of the economy centered its attention on the gratuitous salary increase. Probably as much in fear of their political futures as they were for the financial stress on local taxpayers, the Board members considered a resolution early in 1932 which recognized the untimely action "without full publicity concerning the intention of the Board in this regard," and self-rightously observed that it was not in the public interest as indicated by the public criticism because, "on every hand...the country faced a period of severe depression with its natural concommitent of widespread unemployment and great distress." It concluded that the people emphatically opposed any increase in compensation so that the Board had no choice but to rescind the raises. The resolution lost. Justices Murphy, Leiper, and Leighton voted against it along with William Trainer the Town Clerk, while Justice Sullivan and Supervisor Watt supported it. John Toaz did not cast a vote.[11]

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11. "Town Board Minutes, 1929-1933," 319, January 6, 1932. The new salaries were: Supervisor, $6,500; Town Clerk, $5,000; Justices of the Peace, $3,000; Receiver of Taxes, $5,000, and his clerk $1,200; Highway Superintendent, $4,000; Assessors, $2,500; Auditors, $1,000; and Commissioner of Public Welfare, $3,000.

As a sop to the taxpayers the Board abolished the position of Superintendent of Refuse Collection and postponed the yearly tax collection date from January 10 to March 15. The public did not accept this as an equitable solution so that on August 17, the Board voted to remit to the Town Contingent Fund ten percent of the salaries with the Supervisor and Town Clerk returning fifteen percent. This sacrifice was to be for one year only. Justice Murphy held firmly to his original negative vote; the others voted for the measure. Again, John Toaz did not vote.[12] True to the vote the list of budget items submitted for the coming year showed all positions at the new salary level set in 1929; the move to lower them having been effectively shunted aside.

Yet another minor tempest occurred during this period, which is of interest, if only to highlight the relationships between the Board and the public, and interactions amongst town officials. This one takes on the features of an opera bouffe and could be dubbed the White Hill Road Affair. In July of 1932 the Cold Spring Harbor Improvement Association protested to the Board about the closing off and abandoning of certain roads leading to the harbor, namely White Hill Road, which cut off public access to the water. Rising to the occasion the Board retained John J. Robinson to replace the then town attorney and issued a directive to look into the matter. Robinson spent some time researching the case and reported to the Board in August that, first, he was exasperated as the well-intentioned but poorly informed determined stance of the Association, through which he had been subjected to much public pressure. In his opinion neither they nor the general public fully appreciated the legal nuances of the case because, despite their assumptions

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12. Ibid., 371, August 17, 1932.

about use of the road, Helen J. James, who claimed it as part of her estate, had a good case and the town did not.[13]

Not satisfied with this response the Board entertained a motion to hire the Association's attorney Mr. King. It failed to agree on this, but a second motion to pursue the case and bring action against the Superintendent of Highways passed. A month later the Board appointed Edgar F. Hazleton as their attorney in the case.[14] At the next meeting they voted to rescind the certificate of abandonment of Huntington Avenue, a street just north of White Hill Road (now appearing on the maps as Jennings Road, an extension of Huntington Avenue) and challenged Walter Jennings, who claimed it, to defend his title in court. Town Clerk Trainer had offered the feeble excuse that he signed the abandonment papers in July not knowing its full impact and only as a method to file the papers legally.[15]

To add to the Board's problems Superintendent of Highways Ira W. Lewis refused to rescind his department's abandonment certificate, claiming that the original action was brought by the abutting landowner, James, who offered him sufficient proof that at least White Hill Road had in fact been abandoned. He rejected the Board's fiat as insufficient.[16] Lewis stood his ground even in the face of later protestations by the Association that James' suit had been dismissed by the court and that the town had allocated $500.00 to return the road to a usable condition. Attorney Hazleton, in support of this, pointed out that the Town was now in a position to reclaim

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13. Ibid., 364-366, July 20, 27, 1932; 374-375, August 31, 1932.

14. Ibid., 375, August 31, 1932; 376, September 7, 1932.

15. Ibid., 378, September 14, 1932.

16. Ibid., 378, September 21, 1932.

the road since the plaintiff failed to appeal the court's decision. If nothing was done then James would really have a strong case for integrating the road into her own property.[17] Despite this, Lewis wrote a letter to the Board outlining his position as to why he refused to take action. He contended the court dismissed the suit simply because White Hill Road never had been public. Citing the fact that for years the state's assembly required all "layers out" and "orderers" of all roads to report their activities, and that in 1873 a contract had been given to Henry S. Wood and Charles R. Street to make an abstract of all roads then in the town beginning with the first highway records of 1671, he claimed White Hill Road was not within his jurisdiction since the Trustees had accepted the report and the road was not included. He neither could not nor would not take steps to improve the road, fearing it would lead to yet another law suit.[18] This effectively squelched the controversy and on today's maps of the 1970's these roads are shown only as broken lines, indicating they are not paved or kept up by the Town.

Not to be outdone by the Cold Spring Harbor Improvement Association another citizens' group, the Harbors Improvement Committee of the Town, sent a letter to the Board in 1933 urging that the lease to Sinclair Oil Company be cancelled for cause and that it should be a policy of the Board to refuse any more waterfront leases so that these lands could be reclaimed for the use and benefit of the people of the Town.[19] Two years later the Board received

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17. Ibid., 465-466, January 8, 1933.

18. Ibid., 475, February 1, 1933.

19. Huntington Harbor File, Town Historian's Office. Letter, Frederick H. Koster and George Ryan to Supervisor William Watter, April 25, 1933.

a series of recommendations from a committee with virtually the same name (probably the same one with a change of title), the Huntington Township Harbors Committee. This group outlined a number of proposals included in which was a suggestion to build up West Shore Road with fill from dredging coupled with the recommendation that the Board refrain from renewing leases and familiarize themselves with a report on town lands prepared in 1871 by Charles R. Street and Henry C. Platt. They pointed out that the town was free to fill in the thatch meadow on the west side of Huntington Harbor since no claimants possessed riparian rights to the exclusion of the town and, with reference to the claims of W. Wilton Wood, took the position that no chain of title could be proven for land along Mill Dam Road. They argued that at no time in the past had the Trustees conferred on purchasers of the thatch meadow a legal title to lands under water since all the deeds contained a reservation of the rights of the people to sailing, fishing, and the like.[20]

During the next two years the same committee followed through with the above recommendations by expanding them to include the construction of a town dock, the elimination of all sources of pollution in the harbors and bays to make them safe and enjoyable for bathers. The committee urged the dredging of channels in the harbors for better access, the acquisition of private property near the mill dam at the head of Huntington Harbor, and a restriction on any further expansion of commercial activities in the area.[21] It also suggested a detailed survey of all lands to identify town lands and

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20. Ibid., circa 1935. This committee relied for its position on Justice Selah B. Strong's decision in Alexander Sammis v. Huntington in 1857 as summarized in HTR III, 435, and various deeds and leases for the area reproduced in HTR II.

21. Ibid., October 27, 1937.

private lands with a view to establishing an overall policy for their development.[22]

Years later the Trustees, again sitting separately from their roles as town officials, voted to purchase Fleets Cove Beach for $30,000, subject to a permissive referendum.[23] This trend was given support by the state legislature in 1955 with the enactment of Chapter 840 which permitted Huntington to establish, maintain, and operate public bathing beaches on "land owned or leased by the Town of Huntington or the Board of Trustees of the Town of Huntington at any place within the territorial boundaries of the Town of Huntington," at the town's charge.[24]

Many years earlier the town had actually acquired a beach of sorts, yet the general public seems unaware of it even today. Shortly after the turn of the century Samuel and Hannah Denton sold to the United States Government the southernmost 2.5 acres of a long sand pit running southerly from the southwestern tip of Lloyd's Neck as a site for a light house. Its usefulness ended by 1924, the federal government transferred ownership to the State of New York.[25] In September of that year Robert L. Moses, President of the Long Island State Park Commission, sent a letter to the Town Board requesting permission to dredge sufficient sand to fill in the area since at high tides much of it was under water. He felt this action was necessary to fulfill the

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22. Ibid., no date, circa 1937.

23. "Trustees Minutes, 1946-1961," 42, June 2, 1954.

24. Laws of New York, 1955, 1253-1254, Capt. 840, April 29, 1955.

25. Lloyd Harbor Light House File, Town Attorney's Office, letter dated 1964 questioning ownership of this land.

mandate of the federal government to maintain it as a public park.[26] The Trustees granted the necessary permission to dredge sand from Lloyd Harbor for fill. In 1928 the State turned the area over to the Town of Huntington for use as an educational, recreational, and park site.[27] Since that time boat owners have moored near the area and occasionally used the land above water for picnics, but no concerted effort has been made by the Town to publicize it. It remains in its natural state, buffeted by winds and tides, accessible only by water. And probably it is better that way.

Another form of acquisition of land for public use, that is reclamation instead of purchase or gift, involved what is now the town marina on the east side of Huntington Harbor. During the 1950's this area was leased to Piping Rock Petroleum Company which occupied it for many years and built an impressive array of storage tanks, docking, and related facilities. Beginning in 1956 Sam Albicocco began questioning the use of the area and the extent to which improvements seemed desirable. The Trustees had to answer that they have given no thought to matters of zoning the area of renegotiation of the lease with the oil company.[28] Ten years later, after the public had been sufficiently aroused to question the condition and use of the area, the Trustees consented to terminate the lease with the company, and at the same time Piping Rock distributed a pamphlet offering to move across to the east side of New York Avenue and pay for the rehabilitation of the shorefront

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26. "Trustees Records, 1914-1928," 116, Letter from R.L. Moses to Trustees dated September 5, 1924.

27. Laws of New York, 1928, 978, Chapter 445; amended in Laws of New York, 1931, Cahpter 49 to be used mainly as a public park.

28. "Trustees Minutes, 1946-1961," 65, June 13, 1956.

area.[29] The following year the President of the Trustees was authorized to draw up a deed to transfer to the Town the land formerly leased by the oil company, the intent to be that of making it a public recreation area. This was defeated, however, and the Trustees decided to retain it but allow the town to improve it for public use as a marina.[30]

Toward the end of that decade the Trustees, finding their records and knowledge of land holdings somewhat confused, voted to conduct a study to discover the full extent of lands under their proprietary control. Actually the motivation probably came from William Cotter who suggested to them in January of 1958 that such a study be undertaken by a reputable title company and that, at the same time, they appeal to the general public through the local newspapers for information to help in locating Trustees property then held by private persons. Any knowledgeable person could have cautioned him that this tactic would be fruitless since many people covet historical records in their possession for peculiar reasons known only to themselves and would never divulge them because of some fanciful fear of being deprived of what may or may not be rightfully theirs. In any event, the Trustees looked upon the suggestion with favor--and with some reservations. Trustee Kane urged that the title searches begin with the present day to avoid the perplexities of more ancient deeds with their "bewildering mass of terms giving descriptions of boundaries such as 'bounded on the north by an old stump, on the south by the back end of an old barn belonging to so-and-so;" while Town Clerk McNulty admonished the Trustees that they would need adequate

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29. "Trustees Minutes, 1962-1971," II, 77, August 30, 1966; and pamphlet, "Let's Cure an Eyesore," published by Piping Rock Petroleum Company, in Huntington Harbor File, Town Historian's Office, no date.

30. Ibid., 80, January 24, 1967; 96-97, August 22-September 26, 1967.

storage facilities to house the results of the study since without them, "it would only be a matter of time before it, too, would be buried in some musty corner."[31] Such a study was in fact undertaken by the Town Historian Roy Lott, who relied upon easily accessible records in the offices of the Town Clerk and his own office. Although a detailed and exhaustive title search was not done at the time and a listing of Trustees' land not under lease was not compiled, a complete list of current leasees became a part of the records of the Town. An additional contribution to this record was made in 1965 when T.S. Prime was authorized by the Trustees to survey and map all Trustees property in Cold Spring Harbor.[32]

During this decade and well into the 1960's problems beset the Trustees regarding use of the harbors and bays. In July of 1959 George Soper applied for a lease of land under water in Centerport Harbor, having already received approval to build a dock from the U.S. Army Corps of Engineers. Almost immediately opposition developed. Attorney John Toaz filed a letter of protest on behalf of the Huntington Beach Community Association, in which he enclosed a petition signed by four hundred local residents in opposition to any such construction. At a Trustees meeting held on July 12, it came to light that the town's building department had already approved construction of a dock for noncommercial purposes, that Soper had been beaching a clamming barge in the area and that he and his associates had so parked their cars as to block driveways in the vicinity, and that the dock would, in fact, undoubtedly be used for his commercial purposes.[33] Toaz, in defending the

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31. "Trustees Minutes, 1946-1961," I, 80-81, January 8, 1958.

32. "Trustees Minutes, 1962-1971," II, 61, April 27, 1965.

33. "Trustees Minutes, 1946-1961," I, 102, July 12, 1959.

local association stated that, to the best of his legal knowledge, Soper had riparian rights and the Trustees owned only the sand; at which point Trustee Kane questioned him as to whether or not his client had the right to cross over that sand and build a dock for his own private business ventures. Contending that even if alleged riparian rights existed, they should not be used for the benefit of a few to the detriment of the general public the Trustees refused to grant a lease at that time and resolved to temporarily restrain Soper until an investigation could be made.

In March of the following year the Soper lease came up for renewal. Trustee Kane opposed it on the grounds that it benefited only a few, pointing out that a number of citizens opposed it. He gained additional support from the Huntington Baymen's Association who went on record as being against it.[34] No lease was granted but, at the same meeting, a resolution was offered by Kane and seconded by Flynn to hold public hearings in the future on leases. Although this appears to have been an attempt to overcome the disquieting effects of the Soper controversy, most of the Trustees proved to be against such a step and, after a brief discussion, all four Trustees present voted to table the motion.[35]

While the Board pondered what to do about the Soper application and sought a way to prevent his building a dock, the local chamber of commerce presented them with a series of recommendations asking that more ramps be placed at some town beaches and suggesting that commercial enterprises be restricted as to the number of moorings they placed in the harbors for their customers because they preempted such large areas and severely restricted the

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34. Ibid., 114, March 14, 1960.

35. Ibid.

room local citizens had for their own moorings. The recommendations also urged that higher fees be charged out-of-towners for use of town ramps to get boats into the water, thus hopefully discouraging the influx of outsiders.[36]

During this period the Trustees acquired still more beach property for use by the people of Huntington. Early in 1957 the Long Island Lighting Company made it known that they wished to construct new facilities near Blanchard Lake which would amount to $150,000,000.00 in plant improvements. After extensive negotiations the Board agreed to give the company a quit-claim to any interests they might have in the lake in return for title to extensive beach frontage on the east side of Northport Bay.[37] And in 1962 the Town Board submitted a proposition to the public which would authorize the issuance of $2,470,000.00 in serial bonds and $130,000.00 in capital notes, the proceeds of which would be used for the acquisition of land for public parks and recreation areas. The voters solidly supported the measure by 5,272 to 1,815.[38] The colonial trustees would probably have had apoplectic fits if they could ever have conceived that their successors generations later would have to borrow money to buy back the land that they had granted to individuals.

An added complexity in the sometimes hectic life of the Trustees came in 1957 in the form of a letter from a local attorney, Albert Levert, who wrote

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36. Ibid., 105, October 13, 1959.

37. Ibid., 79, December 30, 1957. It is of passing interest to note that every time a Lighting Company representative appeared at a Trustees' meeting his statement of the value of company improvements rose considerably, having originally been quoted at a figure well below $100,000,000.00. This is one instance where money talked, whether or not its increasingly loud voice produced the hoped for results directly is open to question.

38. Huntington Harbor File, Town Historian's Office, September 22, 1962.

the town tax assessor demanding that all Trustees property be assessed at full market value and be placed on the tax rolls pursuant to Section 24 of the Tax Laws of the State of New York.[39] Basing his demand on Matter of Huntington v. William J. Bradford et al (273 N.Y. 603), he claimed that,

> The exemption of municipal property held in a proprietary capacity provided for in Section 4, subdivision 3 of the Tax Law does not apply to property which is not used "for a public use" or not used at all. This means that all properties owned by the Board of Trustees which they have leased to private individuals, firms or corporations are taxable and it also means that all properties which are not actually in public use, that is to say, not used at all, are taxable. Such taxable properties include all the Trustees' properties which have been leased whether in the Town or in the four incorporated villages within the Town, and regardless of whether such properties be lands under or above water. The Court of Appeals has expressly held that the land of a municipality not used "for a public purpose" is held by the owner as a private individual and does not come within the exemption of Section 4, subdivision 3 of the Tax Law.

He concluded by pointing out to the Assessor that, as a taxpayer, he would bring an action under Section 51 of the General Municipal Law which provided that public officials could be prosecuted for illegal acts and be forced to restore personally lost property, funds, or estate of a county, town, village or municipal corporation.

This rather upsetting bit of correspondence precipitated a flurry of letters over the next year among town officials, between Levert and the Assessor's office, and between the Town's special counsel and Albany. Mr. F. Roberts Blair, the special counsel, wrote a lengthy letter to the State's Attorney General in support of a continuation of the exempt status of the Trustees' property. Citing the various colonial patents and pointing out

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39. Letter, Albert Levert to Mr. Viafora, Assessor's Office.

that they had never paid taxes in the past he claimed there was sufficient support in the law for disregarding Levert's demand. He summarized the Trustees' position by saying that the property in question was held for the benefit of the people inhabiting the Town who were the beneficial owners of it, "Thus, it appears that an execution against the Trust property would, in effect, be an execution against the people, which would be prohibited by Section 659 of the Civil Practice Act (which provided that an execution shall not be issued against the people)".[40]

Throughout the remainder of the year and well into 1958 Levert kept up a letter campaign, constantly prodding the Assessor for a reply and action or threatening him with a law suit.[41] Finally in July Theodore H. Kline, Cheif Local Assessment Consultant of the State Board of Equalization and Assessment in Albany, transmitted to the Town Attorney, George Blaesi, his views on the status of the taxability of Trustees land.[42]

> It is my opinion that since the Court of Appeals has ruled that such property is subject to village taxes (Matter of Town of Huntington v. Bradford, 248 App. Div. 730, aff'd 273 N.Y. 603), the town assessors must place such property on the town assessment rolls. Even if I were to conclude that the arguments presented in the memorandum submitted by you dictate a different conclusion, I believe that the Bradford case represents the law on the question at the present time and the town assessors have no alternative but to follow the law as set forth in such case. Under the circumstances,

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40. Letter, F. Roberts Blair to Attorney General, Albany, June 14, 1957, in Assessor's Office.

41. Letters, Levert to Viafora, October 10, 1957; George M. Blaesi to Viafora, October 21, 1957; Viafora to Levert, October 23, 1957; Levert to Viafora, October 25, 1959; Levert to Viafora, February 11, 1958; Blaesi to Viafora, February 18, 1958; Viafora to Levert, February 19, 1958; Levert to Viafora, March 11, 1958; Viafora to Levert, March 13, 1958; in Assessor's Office.

42. Letter, Theodore H. Kline to George Blaesi, July 16, 1958, in Assessor's Office.

> the town may wish to consider legislation or a relitigation of this question. This observation is not to be regarded as advising you to take either of these steps.

This resulted in the calling of a special meeting by Supervisor Johnson on August 6, at which the Board members, the Assessor, and the attorneys were present. After checking with other towns such as Brookhaven and Southampton which had essentially the same situation insofar as trustees land was concerned, they all agreed that the assessors would advise the Trustees that they must list their properties in order to place them on the tax rolls.[43]

These sketches of the fluctuating fortunes of the Trustees are, in the main, but illustrations of relatively minor incidents. Now it is necessary to turn to some of the major occurrences that played such an important role in the history of the Trustees during the twentieth century, matters such as shellfishing, dredging, major land acquisitions, challenges to their land titles, and, finally, the threats to their very existence.

Shellfishing played an important part in the lives of the people of Huntington almost from the founding of the town. Regardless of the means, whether it be rake, drag, or dredge, the local people harvested oysters, clams, and scallops from the lands under water in the harbors and bays either to supplement their family diet or to sell commercially to others. At first casual private exploitation predominated, at least until well into the nineteenth century. Thereafter it became commercially profitable to shellfish for export to other communities, especially New York City. Because of the controversies that resulted from disputes over ownership and control of

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43. Letter, Johnson to Viafora, July 30, 1958, notice of meeting with later handwritten notations of the discussion at the meeting, in Assessor's Office.

underwater lands,[44] the state legislature passed an act entitled "An Act to cede lands under water of Huntington Bay, town of Huntington, Suffolk County, Long Island, to the trustees of the town of Huntington, and their successors in office, for the cultivation of shell-fish."[45]

> Section 1. All the right, title, and interest which the people of the State of New York have, in any, in and to the lands outside of and beyond low water mark the waters of Huntington Bay, in the town of Huntington, Suffolk County, southerly of a line drawn from a granite monument, now set near high water mark on the northerly point of Eaton's Neck, and west of the United States Life Saving Station, to a locust monument, now set on Lloyd's Neck, which line runs on a course south, fifty-nine degrees, twenty minutes and twenty-five seconds west, and which is the line claimed by the Trustees of the town of Huntington as the northerly line of their grants under Colonial patents, is hereby ceded to the present trustees of the town of Huntington, Suffolk County, and their successors in office for the purpose of oyster cultivation. Provided nothing in this act shall be held to interfere with the rights and powers of the Commissioners of the Land Office to grant, all the right, title, and interest of the State to lands under water in said bay, to the owners of adjacent uplands for purposes of commerce of beneficial enjoyment, and nothing herein contained shall be construed as interfering with the rights of riparian owners. Subject, however, and without prejudice to the legal rights, if any, of such persons as now have oysters planted in the lands aforesaid.

Toward the end of the century the shellfish industry was in trouble. Indiscriminate exploitation of the shellfish beds and an invasion of starfish seriously endangered the local supply. Prior to this crisis baymen

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44. Sufficient evidence has been presented in previous chapters to prove the continuing interest of the Trustees in such areas for three hundred years; with Lowndes v. Huntington being cited as an example of conflict.

45. Laws of New York, 1888. Years later, in 1938, this law was amended to prohibit the use of dredges and scrapes on lands other than those leased to individuals, although it did not apply in incorporated villages. Laws of New York, 1938, 1106, Chapt. 402; McKinney's Consolidated Town Laws, Art. 9, sec. 130, subdiv. 18; also Village Laws, Sec. 89, subdiv. 63.

had obtained individual leases for under water areas and each worked his area as he saw fit. By the mid-1890's a number of them realized that such individualism worked against the best interests of all of them and they began to combine into groups and formal associations. Some of these combinations took the form of a new commercial firm; others became voluntary organizations whose aims were to control shellfishing and launch an attack on the predators that threatened the extinction of the entire industry.

During the next forty years little mention is made of the shellfish industry in local records until 1939 when an updating of the shellfish ordinances of 1884 took place and again in 1954 when a number of revisions of the older ordinances took place.[46] Beginning in early 1958, however, increasing interest developed, especially among the private baymen, as to the future of shellfishing in Huntington waters. The opening arguments in what would prove to be an acrimonious debate between dredging operations, commercial leasees of town lands under water, and individual baymen were presented at a Trustees' meeting in January. At that meeting an attorney for Richard B. Scudder sought renewal of his client's lease of three acres of land under water in Lloyd Harbor.[47] The Town Clerk reminded the board that under a previous ruling by the past president no leases were to be renewed until the town received a complete report on the state of the shellfish industry from the State Conservation Department, whereupon the attorney was informed that the lease would be renewed on a month-to-month basis at $7.50 per month, as would be the case with all such leases, until receipt of the report.

The Huntington Baymen's Association, represented by Joseph Adamczeski,

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46. "Trustees Minutes, 1946-1961," 33, May 20, 1952; 42, June 2, 1954.

47. Ibid., 80-81, January 8, 1958.

urged the Trustees to commence action to return to private baymen's use all land leased to commercial enterprises. As an example of alleged violations of both the spirit and the letter of oyster leases, he cited the case of August Carbone who leased thirteen acres, had not paid the rent, had sub-let portions of it to two men without authorization, had allowed the men to dredge even outside the leased area, and had not marked his lease area with buoys. The upshot of the meeting was the passage of a resolution by the Trustees calling for a meeting of all interested parties to discuss the status of the shellfish industry and to dispose of any grievances such as the one against Carbone.[48]

At the public hearing held on February 5, a number of accusations were made and alleged facts cited having to do with the condition of the harbors and bays and their use. Actually the discussion reduced itself to two basic considerations: the extent of encroachment into the waters by starfish, and the long-standing controversy between the independent baymen and those who leased portions of the lands under water.

Generally those at the meeting agreed the starfish menace did exist, although a Mr. Amerel claimed they had not yet infested public grounds. Long standing animosities quickly shifted the debate from starfish to the correct use of the oyster and clam areas, in some instances the inference being that improper methods of shellfishing helped to perpetuate the starfish. The baymen accused commercial firms of using power dredges and high pressure pumps to harvest oysters to the detriment of the individual's use of the area with more primitive equipment. That group also complained

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48. Ibid.; see also Long Islander, "Trustees Hold Up Bay Lease Renewals; Await State Report," January 9, 1958, 1.

that those who leased areas often did not harvest them or even attempt to combat the starfish invasion, offering the suggestion that the entire area be made public and open to all without any lease arrangements. Mr. Vanderborgh, representing the Long Island Oyster Farms Company, one of the largest leasees, tried to rebute these arguments by pointing out that his company used power equipment only for clams and that dredges used in clamming did little or no damage to oyster areas. Also, he claimed his company had been trying to get rid of the starfish.[49]

The net result of the public airing of grievances was that a number of people who had harbored grudges for years against others finally found a public forum. It also brought to light the classic struggle between disorganized individuals who insisted on going their own way and those who employed more efficient methods of operation, such as the Oyster Company and one or two large leasees, and resented the anarchy which prevailed as a result of their opponents' activities. Out of all this came one or two vaguely defined goals and solutions to the problem. One, of course, was to cancel all leases; another consisted of voluntary cooperation among all concerned to combat the starfish; and a third proposed the introduction of scallops on a large scale. The meeting closed with an admonition from August Carbone that when the baymen offer certain relevant ordinances in the near future no group should be excluded from consideration either in the final formulation of them or so treated as to be denied full use of the area for shellfishing. At the end of the meeting the Trustees resolved to spend up to one hundred dollars on scallop seeding and to ask the State

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49. "Trustees Minutes, 1946-1961," 82-84, February 5, 1958.

Conservation Department for more data on establishing a shellfish management project.[50]

Confrontation brought neither compromise or cooperation. The antagonists continued to berate and harass each other in succeeding years. In August of 1958 Lawrence Hawkins and other baymen accused Richard and Whitney Scudder of dredging seed clams and replanting them in their leased area and that they had marked an area too shallow for clamming. The Scudders held firmly to the contention that they took only that which was theirs by previous seeding by themselves.[51] August Carbone became a target of other baymen. In 1960 eighteen baymen petitioned for a cancellation of his lease, at which point Carbone agreed, but only if the Trustees also cancelled the lease of the Long Island Oyster Farms. In support of the cancellation of the latter, Fred Schieferstein accused the latter company of dredging past the company's staked area.[52] For a while the Scudders attracted the most attention, Richard being arrested in June for illegally taking seed clams, followed by a request from the baymen to have the Scudder leases cancelled due to excessive violations.[53] Finally toward the end of the summer the Trustees revoked Richard Scudder's lease because he had been caught on unleased land with illegal equipment.[54]

The following year Mr. Soper's lease came under fire. His attorney

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50. Ibid., 85, February 5, 1958.

51. Ibid., 93, August 6-September 3, 1958.

52. Ibid., 116-117, April 18, 1960.

53. Ibid., 123, June 7, 1960; 126-127, July 21, 1960. In August the Harbor Master reported he received replies to a request for compliance with staking regulations from everyone but the Scudders, Ibid., 128-129, August 16, 1960.

54. Ibid., 128-129, August 16, 1960.

pointed out that his client had seeded the area at great expense to himself and, even though his lease had run out, he was harvesting that which was rightfully his. To do so he had to exclude others for fear of losing his investment.[55] Finally, in 1964, Soper offered to renew the lease since he had planted over one thousand bushels of large clams and fifteen hundred bushels of small clams in the area and to permit him to harvest the crop would be a public benefit since he would also remove a great many starfish. The resolution to extend his lease period was defeated by a vote of three to two.[56] Two years later the Dosoris Shellfish Farm received the scrutiny of the baymen for essentially similar violations and activities: alleged unauthorized taking of seed clams and dredging. Little came of it since this particular case had to do with the ownership of the lands under water in Lloyd Harbor. Because of the 1734 agreement between Lloyd and the Town, a serious question remains as to ownership and jurisdiction in that harbor.

During this period the Trustees took steps to alleviate the conditions in the harbors which threatened destruction of a local natural resource. At the same time they instituted measures designed to forestall further classes among those in the shellfish industry. In December of 1958 Town Clerk McNulty submitted a series of recommendations to the Trustees which recapitulated the past history of the Trustees and the local shellfishing industry and suggested areas for improvement.[57] McNulty reminded the Trustees that in the

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55. Ibid., 137-138, April 11, 1961; 140-141, May 9, 1961. At that time Soper had sent in checks covering the rent for the leased area and his attorney complained the lease period was too short to be effective or useful to baymen.

56. Ibid., 1962-1971, 41, May 19, 1964.

57. "Trustees Minutes, 1946-1961," 96, December 3, 1958.

past they had acted "for all of the inhabitants of this town," but that within recent years sharp disputes had arisen between baymen and local individuals because the requests of the latter for more dock space, slips, and moorings for small pleasure craft. Urging increased cooperation among all parties concerned, he chided the Trustees for having maintained the status quo without taking any positive action. He recommended the formation of a committee that would be representative of all concerned to reach the entire matter with a view to establishing specific procedures for the enforcement of current shellfish and boating ordinances, and to recommend where areas might be set aside for individual baymen which would be closed to dredging. In short what McNulty did was to verbalize what had been taking place insidiously for over seventy years--the increasing suburbanization of the town, beginning in the 1880's when pleasure seekers from New York City recognized the area as desirable. The result was a rapid, yet subtle, expansion of private docks, summer homes, and the use of small pleasure craft which, like flies on a horse, were an accepted fact of life for the "locals" until they became too numerous for the tail to swat away. Over the years this trend, considered a cancerous growth by some in the town, persisted without too much resistance because it raised property values and brought in much needed money. Now Huntington was reaping its reward, or, too be trite, "paying the piper" for the cash register sounds they had been dancing to for over seventy years.

McNulty's letter, supported by local interest groups and a report from the State Comptroller, finally produced some badly needed action. In January of 1959 the Trustees were informed by the Comptroller's Office in Albany that they did have the right to regulate the shellfish industry.[58]

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58. Opinions of the State Comptroller, vol. 12, 315, opinion nr. 8250, 1956.

With almost an even three hundred years of history behind them and innumerable legal decisions in their favor, plus the known activities of past boards of trustees, it is amazing that the Trustees would even question this right. Either they were singularly naive and stupid about it or overly cautious (whether for political purposes or not cannot be determined here) beyond the point of being effective in fulfilling their roles as trustees. This period is not to their credit; at least it was not so till they awoke to the need for positive action.

This action came early in 1959 when the Trustees created a Harbors and Waterways Committee. They issued a mandate of sorts to the Committee to study all harbor conditions in order to make recommendations to improve boating facilities, take steps to insure shellfish conservation and improve on shellfish ordinances, and review the status of town-owned lands and shorefront use in order to present recommendations for "proper" community use of such lands.[59] In fairly rapid successor, whether as a result of this committee's efforts or not, the Trustees passed a resolution that they would enforce any lease or ordinance provisions for the setting up of markers in the harbors and bays. At that point, Mr. Schieferstein brought to their attention that a boat was anchored near the Vanderbilt estate full of seed clams without complying with staking regulations, and the local harbor master submitted maps of leased lands under water in Huntington and Northport bays and Lloyd Harbor for use in declaring where stakes should be placed.[60]

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59. "Report of the Harbors and Waterways Committee to the Board of Trustees," October 1, 1959, Huntington Lease File in Historian's Office.

60. "Trustees Minutes, 1946-1961," 115, March 14, 1960; 121, May 16, 1960; 131, October 11, 1960.

Between 1962 and 1969 the Trustees galvanized themselves into action in an effort to counteract the continuing deterioration of the clam population in Huntington's waters. In April of 1962 they voted to pay up to $3,000.00 to transplant clams to an unpolluted area in Northport Harbor.[61] And in 1966 the Trustees combined with the State Conservation Department, the U.S. Fish and Wildlife Service, and two local businessmen, George Vanderborgh of the Long Island Oyster Farms and Fred Schieferstein of the Baymen's Association, to experiment in planting clams in different types of areas to determine the best environment for their propagation.[62] During the next three years the Trustees financed the experiment through contributions from Trustees' funds of $6,000 each year to purchase a total of 9,000 bushels of clams that were planted in Trustees land under water in designated locations.[63] Thus did the Trustees fulfill their responsibilities to use the lands under their trusteeship for the use and benefit of the people of Huntington.

During the twentieth century dredging became another activity of concern to the Trustees since it related directly to the lands under water. Its use had two major applications in the harbors and bays; either the operation cleared and deepened channels to improve accessibility for private pleasure boats and commercial vessels or the digging was carried on to mine sand and gravel for sale. In the former case the general public benefitted; in the latter such benefits became subordinated to the profit motive. In both the net result seldom pleased all those affected. And again the Trustees were

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61. "Trustees Minutes, 1946-1961," 10, April 10, 1962.

62. Long Island Press, "Shellfish Project Under Way on Long Island, June 25, 1966.

63. "Trustees Minutes, 1962-1971," 98 September 26, 1967; 111, June 11, 1968; 120, May 20, 1969.

caught in the middle between the contending parties.

The U.S. War Department became one of the first to undertake major dredging in 1915 when it received permission to create a channel in Huntington Harbor. As a result of this and subsequent dredging operations over the years the shorelines of the harbors underwent slow but subtle changes, because the dredged up material had to be dumped somewhere. In this instance the Trustees authorized the disposal of the material on the east side of the harbor on an acre they owned just north of the causeway below the mill dam and another two and a half acre plot, also Trustee owned, south of the causeway which was under lease to Alice and E.T. Marsh.[64]

Within a year the Trustees were confronted with another dredging operation, but this time strong community resistance to it because of alleged detrimental affects presented the Board with a dilemma. Should they support commercial ventures which benefitted the local economy or should they accept the arguments of community organizations and individuals that it would cause irreparable damage to a harbor and adjacent beaches? Which would be in the best interests of the people of Huntington, the beneficiaries of the trust? In February of 1916 Steers Company, a sand and gravel mining outfit, asked for permission to dredge a channel in Lloyd Harbor, which would cross over oyster lot number 106 in order to get to Jones' upland on Lloyd Neck. At a public hearing a large group of citizens and representatives of local organizations confronted the Trustees.[65] The Board could ill-afford to ignore this show of force since it was a cross-section of prominent individuals,

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64. "Trustees Records, 1914-1928," 12-13, May 7, 1915.

65. Ibid., 22-25, February 14, 1916.

among whom could be counted H.H. Gordon of the Huntington Yacht Club, C.A. Marshland of the Lloyd Harbor Club, N.S. Stebbins, secretary of the U.S. Power Squadron, A.W. Kinnau of the Union Dime Savings Bank, F.D. Edsall, superintendent of the Brooklyn Academy of Music, and August Heckscher who warned that, "wherever a plant of this kind has been operated, it has been a curse like leprosy." Representatives from as far away as the Waterway League of Greater New York, the New Rochelle Yacht Club, and the New York Athletic Club voiced their opposition. After a second meeting in April at which three petitions with a total of 348 signatures were submitted, the Trustees denied the Steers application declaring it not to be in the best interests of the town.[66]

Undeterred by this another company, the Continental Gravel Company requested permission the following year to dredge in Lloyd Harbor to reach the upland of Alga Fluisch. Despite a public hearing and subsequent rejection of the application, dredging began in 1918. The Trustees immediately took formal action to halt this direct violation of their ruling and called upon the War department to issue a stop-work order. Citing Section 10 of the Rivers and Harbors Act of 1899, the Department peremptorily ordered Fluisch to stop at once.[67] Refusing to accept this as final, Fluisch tried again and asked the North Shore Gravel Company to apply for permission to dredge in front of the Lloyd Harbor property. And again the Trustees opposed the application stating that,[68]

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66. Ibid., 25-26, April 7, 1916.

67. Ibid., 41-44, June 1, 21, 27, 1917; 61-62, November 1, December 6, 1918.

68. Ibid., 63, December 23, 1918.

> the granting of such permit would be very detrimental to surrounding property as a residential section, thereby causing a great reduction in the assessed valuation of property and necessarily in the reduction of the revenue to the Town in taxes. It would destroy the shellfish industry of Lloyd's Harbor and practically render Lloyd's Harbor an unsafe and undesirable rendezvous for the hundreds of yachts and other craft which find safe refuge there every year.

Rejection of dredging operations proved to be selective. The criteria used by the Trustees to grant or withhold their approval seems to have been based on whether or not such activities would destroy beach and bluff areas close to residences and what the impact would be on shellfishing. In the case of the Henry Steers Company to build a dock at their property at Bluff Point in Northport Village to facilitate the removal of sand to their Port Eaton plant the Board approved a lease for land under water in the face of objections from a number of oyster lease holders who complained of the possible damage to the shellfish. The upland land area was devoid of residences and few other than the baymen would be affected. Furthermore, the company promised, and it became a condition of the lease, that no screening or establishment of a plant would take place at Bluff Point. On the basis of greater local economic activity accruing to the benefit of the town and a minimum of damage presumably to be suffered by the operation the Trustees granted a lease on February 27, 1924.[69] Yet two years later they rejected an application from Thomas E. Cassidy of New Rochelle who wanted to dredge in Centerport Harbor for sand and gravel. Despite the offer of royalties to the Trustees, a promise that it would deepen the channel for pleasure boats, and the possibility that it would increase the Trustees' income, it was turned down because most of the proposed dredging area was under leases to upland

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69. Ibid., 104-105, January 4, 1924; 106-107, February 27, 1924.

owners.[70]

Many years later, during the late 1960's, what had become in name the Steers Sand and Gravel Company began to make moves to close down its operation at Bluff Point, having been there over forty years. In 1966 the company approached the Trustees with an offer to purchase .83 acres of shorefront directly in front of its property, claiming they had landlocked it and the public had no access to it. The offer to purchase outlined the plans for the area: a subdivision of development houses in the immediate area already sold by the company would benefit by being able to have a boat club there when the company left.[71] Few voices were raised to seriously object to the sale. Asked for an opinion on the sale the town's Director of Planning claimed it would be contrary to past and current policy with respect to utilization of lands under water as they related to abutting trustees upland and if sold to the company would remove any controls the Board might be able to exercise over future use. He suggested that the proposed boat club, if indeed it did come into existence, would not be supported by the nearby inhabitants but would be forced to go outside for members and thus become a quasi-commercial venture, which would not be in accord with the general policy of using such areas for general public recreational purposes.[72] The Trustees disagreed with such contentions and finally sold the property to the company after it was appraised at $10,600.[73]

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70. Ibid., 127-128, December 3, 1926.

71. Letter, Leon D. Lazer to Board of Trustees, November 28, 1966. Trustees Files, Town Attorney Office.

72. Memorandum, Harold T. Letson, Director of Planning to Supervisor John P. Kane, January 11, 1967. Trustees File, Town Attorney Office.

73. Correspondence, Quentin B. Sammis to Frank Mack, August 10, 1967. Town Attorney File, 1967.

Probably the largest single dredging operation that ever took place, in the town had its antecedents in 1935 when a referendum rejected a proposal to dredge the harbors. Efforts to enter into a contract continued intermittently until 1951. Eventually the contract between the trustees and a commercial firm proved to be a mixed blessing, welcomed by some and cursed by others. Material benefits could be pointed to in some areas while disasterous results became obvious in others as the overall consequences of extensive dredging altered the configuration of harbors and changed tidal flows. Finally it came to a half, but not after being dragged through the courts at a cost of thousands of dollars. The company involved was the United States Dredging Company which received a contract in 1951 to deepen, widen, and "improve the waters" within the town by removing sand and gravel for commercial purposes.[74]

At irregular intervals thereafter the Trustees entered into contracts with U.S. Dredging to scoop out large chunks of harbor and bay bottoms.[75] Some of the material found its way back, since it was unsalable commercially. In this way sandpits disappeared, new beaches came into existence on both public and private lands, and a new island was created at the head of Northport Harbor. A narrow finger of bluffs at the southwest corner of Eaton's Neck was reduced to a sandpit and two above-water sandbars immediately to the east vanished.

Once dredging operations had begun on a large scale a number of

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74. Huntington Harbor File, Town Historian's Office, Notice of Special Town Meeting, September 10, 1935.

75. "Trustees Minutes, 1946-1961," 13, 14, November 9, 1948, January 25, 1949; 41, May 19, 1954; Letter, Supervisor Walter Fasbender to U.S. Army Corps of Engineers, December, 1951; 63, April 4, 1956; Letter, Corps of Engineers to Board of Trustees, March 10, 1959, Huntington Harbor File, Town Historian's Office.

individuals and clubs in Huntington grasped the opportunity to improve their own shorefront conditions gratuitously. The year 1955 saw a flurry of requests to use the dredging company's equipment to clear away silt and open up channels near docks. Harbor Boating Club and Ketewomoke Yacht Club, situated next to each other on the west side of Huntington Harbor petitioned to have this done in front of their leased property. The Trustees directed the company to do so and within a matter of weeks they received a letter of thanks from the two clubs for such prompt action.[76] At the same time the Trustees rejected the request of Mrs. Hildegard Maaser to remove silt and debris from in front of her slip at Northport Harbor, yet allowed the dredging company to dump sand on the property of Howard Rasmussen at Huntington Bay to create a beach for him.[77] Maaser tried again in 1962, but the Trustees still refused to accommodate her.[78] Actually, by that time the Trustees had taken steps to terminate all leases at her location, an area known as the Quakenbush lease property, to convert it to a town park. The local shipyard, Knutson Shipbuilding Company, received favorable treatment in 1957 after Thomas Knutson complained that silting and filling in of the harbor in front of his shipyard had covered the marine railways.[79] And Claire Landau obtained permission to dredge a five hundred foot channel in front of the property she

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76. "Trustees Minutes, 1946-1961," 52- 53, March 23, 1955, April 6, 1955.

77. Ibid., 53, April 6, 1955; 57 August 24, 1955.

78. "Trustees Minutes, 1962-1971," 13, June 12, 1962.

79. "Trustees Minutes, 1946-1961," 78, December 11, 1957. Trustee President Cermak observed that the fill might have come from the upland and the town beach and thought that the Trustees "should do everything possible to relieve the situation and keep any industry like Knutson's, which is a credit to the town, going."

leased at Duck Island.[80]

Certain benefits did accrue to the town and the Trustees as a result of dredging and sand mining. In 1957 they bought 6.2 acres from the Huntington Sand and Gravel Company for $35,000, half of which was set aside for a game preserve.[81] In a one month period the Trustees received in royalties from U.S. Dredging Company, at nine cents per cubic yard, a total of $2,896.02 for 32,178 cubic yards of gravel removed.[82] And in a 1963 report to the Trustees Supervisor Flynn pointed out that the county dredge alone had removed over 1,250,000 cubic yards of material from Northport Harbor which, if done by the town, would have cost them $5,000,000. Shunting aside the complaint of a Mr. Goldthwaite that the real result had been a raising of the water by three feet so that some upland owners could no longer swim off their property, he casually observed that, "with a large dredging job of this nature, there would quite likely be a few aggrieved persons."[83]

The New York Times took note of general local improvements in Huntington because of the dredging, pointing out that a few years previously the harbors had been a mess with a narrow winding channel two and a half miles long through "vast beds of deep oozy mud". Only two yacht clubs used the area along with the shipyard. After estimating that the cost of dredging would be upwards of

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80. "Trustees Minutes, 1962-1971," 75, June 21, 1966.

81. Newsday, "Huntington Buys Sand Pit for Fun and Games," August 7, 1957.

82. "Trustees Minutes, 1946-1961," 87, March 5, 1958.

83. "Trustees Minutes, 1962-1971," 30, September 17, 1963. The Suffolk County dredge had been used for some harbor dredging partly because the state legislature had amended the county laws in 1959 to allow the County to widen, deepen, or dredge bays, harbors, inlets, and channels "for the construction of bulkheads, groins, jetties, docks, or other...improvements...at the expense of the county..." Laws of New York, 1959, 46, Chapter 25, February 24, 1959.

$1,500,000 Supervisor Fasbender and the Board contracted with U.S. Dredging to remove same from an area encompassing 2,000,000 square yards of land under water, from which the Trustees eventually gained in royalties $475,000. The article enumerated the restulting benefits, included in which were the improvement of 10,800 feet of channel and creation of an additional 2,200 feet of channel, the widening of the Huntington Harbor mouth and the reduction of tidal currents from six to two miles per hour, the increase in mooring areas from twenty-eight to seventy-eight acres, and the placing of excess sand on private and public beaches, and noted in conclusion that the increased flushing action of the tides had cleared up the pollution problem and restored the shellfish industry.[84]

Regardless of the benefits, alleged or real, many local individuals and organizations opposed any dredging as early as 1954. A proposal to dredge in Cold Spring Harbor met with resistance from the Cold Spring Harbor Civic Association and in 1960 the New York State Conservation Department and local baymen combined to voice criticisms about the effect dredging had on shellfish.[85] At this point a compromise was worked out whereby the Trustees would lease a large area to the baymen at one dollar per acre in which they could put transplanted shellfish from endangered sections of the harbors.

Soon after the U.S. Army Corps of Engineers sent out notices of applications for permission to continue dredging in selected areas in 1965

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84. New York Times, 28, January 17, 1965. The statement on pollution and increased tidal flow, in my opinion, is incorrect since the tidal action through a wider mouth would decrease in speed, whereas formerly going through a narrower mouth, the same quantity of water would have to move much faster and thus sweep out the harbor more efficiently.

85. "Trustees Minutes, 1946-1961," 46-47, 49, 51, October 6-December 22, 1954, April 21, 1955; 133, December 20, 1960.

increasing local resentment of and resistance to any such continuation became much more vocal. The complaints ranged from accusations that no one paid attention to the affect on shellfish to the belief that it would create greater boating hazards than then existed and that such operations carried on during the summer months would be so noisy as to ruin all recreational activity and the peace and quiet of the immediate areas.[86] In its own defense the Corps of Engineers wrote to the Town Board stating that it would consider only those areas actually owned in fee by the dredging company and attempted to clarify its position and the limits of its responsibilities.[87]

> Please be advised that the application was made prior to expiration of the permit to avoid de novo application which would be necessary if it was made after expiration of the permit. Furthermore, no property rights are granted under permits issued by the United States Army Engineers; the permit itself specifically states that the "instrument does not give any property rights...or exclusive privileges ....It (the permit) merely expresses the assent of the federal government so far as concerns the public rights of navigation." United States Dredging Corporation has authorized us to assure the Board that any future operations conducted by it on the permit area will be restricted to those portions of the permit area which are owned in fee by the U.S.D.C.

Two years later the controversy over dredging still raged. Requests from residents in Centerport and Northport urged that dredging be finished quickly because mud flats were appearing as a navigational hazard, pollution had developed because of dredging, and there appeared to be sufficient areas now available for moorings. Yet at the same time a petition with 515 names demanded dredging be completed to save the harbors from filling in with mud and to maintain the natural beauty of the beaches.[88] And R.C. Cushman, Lamont

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86. U.S. Dredging Corporation File, 1965, Town Attorney's Office.

87. Ibid., Letter, U.S. Army Corps of Engineers to Town Board of Huntington, December 21, 1965.

88. County Dredging File, Supervisor, 1976, letters and petitions, June, 1967.

Curator Emeritus of Birds at the American Museum of Natural History offered the caustic comment that[89]

> One of the silliest ideas I have yet heard expressed by local politicians is that Suffolk County must keep its dredges working because the cost of an idle machine amounts to about a thousand dollars a day. Suffolk County has never needed two dredges of its own, and a large proportion of their operation to date has led to degradation of priceless wetlands and to the creation of sterile bay and estuarine bottoms...If we relied upon commercial corporations for such dredging as was really required in the public interest, we might rid ourselves of the constant temptation to deal ignorantly with natural land forms, and at the same time save a lot of money.

Twice the Trustees' judgment on initiating the dredging and permitting it to continue became questions for the highest courts in the state to consider.[90] The two cases actually involved separate areas of controversy. In Knapp v. Fasbender, commenced in 1951, the issue was whether or not the Trustees had over-extended their powers; in Nance v. Town of Oyster Bay et al, begun in 1960, the contention was, among other things, the boundary between Huntington and Oyster Bay, the determination of which would decide the extent to which each town had title in Cold Spring Harbor to land under water. Although the latter case has already been discussed, it might be well to point out that, even though Huntington's claim to part of the underwater lands of the harbor were upheld, both the Trustees and the U.S. Dredging Company eventually had to pay the town of Oyster Bay for the amount of material taken from west of the dividing line confirmed by the court. In the case of the Trustees they had to pay $27,353.04 as the amount of royalties

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89. Letter, Cushman to Supervisory, November 7, 1967.

90. Knapp v. Fasbender et al, 1 N.Y. 2d 212; Nance v. Town of Oyster Bay, 258 N.Y. Suppl. 2d, 156.

collected, whereas the company was forced to reimburse Oyster Bay $160,000 less the $31,449.29 already paid them.[91]

The basic dispute in the Knapp v. Fasbender revolved around the rights of the Trustees to acquire a twenty-two acre beach and park at Centerport, various lots that made up a recreation field in Greenlawn, East Northport, and Huntington Station, several parking lots in Huntington Village, Huntington Station, East Northport, and the Gerard Street extension, and in contracting with the U.S. Dredging Corporation to dredge the town's harbors and bays and use the royalties to purchase the other property. The case progressed through the various state courts beginning in 1951 and finally ended up in the Court of Appeals in 1956.[92] A divided court by a four to three decision upheld the rights of the Trustees. Neither the majority decision of the court nor the dissent questioned the existence of the Trustees or their proprietary rights in certain lands and lands under water in Huntington. However, the court divided over the question of the limits of the rights of the trustees to acquire and control land by purchase. The concurring justices agreed that they could, in fact, acquire and dispose of land as they saw fit in the best interests of the trust obligation as the Trusts might interpret it; the dissenting justices attempted to place limits on this power for fear it could reinvest the Trustees with governmental powers which they had not, by state legislative act, been divested of after the colonial period. Both sides relied upon an interpretation of the legislative intent in the law of

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91. "Trustees Minutes, 1949-1961," 118-119, May 10, 1960; "Trustees Minutes, 1962-1971," 74, May 17, 1966.

92. 278 App. Div. 970, 120 N.Y. 2d 517, 303 N.Y. 803, 104, N.E. 2d 361, 281 App. Div. 893, 157 N.Y. Suppl. 2d 361, 282 App. Div. 882, 308 N.Y. 1021, 127 N.E. 2d 863, 151 N.Y. Suppl. 2d, 668.

1952 which reaffirmed the existence and rights of the Trustees;[93] the judgment holding that it continued in the Trustees powers of proprietorship which had existed since colonial times, the dissenters contending that it was not the intent of the legislature to intrude upon modern powers of the governing functions of the Town Board by vesting the Trustees with powers which, by their very nature would require quasi-governmental powers. The impact of this decision and the importance of the law of 1952 will not be discussed here, but will be held until later when the whole question of the existence of the Trustees will be gone into in greater detail since it seems more appropriate in that context.

Of all the properties acquired by the Trustees recently, in addition to the Centerport Beach project involved in Knapp v. Fasbender and the related case of Hubscher et al v. Fasbender et al, the most interesting are the Crabmeadow purchase and the termination of all leases on what came to be called the "Quakenbush Property" in Northport. The former has a long history dating originally from the "Ten Farms" division of the area in the 17th century during the boundary controversy with Smithtown and more recently since 1917; the latter is compressed into a brief nine year period during the 1960's.

What is now Crabmeadow Park is situated midway between the eastern boundary of the Village of Asharokan and the western boundary of Smithtown. When in 1672 Huntington divided the area into farms to make good its title against Smithtown, farms seven, eight, nine, and ten were all in Crabmeadow Neck. Farm number ten, the westernmost, was situated at an area called Round Swamp and later the Cove, while the others stretched eastward with number seven being at the eastern edge of Crabmeadow, numbers five and six

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93. Laws of New York, 1952, 1777-1778, Chapt. 816, April 18, 1952.

occupying the space to Fresh Pond, and the first four extending from there to the Smithtown River.[94] Much of the upland area, consisting of meadows and some marsh areas, remained in private hands; the beach, about one hundred feet wide and many hundreds of feet long, did not.

In 1917 the Trustees retained Willard N. Baylis to search the titles to the entire area because of complaints they received that a Mr. Walker and others had built a number of buildings on the beach without the permission of the Trustees.[95] The area in question at that time was bounded "northerly by Long Island Sound and Crab Meadow Gut or Inlet, easterly by the west branch of Crab Meadow Creek or Gut, southerly by the meadow lands of various owners, and westerly by the highway leading to Long Island Sound, abutting Waterside Park," consisting of a sandy beach, with ell or tape grass here and there, entirely distinct from the meadows to the south which had been mowed or enclosed.[96] There was a tract east of the highway leading to the Sound owned by Willis B. Burt, whose title came down through Cheesebrough and others in connection with a large tract west of the highway. In 1890 the road was shifted to divide the Burt property leaving one of his pieces east of the highway.

The Baylis report stated that as to the balance of the beach, extending from the Burt property (being the line of the old highway) to the gut or inlet, "It will not be questioned that title to it was vested in the Trustees of the Freeholders and Commonalty of the Town of Huntington by the Colonial grants of Nicoll, Dongan, Fletcher, and the ratifying acts, and unless divested,

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94. Sammis, Huntington-Babylon Town History, 180-185, 188.

95. "Trustees Records, 1914-1928," 48-49, August 10, 1917.

96. Ibid., 67-70, May 29, 1919. Report of Baylis on Crab Meadow.

title is still in such Trustees," and, after a search of all titles, he found "no grants covering this beach between the line of the old highway and the Gut, from which it follows that the Town of Huntington, or its Trustees, presumably now own such beach."[97] Baylis' title search indicated that none of those currently occupying the beach had any recorded title and thus no right to sequester any portion for themselves. None had been there long enough to claim adverse possession.

As for the beach that runs easterly several hundred feet from Burt Beach and east of the old highway line, he could find no deeds covering it. Deeds covering the upland conveyed only upland and were usually bounded "north by the beach". That portion of the beach running east to the Gut was claimed by the devisees of Elkanah Soper, deceased, and the heirs of Moses R. Sammis under a deed to Soper and Sammis of 1893. A portion was also claimed by Edgar L. Lewis and Elwood G. Lewis under deeds made within the previous twenty years. However, the deeds having to do with these parcels prior to 1900 conveyed meadow only. His title search disclosed that only in recent years had subsequent deeds undertaken to include the beach.

The Baylis report concluded that the beach between the Burt line, the line of the old highway, and the Gut was owned by the Trustees. In support of this he contended that the history of Crab Meadow east of the Gut, extending to the highway running to the Sound at Fort Salonga or Sunken Meadow bore him out because, although there had been various deeds years ago the makers did

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97. Ibid., The structures on the beach at that time were occupied by John Robbins, George Burr, J.W. Wheeler, D.S.B. Ruland, Claude Burns, H. Noyes Greene, Joseph Jones, L.C. Scudder, Eric Peterson, George Walker, Alfred O'Conner, Harry Van Siclen and Dr. Clymont, C.A.C. Johnson, David Beck, Robert Strickland, George C. Tompkins, Herbert B. Hawes, John E. Gardiner, L.B. Lefferts, Marie S. Henke, and Platt Monfort.

not connect their titles with the Trustees or the Town and had proved no acts which might give them effective title by adverse possession. To buttress his case he cited that previous court decisions, notably that of Price v. Brown, had decided that such titles failed to be proved because "A person cannot acquire title to an uninclosed, unoccupied, and unimproved parcel of land by taking a deed thereof from one not the owner and then going upon the land and asserting his ownership, or making an occasional foray upon the land for grass or sand."[98] Therefore, it followed that the title of the Town or its Trustees to the beach seemed reasonably good and should be asserted.

In sharp contrast to his report of 1919 Baylis submitted another in 1921 involving essentially the same area, but farther to the east. Frank F. Davis complained to the Trustees that Louis F. Geissler had appropriated a piece of the beach at Fort Salonga, a clear encroachment, according to Davis, on Trustees land. On July 15, the Trustees officially notified Geissler that he was trespassing on Trustees land, but on August 5, Baylis, as Trustees counsel, offered the opinion that "It is entirely a state matter, and the town can have no possible interest so far as title is concerned."[99] On what basis he felt compelled to say this is not recorded, nor is there any further reference to the property thereafter in the official records of the Town.

Beginning in 1954 the Trustees showed a new interest in the Crab Meadow area and took steps to protect whatever interests they might have in any of the creeks and lands under water in Crab Meadow as well as any lands that might have accumulated by lateral accretion.[100] During the following year

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98. Price v. Brown, 101 N.Y. 669.

99. "Trustees Records, 1914-1928," 87-88, April 13, July 15, August 5, 1921.

100. "Trustees Records, 1946-1961," 45, September 8, 1954. Title Guarantee and Trust Company insured the Brown-Lambert parcels under policy nr. 12080057.

Trustee Ingerman undertook, at the direction of the Board of Trustees, to search the titles to the beach and adjoining lands to determine the feasibility of expanding the town's beach.[101] Ten years later the Trustees and the Town initiated condemnation proceedings against a number of property owners in Crab Meadow, included in which were the estates of Edwin H. Brown and Justine Lambert, and eventually acquired the majority of it for $900,000. A narrow strip of upland and beach, occupied by private owners, beginning approximately three hundred fifty feet east of the inlet to what by then was called Geissler's Beach, remained under private control.[102]

The other large area reacquired by the Trustees took place over a much shorter period of time and, although somewhat more bitter because of the individuals involved, did not require much expenditure of money or become bogged down in law suits. This area recaptured by the Trustees for public use is situated in Northport on the east side of the harbor and within the village limits. The words "reacquired" and "recaptured" are used intentionally because, as pointed out earlier, most lands in the Town, with the exception of the very early appropriations prior to the creation of the Trustees, had been owned at one time or another by the Trustees.

The Quakenbush property consisted of a large parcel of upland, adjoining parcels formerly leased to the Long Island Lighting Company before it transferred it operations further north to a site on Long Island Sound, on which were a number of privately owned businesses who subleased from Mrs. Frank Quakenbush. She had occupied the area under lease from the Trustees since

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101. Ibid., 52, March 23, 1955.

102. "Trustees Minutes, 1962-1971," 45, July 28, 1964; Town Attorney File on Crab Meadow.

the 1930's. In 1958 she evidently did not pay the taxes on the property and the question of what action to take came before the Trustees.[103] At that time some discussion centered around taking over the area for a public park but little came of it until 1961 the Trustees seriously entertained a proposal to demolish all existing structures there and convert the land to public use.[104] By November the Trustees had agreed to settle all Quakenbush claims for $75,000 as payment for the value of all structures on the leased land; she in turn was to remove all tenants.[105]

Like many similar matters in which the Trustees participated this did not settle affairs. For the next two years they continued to collect rent on a month-to-month basis from the occupants of Quakenbush's leased property.[106] Although a resolution was passed in December of 1962 to terminate the tenancy of the many occupants nothing was done to move forward with the demolition of the many buildings on the property until early in 1964 when a resolution to do so was opposed by some Trustees and certain citizens who expressed an interest in preserving an old church there.[107] Because of this the Trustees

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103. "Trustees Minutes, 1946-1961," 87, April 2, 1958. The charge was made that Quakenbush paid only $1,825 of the amount owed, but her daughter Cynthia Henrdie contended she paid $1,900 a year plus $1,973.74 in taxes on the buildings. She also pointed out that her mother, at her own expense, enlarged the property by one-third by building a dock. Town Clerk McNulty countered by saying that she had not paid taxes for 1956-57 of $1,725.73 and for 1957-58 of $1,719.12 to the Village of Northport.

104. Ibid., 142-143, June 13, 1961.

105. Ibid., 148-149, November 4, 1961.

106. "Trustees Minutes, 1962-1971," 19, 24-26, January 29, September 4, 1962, and subsequent meetings in 1963 through April. The rentees were Mario Rifelli, Dorothy Hammer, Fred Plank, Sr., Sheehan's Parkview Tavern, Harold L. Suydam, Northport Ice Company, Long Island Oyster Farms, Seymour Harris, Quentin Leverton, and Hildegarde Maaser.

107. Ibid., 22-23, December 18, 1962; 34, February 18, 1964.

amended the resolution to exempt the church from destruction until a further study of its historical value and the costs of rehabilitation could be determined.[108] The fight to save the church dragged on through June with some suggesting it be converted to a museum and exhibition center, while others, primarily from among the Trustees, claimed that it was dilapidated and in danger of collapse if the other buildings surrounding it were removed.[109] By July all efforts to preserve the old structure proved to be of no avail and the Trustees went ahead with plans to clear the entire leased premises.

One hold-out remained: Hildegarde Maaser. Her boat rental shack remained to plague the Trustees. In December of 1964 the Trustees ordered that her shack be boarded up, at which point she appeared at a public session and complained vehemently against such treatment.[110] As usual, the results remained inconclusive and the shack is still there just south of the Long Island Oyster Farms buildings.[111] As recently as 1967 former Trustee Percy Ingerman wrote a letter to Supervisor John P. Kane suggesting there be a meeting between the Mayor of Northport Village and the Supervisor to figure out what to do with the Quakenbush property because "considerable pressure is being executed by the local planning board which feels that no comprehensive plan for the salvation of the business district can be made without some suitable plan regarding this property." He urged Kane to act because, "as Trustees you and I moved heaven and earth to get possession...but the big problems still remain."[112]

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108. Ibid., 36-39, March 10, 24, 1964.

109. Ibid., 39, April 7, 1964; 44, June 16, 1964.

110. Ibid., 50, December 9, 1964; 52, December 29, 1964.

111. There is reliable evidence that Mrs. Maaser later sold the premises for a sizable sum and that the present owner is laboring under the delusion that he has a fee simple claim to it.

112. Letter, Ingerman to Kane, February 17, 1967, Town Attorney File.

Today the Maaser shack, Long Island Oyster Farms, and the Northport Ice Company still occupy the premises as a sad reminder of good intentions gone awry. Lack of consistent attention by the Trustees and a shortage of funds to develop the area into a park are the major road blocks despite the fact that the Town's architectural consultant Donald Busch has drawn up a comprehensive set of plans to rehabilitate it. Much of it is now under lease to the Village of Northport which seems to have done little to improve its appearance.

This does not mean that the Trustees always dragged their feet. As completely unrelated items, it can be pointed out that in March of 1962 they recognized the need for a permanent bay constable and passed a resolution recommending to the Town Board that one be appointed. Five months later Robert E. Halligan was appointed the Town's bay constable.[113] And in August of the same year, upon receiving a petition for a lease of shorefront upland and land under water in Cold Spring Harbor from the Harbor Terrace Civic Association, the Trustees quickly granted it for a five year period, stating the area was to be used only for recreational purposes by all the residents of Huntington.[114]

Once in a while the Trustees were frustrated by claims of the State of New York insofar as the latter's contention that they owned--or at least could lease because of concurrent jurisdiction--lands under water in the town's limits. During the latter part of the nineteenth century and for a few years in the twentieth the state did grant leases to individuals. These, however, were infrequent, as in the case of George McKesson Brown in 1912,[115] and did

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113. "Trustees Minutes, 1962-1971," 8, March 13, 1962; 19, September 4, 1962.

114. Ibid., 18-19, August 14, 1962.

115. Town Historian's Office, Lease File.

not seriously intrude upon the rights of the Trustees. In fact, most such instances appear to have been supplemental grants to upland owners who also had permission from the Trustees. The position of the State in such instances could probably be clearly delineated by a quotation from Willard Baylis, representing the Town in an action against the 1912 Brown petition for a state lease, when he cited a remark by a former state attorney-general,[116]

> I understand that there was one other grant applied for out in Huntington Bay, by a man named Jones, some years since, and that the Attorney-General then in office (far be it from me to criticize the Attorney-General, and he was a man of ability) but he suggested that they were taking away just so much waste paper and that there was no reason why the State should not hand out waste paper if someone should be found foolish enough to part with their money for it.

Other matters continued to plague the town and, indirectly, the Trustees, such as the closing off of certain roads which normally would have given the general public access to beaches and the water. For example, in 1961 the trustees of the Village of Huntington Bay closed off the end of Bay Road which terminated at a beach because "irresponsible people" used the area for swimming and launching small pleasure boats. Evidently local residents had complained to the Village Mayor, Milton Foster, that public use of the road and beach by other than village residents was a nuisance and endangering the peace and quiet of the area. He responded by placing an eight-foot high fence across the end of the road, thus blocking access to the beach. The Town Attorney, Leonard Lazer brought an action in the State Supreme Court to secure an injunction against the village. In the meantime those who had used the road tore down the fence. The village reconstructed it. There it

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116. Ibid.

stood awaiting Justice Zaleski's decision.

The Village contended that it had control over the area and the power to regulate the use of local beaches, and claimed through its attorney, Matthew Buerman, that "Up until six years ago, no one used the beach. Then new developments sprung up outside the village. These people use it."[117] He also claimed that the road had been abandoned by virtue of the failure of public use for many years. Lazer countered by declaring that the village trustees had acted illegally as a public municipal body because, "a municipality is impressed with a trust to maintain a public highway for the use of the public...The Village of Huntington Bay has abrogated this trust."[118]

Judge Zaleski agreed with Lazer that the road was not the property of the village, but that it was held by them in trust for the public and that the village did not have the power to prohibit the use of open, public ways.[119] If the village's position had been allowed to stand it would also have infringed upon the rights of the Town Trustees. Evidently the beach was considered to be public, that is, owned by the people of Huntington. Unless the Village of Huntington Bay could show clear title to the beach they could not block the Town Trustees, and more particularly the cestui que trust, from access, as they attempted to do. Even if they had succeeded, unless than could also prove clear title to the foreshore and the land under water, they would be so restricting the rights of the Town Trustees as to make their proprietary rights meaningless by cutting them and the beneficiaries off from

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117. Long Islander, "Zaleski Reserves Decision on Future of Bay Rd. Fence," June 8, 1961.

118. Ibid.

119. Ibid., "Zaleski Orders Removal of Fence Across Bay Road." July 20, 1961.

their property. As an obiter dictum, it seems that such a stance on the part of a village within Huntington is not unusual. More than once one or more of them have claimed rights and powers they simply do not have. Frequently they fail to recognize the fact that they are the lowest rung on the administrative ladder of the state, subordinate to all those above them. If left unchallenged, such a stance could eventually wipe out the authority and proprietary interests of the Town Trustees.

The other similar case which should be given passing mention is that of West Shore Road in Centerport. At one time there was a road running along the west edge of Centerport Harbor and records of it date back to 1828.[120] Without going into the historical details of the evolution of the road and its use, sometime during the twentieth century the road fell into disuse and another was constructed somewhat to the west of it. Between the two houses were built, although evidently for a time the old road was used. Sometime during the 1940's C. Harvey Smith moved into the area with a trailer which he placed on land he owned abutting the road. To the south of his location lived Wallace Palmer. Within a short period of time disagreements developed between the two which blossomed into a feud. Wallace took the initiative by placing obstructions across the old road to prevent use and asserted his title to a strip of beachfront property. Smith, not to be outdone, enlisted the support of neighbors and chopped down the blockade.[121]

Naturally matters could not end there. In addition to the basic question of whether or not a public road existed was that of who would best whom in the personal matter of neighborly hatred between Smith and Wallace. The dispute

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120. "Highway Book A," 206, August 23, 1828.

121. Long Islander, "Roadblock Makes Them Saw," May 12, 1961.

quickly found its way into court. The Smith faction, citing the original highway record of the road, submitted evidence that as recently as 1928 a local newspaper, The Long Islander, had given attention to the old West Shore Road when it reported a petition having been transmitted to the Town Board on September 14, 1928, which complained that upland owners had been fencing off the area below highwater mark. At that time the Board took immediate action and ordered the removal of the fences.[122] Claiming that it had always been a public right of way and that the Town had no right to abandon it or disclaim ownership of the right of way, they demanded that the Highway Department commence work to restore it for public use. The Wallace forces countered with the fact that in 1958 the road had been officially abandoned, and that such certificate of abandonment was on file and was within the legal rights of the town to issue. Judge Ritchie of the State Supreme Court, at a special term in Riverhead on July 2, 1964, accepted the position of Wallace and of the Town which had supported him in his suit. The road was judged to have been abandoned and no longer town property.[123]

The same observations hold true in this case, in a broad sense, as they do in the Bay Road case. Indirectly the proprietary rights of the Trustees of the Town have been ignored. They have been, in effect, cut off from access to whatever land they might own or lay claim to along the old West Shore Road--unless, of course, they accept the contention that they can always approach it by water. This means that the upland property owners have effectively land-locked trustees property. And, although it now appears moot,

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122. Town Historian's Office, "Centerport Harbor File."

123. Ibid. Various court papers, a diary, maps, and newspaper clippings in the file give the basic history of this entire case. There is little need to repeat it here other than as a reminder of things past.

the right of the then town superintendent of highways to judge a road to be abandoned for lack of use seems arbitrary and capricious when dealing with public land. By such administrative fiat the acts of local officials could endanger the proprietary rights of the Trustees--as they seem to have done in this instance.

Roads made up but one instance of local facilities which had their origins in utilitarian service to the community and which later became centers of controversy over ownership. Mills, mill dams, and mill ponds also fall into that category even though they had their beginnings in the seventeenth and eighteenth centuries when grist, flour, and saw mills were essential to the economic growth of Huntington, when it was a predominately agricultural community.[124] Although many mills came and went in the town, only two are of importance in this century because of conflicting claims between the Trustees and private individuals over who owned the mill sites, the dams, and the mill ponds. They are the mills at the head of Huntington Harbor and at Centerport.[125]

The mill at the head of Huntington Harbor came into existence sometime during the 1650's under the ownership of William Leverich who also served as

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124. The difference between grist and flour mills is one of purpose. The former ground grain only for local use; the latter did so commercially for export. In all other respects they were identical.

125. Other mills in the town included the corn and saw mill at Cold Spring Harbor, the rights to which were granted to John Robeson on October 23, 1680, and later given over to John Adams on April 1, 1682 because Robeson failed to complete construction, HTR, I, 272, 334. On October 16, 1686 the town granted the right to build a mill, but the site is not mentioned, HTR, I, 469; on May 3, 1726, Jonathan Whitaker received permission to build a mill at Higbee's Cove, HTR, II, 356; and Pallatiah and Henry Soper were allowed to build one at Page's Cove, not hindering grass mowing of any kind, on May 1, 1733, HTR, II, 370.

the minister of the town.[126] Sometime before 1660 Leverich sold the mill to William Ludlam who later sold it to Mark Meggs in 1667.[127] Charles R. Street in a footnote to the Ludlam-Meggs deed located the mill in 1872,[128]

> It was located at the south-west corner of a lot on the north side of Mill-Dam Lane about five hundred feet westerly from where the brook crosses the highway. The spot where the mill stood and the mill wheel was located was often pointed out to the writer [Street] by his grandfather, Gilbert Scudder, nearly fifty years ago, Mr. Scudder then owning the land and being about 80 years old. The mill race, though partially filled up, can now be traced. The dam which flooded the lands far to the south was on the same site as that now occupied by the highway--Mill-Dam Lane--and the grate of the mill pond was where the bridge over the brook is now located.

It is questionable whether the first miller, Leverich, and his successors, Ludlam and Meggs, actually obtained possession of the land on which the mill stood or the mill dam and the pond it created. The wording of the conveyance between the latter two millers suggests that Ludlam had some question as to his title since he, "do sell, assign, alienate and make over from me, my heirs, executors, administrators, or assigns all my right in and unto my mill at Huntington bought of Mr. Leverich of Huntington aforesaid with all the right thereunto belonging..."[129] And later in the same instrument he speaks of conveying it, "as fully, largely and amply as I the said Willi had, might, or could by any grant or bill of sale from Mr. William Leverich or the town..." In 1669 Meggs gave the mill to the town's use if he died while a resident or agreed to sell the building to them if he moved away.[130] He did not give the

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126. HTR, I, 19n, January 13, 1659.

127. Ibid., 30-32, October 25, 1660; 101-102, June 13, 1667.

128. Ibid., 101n.

129. Ibid., 101-103, June 13, 1667.

130. Ibid., 132, January 24, 1669.

mill site, the dam, or the pond, he gave the mill, indicating that the town very probably had the fee title to them. Yet he did receive from the town the swamp to the south of the dam, some of which he conveyed to Jacob Walker in 1671.[131] That same year the town voted to let the water out of the pond because its continued presence was thought to be a health hazard, in return for which they allowed Meggs to construct a new dam farther north.[132] Finally in 1672 Meggs deeded back to the town all his rights and interest in the mill, mill house, pond, and dam as well as a two rod wide highway leading to the mill, reserving to himself the swamp below the mill pond.[133] A year earlier he agreed with the town that it should own the dam and formally construct and maintain a road over it to the mill.[134] The town eventually divided up the old, drained pond among the proprietors of the Old Purchase in 1676.[135] The entire procedure of Leverich acquiring the milling rights and a site for a mill and its eventual return to the town followed a standard colonial practice. Seldom did towns alienate such sites irretrievably, considering them to be public in nature. Any person receiving such a right had a clause inserted in the conveyance that he had to build and commence operation within a stated period of time and, if he departed or died, the site and the mill reverted to the town. Occasionally an additional clause guaranteed fee ownership if the miller remained a specified number of years.[136]

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131. Ibid., 109, December 24, 1667; 174-176, February 3, 1671.

132. Ibid., 173, January 6, 1671.

133. Ibid., 182-184, January 23, 1672.

134. Ibid., 193, September 18, 1671.

135. Ibid., 219, January 16, 1676.

136. Oyster Bay Records, I, 40-41, September 16, 1661; 9, October 7, 1662; 11, September 14, 1663; 212, November 15, 1669.

The next mention of a mill in the Huntington Harbor area is in 1752 when Dr. Zophar Platt acquired the right to build one at the head of the harbor.[137] The question again arises as to whether or not the conveyance was one of use or of possession. The conveyance from the Trustees to Platt granted, released, conveyed, assured, enfeoffed, and confirmed, "unto him the said Zophar Platt, his heirs and assigns forever the rights, liberties, and privileges...of building, making, and runing of a dam to dam the water at the head or near the head of Huntington Harbor." The dam was to begin from the thatch point of a salt marsh on the east side of the creek and extend across to the shore on the west side of the creek at a place to be selected by Platt. He had free liberty to erect a mill or mills on the dam or below it and to confine the waters above the mill dam itself. If it chanced that oysters grew in the pond, he and his successors had the right to harvest them. All this "to have and to hold all the above granted and bargained premises with their appurtenances unto...Platt, his heirs, successors, and assigns forever to his and their own sole and proper use, benefit, and behoof from henceforth and forever." In return, Platt, "for and in consideration of the above granted privileges," covenanted to grind the town's corn and grain, taking one-fourth as the toll, to build and maintain the dam and to dig a ditch to turn the current of water into a cove below Benijah Jarvis' house. He also agreed to allow the town's inhabitants to fish and gather oysters in the mill pond. Finally, in case he did not build a mill, all rights reverted to the town. It appears this was not a fee simple conveyance.

A local historian, Martha K. Hall, traced the continuous occupation of

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137. Ibid., III, 112-116, April 10, 1752. This deed appears out of its normal place in volume II because, according to the editor, it was not available at the time that volume was compiled by Mr. Street. All references here to portions of the conveyance are taken from this citation.

the Platt mill from 1752 to 1930. According to her, Platt was a wealthy merchant and physician who bought the mill rights as a business investment and sold it to John Brush, with all the orchards, houses, mills, and barns, for $2,400. When Brush died in 1795 his son inherited it. Later it is mentioned in the will of one of Brush's sons, Ichabod, who indicated he owned it. Richard Holden acquired the mill in 1838 and sold it to John Wood who operated it until 1881 when he, in turn, sold it to Daniel Webster Smith. Daniel Smith, Junior was the last owner and the mill was dismantled in 1930.[138]

Within a year after the old Platt mill came to an end the Trustees found themselves in a controversy over ownership of the mill pond. In December of 1931 the Town Board entered into an initial agreement with Francis, Bertha C., Charles W., and Mary P. Ludlam to purchase a parcel of land in question, bounded on the north by Huntington Harbor, on the west by Wall Street, on the south by "unknown owners", and on the east by the harbor, Wilton Wood, town property and New York Avenue, was to be quit-claimed to the town by the Ludlams for $27,500.00.[139] Because of the question of title the Town Board retained Wallace E.J. Collins to bring an action against the Ludlams. However, because of a "lack of confidence on the part of the people generally in the wisdom of his advise in several instances--notably in the case of the Ludlam Brothers versus Huntington and Marine Oil Company versus Huntington," the Board turned the business over to John J. Robinson.[140]

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138. Martha K. Hall, "The Heart of Huntington," (The Huntington Historical Society, 1958), 14-15.

139. "Town Board Minutes, 1929-1931," 312-313, December 18, 1931.

140. Ibid., 319-322, January 6 and 20, 1932.

The following year the Ludlams became vexed at the refusal of the Town Board to abide by the proposed settlement of December 14, 1931. In a letter to the Board the plaintiffs claimed that they had bought the property in good faith from the Scudder estate, that they had agreed to divide the parcel in half, receiving $27,500 for the portion acquired by the Town, and that they had agreed also to spend $20,000 to dredge the harbor in case the pond were to be filled in. Complaining that they had paid taxes on the land for four years, they objected to the court action as being unfair, and asked for an immediate settlement of the matter.[141] This in no way resolved the matter and it dragged on for another three years.

In the spring of 1935 the Huntington Township Harbors Committee sent a statement to the Town Board in which they directed attention to the mill pond. The statement claimed that the town could and should go ahead with plans to fill in the thatch meadow along the West Shore Road since no claimants possessed riparian rights to the exclusion of the town's development of the west shore and cited the decision of Justice Selah B. Strong in the 1857 case of Alexander Sammis v. Huntington. The report went on to point out a claim by Wood included the statement that there was no chain of title to land situated along Mill Dam Road, that the Trustees had never conferred on purchasers of thatch grass legal title to lands under water within the harbors of the town and that, therefore, the Board could go ahead as it pleased.[142] Shortly after the statement was received Howard Schow of the Harbors Committee informed the Board that a tax sale had taken place in 1931 for nonpayment of

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141. Huntington Litigation File, Town Historian's Office, letter to Town Board from Francis A. Ludlam, August 7, 1933.

142. Huntington Harbor File, Town Historian's Office, 1935.

$327.01 and urged the Board to take legal steps to declare its ownership of the mill pond area. Schow reminded the Board that neither that property nor Wood's property on Mill Dam Road had been assessed for taxes until recently and that they had no value unless the claimants could produce a "straight out deed" from the Town. According to him this might be impossible since there was no public record of such deeds.[143] The Board quickly took the necessary steps to protect its interests and tendered a payment of $350.67 to the county treasurer, including accumulated interest, to redeem the property.[144]

The legal brief prepared for the Town Board as plaintiff in the case against the Ludlams is worth a detailed summary since many legal and factual points brought out in it are still pertinent today. The brief begins by establishing the validity of the colonial patents and the existence of the Board of Trustees as the sucessor to the Trustees of the Freeholders and Commonalty of the Town of Huntington resulting from the law of 1872.[145] As to the Platt grant from the Trustees in 1752, it did not intend to convey in fee title to any lands, but rather gave to the grantee certain rights, privileges, and liberties. The brief relied in part upon Trustees of Southampton v. Jessup (162 N.Y. 126) in contending the conveyance dealt with

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143. Ibid., letter to Town Board from Howard Schow, May 8, 1935.

144. Huntington Litigation File, Town Historian's Office, deposition of William Watt, Town Supervisor, no date but probably during the fall of 1935.

145. Huntington Litigation File, Town Historian's Office, circa 1935. Cases cited in support of the first point included Lowndes v. Huntington, 153 U.S. I (lands under water belong to the town); Robins v. Ackerly, 91 N.E. 98 (Northport Harbor included in town trustee lands); People ex rel. Howell v. Jessup, 160 N.Y. 250 (Southampton) Hand v. Newton, 92 N.Y. 88 (Brookhaven); Southampton v. Mecox Bay Oyster Co. 116 N.Y. I (Southampton); Brookhaven v. Strong 60 N.Y. 56 (Brookhaven); Sammis v. Huntington, 186 App. Div. 466 (Chap. 492 of Laws of 1872 abolished former trustees office and designated certain town officers as Board of Trustees vested with rights, privileges, etc., of former trustees).

tide water and marsh rather than fresh water and that the conveyance was in reality the grant of a franchise as distinguished from the grant of an easement or a license.

> In that case the Court of Appeals, referring to the right created by resolution of the Trustees of the Town of Southampton authorized a riparian proprietor to make a roadway and erect a bridge across the bay, said, "It would fall under the definition of an easement if it had been granted by an ordinary land owner and not by a body holding lands under water in trust for the public. We think it is a franchise because it was granted in the exercise of a governmental power conferred by the royal charter in colonial days....In construing this franchise we are not to lose sight of the principle that a grant from the public, so far as it is ambiguoys, is to be construed in the interest of the public, and hence in favor of the grantor, and not, as in ordinary cases, in favor of the grantee (Syracuse Water Co. v. City of Syracuse, 116 N.Y., 178; Mayr v. Starin, 106 N.Y. I, 19; Wells v. Carbutt, 132 N.Y. 430, 435). This principle, however, is to be applied only when doubt arises, for when the meaning is clear there is no room for construction.

The Court of Appeals went on to state that in the instrument of conveyance certain words were used which were generally found in a conveyance of fee title, but when they were read carefully as a whole there was no evidence of any intention to convey fee title. Therefore, the brief declared, it was clear that the sole purpose was to grant and convey to Platt certain rights, liberties, and privileges specifically enumerated in the instrument itself.[146]

The question was then posed as to whether or not the grantors, the

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146. According to the brief the Court of Appeals in Matter of Brookfield (176 N.Y., 138) held that, "when we find provisions in a deed which are inconsistent, the rule is well settled that those provisions which are written or are unusual, or those which have received special attention, will be deemed to express the intention of the parties rather than the printed or formal portions of the instrument." In Nostrand v. Durland, 21 Barb. 478 essentially the same principle was stated.

Trustees, had the power to convey in fee to a private individual even if they had wanted to. Referring to Coxe v. State, the brief offered a lengthy quotation,[147]

> That the dominion and ownership of such lands is in the sovereign for the benefit of the public has long been settled. Such dominion and ownership of property generally implies the power of absolute disposition, but with respect to the lands under navigable or tide waters an important limitation has been engrafted upon this power from the nature of the title. The title of the state to the seacoast and the shores of tidal rivers is different from the fee simple which an individual holds to estates in lands. It is not a proprietary, but a sovereign right, and it has been frequently said that a trust is engrafted upon this title for the benefit of the public of which the state is powerless to divest itself....It has often been said that the legislature of this state is clothed with all the powers of the British Parliament, except as restrained by the express or implied provisions of the Constitution. When the general doctrines of the English courts on the subject are given full scope, the conclusion is inevitable that the Parliament and the Crown together were not competent to grant to a private corporation, for private purposes, the seacoast around the island below the shore line, without violating established principles of law (Martin v. Waddell, 16 Peters, 367). While I am not aware of any such restriction to be found in the Constitution of this state, in terms, yet, from the very nature of the question, it must be deemed to be inherent in the title and power of disposition. The title which the state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, except for some public purpose, or some reasonable use which can fairly be said to be for the public benefit.

Speaking of the mill pond itself the brief asserted that the grantors were powerless to convey it in fee simple because the lands were under tidal waters and could not be alienated in fee to a private individual. Also, the purposes of the grant did not require that the grantor do so since it was

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147. Coxe v. State, 144 N.Y. 407. The brief also cited Roberts v. Baumgarten, 110 N.Y., 380, and Roe v. Strong, 107 N.Y., 358, as upholding the principle that conveyances of creeks and mill ponds did not convey land under water, which was tidal, but conveyed only easements in the waters of the creeks for mill purposes.

merely a right to impound and use the waters of the pond, thus leaving the fee title in the public. Huntington as owner of the legal title under the colonial patents was actually in constructive possession (Civil Practices Act, Section 35), and Platt acted only with the permission of the town. Consequently any acts of his successors could not give rise to any claim of title by adverse possession.[148]

Turning to the payment of taxes as supportive of a claim of ownership, the brief stated that such was not the case and could not be accepted as evidence of possession either actual or constructive. Such payments could not estop the town from claiming title to land. Title is held by a municipal corporation in trust for the public. The public as the real owner could not be estopped by acts or commissions of officers whose duty was to protect the interests of the public.[149] Pointing out that successive title transfers between private individuals, even though property recorded, could not estop the town from its claim, the writer of the brief stated that none of the transfers purported to convey anything other than the original franchise. Therefore, as long as the franchise was not abandoned there was no right of other parties to claim fee title. The brief closed with the summary argument that,

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148. Cases cited were City of New York v. New York Central Railway Company, 234 N.Y., 113; Hinkley v. State of New York, 234, N.Y., 309; and White v. Sheldon, 35 Hun. 197.

149. Cases cited included Greenleaf v. Brooklyn Railway Company, 141 N.Y., 395; Archibald v. New York Central Railway Company, 157 N.Y., 583; City of Mount Vernon v. New York Railway Company, 232 N.Y., 309; City of Geneva v. Cayuga Oil Company, 135 Misc. 673, 238 N.Y. Suppl., 187; Consolidated Ice Company v. Mayor, 166 N.Y., 92; Harway Improvement Company v. Partridge, 203 App. Div. 174.

> Finally, upon this branch of the case, we contend that as title to the locus in quo was in the Town in its sovereign capacity and in trust for the public, such title could not be transferred to any private individual, either by adverse possession or by estoppel. As heretofore stated, the weight of authority is that if the fee title to lands under tidal waters can be transferred to a private individual at all, the transfer must be by an express grant made for a valuable consideration and in and of commerce and navigation. This rule clearly excludes a transfer of the fee title by adverse possession or estoppel, such as is claimed by the defendants in the present case.

The dispute became moot in 1936 when a special election was held by the town to allow the voters to decide if they wished to purchase the property. The question on the special ballot asked the voters whether or not they wished to approve the purchase of property then in controversy in the Supreme Court of the State of New York, bounded west by Wall Street, east by New York Avenue, north by Huntington Harbor, and south by Creek Road, including the site of the old Platt mill, mill dam, and mill pond, for the sum of $18,250.00. The voters granted their consent by a wide margin of 219 to 55. Shortly thereafter the town received a quit-claim deed form the Ludlams turning over all their rights and interest in the area.[150]

The Centerport mills and mill ponds have essentially the same history as the Platt mill in Huntington Harbor. Actually there were two major mills in the Centerport Harbor area, one at the very head of the harbor with the pond on the west side and the other almost midway up the harbor where the dam now crosses the harbor from west to east. In the latter case, the mill was located on the west side also. The first mill had its origins in 1674 when the town surveyed what was then called Cow Harbor to determine if it would be feasible to construct a mill.[151] Six years later the town granted the

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150. Huntington Litigation File, Town Historian's Office, 1936; Book of Deeds, Liber 1868, 485, June 29, 1936.

151. HTR, I, 207-208, June 30, 1674.

privilege of building a mill to Jeremiah Smith, the agreement including the provisions typical of the period.[152] As late as 1686 Smith still had not built his mill and the town offered him an additional inducement of six acres of marsh land to do so.[153] Although there appears to be no later record of who acquired the mill rights and built a dam which created a small pond at the extreme southwest corner of Centerport Harbor, it is apparent that if at any time a mill was in operation there that the town trustees own the pond.[154]

The more important mill in Centerport was that built by Sylvanus Townsend sometime after 1774 when he received a grant of rights and privileges from the Trustees.[155] The conveyance, since it appears to be essentially the same as the other mill discussed earlier, was one of use and not possession. Eventually the mill came into the hands of William L. Titus who, in 1856, petitioned the town to be released from the bond to maintain a road "three rods wide from the banks all the way down to the landing below the grist mill."[156] In 1899 the Trustees had to remake and improve the road over the dam, thus the clause in the original conveyance regarding its upkeep by the mill owner was abrogated.[157] Thereafter intermittently the question of the Centerport mill pond came before the Board of Trustees. In one instance Andrew Titus,

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152. Ibid., 227-228, February 26, 1677.

153. Ibid., 469, October 16, 1686.

154. There is a map in the Town Historian's Office, dated 1870, which clearly shows a mill in that location labelled W.D. Lewis grist mill.

155. HTR, II, 523-528, January 14, 1774.

156. HTR, III, 427, April 25, 1856.

157. Roy Lott, "Notes on Mill Ponds," no date, Town Historian's Office, cites September 9, 1899 as the exact date of this act.

successor to the mill, refused to repair the road, which precipitated the town's later action in doing so itself; in 1919 some research was undertaken to determine legal title to the mill pond; and during the 1950's the Trustees successively refused to become parties plaintiff against Antonio and Mary Pillucere for filling in a portion of the pond, then appointed William R. Geiler to prosecute the case, and later took steps to stop individuals from bulkheading certain shorefront areas.[158] Since both the small and the large, major mill pond fall within the same category as the Platt mill pond there seems little point in belaboring the issue at this time.

If nothing else can be said about the Trustees during this period, at least it can be observed that they just barely held their own against private and corporate entities which persistently intruded upon their rights and powers. In some instances the Trustees engaged in what could charitably be called a rear-guard action; in other instances, goaded on by others, they initiated the attack. Slowly but surely their very existence came to be threatened. To that problem we now turn.

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158. "Trustees Records, 1893-1914," 22, September 13, 1894; "Trustees Records, 1914-1928," 52-53, February 1, 1918; Ibid., 72, 73-74, June-July, 1919; Opinion of Counselor Isaac R. Swezey to Town Board, July 7, 1919, in Town Historian's Office; "Town Board Minutes, 1929-1933," 268-269, July 3, 1931; "Trustees Minutes, 1946-1961," 24, September 12, 1950; Ibid., 94, October 8, 1958; Ibid., 99, March 10, 1959; Ibid., 124, July 21, 1960; letter, Director of Planning, Harold T. Letson to Supervisor Kane and Town Board, January 20, 1967, Planning Board File.

Chapter V

The Trustees in the Twentieth Century: Requiem or Resurrection?

Not the least of the Trustees' problems were those actions by individuals which either ignored or demeaned the rights and powers stemming from the colonial charters. At one point a group of individuals banded together, possibly for partisan political reasons, to have the Board of Trustees abolished. Some court decisions and legislative acts seemingly have, at least on the surface, seriously impaired the ability of the Board of Trustees to act.

Occasionally a citizen would come forth to try to force the Board of Trustees to be more conscientious in its duties. Such was the case with Albert Levert, a local attorney who felt the Trustees did not charge a sufficient rental for leased land on which Post 360 of the American Legion had its building. In 1957 he brought an action against the Board of Trustees in the form of a taxpayer's suit to set aside the fifty year lease between the Trustees and Legion signed on August 8, 1939. The one acre leased to the Legion for a dollar a year was located on Mill Dam Road and had originally been a marsh. Upon acquiring it the Legion filled it in and constructed a meeting place for the organization. Levert liked neither the length of the lease nor the nominal charge.

Levert contended that the action of the Trustees constituted waste and was contrary to Article VIII, section 1 of the New York State constitution which provided, in substance, that, "no town shall give or loan any property to or in aid of any private corporation or association or private undertaking." Claiming that the Legion was private in nature, even though in the public interest, he demanded that an adequate rental be charged.[1]

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1. Huntington Lease File, Town Historian's Office, October, 1957.

The court agreed with Levert, forcing the Trustees to cancel the fifty year lease and to charge more than a token rental. In order to circumvent the court's decision the Trustees sold the land to the Town the following year. At that point the Town leased the premises to the Legion for a five year term at one dollar a year, thus following the spirit but decidedly not the letter of the decision.[2] Despite the fact that the Legion currently occupies a site valued at $117,500.00, it continues to enjoy a special privilege status.

Another organization, this one commercial in nature, also posed problems for the Trustees, some of which have not been resolved even today. The Knutson Marina is located in the southeast corner of Huntington Harbor. It is a sprawling complex of retail stores, ship yards for pleasure boats of all sizes and descriptions, and a number of wharves extending into the harbor. Although built on what was once marsh land the company has no lease with the Trustees for occupation of the upland or the land under water upon which a forest of pilings rest to support a maze of docks and ramps.[3] Farther up the east side of Huntington Harbor, virtually at the northerly end of the commercial and yacht club congestion which characterizes the east shore is another commercial enterprise of the Knutson family, the Thomas A. Knutson Shipbuilding Corporation. Back in 1959 the Trustees had the opportunity to demand a more equitable rent for the leased property occupied by this company, but did not grasp the chance as fully as they might have. At a meeting in December of that year August Carbone, a local bayman and operator of a bait

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2. Long Islander, January 2, 1958.

3. Members of the American Legion Post claim that this operation, which is due west of them, has bulkheaded along a creek, filled in, and pushed its docks out sufficiently far to cut off the Legion Post from the water entirely, whereas at one time the Post did have water frontage. The question arises here, why did not these public spirited citizens, operating in the public interest, bring this to the attention of local authorities?

and tackle shop, questioned the lease terms, blaming the Trustees for charging less than the property should produce in rental income. At that time the Knutson lease had come under consideration for renewal, the suggested terms being for ten years at six hundred dollars a year with option to renew for an additional ten years.[4]

Speaking for the Knutson interest, John C. Toaz, local attorney and former member of the Board of Trustees, pointed out that the town had no direct access to the water or any land owned by it in the area of the shipyard since the Knutson firm blocked off the entire area. The business employed eighty-five persons and required direct access to the water for its continued operation, the implication here being that if it were not granted then the Trustees would be instrumental in having the employees lose their jobs. A member of the audience, Mr. Albicocco, asked Toaz if Knutson had a right to pass over the land to get to the water if a portion were owned by the town. Toaz replied in the affirmative but qualified it by saying the firm could not build any buildings without the permission of the town. At the next meeting of the Board the Trustees approved the Knutson lease for a five year term at five hundred dollars a year.[5] But the Trustees had not heard the last of Mr. Knutson.

In 1966 Knutson, expanded into Cold Spring Harbor. Along the southeastern shore of that harbor was a tract of upland owned by the Oysterbay Realty Company. During the late 1950's that firm obtained a lease from the Trustees in order to construct facilities for a yacht club. The lease

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4. "Trustees Minutes, 1946-1961," 107, December 8, 1959.

5. Ibid., 108, December 21, 29, 1959.

limited the number of boat slips to fifty and the small marina created was later occupied by a private club known as the Whalers Cove Yacht Club, which remained there on a month-to-month arrangement.

One of the first public protests against the realty company's method of operation came in the spring of 1966 when two Cold Spring Harbor residents, Frank and Janet Jacobi, sent a letter to the Board of Trustees because they were becoming alarmed at the increased number of moorings being placed in the harbor. They stated that in their opinion Oysterbay Realty Company had committed a number of violations by installing illegal floats and not complying with building department notices and inspection reports. They concluded by asking the Board to act to halt further pollution of the water and the increasingly unsafe conditions by restricting the number of moorings and thereby cutting down on the boat traffic.[6] The Board had also received a letter from the Whalers Cove Yacht Club claiming that they had removed the controversial moorings and slips and had returned the area essentially to its condition of 1965. The Club brought to the attention of the Trustees that apparently Knutson had acquired some interest in the area and was subjecting them to a campaign of harassment to force them out. They reviewed briefly local conditions, such as Knutson commencing to dredge in the area, the collapse of a seawall, and the removal of a boardwalk they had used. Obviously the condition of the seawall could not be blamed on Knutson but, in their minds, his motives for making the Club's life difficult foretold disaster for the area.[7]

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6. "Trustees Minutes, 1962-1971," 73, May 17, 1966.

7. Supervisors File, 1966, letter, Whalers Cove Yacht Club to Trustees, May 2, 1966.

On May 26, the Town Board held a public hearing on an application by the realty company to enlarge the marina facilities to two hundred slips and install gas pumps. Fifty taxpayers, not in the best of humor, appeared to protest the application and produced a number of letters and telegrams in opposition. In the face of such determined resistance the company withdrew its application, but this did not end the private controversy between the yacht club and the owners.[8]

The position of the yacht club had never been built on a firm foundation. Renting the facility on a monthly basis, its fifty members had indebted themselves to the tune of a $32,500 waterfront improvement bond and had agreed to advance the realty company $100 per member to finance the preparation of the facilities they hoped to use. Early in 1966 no one seemed aware that Knutson had not only bought into but actually bought out Oysterbay Realty. On May 14, 1966, the company called a meeting with the yacht club to assess the situation. The club's attorney offered checks to cover the rental owed, which were accpeted by a Mr. McCabe and a Mr. Leinweber. At that point McCabe thoroughly unsettled the club members by announcing that he had nineteen new members to occupy slips and that he could accept only thirty-one of the yacht club members. The remaining nineteen, regardless of how much they had paid toward the bond, were "just out." Furthermore, he insisted that all members must join the new Millsite Yacht Club now being formed to replace the Whalers Cove Yacht Club. The club members resisted, as they should have, and a long discussion ensued. The final revelation came when, according to a report by the club, Mr. Knutson, "who came incognito", stood up in the back of the room and declared, "The ball game's over--give back

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8. Supervisor Files, 1966, letter from Whalers Cove Yacht Club to Board of Trustees, June 22, 1966.

the checks."[9] Apparently until that moment no one was sure exactly how much interest Knutson had in the enterprise. Now they knew.

According to the club, Knutson indulged in a "cheap and cold attempt to destroy the club." By June 20 they could count forty-two members and expected eight more shortly, but Knutson would not let them alone. In addition to installing twenty-five new moorings allegedly in violation of Laurel Hollow regulations, Knutson jammed in and around the club's boats fifteen to twenty non-members' craft and even ran them into the slips when the members had taken their boats out for a sail. The club related, probably as much in anger as in despair, that Leinweber had threatened the life of one member and Knutson had threatened to have one arrested. The latter also tried to intimidate the club members by warning them he would have all their floats towed out into the harbor. The club completed its report of the dispute, and appeal for action, by claiming that thirty feet of seawall had been pulled down and a boardwalk demolished.

It is only fair to include Knutson's response to the charges levelled against him. During the summer of 1966 he wrote to the supervisor outlining his position. The Cold Spring Harbor Marina, an incorporated entity, was the successor in interest to the Oyster Bay Realty Company, and were the sole owners of the premises; Thomas A. Knutson was the principal stockholder. He referred to an article in the local newspaper, the Long Islander, on August 4, which alluded to alleged violations in dredging, moorings, and the condition of the shore front. He pointed out that he had requested an interview with the supervisor but had received no reply and that every violation had

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9. An account of the entire meeting, from the yacht club's point of view, was mimeographed by club officials for its members. One copy they sent to the town's supervisor. Supervisor Files, 1966, Ibid.

been corrected to the satisfaction of the building department. Claiming that he paid taxes on the premises "in excess of $5,000.00 per annum," he felt he had been very reasonable and cooperative.[10]

After protracted negotiations with the yacht club Knutson, true to his breed of businessmen, drove a hard bargain which the club accepted. The parties signed a two-year lease at an annual rental of $20,000.00 payable in five installments each year. The club absorbed all service charges such as dock boys, telephone, electricity, and trash disposal and if the cost of a lease with the Trustees for the land under water exceeded the current rental of $500.00 per year, both parties were to share the increased cost equally. The club received exclusive use of the land and facilities subject to normal inspections by the landlord. If permission were granted to increase the number of slips beyond fifty the club was obliged to pay Knutson $150.00 per year for each additional boat if no new construction took place. If, however, new construction was required by the landlord, the club agreed to pay him $150 per year for each additional sixteen foot slip and $333 per year for each thirty-two foot slip, up to a total of thirty additional slips.[11] After harassing the members and making their lives miserable, Knutson bled them.

What has this to do with the Trustees? In December of 1966 Knutson signed a lease with the Trustees for use of the lands under water occupied by Cold Spring Harbor Marina. Certain terms in that instrument continue to plague the Trustees. To do something about the fallen seawall, Knutson began construction of a new one a number of feet out from it, planning to dredge

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10. Supervisor File, 1966, letter from Thomas A. Knutson, Jr., to Supervisor Kane, August 5, 1966.

11. Supervisor Files, 1966, "Report to the Membership on Lease Negotiations between the Club and Arthur Knutson." December 9, 1966.

the bottom in front and use it for fill. The lease acknowledged that the seawall, or bulkhead, had collapsed and that some construction had begun. Various clauses in the lease halted all such construction without the specific permission of the town authorities. Further on another clause recognized the existing construction and authorized its completion to the extent of repairing existing damage to the bulkhead. Knutson applied for and received permission from the building department for repairs to the existing bulkhead--and then proceeded to continue constructing the new one. Thereafter a zoning variation was first approved and then withdrawn for the addition of fifty more slips. Since 1969 the dispute between Knutson, the Town, and the Trustees over additional slips and the so-called repairs to the old bulkhead has waxed and waned, remaining unresolved even today.[12]

Across Huntington Harbor from Knutson's Marine Center, along the west shore, stand the docks occupied by W. Wilton Wood, Incorporated. Directly south of the Wood docks stood the old Platt mill and its successors until 1930. Between the time of the original grant of liberty to build a mill in 1752 and today's claims by Wood to ownership of certain lands in the immediate vicinity, innumerable exchanges of land took place, highways were built and altered, docks were constructed, and assumptions as to who owned what became firmly ingrained in the minds and habits of successive conveyees to the premises over a period of two hundred and twenty years. Through the many generations the Trustees acted as if they owned all or part of the area; through equally as many generations private parties who became occupants of the site came to feel that they owned it. Time and the erosion of memories

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12. "Trustees Minutes, 1962-1971," 119, May 6, 1969, resolution of the Trustees affirming action of zoning board in denying permission to increase the number of slips.

created such a gulf between the two that today neither side can be absolutely sure of its claims unless a complete reconstruction of the records takes place. To do so here would simply extend this manuscript to undue lengths. Also the material itself would require duplication which is more appropriate to a legal brief than to a summary. Therefore, what will be recounted is but an outline of the confused and complex situation which exists.

It is conceivable that the origins of the present dispute over ownership of the shorefront and the docks occupied by Wood are buried in the records of the seventeenth century. One must look to the grant to Leverich for the first mill and the conveyances of the mills rights over the years. Very probably Leverich and his successors located the mill farther south than the land in question, but adjacent meadows and marshes subsequently conveyed by the Town or the Trustees stem in part from occupation of that mill site. From that point it becomes necessary to move forward to the Platt mill grant of 1752 and its chain of users down to the present. For example, in 1680 the Town voted to give Jonathan Scudder the "boggy meadow" that lay "northward from the west field by the harbor and four acres of land joining to the said boggy meadow," and in 1690 the Town gave Jonas Wood "sixteen acres of land upon the west neck to the northward of John Scudder's ponds."[13] Quite possibly some of this land is involved today in the question of ownership.

The Platt mill now becomes the focal point of the controversy. Granted to Zophar Platt in 1752, it found its way into the hands of John Brush in 1763, Joseph Tremain in 1805, and Ichabod Brush in 1806.[14] In 1769 the

13. HTR, I, 259, April 2, 1680; HTR, II, April 1, 1690.

14. W. Wilton Wood File, Town Attorney's Office. Memorandum from Mr. Uher to Mr. Pedowitz, dated June 17, 1953, gives the following citations in the County Clerk's Office, Suffolk County: Liber 1015 cp. 370 (recorded in 1921); Liber 1416 cp. 542; Liber 5, unacknowledged deeds, 373 (recorded in 1921).

Trustees granted Zophar Platt, Nathaniel Williams, Israel Wood, John and Thomas Brush, and Captain John Squire permission to construct a dock on the west side of the harbor "against the point northward of John Brush his mill near where the clay is and to build it sixty foot upon the front or larger if they shall think it needful running up towards the bank above high water mark leaving room for a highway between that and the bank."[15] Two years later they voted that John Brush should have the liberty to build a dock "between the mill and the shore...not hindering the highway."[16] It appears that the original six grantees did not exercise their privilege and John Brush went ahead on his own. At some point a road actually appears in the records and is apparently Wall Street--West Shore Road. Unfortunately its first location is difficult to determine and at one time was described as being under water at extreme high tides.[17] In 1840 John Wood leased some land under water on the west side of the harbor just northwest of the mill and running northeasterly ninety feet to build a dock and the next year the Trustees sold to George W. Conklin, "at the request of the committee of the proprietors of the old purchase," a piece of thatch meadow which extended across the harbor from east to west to the spring just below Wood's mill. In the same year the Trustees, again at the request of the proprietors' committee, sold a narrow strip of thatch running along the western shore to Solomon Ketcham who in turn sold it to Platt Conklin who later sold it to Wood.[18]

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15. HTR, III, 465, January 31, 1769.

16. W. Wilton Wood File, Town Attorney's Office, title search nr. 1207762.

17. HTR, III, 375, June 9, 1840; 377, November 1, 1841.

18. Ibid., 375, November 1, 1841; Liber 63 of Deeds, 82, 1852; Liber 37 of Deeds, 431-432, 1865.

By this time the area encompassed comprises conveyances of thatch, leases of land under water, and a shifting highway. None of the maps or surveys are sufficiently accurate to pinpoint the original locations of any of them. Changes in the shoreline and high water mark over the centuries make this virtually impossible. Nevertheless, the closer one comes to the present the more reliable become the metes and bounds described in various conveyances. At the same time an added complexity appears in the form of a series of leases and negotiations between W. Wilton Wood and the Trustees for the two dock sites presently in use. In 1911 he petitioned for and received a twenty-five year renewal of an existing lease of one of the docks and in 1924 also received an updated lease for the south dock.[19] Six years later Wood again approached the Trustees with a request to renew the leases because he had incorporated as W. Wilton Wood, Inc. The Trustees obliged him by granting a new lease for ten years at a rental of $1,000 a year.[20] In September of 1930 the question of a change in the bed of Mill Dam Road came up and the Wood interests offered to exchange a small strip south of the location of the road for a small strip of town property to the north and then early in 1931 applied for a lease of a sixty feet wide strip running two hundred feet eastward along Mill Dam Road from the east side of the old mill site.[21] Apparently these were not acted upon by the town, at least according to the records of town meetings.

To further confuse the issue of who owned what, in 1933 Wood produced a

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19. "Trustees Records, 1893-1914," 308-309, February 3, 1911; "Trustees Records, 1914-1928," 108, April 10, 1924, and 119, December 26, 1924.

20. "Town Board Minutes, 1929-1933," 81, April 25, 1930; 109, June 25, 1930.

21. Ibid., 131, September 2, 1930; 202, January 30, 1931.

deed of 1841 which conveyed about a half acre of land because there was a plan at that time to improve the West Shore Road.[22] Concerning the improvements, the Huntington Harbor Improvement Committee addressed a letter to the town's supervisor claiming that back in 1907 Wilton Wood had given a quit-claim to the town for "part of what is now West Shore Road which was built over old thatch right grants which are claimed by the present owners."[23] It is impossible to trace events after that date because the records of the minutes of the Town Board and the Board of Trustees are no longer in the Town Clerk's office.

Evidently the question of the Wood interests versus those of the town and the trustees came up intermittently during the next decade, but did not really capture the interests of the local officials until the 1950's. In March of 1953 an attorney, Melvin Marisch, requested permission to negotiate for a lease on the two docks occupied by Wood.[24] A year later Henry Wood was asked to attend a Trustees' meeting to discuss the lease arrangements with the Woods.[25] Nothing much came of the meetings and in 1956 the Trustees found it necessary to inform Albert Levert, attorney for LoBasso Brothers Oil Company, that they were "still trying to ascertain title to the above subject docks and were not prepared at this time to enter into any negotiations."[26]

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22. Ibid., 495, April 26, 1933.

23. Huntington Harbor File, Town Historian's Office, letter from Frederick E. Koster, Committee Chairman, to Supervisor and members of Town Board, August 15, 1933.

24. "Trustees Minutes, 1946-1961," 36, March 17, 1953.

25. Ibid., 39, March 3, 1954; 41, May 5, 1954. At the latter meeting the Board voted to continue discussions on "conflicting interests in the Wood Docks."

26. Ibid., 66, July 11, 1956.

Such procrastination and reluctance to settle such a matter should come as no surprise to anyone who reads the town's public records for this present century. Yet, it should be said in kindness to that Board, that in December of 1956 it voted to return the rent checks submitted by Wood for the docks and to notify him that he must vacate the premises.[27] He is still there.

Two years later the Trustees were still kicking around the Wood docks problem. In response to yet another request by the LoBasso Brothers Oil Company to lease the docks at a rental of $3,200 per year, the Trustees again put them off claiming the question of title had not been settled. Levert, acting as the company's attorney, made the observation that the land on which the docks stood could not be acquired by adverse possession because it was public property. At the same meeting the Trustees announced they had searched the town's records and found no quit-claim from the town at any time to Wood for the area.[28] Not content to be resolved or simply to go away and not trouble anyone, the Wood question popped up again in 1960 when William E. Titus, a local attorney representing Wood, offered to exchange title to the West Shore Road allegedly owned by Wood in return for a fee title to the north dock. Again a solution, if it can be called that, was put off with the statement that the, "situation is very complex. There is more to it than meets the eye in terms of who owns what."[29] Since that time little has been done to bring the matter to an end. A number of discussions have taken place and offers of settlement put forward. Today it is in the courts, but not because of the original issue of the dock sites per se. Wood made the mistake

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27. Ibid., 70, December 5, 1956.

28. Long Islander, 1-2, March 6, 1958.

29. "Trustees Minutes, 1946-1961," 123, June 7, 1960; 132, November 15, 1960.

of applying for permission to construct a marina between the two docks; this resurrected the whole issue and it is now taking its torturous course through lawyer's offices and the courts.

It must be said in all fairness that the issue is quite complex, involving as it does the basic question of the rights of the former trustees to grant away lands which, for centuries in England under the common law, have been invested with a public interest through common use "time out of mind." Whatever flash of genious or intuitive insight into this aspect of the problem might have crossed the collective minds of previous boards of trustees is not known, but it might prove to be instrumental in reasserting the rights and powers of the Trustees in 1972.

To return for a moment to the early years of this century, the State of New York continued its claimed right to issue leases for lands under water within the limits of the Town of Huntington, apparently ignoring the decision in the Lowndes v. Huntington case in which the highest court in the land affirmed the town trustees' ownership of such lands. In 1903 the Board of Trustees found it necessary to retain Nathaniel S. Ackerly to represent them before the State Land Commissioner to oppose and protest the application of one Timothy S. Williams for land under water on the east side of Cold Spring Harbor.[30] Shortly after making this decision they passed a resolution which tended to completely negate their original position as to ownership and the trust obligation.[31]

> Whereas the Board of Trustees of the Town of Huntington in office the year previous to April 1, 1903, authorized the making of the following agreement, to wit, in the

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30. "Trustees Records, 1893-1914," 186-187, January 2, 1903.

31. Ibid., 194-197, May 9, 1903.

matter of the application of Timothy S. Williams for a grant of lands under the waters of Cold Spring Harbor in the town of Huntington, Suffolk County, New York. Whereas the Town of Huntington and the Trustees thereof have filed a remonstrance against the making of the grant here applied for and said application has been regularly noticed for a hearing before the Committee of Remonstrances and before the Commissioners of the Land Office of the State of New York for February 26, 1903. Now for the value received and in consideration that the Town shall not appear before the said Committee or before the Commissioners of the Land Office, by their counsel N.S. Ackerly or otherwise, or offer further evidence in support of their remonstrance or orally argue the same said Timothy S. Williams agrees to accept a quit-claim deed from the said Town and its Trustees covering such lands under water as shall be granted upon this application, provided, however, that if the grant made by the State includes any lands which are now leased by said Town for oyster culture that said quit-claim deed shall reserve for said town, its lessees, and their assigns, the use of such lands so leased for oyster culture until the termination of existing leases which will expire not later than during the year 1913 and all rents which accrue under such leases and remedies for collection thereof are to be reserved to said Town and its Trustees during such period excepting, however, that this reservation in favor of the Town, its lessees, and their assigns, shall not extend to a strip of land seventy-five feet in width to be located by said Williams for the purpose of a dock, its approaches and use, notwithstanding that said seventy-five feet may extend over lands leased by the Town for oyster culture or otherwise. In consideration of the foregoing, the Trustees of the said Town agree to give the deed herein provided for within two months from the date of the grant made by the State, provided they are then in office and the present members of the said Board of Trustees severally agree to vote for, approve of, and make such grant or deed if within their power so to do.

It is further agreed that the said quit-claim deed is not to effect the rights and privileges, if any, of the residents of the Town of Huntington reserved to the citizens of the State of New York generally upon the lands granted by the State or its commissioners and that it shall not effect any right of way or highway (if any) which may exist over the property. This stipulation on the part of the said Williams is not to be deemed an admission as to the present ownership of the premises in question or an admission that there is or ever was any right of way or highway over said premises or any part thereof, said Williams contending that there never was any such right of way or highway. Dated February 25, 1903. Signed Willard M. Baylis, attorney for Timothy Williams; N.S. Ackerly, attorney for the Town of Huntington.

> And whereas the State thereafter made a grant under the said application and we have heard the report of counsel N.S. Ackerly on the matter and duly considered the same. Now be it resolved that we the present Board of Trustees of said Town ratify said agreement and execute a quit-claim deed for the premises embraced in the patent to said Williams in accordance with said agreement in every respect.

A few more such resolutions, backed up by the kind of advice Ackerly seems to have offered, and the Trustees would have resolved themselves out of existence. Whether or not they had the power to divest the truth of such property is a question that will be touched upon in the final chapter.

For the next few years Ackerly continued to represent the Board of Trustees in a number of protests to the Commissioners of the Land Office.[32] The last major case that threatened to reduce Trustee control over land under water began in 1911 when George McKesson Brown petitioned the state for a patent so he could build a large dock off the shore of his estate on the west shore near the mouth of Huntington Harbor. Willard N. Baylis defended the title of the Trustees and cited such cases as Lowndes v. Huntington, Robins v. Ackerly, and Brookhaven v. Smith. The latter was relied on "so far as lands under water of Huntington Harbor are concerned, they may only be interfered with by the owner, which is the Town of Huntington or its Trustees, excepting that the upland owner may build a portable dock to reach navigable water under the Brookhaven case. This is riparian right."[33] Although Brown did not get the right to build a dock larger than the fifty feet by two hundred fifty feet area he leased from the Trustees at the same time as his state petition, the entire question appears to have become moot as a result of Grace v. Town of North Hempstead, wherein Mrs. Grace, widow of a former mayor

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32. Ibid., 203-204, September 4, 1903; 227, June 8, 1905.

33. Huntington Lease File, Town Historian's Office, Opinion of Willard N. Baylis, March 22, 1921.

of New York City, relied upon a grant from the Commissioners of the Land Office to support her claims to lands under water.[34] She lost.

During these early years another controversy drove the Trustees back into court on another issue. This time there was no contention over landownership, but the plaintiff, Charles T. Sammis, tried to force the Trustees to renew a lease or to pay an adequate sum for improvements on the property such as docks and other structures. The Trustees contended that the lessee had not paid the rent for more than three months so they had every right to reenter and dispossess him. Furthermore, since he had subleased a fifty feet wide strip to the Northport Electric Light Company this voided the lease. Faced with a lengthy law suit the Trustees again turned to Baylis. He advised them that,[35]

> The all important question, however, is whether or not title to public lands is vested in the Board of Trustees or in the Town. It is important to the people in this and in all other suits having to do with town properties to know where the title is vested. It certainly would be unfortunate to go on with this litigation with Sammis in the name of the Town if the Appellate Court should ultimately hold that title is vested in the Trustees, and that the litigation with the Town did not bind them. In other words, it is quite essential that we should get a general determination as to whether suits having to do with public lands should be in the name of the Trustees or in the name of the Town.

The suit took its expected course as far as the Appellate Division of the State Supreme Court, where a decision was handed down on February 21, 1919. The Town won its case. In response to Baylis' serious question posed to the Town Board and the Trustees, the court stated that,[36]

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34. Huntington Litigation File, Town Historian's Office. Case cited as 166 App. Div., 844; 152 N.Y. Suppl., 122.

35. "Trustees Records, 1914-1928," 58, June 17, 1918.

36. Sammis v. Huntington, 174 N.Y. Suppl., 610, 612.

> By Laws 1872, c. 492, such former trustees of Huntington were abolished, and it was enacted that, "The supervisor, town clerk and assessors of the town of Huntington, and their successors, are hereby created ex officio the board of trustees of the town of Huntington, and legal successors of the trustees of the freeholders and commonalty of the town of Huntington, and vested with all the rights, privileges, powers, duties, and jurisdiction heretofore enjoyed and exercised by such trustees, over the real and personal property of the town of Huntington." Inasmuch as this act directed the president of such prior trustees to deliver to their successors then created all records, money, and property belonging to said town, on this demurrer it must be presumed that such town officials have since exercised the functions of such former trustees of the freeholders and commonalty of Huntington. Similar legislation was later enacted for other Long Island towns.
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> Such change, being to simplify the election of such officials and to prevent duplication of public duties, was constitutional. People ex rel. Squires v. Hand, 158 App. Div. 510, 135 N.Y. Supp. 192, 143 N.Y. Supp. 1138. Under Town Law (Laws 1909, c.63 [Consol. Laws, c. 62] para. 11, the present suit is to be maintained against the town, and not against its officials.
>
> It is, however, argued that the rights to such erections and the liabilities under such a lease are not recognized as within the corporate capacities of towns. But this subject-matter is the proprietary, private property of the town of Huntington, which is not held or managed in its governmental capacity. Therefore, it requires no legislative authority to enable its official to deal therewith, as the town interests may require. Town of Islip v. Estates of Havemeyer Point, 224 N.Y. 452, 121 N.E. 351.

Throughout the centuries the courts and the state legislature had tried to define the trustees, their powers and duties. This decision is but one in a long chain extending back to the Fletcher grant of 1694. Generally this grant is construed to have created the trustees and vested in them two functions, that of a governmental agency and that of a proprietorship. This most recent decision recognized that the first role had been slowly eroded away by acts of the colonial and state legislatures in assigning specific tasks, such as maintenance of highways, collection of taxes, and police duties, local officers,

other than trustees, created by legislative fiat. The law of 1872 which abolished the office of Trustees of the Freeholders and Commonalty of the Town of Huntington became the first modern recognition of this. The second, that of proprietorship, remained constant through the years, having been upheld by court and legislature whenever brought into question. In all this time a third, and today the most important, role has never been brought under consideration: that of trustees to manage a public trust. This facet of the Trustees has been implicit since the seventeenth century but has never been articulated as such.

Even the Law of 1929 which amended that of 1872 said nothing of it. Chapter 101 of the laws of that year amended Chapter 492 of the laws of 1872 in relation to the composition of the Board of Trustees.[37] By that law the supervisor, town clerk, and justices of the peace became ex officio the Board of Trustees, with the same rights as the Trustees of the Freeholders and Commonalty had. The tax assessors were replaced by the justices.

When Knapp brought suit against Fasbender, President of the Board of Trustees, in 1951, the Board itself became concerned over the extent of its powers and felt compelled to seek a legal definition. In January the Trustees decided to petition the Supreme Court for a construction of the trust and a definition of their powers, duties, and privileges. For this purpose they retained the law firm of Toaz, Buck, and Root.[38] One outcome of the search for modern identity took the form of a legislative enactment in 1952. Chapter 816 of the laws of that year, "An Act to ratify and confirm the

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37. Laws of the State of New York...1929, (Albany, J.B. Lyon Co., 1929), I, 323.

38. "Trustees Minutes, 1946-1961," 27, January 31, 1951. In November the Board agreed to continue using the same firm in the case of Hubscher et al v. Fasbender. Ibid., 32, November 27, 1951.

title of the Trustees of the town of Huntington, Suffolk County, in and to certain lands therein and to ratify and confirm the acts of its Board of Trustees, and defining the powers and duties of such board," stated that,[39]

> Section 1. Legal title is hereby ratified and confirmed in the Board of Trustees of the Town of Huntington, as successors to the Trustees of the Freeholders and Commonalty of the Town of Huntington under Chapter 492 of the laws of 1872 as amended by Chapter 101 of the laws of 1929, to all lands described in the Governor Nicolls Patent recorded in Book no. 1 of Patents at page 73, in the Governor Dongan Patent recorded in Book no. 6 of Patents at page 338 and in the Governor Fletcher Patent recorded in Book no. [sic. Left blank] of Patents at page 493, all in the office of the Secretary of State.
>
> 2. The powers to acquire, hold, manage, lease, control, convey, grant and dispose of property both real and personal for the benefit of the residents and taxpayers of the Town of Huntington heretofore exercised by said Board of Trustees of the Town of Huntington and/or its predecessors, are hereby ratified and confirmed in said Board of Trustees and said Board of Trustees is hereby authorized and empowered to continue to hold, manage, lease, convey, grant, invest, and reinvest such property and funds as Trustees for the residents and taxpayers of the Town of Huntington, and in furtherance of its said trust to acquire in its own name by gift, purchase or lease and to maintain and improve property of any nature either real or personal, for the benefit of the residents and taxpayers of the Town of Huntington.
>
> 3. All acts heretofore taken by said Board of Trustees in the exercise of the aforesaid powers are hereby legalized and confirmed and made effectual and valid as the official acts of said Board of Trustees.
>
> 4. Except as therein otherwise specifically provided, the provisions of the town law, shall not apply to the acts of said Board of Trustees, and such acts shall be subject to review by the Supreme Court under the provisions of Article 79 of the Civil Practices Act of the State of New York. Such trust is hereby declared to be an express trust within the meaning of Section 1307 of the Civil Practices Act.
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> 5. If any clause, sentence, paragraph, or part of this

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39. Laws of the State of New York...1952, (Albany, 1952), 1777-1778.

> enactment or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder, and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered, and to the person or circumstances involved. It is hereby declared to be the legislative intent that this enactment would have been adopted had such invalid provisions not been included therein.
>
> 6. This act shall take effect immediately.

This act should have ended the matter. It did not. For one reason or another the Trustees came under attack and have been subjected to harassment of one kind or another for the last twenty years.

Part of this is understandable if one is an efficiency expert and can think only in rigid patterns of a simplistic nature. At the time of the 1872 act there was no town board, although its later members, the supervisor, clerk, and assessors, had been in existence for years. These individuals became the Board of Trustees yet continued to function in their local administrative capacities individually. Under the Town Law of 1890 town boards came into existence and in 1929 the Trustees were merged with the Huntington Town Board. The act of 1952 clarified the duties of the Town Board insofar as it acted as trustees. But when the town voted by referendum in 1953 to become a town of the first class, the result was a separation of the Town Board from the Board of Trustees since the justices of the peace were ex officio trustees and were replaced by councilmen on the Town Board.

Beginning in 1958 this situation created two local factions--those who wished to take advantage of it and those who saw a chance to eliminate the trustees for all time. In January the subject of undertaking a study to determine the lands still left to the trustees came under discussion at a

Board meeting. Judge Ingerman in particular saw in this an opportunity to halt the destruction of woodlands and natural sanctuaries in Huntington.[40] Supported by Judge Kane they introduced measures to begin a detailed title search.[41] But it was not until three years later that opposition to the Trustees began to develop openly. The first indications of this came in March of 1961 when a local attorney, John G. McCarthy described the Trustees as a private trust and claimed that the town would obtain better administration of its waterfront and under water properties if the duties and responsibilities of the Trustees were transferred to the Town Board.[42] McCarthy did not speak for himself nor is it likely that he conceived of a plan to abolish the trustees on his own initiative. As a member of the Republican Party he had been appointed to the Subcommittee on Town Affairs of the Huntington Republican Committee. On January 25, 1961, the subcommittee submitted a report "with respect to transferring the functions of the Board of Trustees of the Town of Huntington to the Town Board and discontinuing the Board of Trustees as a separate body."[43]

The report is interesting in that it displayed a lack of understanding of the trust obligation as it pertained to Huntington and relied upon a few

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40. Long Islander, January 9, 1958, "Ingerman Urges Town Reclaim Trustees' Holdings."

41. "Trustees Minutes, 1946-1961," 88, April 2, 1958. There is no complete record available of the results of any such study other than a list of trustee lands then under lease as compiled by Roy Lott, then Town Historian.

42. Long Islander, March 2, 1961, "Abolish Trustees McCarthy Urges in G.O.P. Address."

43. Supervisor Files, 1961. Members of the Republican Party committee included Laren C. Berry, Chairman, Frank L. Gates, Jr., Mrs. Aileen C. Haskell, Ernest W. Johnson, Charles T. Matthews, John G. McCarthy, John A. Meyer, Lawrence Newmark, Gordon C. Sammis, Edward Van Nessen.

generalizations. In essence it is based on four points:

1. Outside of a few lawyers and political persons there was a general lack of understanding of the powers and duties of the trustees as distinguished from the Town Board.

2. The Board of Trustees operate as a private trust even though it deals with matters of public concern.

3. The Trustees were handicapped by uncertainty as to their voting procedures.

4. Administratively the Board of Trustees was "well-nigh helpless to perform its duties" because it had no staff.

As an aside even before commenting on the report, it is of interest to note that one reason the committee disliked the Trustees was because there were four trustees which meant a possible two to two tie vote, at which point nothing could be done. Since this speaks to the basic defect of having an even number of persons on any committee, how then did they rationalize the fact that their own committee had ten members--an even number? Possibly the fault they found in the Trustees did not apply to them.

Virtually all the points offered as reasons to completely abolish the Trustees could be refuted easily. Most were recognition of human failings or lack of knowledge that would require little if any effort to overcome. Only one point had a real impact. The Trustees indeed did not have a staff. However, if even cursory research had been undertaken it probably would have come to light that the regular staff in the town hall handled much of their business as it did any other public business. The most glaring defect in the report was the assertion that the Trustees were a private trust with control over public matters. This point simply displays not a truth but the abysmal ignorance of the subcommittee in its lack of understanding of the historical evolution of the Trustees and the type of trust they administered for three hundred years. In every sense it was public and in virtually every act, with few exceptions, the Trustees performed their duty with the public interest in

mind. Of course, how one construes that public interest is an arguable point.

The early months of 1962 witnessed a public debate over the merits of the proposal to abolish the Trustees and merge their powers, property, and funds with those of the Town Board. William E. Titus, former trustee and justice of the peace, argued that such action would require an amendment to the state constitution providing that all charters and grants recognized and ratified by that instrument be abolished subject to legislative enactments to provide for the transfer of property and powers to town boards. He also urged caution because if the trustees funds became comingled with those of the town then there would be no assurance that they would be used specifically to preserve natural resources.[44] Others rose to the defense of the trustees, voicing their concern in letters to the editor of the local newspaper, the Long Islander. Ex-town attorney E. Merritt Weidner warned that a merger would produce nothing but confusion of functions since the Town Board members would actually be wearing two hats and might not be able to distinguish under what circumstances they should wear which hat.[45] Judge Kane, a trustee, supported the legislation to abolish the trustees contending it would eliminate confusion, as in the case of the shellfish ordinance passed by the Town Board without it being requested from the Trustees who owned the lands under water.[46] In response to this Assemblyman Prescott Huntington tried to alert the public to certain dangers inherent in such a move cautioning all "to safeguard their rights lest the State of New York and the State Park Commission gain a power to take away public lands which they cannot now condemn."[47]

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44. Long Islander, letter to the editor from Titus, January 2, 1962.

45. Ibid., Weidner to Editor, January 8, 1962.

46. "Trustees Minutes, 1962-1971," 2-3, January 9, 1962.

47. Long Islander, "Assemblyman Huntington Cautions Town Not to Lose Proprietary Rights", January 18, 1962.

It is possible that one cause of the continuing debate over the need to maintain or abolish the trustees came about as a result of town concurrent events. During the 1950's a move developed within the Town Board and the Board of Trustees to transfer large sums of money from the trustees account to the general town fund.[48] On July 13, 1955 the Trustees voted to transfer $100,000.00 to the Town of Huntington account, "and other sums from time to time...to be used and applied for and to the purposes of such surplus as provided in the Town Law..." If such transfer proved to be in contravention of trustees powers, the sums would be returned. The following year the Trustees did transfer the same sum, "for purposes of referendum proposals 2, 3, 4, 5 and 6 of November 8, 1955."[49] Actually $165,000 was transferred from trustees to town accounts.[50] And in December of 1958 $65,000 was transferred.[51] The obvious implication here is such transfers of monies from one account to the other served a useful purpose in that a given administration could dip into the trustees' funds for any reason whatsoever, such as to balance a budget, reduce tax assessments, or for some activity not directly connected with the duties of the trustees to preserve local natural resources and manage certain lands. One of the reasons for not comingling the two boards seems to have been given adequate support even before the merger idea gained support.

At this time various lease practices of the Trustees came under scrutiny

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48. "Trustees Minutes, 1946-1961," 55-56, July 13, 1955. On November 26, 1946 the Trustees resolved to separate the funds which had up to that time been mixed with town funds as a result of the law of 1929. Ibid., 1.

49. Ibid., 68, September 5, 1956; 69, October 17, 1956.

50. Ibid., 77, November 13, 1957.

51. Ibid., 97, December 3, 1958.

from a local Northport attorney, Albert Levert. He questioned the lease to Kenfyl Corporation, a road paving firm which shipped out trap rock from a dock on the east side of Huntington Harbor. Since the firm was headed by Queens County Republican leader Frank Kenna with a Queens Republican, C.E. Fyles as treasurer, some questions as to party favoritism became implicit in the discussions of this lease. The lease, signed in 1953, stipulated a payment of $1,500 per year for the first five years and $3,000 thereafter. Later it was proven in a grand jury presentment that the company had sublet the property to Gotham Sand and Stone Company and within five years Kenfyl had made a profit of $183,000, while paying to the Trustees only $9,000.[52] Levert, claiming the trust was an express trust required a unanimous decision for any acts, yet the Kenfyl lease had been approved and signed even after two trustees refused to sign it.[53] He also complained about the arrangement with the American Legion and the eventual transfer of the property, by quit-claim, from the trustees to the town. Pointing out that the property was then valued at $95,000 he decried the consideration received by the trustees for the property saying the phrase in the deed, "in consideration of these presents and mutual presents to be derived", was tantamount to trustees not protecting the interests of the beneficiaries in much the same manner as the Kenfyl lease had been handled. Finally he mentioned and objected to the leases with the Village of Northport which gave it a dock, a park, and two parking fields, all valued at more than $250,000 for the yearly rental of $65.00. Furthermore, the Village was not required to pay taxes on the property,

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52. Long Islander, December 22, 1960.

53. "Trustees Minutes, 1946-1916," 111-112, February 5, 1960.

which amounted to $2,000 a year.[54] He concluded that the Kenfyl lease was illegal, the American Legion lease an outrage, and the Northport Village lease an absurdity. His efforts did not fall on deaf ears. For one reason or another, whether public reaction to a political scandal or a new public spirited awareness on the part of the trustees, the Trustees voted to terminate the Kenfyl lease and add a provision to the Northport Village lease to include the payment of taxes.[55] Nothing was done about the American Legion lease.

The problem of what to do with the Trustees came to a head in the spring of 1962. Proponents of the legislation to merge the two boards cited "facts" such as the need to equip the Trustees with a staff; the merger would open to them the facilities of the town administration.[56] Their inability to properly manage their property because of lack of funds (they had $100,000 in the Trustees account at the time) would be overcome by resort to use of general funds. Their proprietary rights would not be lost, but simply incorporated into a much more efficient and nonduplicating Town Board. At least so the arguments ran. Others, however, did not accept these points, replying that a mixture of the funds would lose those of the Trustees in general town expenses with no recourse by the beneficiaries; property could be disposed of without all the beneficiaries of the trust having any voice in such transactions or directly receiving any tangible advantages; and this was an attempt by the local Republicans to wipe out the last vestiges of the

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54. Ibid.; see also Long Islander, February 11, 1960.

55. Huntington Lease File, Underwater Lands, Town Historian's Office, 1960.

56. "Trustees Minutes, 1962-1971," 4-5, February 20, 1962; see also Long Islander, February 22, 1962, "DeLuca Opposes Kane, Flynn on Trustees Move."

Trustees.[57] Chapter 865 of the Laws of New York of 1962 settled the matter; the proponents of abolition and absorption won the day.[58]

> An Act to amend chapter four hundred ninety-two of the laws of eighteen hundred seventy-two, entitled "An act to abolish the office of the trustees of the freeholders and commonalty of the town of Huntington, in the town of Huntington, county of Suffolk, and to create their successors," in relation to the composition of the board of trustees of the town of Huntington, and to amend chapter eight hundred sixteen of the laws of nineteen hundred fifty-two, entitled "An act to ratify and confirm the title of the trustees of the town of Huntington, Suffolk county, in and to certain lands therein and to ratify and confirm the acts of its board of trustees, and defining the powers and duties of such board," in in relation to defining the powers and duties of such board of trustees, and to grant additional powers to the town board of the town of Huntington as successor to such board of trustees.
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> The People of the State of New York, represent in Senate and Assembly, do enact as follows:
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> Section 1. Chapter four hundred ninety-two of the laws of eighteen hundred seventy-two entitled "An act to abolish the office of the trustees of the freeholders and commonalty of the town of Huntington, in the town of Huntington, county of Suffolk, and to create their successors," is hereby amended by adding thereto a new section, to be section two-a, to read as follows:
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> § 2-a. Notwithstanding anything to the contrary in this chapter or in any general, special or local law, on and after the first day in July in the year one thousand nine hundred sixty-two the town clerk and the justices of the peace of the town of Huntington shall cease to be members ex-officio of the board of trustees of the town of Huntington and the town officers constituting the town board of

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57. Ibid.; see also Long Islander, January 25, 1962, "Lazer, Kane in Near Agreement on Trustees Bill; "Request to Abolish Trustees," (local chamber of commerce supported abolition); "Olson Urges Governor to Veto Trustees Bill," April 5, 1962; "Kane, Berry, Flynn Challenge Olsen on Trustees Bill Action," April 12, 1962; "Keep the Trustees," April 12, 1962; "Trustees Minutes, 1962-1971," 11, April 10, 1962.

58. Laws of New York...1962, (Albany, 1962), III, 3660-3663, April 29, 1962.

the town of Huntington as of the date aforesaid, and their successors on said town board, are hereby created ex-officio the board of trustees of the town of Huntington, and legal successors of the trustees of the freeholders and commonalty of the town of Huntington, and vested with all the rights, privileges, powers, duties and jurisdiction heretofore enjoyed and exercised by such trustees over the real and personal property of the town of Huntington. The supervisor of the town shall continue to be a trustee and ex-officio president of the board of trustees of the town of Huntington so long as he shall continue to be a member of the town board of the town of Huntington.

§ 2. Chapter eight hundred sixteen of the laws of nineteen hundred fifty-two entitled "An act to ratify and confirm the title of the trustees of the town of Huntington, Suffolk county, in and to certain lands therein and to ratify and confirm the acts of its board of trustees, and defining the powers and duties of such board" is hereby amended by adding thereto three new sections, to be sections four-a, four-b, and four-c, to read as follows:

§ 4-a. Notwithstanding anything to the contrary in this chapter as in any general, special or local law, on and after the first day of July, one thousand nine hundred sixty-two, and during such time as the board of trustees of the town of Huntington is composed of the same town officers constituting the town board of such town, (1) the powers and duties of said board of trustees in all matters of administration of said trust, including the powers ratified, confirmed or authorized by section two hereof, shall devolve upon and be exercised by said town board, and with respect to the powers so conferred and the duties so imposed, the town board of the town of Huntington shall be the board of trustees of the town of Huntington, and (2) when acting as said board of trustees, the acts of the town board shall be subject to and in conformity with all of the provisions of law, including the town law, applicable to its acts as a town board, and (3) for their acts and proceedings as said board of trustees the town officers constituting the town board shall be accountable as town officers without further or separate liability as trustees under article 79 of the Civil Practice Act or otherwise.

§ 4-b. Without limiting the generality of section four-a and by way of illustration thereof, the town board, when acting as said board of trustees, (1) shall act at its regular or special meetings, (2) shall require for the adoption of every act, motion or resolution the same vote by the same majority as required by law for its acts as town board, and any act, motion or resolution of the town board in relation to board of trustees matters shall have the same effect and validity, whether it is adopted and recorded in

the form of an act, motion or resolution of the town board or of the board of trustees, (3) shall be attended at all meetings by the town clerk or his deputy, who shall keep an accurate record of all proceedings as part of the town board's minutes, and who shall furthermore enter into a separate book to be known as the "board of trustees conveyance book," an abstract of every act, motion or resolution authorizing a deed or a conveyance of property of the board of trustees, including any extension, modification, or amendment of a lease, and specifying the date of adoption thereof, provided that an estate or interest in real property of the board of trustees, other than a lease for a term not exceeding one year, or in any improvement thereon, shall not be deemed to be granted, assigned, surrendered or declared, unless by a deed or conveyance in writing duly authorized in the manner required by law, and (4) shall be subject to all of the provisions of the civil service law, general municipal law, town law, local finance law, public officers law, real property tax law, and other laws relative to employments, purchases, contracts, conveyances, finances, liability for taxation, audit and allowance of claims, presentation and service of notice of claims, limitations on commencement of actions on claims, certification of payrolls, annual accounting, budget system, and in all such matters of administration of the said trust shall be subject to the same procedures applicable to a board or department of the town administered by the town board.

§ 4-c. During the continuance of the town board as board of trustees the provisions of article 79 of the Civil Practice Act of the State of New York shall not apply to the acts of such board of trustees, except with respect to any matter involving or relating to the acts or proceedings of the board of trustees before the first day in July, in the year nineteen hundred sixty-two, and with respect to any petition filed by a trustee or by the board of trustees paying for the judicial settlement of his or its account or accounts covering any period ending prior to that date, the Supreme Court shall retain jurisdiction under the said article 79 of the Civil Practice Act, and any expenses incurred in any such proceedings for the services of attorneys, accountants or other purpose properly chargeable to the board of trustees were it not for the provisions of this chapter shall be paid by the supervisor of the town of Huntington as an expense of administration of the board of trustees to the extent of any money or property of the board of trustees whether the same shall hereafter be held in the name of the board of trustees or in the name of the town of Huntington.

§ 3. In addition to and without limiting the powers of the board of trustees which devolve upon it, the town board is hereby authorized and empowered as follows: (a) to hold

the real and personal property of the board of trustees in the name of the town of Huntington or in the name of the board of trustees, to commingle property of the board of trustees with any property of the town of Huntington or to hold it in a separate fund in whole or in part in the name of the town of Huntington or in the name of the board of trustees, as the town board shall at any time or from time to time deem advisable in the interest of the residents and taxpayers of the town of Huntington; (b) to authorize the execution of deeds and conveyances by the supervisor as president of the board of trustees, or by the majority of the whole board of trustees; (c) to determine whether and to what extent the proceeds from the sale or rental of, or any other revenue from, properties of the board of trustees whether in the name of the town of Huntington or in the name of the board of trustees shall be applied either in reduction of the real estate taxes required to be levied on the area of the entire town, or for the maintenance and improvement of the properties of the board of trustees, or for any lawful town purpose, and to determine whether and to what extent any expense of administering the properties of the board of trustees shall be either a town charge to be assessed and levied upon the taxable property of the entire town and collected in the same manner as other town charges or a charge payable out of the revenue from the properties of the board of trustees; (d) to impose further and other duties than those prescribed by law upon any elected or appointed officers or employees of the town in connection with the administration of the properties of the board of trustees, and to create the positions necessary to the administration of the said trust, and to fix a single compensation for the performance of all of the duties of such officers or employees; and (e) to regulate the taking and the manner of taking clams, oysters and other shellfish from the lands of the board of trustees during the continuance of the town board as such board of trustees notwithstanding that there has been no application in writing therefor filed by the board of trustees as provided in subdivision eighteen of section one hundred thirty of the town law.

§ 4. Nothing contained in this chapter nor in the amendments of prior law set forth herein shall be deemed to curtail or impair the proprietary rights, titles and interests derived by the board of trustees from colonial charters or subsequently acquired by them, and the same shall remain vested as heretofore for the benefit of the residents and taxpayers of the town of Huntington. Wherever used in this chapter "town board" refers to the town board of the town of Huntington, in the county of Suffolk, and "board of trustees" refers to the board of trustees of the town of Huntington.

§ 5. This act shall take effect July first, nineteen hundred sixty-two.

colonial assembly reiterating that conveyances must be recorded.[29] Parliament did not pass such a statute until 1677 with the Statute of Frauds was enacted requiring conveyances to be in writing and signed by the parties. Otherwise they would be construed as estates at will. Wills must be in writing witnessed by three persons and declarations of trusts also had to be "manifested and proved" by a written document signed by the party creating the trust.[30]

Prior to 1537 the use was a personal confidence placed in one person by another. Such transfers of land did not bind the land itself, but they did bind the conscience of the person into whose hands the lands came. In future transfers of the lands the use was binding only on those who received the property from the original feoffee, the person in whom the confidence had first been placed. In other words, if the new feoffee took the land with notice of the trust then he automatically assumed that trust. If, however, the taker did not know of the use, or took the property with every intention of divesting himself of it without notice, he who took from him was not bound. In the first instance, with notice of the use, the new feoffee took in the per by taking through the original feoffee; in the latter instance, the person took in the post by not taking directly from the original feoffee. With the passage of the Statute of Uses this situation became drastically altered. Thereafter, trusts bound not only those who took in the per but also those who took in the post. The trust followed the land, with the exception of those who took legitimately by paying a valuable consideration for it but without being given notice of or being aware of the trust. Even squatters

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29. Ibid., 224-225. As late as 1771 a more sophisticated act of a similar nature was also passed. Ibid., V, 202-204.

30. Holdsworth, History of the English Common Law, III, 380-384. 29 Car. II, c.3.

could be bound by the trust since they occupied land without having paid a valuable consideration regardless of notice.[31]

As a result of the Statute of Uses the courts began to define and describe various types of trusts. An express trust existed when the individual creating a trust did so with that express intention in mind. Implied trusts resulted when, although there appeared to have been no intention of actually creating a trust, the facts of the case require that equity declare a trust to protect the rights of all parties involved. Express trusts are divided into active or passive trusts and according to one authority,[32]

> An active express trust calls for the performance of some active duty on the part of the trustee....A passive trust exists in any case where no active duty is imposed on the trustee...permitting the beneficiary to possess and enjoy the land...and...all the usual incidents of ownership. He is a mere receptacle of the legal title.

Implied trusts are usually divided into two categories: resulting and constructive. In each case the existence of a trust depends upon the facts and the trust is read into the actions of the parties by a court of equity rather than resulting from the intentions of the parties themselves. A resulting trust can come into being when a person takes title to land while the actual purchase price is paid by a third party. In law the purchaser has no interest in the property; in equity he can be looked upon as the owner, since having paid the price he is entitled to the beneficial enjoyment of

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31. Simpson, Land Law, 170, 194; Maitland, Equity, 84.

32. Simpson, Land Law, 438; Maitland, Equity, 53, 76-77. Although certain forms of trusts were voided by law in New York in 1827 and fee title vested in the cestui que trust, express trusts remained as valid as before the law. Emory Washburn, A Treatise on the American Law of Real Property (Boston: Little, Brown, and Co., 1887), II, 575-580, quoting from Revised Statutes of New York of 1827, art. 2, tit. 2, c. 1, part 2; see also Thompson's Laws of New York...1939, (Brooklyn, Edward Thompson Co., 1939), Real Property Law, Chapt. 52, 136-137.

that property. The actual taker holds as trustee for the benefit of he who paid the price. If it can be proven that the intended result is inconsistent with a trust, as when a person makes a gift of the money or lends it, then no trust exists. Constructive trusts can arise when an element of fraud is present in the conveyance of property. When a person, by fraud, acquired land, that is by deceit or false representation of facts, then he holds that land in trust for the person defrauded.[33]

Generally speaking, neither statutes of limitations nor adverse possession are a bar to express trusts. A rule of equity, in distinguishing between express and other forms of trust, states that, "to an action based upon the breach of an Express Trust the Statutes of Limitations are no bar."[34] Once property has been vested with a trust none can claim adverse possession unless they can prove a good and legal title, or possession over a period of years prior to the creation of the trust.[35]

It should be mentioned in passing that certain duties and restrictions devolve upon trustees. Although a whole body of rules of law have grown up around trusts only two or three of a general character need be noted here. A trustee can safely do anything that he is expressly authorized to do under the instrument creating the trust, in fact he is bound to do anything which that instrument requires him to do. Conversely, he must refrain from doing anything expressly forbidden by the trust instrument. A trustee can not benefit from the trust nor receive any remuneration as a result of it. If

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33. Simpson, Land Law, 449-459; Maitland, Equity, 77, 82-84.

34. Maitland, Equity, 76.

35. Ibid., 121.

In a letter to Robert J. Flynn, then Supervisor of Huntington, John P. Kane, a trustee who supported the legislation, attempted to explain the significance of the law. In his opinion all it did was to change the make-up of the present Board of Trustees for administrative purposes and to remove it from the provisions of article 79 of the Civil Practices Act and place it under the "yardstick" of the Town Law and Local Finance Law. "In essence, the intent is to consolidate within the Town Board the powers, responsibilities, etc., of the Trustees...thereby eliminating any duplication, but preserving the distinction for any historical value or purpose or heritage....If at some future date such distinction is necessary to maintain any advantage of holding property in a proprietary capacity, as distinguished from a governmental capacity, this distinction would be intact and the property so held."[59]

To further confuse the trust which had been superimposed upon Huntington in the seventeenth century, article 1 section 15 of the state constitution was repealed on November 6, 1962. This is the article, originally article 36 of the constitution of 1777, which validated the colonial charters after the colonies revolted against Great Britain.[60] It is likely that the rationale behind the repeal was simply that over the years legislative enactments and vested rights created by judicial decisions made the article superfluous. Surely it cannot be interpreted as wiping out the trust. The courts and the legislature have consistently viewed the original article as confirming the propriety rights of the trustees under their colonial charters. Such rights were proprietary property rights subject to the protection of the due process

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59. Huntington Lease File, Town Historian's Office, letter Kane to Flynn, November 17, 1962.

60. Supra, chapt. II, 92.

and just compensation clauses of the fifth and fourteenth amendments of the United States constitution and the appropriate clauses in New York State's constitution just as property rights of private individuals are protected. If the repeal of article 1 section 15 were to be interpreted as destroying the trustees' rights to property under the colonial charters, it would be in violation of the more specific protection of private property under the due process clause of both federal and state constitutions. Courts might be very reluctant to hold that repeal made the protection of private property inapplicable to the property immemorially held in trust, and a public trust at that, by the trustees of Huntington. Whether or not these rights are recognized under section 15, the long history of judicial recognition of such rights makes them vested rights entitled to constitutional protection. New York courts would very probably continue to uphold the colonial charters, since, "There was surely no purpose by the repeal to overturn or unsettle titles of immemorial acceptance."[61]

It is apparent that neither the Board of Trustees nor many people in Huntington interpreted chapter 865 or the repeal as eradicating the trustees or the trust res. By their actions they refuted any such construction. Individuals continued to petition the Board for leases; the Board granted or rejected them as they deemed the public interest was served.[62] At board meetings people persisted in bringing to the attention of the Trustees various incidents in the town which they felt encroached upon Trustees land and rights; others complained that they did not discharge their duties as fully and

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61. Beers v. Hotchkiss, 256 N.Y. 41, 58-59, 175 N.E. 506, 512. For repeal, see McKinney, Laws of New York, 1969, Book 2, Constitutions, 793.

62. See Appendix B.

efficiently as they should.[63] As recently as January of 1971 the Huntington Conservation Advisory Council submitted a comprehensive report to "Supervisor Ambro and the Board of Trustees" briefly outlining the status of trustees land and an assessment of what had been taking place as well as what should be done.[64] After listing a number of areas of concern to the Trustees, such as filling in of ponds and building docks without authorization, the report recommended that a title search of all waterfront property be undertaken and legal counsel retained to handle all legal problems arising from claims by the Trustees stemming from their ancient proprietary rights.

Following on the heels of this report, and goaded on by a nonresident attorney, Victor J. Yannacone, Jr. of the town of Brookhaven, the Board of Trustees unanimously adopted a "Declaration of Policy Concerning the Environment" in which they spelled out what they felt to be the responsibilities of the Board with regard to the preservation of the local environment through the exercise of the powers of the Trustees in the interests of the present and future generations. Two supportive resolutions came before the Board in November and December of 1971 which authorized the Town Board to create a Department of Environmental Protection and spelled out the procedures to be followed by anyone wishing to construct bulkheads, erect piers or docks, or in any way alter the shoreline and lands under water of the town.[65] In the meantime in April the Board, by unanimous vote, created a Trustees Advisory

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63. "Trustees Minutes, 1962-1971," II, 103, December 19, 1967; 105, January 23, 1968; 107, March 12, 1968; 120, May 20, 1969.

64. The report is reproduced in Appendix D because of its clarity, its recommendations which were eventually adopted, and the fact that it was the forerunner of this report.

65. Appendix E reproduces these three resolutions.

Committee to undertake the task of title searching all lands along the town's shorefront to uncover how much belonged to the Trustees, to analyze the historical and legal role of the Board of Trustees, and to employ legal counsel not only to advise the Committee but also to take whatever legal action was deemed necessary to protect the rights and interests of the Trustees.[66] The Trustees are not dead--yet.

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66. "Trustees Minutes, 1962-1971," II, 137-138, April 27, 1971.

Chapter VI

The Trust Doctrine, English Common Law, and the Federal Courts

The trust, or "use" as it was called prior to the middle of the sixteenth century, has an ancient and generally honorable history. But before entering upon a study of its origins a brief description of what it means is in order. A trust or use occurs when one person gives some real or personal property to another for the benefit of the giver or third parties designated by him. Definitions, more acceptable to those in the legal profession but somewhat abstruse and oblique to the laymen, would be, "When a person has rights which he is bound to exercise upon behalf of another or for the accomplishment of some particular purpose he is said to have those rights in trust for that other or for that purpose and he is called a trustee."[1] Or, "An equitable estate...involves in every case the holding of the legal title to the land by a trustee who has no beneficial interest of his own, but who holds solely for the benefit of the beneficial or equitable owner, called the cestui que trust."[2] And again, "An use is a trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral annexed in privity to the estate of the land, and to the person touching the land...cestui que use had neither jus in re nor jus in rem, but only a confidence and trust."[3] In simplistic terms, what they are trying to convey is

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1. F.W. Maitland, Equity, also the Forms of Action at Common Law, (Cambridge: Cambridge University Press, 1909), 44.

2. W.F. Walsh, A Treatise on the Law of Property, (New York: Baker, Voorhis & Co., 1937), 422.

3. Maitland, Equity, quoting Sir Edward Coke in the early seventeenth century, 116.

the idea that a trust arises when a person (the feoffor or grantor) conveys legal title to real or personal property to another person (the feoffee or grantee) to manage, use, or dispose of for the sole benefit of either the feoffor or a third party, either of which is then called the cestui que use, cestui que trust, or beneficiary as synonymous terms.

In the histories of the customs and law of the two great civilizations which strongly influences American law one can find innumerable examples of the trust doctrine. The Romans did have a form of trust or use, but not nearly in as sophisticated a form as later developed by the English. The Romans recognized that it was possible for a thing to have two owners. The legal owner, the dominus ex jure civile or ex jure Quiritium, who was the complete owner and the only one who could dispose of it, could pass the beneficial use of a thing to another, who held only baritarium ownership, without affecting the legal ownership.[4] They also had usus-fructus, the right to temporary ownership to obtain the profits from the use of a thing. In the latter cases there was no binding legal relationship between the owner and the user, the two "owners", until the codification of the laws under Justinian when such obligations were enforceable in the courts.[5]

The Romans also recognized the existence of public land, in a sense common land, held by the government for the people. As early as the fourth and third

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4. Kenelm E. Digby, An Introduction to the History of the Law of Real Property, (Oxford: Clarendon Press, 1897), 316-318. The word Quiritium refers to a citizen of Rome and derives from Quiritius, the name given by the Romans to Romulus the legendary founder of Rome.

5. Ibid., 317. See also R.W. Lee, The Elements of Roman Law with a translation of the Institutes of Justinian (London: Sweet and Maxwell, Ltd., 1956); and, W.W. Buckland, A Text Book of Roman Law from Augustus to Justinian (Cambridge; University Press, 1921).

centuries B.C. one finds that conquered territories were considered public lands to be held or distributed to the victorious Romans as the government deemed it in the best interests of the people to do so. Later, during the first century B.C. Tiberius Gracchus attempted to institute land reforms which relied heavily upon redistribution of public lands amongst the proletariat. Even though his reforms failed the fact remains that the Romans fully appreciated the concept that certain lands could be held by the state for public use. Although far removed from the trust doctrine explicitly, the mere fact that such land existed lends support to the contention that, since a corporeal thing was being held by one group for the benefit of another, there was, in however vague a form or poorly defined, a trust obligation.

With the advent of what is called the Dark Ages in Europe and its accompanying intellectual paralysis, the influence of Rome and its laws diminished almost to the point of disappearing from large sections of western Europe. What then has the early concept of the trust doctrine to do with the evolution in England--and indirectly in the colonies later--of common property and public trusts? Regardless of whatever devious route the Roman law took, eventually it did have at least some impact upon the English system of law even to the point of being recognizable in the area of public lands held in trust for the people. To a great extent this is a tenuous relationship to say the least, but in a larger sense it underlines the fact that these two systems managed to produce almost independently of each other, with but a modicum of interaction, the concept of a trust obligation. It lends to it a multicultural dimension which otherwise might not obtain.

The Roman law actually did almost diappear from western Europe for centuries. Even at its height it had its least impact on England. Rome abandoned that country early in the fifth century A.D. leaving it to successive waves

of barbarian invasions long before the last great codification of Roman laws under the direction of Justinian a full century later. During the decline of the Roman Empire from the fourth to the sixth centuries A.D. there were a few notable attempts to codify the law. Because the provinces had been overrun by barbaric tribes such compilations of laws as were produced reflected more an admixture of Roman law and provincial tribal practices than a fuller application of the former. Such is the case with the Edicts of the Ostrogothic kings, which lost their significance when their kingdom was destroyed by the Byzantines; the Lex Romana Burgundionum, circa 500 A.D., which remained essentially local in usage; and the Lex Romana Visigothorium in 506 A.D., known as the Breviarium Alarici, which included the earlier code of Theodorus II written in 438 A.D. and the works of reknown Roman jurists such as Gaius and Papinian.[6] The latter is by far the greatest in importance in keeping alive the Roman tradition in western Europe. Although confined to France and Spain it was a rather complete code of law for the use of the Roman populations there.

Of much more far-reaching importance was the Corpus Juris Civile or the Justinian Code begun under the direction of Justinian a year after he ascended the throne of the eastern empire in 527. It is still one of the principal sources of knowledge of Roman law and the instrument which conveyed the Roman legal system to the modern world via the medieval scholars of the thirteenth and fourteenth centuries. Consisting of the imperial constitutions of past centuries, the writings of jurists and the old law, and known customs

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6. Lee, Elements of Roman Law, 20-23. For a concise scholarly account of this period in legal history see Lee, Historical Conspectus of Roman Law, (London: Sweet and Maxwell, Ltd., 1956), Part I; and, Paul Vinogradoff, Roman Law in Medieval Europe, (Oxford: Clarendon Press, 1929), chapt. I.

(consuetudo), the entire body of laws was published over a period of years in parts called the Code, Institutes, Digest, and Novels. Of these the Institutes served for centuries as an elementary textbook for a study of the law.

The Justinian Code divided the law into public law and private law. The former, jus publicum, encompassed the constitution of the Roman state: constitutional law, administrative law, criminal law and procedures, and jus sacrum. The latter, jus privatum concerned itself with the interests of individuals and the regulation of relations among citizens, family law, property, contracts, and inheritance. The Institutes dealt primarily with these and subdivided the law into jus civile, the system of laws in a nation derived from its own customs and institutions; jus gentium, the law of people in general which developed when persons dealt with those under a jus civile but were not bound by them as aliens and had to do with settlements of differences between persons from different locales who came into contact; and jus naturale, looked upon as an ideal "to which it is desirable that law should conform" because it governed all mankind and was of a higher, more abstract order than jus gentium.[7]

Of interest to us here is Justinian's observations on public property. He begins the second book of the Institutes by pointing out that, "Some things are by natural law common to all men, some are public, some belong to a corporate body, some belong to no one, most things belong to individuals and are acquired by various means..."[8] In other words certain things (res) are

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7. Lee, Elements of Roman Law, 34-39.

8. Ibid., 109, 113-114.

not susceptible of private ownership, such as (1) things common to all men (res communes)--the air, running water, the sea and sea shore; (2) things public (res publicae)--rivers and harbors; (3) things belonging to a corporate body--theatres, races courses, and the like, found genrally in cities (res universitatis); (4) things belonging to no one (res nullius)--sacred things (res sacrae) such as churches, religious things (res religiosae) as with grave yards, and sanctioned things (res sanctae) such as city walls and gates.[9] As for shores and waterways specifically Justinian had this to say,

> By natural law the air, flowing water, the sea, and therefore the shores of the sea are common to all. Consequently, no one is forbidden to approach the shore, provided that he does not interfere with dwelling-houses, monuments, and buildings, for these are not subject to the jus gentium, as the sea is. 2. All rivers and harbors are public; consequently the right of fishing in a harbor and rivers is common to everyone. 3. The sea-shore extends to the limit reached by the highest winter flood. 4. The use of river-banks is public and juris gentium, like the use of the river itself; and so every one is free to put in at the bank, to fasten ropes to trees growing on the bank, or to land a cargo, just as every one is free to navigate the stream. But the ownership of the banks and of trees of sea-shores too is public and juris gentium, like the use of the sea itself, and so any one may set up a hut to retire into, may dry his nets, and draw them up from the sea. But the ownership of the shores may be supposed to be vested in no one, and to be governed by the same law as the sea and the sea-bottom.

According to two authorities, the distinction between res communes and res publicae (things common and things public) is so poorly defined as to be of

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9. By res the Romans meant any economic interest guaranteed by law, any right or rights having a money value, any interest expressible in terms of money which the law will protect. The law relating to things is thus the law relating to property. Ibid., 108. Res nullius has various meanings: that which is not susceptible of private ownership as in the case of religious, sacred, and sanctioned res, and things, though susceptible of private ownership, not at the moment owned or which have been abandoned (e.g., uncaptured wild animals, and res derelictae), Ibid., 110.

no practical value. As time went on these two became increasingly blurred so that all was regarded as res publicae and the property of the Roman people.[10]

There was some uncertainty among Roman jurists as to the extent to which an individual could occupy a portion of the sea-shore for his personal use. This involves usucapio, the recognition that a person is in possession of property as owner without legal title. All "mature legal systems" recognize him as owner or at least give him the benefit of the doubt if he continues to possess the property for a period defined by law and can satisfy other necessary conditions: its susceptibility to ownership, title, good faith, possession, lapse of time (res habilis, titulusque, fides, possessio tempus).[11] Usucapio (usucaption) or acquisitive prescription then occurs. However, the thing in question had to be capable of being the subject of a transaction between Roman citizens and not declared to be incapable of alienation by any law. It was generally settled in the case of the sea shore and provincial lands that they were in fact incapable of alienation. Since the latter belonged to the Romans by conquest (dominium ex jure Quiritium) it was considered res publicae. Although a similar practice to usucapio, that of "long time prescription" (longi temporis vel longae possessionis praescriptio), existed in the provinces it was always subject to the qualification that the occupant of such land was technically not the owner.[12]

To say that Roman law directly influenced English law to any great extent,

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10. Buckland, A Text Book of Roman Law, 184-186; Lee, Elements of Roman Law, 109-110.

11. Lee, Elements of Roman Law, 119-120.

12. Ibid., 120-125. Justinian in 531 combined usucapio and longi temporis praescriptio.

at least prior to the thirteenth century, would be erroneous. But to say that the early Anglo-Saxons and later the conquering Normans evolved systems of public lands invested with a vague forerunner of a formal trust obligation might not be wrong or even too outlandish to take into account. There was, of course, no direct carry-over of Roman law after the end of Roman occupation in 440 A.D. The Teutonic tribes which overran the British Isles and virtually wiped out the Britons brought their own land systems with them. Just emerging from a nomadic way of life they probably had some form of primitive communal arrangement. The district in which each tribal group lived was not considered to be private property but for the use of all in the community, yet each head of a household did actually own the land on which his house stood. The remainder of the district fell into two categories: arable land and common or waste land. Although individuals held land in the former it was subject to customary regulations of commonage of pasturage over the fallow portions. None really held his portion permanently since it periodically returned to the common stock and he received other lands under the dictates of the three-field system of agriculture then current. Meadow land received the same treatment and the waste or common land, usually woods, was used by all for rights of pasturage, wood-cutting, and similar basic needs of these primitive agricultural communities.[13]

The vast amount of waste land in England came to be looked upon as a common stock from which the king and the Witan had the right to make grants of land by charter. Once granted it passed into private hands and was designated bocland or bookland since the transfer was recorded. This distinguished it from folkland which, although not public land _per se_, could be

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13. Digby, _Real Property_, 5-6.

occupied by persons or families or be left as waste without the benefit of a charter grant. The only common characteristic of this latter type lay in the fact that, however occupied or used, it was not bocland. From it the king and Witan could continue to make grants of land, but not without the consent of the community or its chief. Gradually this custom translated itself into a conception that unoccupied land belonged to the crown and that the king was prima facie the owner, even of the sea shore below high water mark.[14] As small weak kingdoms merged with or became absorbed by larger kingdoms and eventually the largest kingdom and its king encompassed the whole nation the idea that all unoccupied land was the royal domain, terra regis, became more strongly developed. Concurrently the claims of the kings to certain dues, services, and proprietary rights begin to be recognized.[15]

As the Anglo-Saxon period drew to a close it became common for large areas of land to be held by powerful lords, thegns, or religious organizations. Some of the land came directly under the control and proprietorship of them while the remainder of the land was held as a seignory wherein the lords had no rights of actual possession of the land itself, but could collect rents or dues from the occupants. Unoccupied land was still looked upon as waste, but more often than not as terra regis or the local lord's waste over which villagers within the district maintained and exercised certain customary rights.[16]

Even though a clearcut theory of tenure may not have existed in Anglo-

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14. Ibid., 17-18.

15. Ibid., 18, citing Kemble, Saxons in England.

16. By this time bocland could be alienated inter vivos or by will and estates of inheritance existed which could be passed down to descendants, although equally rather than by the later Norman primogeniture.

Saxon England, the Norman conquest of 1066 imposed one upon the country. Thereafter all land was held of some lord and ultimately of the crown throughout the entire nation. No allodial land remained.[17] With the conquest William I assumed all the rights of the Anglo-Saxon kings and their possessions held in a private capacity. No longer did a distinction exist between the king's ownership of land privately and his suzerainty over unoccupied lands as head of the nation. All became terra regis.[18] Despite this change certain customary common rights prevailed. Even though all rights over the land within a district not expressly claimed by an individual came to be regarded as vested in the lord and he in turn was regarded as a tenant of the king the common rights of pasturage, fishing, and wood gathering persisted.[19] The lord did have the right to appropriate a portion of the waste where common of pasture existed, provided he left enough for his tenants with adequate means of access. The Normans and their successors wove into the fabric of England a theory and practice of feudalism which decreed that all land was held of some superior lord and ultimately of the king into whose hands the protection and well-being of his subjects was placed. In this system certain common rights became an integral feature and incident of lands traditionally held to be beyond exclusive private ownership and vital to the existence of the community.

Into this system came the Roman law, although it did not appear conspicuously

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17. A.W.B. Simpson, An Introduction to the History of the Land Law, (Oxford; Oxford University Press, 1961), 2. Allodial land is held absolutely with no superiors in tenure involved. Only the king held thus. Full recognition of the introduction of the feudal system is found in Domesday Book of 1086.

18. Digby, Real Property, 34.

19. Ibid., 44, 191-194.

until the middle of the thirteenth century. Much earlier, in the eleventh century, European scholars revived an interest in Roman law, particularly at Pavia, Ravenna, and Bologna where men known as glossators studied and taught it. To a great extent the work of the glossators and post glossators influenced the course of the law in Italy, Germany, France, and Holland.[20] In England it was another story. There Henricus de Bracton, an itinerant justice and ecclesiastic from Devonshire during the thirteenth century, is responsible for forcefully attempting to inject the Roman law into the English feudal system.

The growth of the study of Roman law began with the lectures of Vacarius at Oxford in 1149 and became quite popular thereafter until early in the next century when resistance to it developed. The church felt threatened by such secular learning and realized that canon law might be replaced by it. Also a general opposition to its "cosmopolitan doctrines" developed and resulted in laws which forebade the teaching of civil law at least in London.[21] Nevertheless, through the writings of Bracton some of the concepts of the Roman law found their way into the English systems. Quoting Justinian's Institutes extensively, he used that work in support of his analysis of the prevailing English laws with respect to common rights and their inalien ability in certain lands, although other than the more usual agricultural applications he did not specify over which other areas this might be enforced. Beyond

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20. Vinogradoff, Roman Law in Medieval Europe, and Lee, Historical Conspectus of the Roman Law are excellent concise accounts of this period and the renaissance in the use of Roman law. The last of the glossators or commentors on the Roman law was Accurius (d.1260), followed by the post glossators, of whom the best known is Bartolus (1314-1357).

21. Vinogradoff, Roman Law in Medieval Europe, 97-98.

accepting Justinian's introduction to Book II of the Institutes Bracton did not apply it outside of the known and accepted common rights of turbary, piscary, and the like. His influence, and correspondingly that of the Roman law, can be found most directly in the doctrine of seisin and possession of real and personal property. Other than that the knowledge of Roman law, "accelerated the process of simplifying and systematizing custom and bringing the body of native customary law into some semblance of a corpus juris."[22]

Before assimilating this discussion of Roman law into the more general one of the trust doctrine, it is necessary to return to that doctrine for a moment to trace its origin and use in England. Under the technical rules of law which feudalism created real property could not be disposed of by will. Also under the feudal system an heir to an estate had to pay the lord a relief in order to succeed to the estate; if under age the heir became the ward of the lord who saw to it he married under circumstances favorable to the lord. A tenant could lose his real property to the lord by forfeiture if he was convicted of treason or by escheat if guilty of a felony. Creditors could attach the property for payment of debt. Trusts, or uses as they were called, arose to circumvent these restrictions.

Feudal burdens bore heavily on the tenant of a lord, as they did on the lord himself in terms of his superior. To overcome such incumbrances and remain within the legal system without being hampered by the prevailing rules of law a tenant would enfeoff the land to a trusted friend who then became seised of the land but who was bound by friendship to manage the land for the benefit of the feoffor or his family. The feoffee was recognized by law as the owner of the land; the feoffor retained the benefits of ownership without

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22. Digby, Real Property, 67, 119-120.

the burdens. Simply stated, A grants his land to B for the use of A or of his family. A can then write a will instructing B to make use of the land for the benefit of his heir C, or to grant it to C upon A's death. In the latter instance a future estate has been created, something forbidden under feudal law since all property must have a tenant at all times. By passing title to B to be vested in C at some future time the land is never without a tenant. If C were under age, to insure that no wardship would take place, A would enfeoff four, five, or even ten so that at least one or more would always be in his majority and be able to assume the governance of C the minor. This cut off the lord from all hopes of exercising his traditional rights of wardship. Similarly, if A owed a large debt, he would enfeoff to B and A's use; a creditor then could not attach A's property since it was vested in B even though A enjoyed all the benefits of that property. In this way land owners were able to get around feudal restrictions. However, it all depended upon the honesty and conscience of B the feoffee or, actually, the trustee.

Persons also used this device to avoid the Statute of Mortmain which forebade the granting of lands to religious organizations. One could enfeoff his land to another for the use of a religious order. One of the first instances of this occurred in the middle of the thirteenth century when the Franciscan friars arrived in England. Sworn to poverty they could not own property of any kind, yet they had to have food to eat and a place to sleep. The practice arose of granting lands and buildings to a group of persons or to a community for the use of the friars, in other words a trust was created for the benefit of the friars.[23]

Most applications of the use were entirely legitimate and reflected an

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23. Maitland, Equity, 24-34; Walsh, Law of Property, Ch. XIII.

effort on the part of society to get around the rigid feudal structure it had placed on itself. The use originated as a personal trust or confidence placed by one person in another. Once the land had been granted away the grantor lost his legal hold over it and only the trusted friend was recognized in law as being the owner. The grantor had but an inchoate equitable interest with no real remedies in the law to force the grantee to do or not to do something once the transfer had taken place. Unable to find relief in the common law courts the beneficiary of the use had recourse only to petitions to the king to redress his grievances. Under the early English system the king was the source of all justice and even the common law courts derived their authority from him. If one could find no remedy in the courts he appealed to the king who could do what the courts could not, that is, he could mete out justice based on equity where the law courts were otherwise restricted by their rules to either no remedy or an inadequate one. In this way equity jurisdiction came into being and slowly built up precedents and rules of its own, supplementing the workings of the common law courts.[24]

During the reign of Edward I (1272-1307) petitions to the king were usually referred to the chancellor. This procedure was formalized by Edward III (1326-1377) who decreed that all such petitions for relief be sent directly to the chancellor or to the keeper of the Privy Seal. It was not until the fifteenth century, however, that such procedures became systematized. By that time the practice of creating trustees to uses had become common, particularly so since this century witnessed a major civil war in England and many persons

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24. Ibid., Both Maitland and Walsh cover the evolution of equity and trusts quite well throughout their books; see also Simpson, Land Law, and Sir William Holdsworth, History of the English Common Law, I.

resorted to the devise to save their lands if they happened to find themselves on the currently losing side and accused of treason. Even then the trustee to use had only a moral obligation to fulfill the terms of the obligation imposed upon him. Nevertheless, the chancellor's court, the court of chancery, could instruct a trustee to carry out his duties and threaten him with contempt of court if he did not.

Until the reign of Henry VIII Parliament paid little attention to uses. By then large quantities of land had been transferred to trustees, thus subjecting it to two owners, one in law the other in equity. Creditors found it difficult if not impossible to enforce claims against debtors; lords with tenants were deprived of their rights of wardship and escheats; the king lost his rights of forfeitures. At the insistence of Henry VIII Parliament passed the Statute of Uses in an attempt to wipe out all those uses which were not active and proved to be a devise to create a passive repository of the legal title.[25] Unfortunately the statute did not accomplish its purpose. The courts soon interpreted it as not applying to active uses, or trusts, where the trustees had certain specified duties to perform. Nor did they permit it to be applied to uses for a term of years, claiming the statute only covered freehold estates to uses.

This does not mean that the statute became a useless piece of paper. What it did do, at least in terms of passive uses where the trustee had no duties to perform, was to transfer the legal estate to the cestui que use. No longer could the beneficiary dispose of his lands by will; he again became subject to the feudal dues of relief, wardship, and the like. To distinguish between an active and a passive use the former came to be called a trust and a whole body of modern law developed around it to insure that the

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25. 27 Henry VIII c.10, reprinted in Digby, Real Property, 344-347.

trustee would carry out his duties on behalf of and for the benefit of the cestui que trust. It also caused the passage of the Statute of Wills which permitted a freeholder certain powers to devise his land where otherwise under feudal custom he could not.[26] Because it abolished the practice of livery of seisin, the tangible, open, and easily recognized act of transferring property (but a cumbersome one which made the grantee actually take possession), it gave legal validity to bargain and sale deeds which required no open and notorious act. This opened up the possibility of covery transfers of property. Consequently, in the same year Parliament passed the Statute of Enrolments, the object of which was to cause bargain and sale deeds to be publicly enrolled in the locality in which the sale took place.[27]

Incidently more than a century later the colony of New York included in the Duke's Laws in 1665 a provision for the enrolment or recording of all conveyances of land.[28]

> That henceforth no sale or alienation of houses and lands within this government shall be held good in law except the same be done by deed in writing under hand and seal and delivered and possession given upon part in the name of the whole by the seller or his attorney so authorized under hand and seal, unless the deed be acknowledged and recorded according to law....And for the recording of all such grants, sales, and mortgages, that every clerk of every court of sessions shall enter all such grants, bargains, sales, and mortgages of houses, lands, rents, and hereditaments as aforesaid together with the estates of the grantor and grantee; things and estates granted, together with the date thereof.

In 1683 "An Act to Prevent Frauds in Conveyancing of Lands" was passed by the

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26. 32 Henry VIII, c.1 (1540), and explanatory act of 34-5 Henry VIII c.5; Maitland, Equity, 35-36.

27. 27 Henry VIII, c.16 (1537), Simpson, Land Law, 177.

28. Colonial Laws of New York, I, 30-31, 44.

he purchases property in his capacity as trustee then that property automatically becomes part of the trust; if he wishes to acquire any of the trust property for himself he must disclose fully to the cestui que trust all facts about it and display the epitome of good faith. The office of trustee cannot be delegated to another nor can trustees shift their responsibilities to another. If this happens the trustee assumes full responsibility for all actions of the third party. However, a trustee may, if he wishes, seek advice and assistance in the management of the trust and even permit the trust property to come under the control of another agency if no needless risk is involved. Finally, a trustee can terminate the trust by conveying all the trust property legally to others if the instrument creating the trust permits such acts. If all the beneficiaries of a trust, being of full age and under no disability, request the trustee to take some action which divests him of all the trust property the trust comes to an end. A trustee can appoint a new trustee or pass the property to another designated as a trustee only by legislative act, in such a case the trust is in no way altered or affected.[36]

What of the cestui que trust? What rights and remedies has he since he has an equitable estate and the trustee has the legal estate as regards express trusts? First, a trust can be enforced against the heirs, executors, administrators, and successors of the original trustees. These persons assume the persona of the first trustee and are bound by his obligations. The trust can also be enforced against those who gain legal title of trust property, even after having paid a valuable consideration, if they ought to have known of the trust. However, there can be instances where a purchaser with valuable consideration and without notice of the trust can successfully

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36. Ibid., 94-97, 106-107.

protect his title against any action by the cestui que trust. Such cases arise when the purchaser enters into the sale in good faith and exercises all due diligence in determining whether or not there are incumbrances of one kind or another on the property he buys. This, of course, becomes a question for the courts to decide, based on the rule that, "It is not enough that one be honest; one must be diligent."[37] If the purchaser does not make a thorough investigation of the seller's title as a prudent purchaser should then he is "affected with notice" of all equitable rights in the property and must, therefore, assume the trust obligation. Contrarily, if he does act diligently, and can prove it to the satisfaction of a court, he can ignore the trust, as can those who purchase from him even though they are made aware of the trust. The latter are protected by the actions and title of he who bought from the trustee in good faith and without notice. Obviously the trustee must act at all times solely in the interest of the cestui que trust. The cestui que trust must exercise due diligence at all times to insure that he does so, even to the point of dragging the trustee into court to force him to act in accordance with the terms of the trust obligation.

To return momentarily to Roman law, how can one justify its consideration when the primary thrust here is the trust doctrine and its application in the town of Huntington? Quite simply it would be straining the facts to say that there is a direct and easily defined relationship between English trust doctrine and Roman law. Nevertheless, it is not beyond reason to claim that Roman law had an influence on seisin and possession of real and personal property in England. In fact whereas there had been no clear distinction between these two types of property those who studied the Roman law engrafted the two onto the laws of property. By the end of the fourteenth century the

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37. Ibid., 117-120, 122-123.

Court of Admiralty used Roman forms of written procedure along with Roman substantive law.[38] Roman forms of interrogating witnesses in the Court of Chancery also became common practice. One must not neglect the work of Bracton and his influence in systematizing English law through his writing which relied heavily on Justinian's Institutes. The sixteenth century conception of the commonweal finds it origins in the Roman principle of public policy.[39] The medieval idea of a natural law and a law of mankind, born of feudalism and christianity, has a direct parallel in the Roman jus naturale and jus gentium. Above all, the fact that the two legal systems found it necessary to create a trust doctrine and to acknowledge that certain lands were vested with a public right which could not be sequestered by private individuals speaks to the point that neither was an isolated or parochial ideal but rather a somewhat more universal one.

It is now necessary to see to what extent the English courts accepted the trust doctrine as it applied to public or common lands and rights. Since our primary concern is with the shore and lands under water it is useful to determine how such areas were viewed by the English courts and to what extent they applied this doctrine to them. Because we are dealing with charter issued during the colonial period it is only logical that court decisions of that period be considered for they will shed some light on what Englishmen of that era thought they meant in the provisions of the charters rather than what twentieth century men thought they thought what they meant.

Under the English common law the seashore, or foreshore as it is often called, was defined as the land between the high and low water marks of

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38. Alan Harding, A Social History of English Law, (Baltimore: Penguin Books, 1966), 140-141.

39. Ibid., 236-237.

ordinary tides.[40] The right to the soil in this area was vested, prima facie, in the Crown. This doctrine was questioned in 1795 in Attorney-General v. Richards.[41] The Crown disputed the rights of the defendant to construct wharves, docks, and other buildings between the high and low water marks in Portsmouth, claiming these structures prevented boats from sailing over the area or mooring there. They would also cause further damage to the harbor by so restricting the free flow of the tide that mud would not be carried out. Richards claimed he had full use of the area under a royal patent and that he had been in possession of the area for over sixty years. The court ruled in favor of the Crown and interpreted the royal charter as not conferring upon Richards the right to build what the Crown sought to enjoin, that the defendant did not prove a clear chain of title from the original patentees, and that the buildings were a nuisance, or purpresture.

The same question came before the court again fifteen years later in Attorney-General v. Parmeter.[42] The court held that the royal grant could not affect the jus publicum and that long disuse of the rights under the patent voided them. The latter point was buttressed by the opinion of the court that the Crown could not really grant such a right and, in addition to the long disuse, the defendant had never really had the rights he claimed under the patent.

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40. Angell, A Treatise on the Rights of Property in Tidewaters (2nd ed., 1847), 67, 69.

41. Attorney-General v. Richards, 2 Anst. 603; 145 E.R. 980, 983 (1795).

42. Attorney-General v. Parmeter, 10 Price 378; 147 E.R. 345, 352 (1811); affirmed on appeal by House of Lords, Parmeter v. Gibbs, 10 Price 412, H.L., 147 E.R. 356 (1813).

> Upon all or any of these grounds, first, the existence of a nuisance; next, the illegality of any grant affecting the jus publicum between high and low water mark; and next, the great length of time, and no fruit having come of this grant --a grant certainly, by the terms of it, expected to take effect immediately, and to be acted on by the grantees who were to go on progressively as well as they could; whereas nothing has been done: upon all and every one of these grounds, it appears to the Court that this grant can be of no avail whatever. The consequence is, that there must be the same decree as was made in the case of The Attorney-General v. Richards, grounded upon the illegality of the grant itself and that this nuisance must be abated.

There are, however, some rights of individuals with which the Crown could not interfere. In 1822 the lords of the Manor of Brighton discovered someone taking sand from the seashore and accused him of trespass, since they claimed title to the land between the high and low water marks. At Hilary Term on February 13, 1823, on appeal, the Court of King's Bench found for the defendant, holding that the right of "wreck", on which plaintiffs' based their claim amongst other things, was not alone enough to confer title, by presumption or construction of law, to the ownership of the soil of the shore against the Crown.[43] The Court stated that the rights of the Crown to the sea and seashore was not "any beneficial interest to the Crown itself, but for securing to the public certain privileges in the spot between high and low-water mark." A person could remove sand and stones and the Crown would not interfere if his acts did not prejudice the interest of the public and become a nuisance.

This principle of common law found further expression in a legal treatise during the nineteenth century which took upon itself the task of explaining the rights the public did have in such areas. Even though the Crown had dominion over and right of property in the waters of the sea and inland waters, it was a common public right as in the civil law and whether the seashore was

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43. Dickens v. Shaw, 1 L.J.O.S.K.B. 122 (1822).

private property or Crown property the Crown's subjects had the right to use it. Such a right was indeed an inherent right which emanated from the king to his subjects who, by virtue of their relationship to the king, became entitled to the free enjoyment of "what are deemed inherent privileges." In other words, "the king has the property, but the people have the use necessary."[44]

The Crown did have the right to convey the soil of the seashore by grant[45] but it could not alienate the public rights to the use thereof.[46] However, this was subject to interpretation of the extent of the public right in an action brought for trespass in 1821. In that year an incident took place in Lancester involving a close, an area privately staked off for fishing purposes, along the banks of the river Mersey. The defendant was accused of breaking and entering between the high and low water marks and, "with feet in walking, and with the feet of horses, and with the wheels of bathing machines, carts, and other carriages, passing over, tearing up, damaging the sand, gravel, and the soil of the said close."[47] In a three to one decision the Court upheld the plaintiff stating that there was actually no common law right of the public to bathe in the sea and to pass over the seashore for that purpose where the soil of the seashore had been staked off as private property for fishing purposes. If such a right existed it had to have been established by usage and custom. Nevertheless, the dissenting opinion held that there

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44. Angell, Rights of Property in Tidewaters, 21-22.

45. Attorney-General v. Parmeter, 145 E.R. 352.

46. Hall, The Rights of the Crown and the Privileges of the Subject in the Sea Shore of the Realm (2nd ed., 1875), 46; Moore & Moore, A History of the Foreshore (3rd ed., 1888), 28.

47. Blundell v. Catterall, 5 B.R. Ald. 268; 106 E.R. 1190 (1821).

was indeed a common law right to pass over the shore for the purpose of bathing and the public has a right of way over the shore to fish from the shore which cannot be denied by the king or his grantee. "The soil can only be transferred, subject to this public trust; and general usage shows that public right has been excepted out of the grant of the soil."[48]

Traditionally the two paramount public rights in the sea, seashore, and navigable rivers were the rights of navigation and fishing.[49] It included not only the land lying between the high and low water marks covered by ordinary tides, but also in arms of the sea and navigable rivers. According to one authority on the subject,[50]

> The ownership of the Crown in the shore has always been subject to the public right of using it as a road for fishing and navigation. It is evidently not the sea alone, but the shore also which is subject to these two common law rights. Thus, the frequenting the shore is claimed and enjoyed as an accessory to these rights, which are the principals....So the shore lies between the fishery or navigation and the public, but the public has a right to the fishery and navigation, and a convenient way is presumed over the shore for the carrying them on; such as for launching boats, carriage and footway for the conveyance of the fish, goods, etc. to and from the boats, etc., and for exercising whatever other convenience common sense and usage point out as essential to these rights; in shore whatever obstruction would render the fishery or navigation nugatory, must be deemed unlawful and incompatible with these rights.

Years ago this right had been upheld in Ward v. Creswell.[51] In 1741 the defendant had taken six oars of the plaintiff who had been fishing on the

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48. Ibid., 268.

49. Schultes, Aquatic Rights (1839), 10, 110.

50. Hall, Rights and Privileges in the Sea Shore, 171-172.

51. Ward v. Creswell, 125 E.R. 1165 (1741).

shores of the defendant's land in Geswell Haven in the parish of Woodham. In a replevin action to regain possession of the oars, plaintiff claimed he was exercising the common right of fishery at the time, whereas the defendant swore the oars were damaging his property. Although the plaintiff lost his case because the court decided he had not proven it was necessary for common of fishery to land his boat on the defendant's land, it did state that, "The right of fishing in the sea is a right common to all the King's subjects (and that) every man may fish in the sea of common right. Every subject of common right may fish with lawful nets in a navigable river as well as in the sea." In other words, the public right of fishing, presumably regardless of the possibility of the loss of oars, could be exercised in creeks, arms of the sea, havens, ports, and navigable rivers up to the reach of the flow of the tides.[52] This right was again reiterated in 1801 in Baggott v. Orr, when the court declared that, even though the case was one of trespass and decided on other grounds, the right of fishing in the sea, the creeks, and the arms thereof was, "a public common of piscary and may not without injury to their right be restrained of it..."[53] Even the plaintiff in the action agreed this to be the case.

Sometime during the 1770's the city of London made a horse-tow path along the Thames River under powers vested in them by the statutes of 14 Geo. 3, c. 91 and 17 Geo. 3, c. 18. A property owner along its way cut down some of the piles used in the construction of the path, claiming the mayor of the city had no right to place them on his land. In the resulting case of King v. Smith in 1780 the court held that the subjects of the Crown had a right to

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52. Hall, Rights and Privileges in the Sea Shore, 3, 41, 46.

53. Baggott v. Orr, 2 Bos. and P. 472; 126 E.R. 1391 (1801).

take fish found between high and low water mark on the sea shore, that the actions of the defendant were contrary to long established common rights to use of the foreshore, and that, finally, he had no right to destroy that which had been permitted by statute.[54]

This public right to the use of the foreshore, the area between the high and low water marks, found acceptance in the learned treatises of some of the leading authorities on the subject. Hall observed in 1875 that, "There can be no doubt whatever but that the public have a right to fish on the shore, although the soil thereof may happen to be private property....The public fishery extends over sea and shore...."[55] and described the shore as, "a highway for fishing...as public as the sea itself."[56] Twenty years earlier Woolrych claimed that, "navigation and public fisheries are the inheritance of the subject, by virtue of the general title, or jus publicum, which everyone possesses."[57] Even if the Crown had granted upland and seashore to a subject the public right to fish could not be restrained by virtue of the grant.[58] The courts had clearly ennunciated such a position over a hundred years before in Warren v. Matthews, declaring that fishery is common and is, prima facie, in the king and therefore public.[59]

Under these common law rights those who did acquire the foreshore

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54. King v. Smith, 2 Doug., K.B. 441; 99 E.R. 283 (1780).

55. Hall, Rights and Privileges in the Sea Shore, 174-175.

56. Ibid., 193.

57. Woolrych, A Treatise of the Law of Waters (1853), 38.

58. Schultes, Aquatic Rights (1839), 61, 110.

59. Warren v. Matthews, 6 Mod. 73; 1 Salk, 357; 91 E.R. 312 (1703). See also opinion of Bayley, J., in Blundell v. Catterall, 106 E.R. 1190 (1821).

became subject to the jus publicum or public rights of the king which included the right of his subjects to the easement of passing and repassing both over the land and the water. The courts consistently held to this position in Attorney-General v. Richards and Attorney-General v. Parmeter and reiterated it in 1822 in Attorney-General v. Burridge, all three cases involving essentially the same question of whether or not the defendant could construct wharves and similar structures on the foreshore in such a way as to block off public use.[60] Each declared in general terms that, "As the public rights of fishery cannot be enjoyed without making use of the seashore for egress and regress, and for other essential conveniences which the fishery required in order to be carried on with effect, the use of the sea-shore, for all purposes essential to the enjoyment of the right of fishery, necessarily accompanies such right."[61]

Grants which included these areas came to be recognized as vested with the jus publicum.[62] The principle was stated by Lord Hale in the seventeenth century to the effect that, "the jus privatum, that is acquired to the subject by grant, patent, or prescription, must not prejudice the jus publicum, wherewith public rivers and arms of the sea are affected for public use."[63] This placed public rights over private interests and, with few exceptions, made the former superior to the latter. Writing on the same subject almost two hundred years later, Angell flatly stated it as a point of law and asserted

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60. Attorney-General v. Richards, 145 E.R. 980; Attorney-General v. Parmeter, 147 E.R. 345; Attorney-General v. Burridge, 10 Price, 350; 147 E.R. 335 (1822).

61. Hall, Rights and Privileges in the Sea Shore, 48-49.

62. Schultes, Aquatic Rights, 110.

63. Hale, De Jure Maris, reproduced in Hall, Rights and Privileges in the Sea Shore, XXIV.

that,[64]

> The King may doubtless grant the soil covered by tidewater to an individual, but the right of the grantee is always subservient to the public rights....The law...is, that where a part of the sea coast or shore, being the property of the crown, giving jus privatum to the King, is granted to a subject for public uses, and to be enjoyed so as to be detrimental to the jus publicum. Therein such grant is void as to such parts as are open to such objection;...or it is a grant which does not divest the crown or invest the grantee. The crown may, by letters patent, grant to a municipal corporation, or the corporation of a town or borough which is caput portus, all the land which is between high and low water marks; but the subject matter of grant, as being a jus privatum in the King, must be subject to the jus publicum, or public rights of the people to the passing and repassing over both land and water.

That is to say, where there was a conflict between the jus publicum and the jus privatum of the owner of the foreshore the jus publicum was paramount and the owner could be restrained from encroaching on the rights of the public.[65] If a property owner did attempt to exclude the public, he would be confronted with the principle that, "it is not true that the ownership of the shore by the subject tends to limit either the rights or enjoyment of the public....The subject is as limited in his ownership as the Crown was before it granted him the shore."[66] He could not take away public rights by his actions. In fact, according to Angell, the Crown's private rights were really in the nature of those of a guardian of his subject's rights.[67]

> The right of property in tide waters, and in the soil and shores thereof, is prima facie vested in the King, to a great extent at least, as the representative of the

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64. Angell, Rights of Property in Tidewaters, 25-27.

65. Moore and Moore, A History of the Foreshore (3rd ed., 1888), 257, 832.

66. Ibid., xlviii, 784, see also Woolrych, Law of Waters, 25, 185.

67. Angell, Rights of Property in Tidewaters, 23-25.

> public. To such an extent, that to the rights of navigation and fishery he has no other claim than such as he has as protector, guardian, or trustee of the common and public rights. Hence the King has no authority, and since Magna Carta, has never had, to obstruct nagivation, or to grant an exclusive right of fishing in an arm of the sea....public rights, and such things as are materially dependent upon them, cannot be alienated by the crown.... The rule, as laid down by Bracton, is, that these things which relate particularly to the public good cannot be given, sold, or transferred by the King, or separated from the crown....Hence the people of England are not only, prima facie, entitled to the use of the sea, etc., for the purposes hereafter to be considered, but their right in this respect cannot be restrained or counteracted by any royal grant, on the ground that the King is the legal and sole proprietor.

In a case already cited, that of Attorney-General v. Parmeter, the court, and on final appeal even the House of Lords, discussed this point in some detail and arrived at the same conclusion. It was held that any royal grants from the crown to a subject of the foreshore "was always subservient to the public rights" of the subjects of the Crown and that the Crown could not, "in any degree affect the public right of the subject passing and repassing upon the salt water; he cannot affect that by any thing which can be done by him."[68] The court went so far as to state that any grant affecting the jus publicum in the foreshore was illegal.[69] Woolrych, writing on this subject a few years later, also observed that a grant to exclude the public from taking fish in a navigable river or in the sea was considered, by his time, to be invalid and that anyone misusing a grant of the foreshore voided such portions of that grant as invaded the public rights.[70]

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68. Attorney-General v. Parmeter, 147 E.R. 352, 356, 363.

69. Ibid., 355. The appellants in the case conceded that any grant to a subject by the Crown was subject to all such public use as the Crown itself held it subject to.

70. Woolrych, Law of Waters, 442-443, 449.

Yet the private owner did have some rights maintainable against the general public. The courts recognized that if it were otherwise those owning property along the seashore or banks of navigable rivers and streams could do nothing to stop the public from indiscriminately tromping across their property at any point. In 1789 in Ball v. Herbert, the court was presented with a case wherein the defendant had exercised his common rights by dragging barges down a river at Wiggenhall in the county of Norfolk by attaching ropes to them and having horses pull them along. This, of course, required that the entire assemblage of horses, men, and ropes had to pass across the plaintiff's foreshore area, much to the annoyance and chagrin of the latter. The court held that there was no common law right of the public to tow on the banks of ancient navigable rivers.[71]

Furthermore, the public could be required to follow a certain right of way to reach the seashore. Once there, however, there existed a common law right of way along the dry sand above the high water mark to the nearest road, subject only to what might be sufficient to protect private property rights.[72] This issue came before the courts in Blundell v. Catterall and proved to be sufficiently controversial that the four judges could not fully agree. Two of them, Holyrod and Abbott, held that the public had no such common law right; a third argued that such a right did exist but did not go to any lengths to explain further. A fourth, Bayley, thought that the right to bathing, for example, should be confined within reasonable limits and should not extend to places where right of fishing with stake nets existed, nor be

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71. Ball v. Herbert, 100 E.R. 560, 3 TR 253 (1789).

72. Hall, Rights and Privileges in the Sea Shore, 176-177, 105, 155.

completely free from regulation by the owner of the soil. He recognized that access was incident to such rights but only by and from such places as necessity or usage had appropriated.[73]

General common law rights could not be lost by local disuse, but could be revived into use for the public good.[74] But, to a certain extent persons could obtain title to the seashore by prescription, by custom, or by usage. Prescription is evidenced by constant and usual "fetching of gravel, sea weed, and sea sand between high and low water mark; inclosing and embanking against the sea; enjoyment of wrecks; and the exercise of jurisdiction over the land."[75] However, for many years in England such prescriptive rights had to be proven to have existed prior to Magna Carta, or "from time beyond legal memory", since exclusive rights to such things as fishery could not be granted by the Crown after Magna Carta.[76] Obstruction rather than prescription would be assumed if the public exercised their rights over the seashore prior to any alleged prescription. In later years the time limit of twenty years to claim by prescription did not hold if a river was navigable and would not be looked upon as a bar to the public right. This was clearly set forth in Vooght v. Winch, a suit to enjoin diversion of a stream by the defendant so that it would no longer pass in front of the plaintiff's mill. The court ordered a new trial on the grounds that if the jury trial had determined the stream to be navigable then the defendant's obstruction for twenty years did not bar the

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73. Blundell v. Catterall, 5 B.R. Ald. 268, 106 E.R. 1190 (1821).

74. Hall, Rights and Privileges in the Sea Shore, 216-217.

75. Angell, Rights of Property in Tide Waters, 271, 275; see also Hale, De Jure Maris, in Hall, xx.

76. Duke of Somerset v. Fogwell, 108 E.R. 325 (1826).

public's rights, contrary to the instructions of the trial judge to the jury in the lower court.[77]

England's American colonies were considered parts of the dominion belonging to the Crown and, "not only the jurisdiction of the British sovereign extended over the territory acquired by the colonists from the native occupants, but also the same jus proprietatis, or right of property, in all the tidewaters included by such territory, existed in the crown, to the same extent as in the tidewaters of the realm, and were held like the latter."[78] This belief, at least as it related to the English common law, is given further support for its acceptance in the United States and more particularly in the state of New York in a description of the common law in McKinney's Consolidated Laws of New York.[79]

> The common law originated early in the history of England. Its rules were principally retained in memory and handed down from generation to generation until they became the unwritten law of the land. These rules were of course applied in cases at law, and "where recognized printed reports of the English courts prior to 1775 show that the common law on any particular subject was by such case established and determined as therein stated, such reports are the best and highest evidence of such common law." Many early decisions, however, were never reported; wherefor, it frequently happens that no case decided prior to 1775 can be found giving expression to a principle admittedly part of the common law; accordingly, "where the rules of the common law relating to a matter under consideration are not expressly stated in the reported cases of the English courts prior to 1775, the statement of the courts of this country and of England subsequent to that time, especially when they do not purport to modify the common law, are not only entitled to careful consideration,

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77. Vooght v. Winch, 106 E.R. 507 (1819); see also Woolrych, Law of Waters, 148.

78. Angell, Rights of Property in Tide Waters, 36-37.

79. McKinney, Consolidated Laws of New York, 1959, Book 2, Constitution, 791. This is a restatement of Waters v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907).

> but to great weight in determining the common-law rule prior to 1775. An unreserved statement by a court as to the common-law rule will in the absence of other authority, be assumed to be based upon custom and the unwritten law antedating such time."

The U.S. Supreme Court and lower federal courts have generally followed this principle in interpreting colonial patents which involve the seashore and have transposed much of the English common law into American law. The Supreme Court dealt with this issue in Martin v. Waddell in 1842.[80] This was an ejectment action involving land below the high water mark in the Raritan river and bay off New Jersey. The plaintiff claimed title to these lands as a successor under grants from Charles II through the Duke of York and the proprietors of New Jersey. The defendant claimed rights under a New Jersey statute which reserved some of the lands in controversy for the purpose of growing oysters, and for which the defendant paid the state a rental payment. The two patents to the Duke of York in 1664 and 1674 gave the Duke and his heirs and assignees a large territory along the Atlantic coast, including all lands, islands, soils, rivers, harbors, marshes, waters, lakes, and fishings. The Duke conveyed part of this territory to the proprietors of East New Jersey, including the land in controversy, for a valuable consideration along with all the rights of property and government which had been conferred on the Duke by the patent from Charles II.

The court found that in 1702 the proprietors had surrendered all of the customary powers and privileges under these patents, including the land in question, to Queen Anne and held that the people of New Jersey then succeeded to the prerogatives and regalities which had been re-invested in the Crown or parliament in 1702. It thus upheld the power of the state to allow the use of

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80. Martin v. Waddell, 41 U.S. (16 Peters) 367.

submerged tidelands for growing oysters and rejected the claim of the plaintiff.[81] The state statute did not allow the commissioners who administered the statute to authorize any obstruction or injury to navigation of tidewaters or to any fishery of fisheries therein. The plaintiff, even though the defendant had complied with the statute, attempted to eject him because of his claim to ownership based on a chain of title extending back to the fee simple grants the proprietors had given to the land below the high water mark. In taking this into consideration the court based its decision upon a construction of the letters patent and the effect of the surrender by the proprietors to Queen Anne in 1702. It stated that the territory was held by the Crown, "in his public and regal character as the representative of the nation, and in trust for them."[82] Citing Blundell v. Catterall and Duke of Somerset v. Fogwell, the Court held that the King, since Magna Carta, had no power, "to grant to a subject a portion of the soil covered by the navigable waters of the kingdom, so as to give him an immediate and exclusive right of fishery, either for shellfish or floating fish within the limits of his grant."[83]

The Court interpreted the charter as not granting the dominion and propriety in the navigable waters and the lands under them as private property to be parcelled out and sold to individuals for his own benefit, but rather construed it as in the nature of a trust for the common use of the community to be established within the patented territory. It reached this conclusion

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81. Ibid., 420.

82. Ibid., 409.

83. Ibid., 410.

by considering the patent to be an instrument "upon which was to be founded the institution of a great political community," and not a deed conveying private property. This new community was to be governed,"as nearly as circumstances would permit, according to the laws and usages of England; and in which the duke, his heirs and assigns, were to stand in the place of the King, and administer the government according to the principles of the British Constitution."[84] In its decision the Court accepted Hale's statements in De Jure Maris, as regards public common of fishery in the sea, creeks, and arms of the sea, as unquestioned.[85]

> The point upon which different opinions have been expressed is, whether since Magna Carta, "either the King of any particular subject can gain a proprietary exclusive of the common liberty." For, undoubtedly rights of fishery, exclusive of the common liberty, are at this day held and enjoyed by private individuals under ancient grants. But the existence of a doubt as to the right of the King to make such a grant after Magna Carta, would of itself show how fixed has been the policy of that government on the subject for the last six hundred years; and how carefully it has preserved this common right for the benefit of the public. And there is nothing in the charter before us indicating that a different and opposite line of policy was designed to be adopted in that colony. On the contrary, after enumerating...some of the prerogative rights annexed to the Crown, but not all of them, general words are used, conveying "all the estate, right, title, interest, benefit, advantage, claim, and demand" of the King in the lands and premises before granted. The estate and rights of the King passed to the Duke in the same conditions in which they had been held by the Crown and upon the same trusts. Whatever was held by the King as a prerogative right, passed to the Duke in the same character. And if the word "soils" be an appropriate word to pass lands covered with navigable water...., it is associated in the letters patent with "other royalties", and conveyed as such. No words are used for the purpose of separating them from the jura regalia, and converting

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84. Ibid., 411.

85. Ibid., 412-413.

> them into private property, to be held and enjoyed by the Duke, apart from and independent of the political character with which he was clothed by the same instrument. Upon a different construction, it would have been impossible for him to have complied with the conditions of the grant. For it was expressly enjoined upon him, as a duty in the government he was about to establish, to make it as near as might be agreeable in their new circumstances, to the laws and statutes of England; and how could this be done, if in the charter itself this high prerogative trust was severed from the regular authority? If the shores, and rivers, and bays, and arms of the sea, and the land under them, instead of being held as a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery, as well as for shell-fish as floating fish, had been converted by the charter itself into private property, to be parcelled out and sold by the Duke for his own individual emolument. There is nothing...in the terms of the letters patent, or in the purposes for which it was granted, that would justify this construction....The land under the navigable waters passed to the grantee as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown.

Extending this beyond 1775 the Court declared that when the Revolution occurred the people of each state became sovereign and thereafter held the absolute right to all the navigable waters and soils under them for their own common use, subject only to whatever rights they later surrendered to the federal government in the Constitution.[86]

The Supreme Court interpreted other colonial charters for territories along the Atlantic coast, those made at approximately the same time, as consistent with its interpretation, and stated that none of these other charters, "differed materially from it in the terms in which the bays, rivers, and arms of the sea, and the soils under them, were conveyed to the grantees."[87]

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86. Ibid., 410. The principles stated in this landmark decision were later extended by the Court to apply to newly admitted states in Pollard's Lessee v. Hagan, 44 U.S. 212, 229 (1845).

87. Ibid., 413-414.

These other patents, according to the Court, should be interpreted in the same manner and be held to be in trust for the public rights in the sea, seashore, navigable waters, and the soil thereunder. With respect to the lands under water, the Court reaffirmed its opinion in Martin v. Waddell when in 1853 they were presented with a case to recover land in Jersey City which had been reclaimed from the water by the defendant under the authority of the state of New Jersey. The plaintiff claimed title under the 1664 patent and later grantees. In Den v. Jersey Company, the Court referring to its previous interpretation of the colonial charters, held that Martin v. Waddell had decided the question of title to land under water as well as the right of fishery, and decided for the defendant because title belonged to the state which had conveyed it to the company.[88] Thus in both cases the Court indicated that it was of the opinion that colonial charters similar to those scrutinized in Martin v. Waddell made certain property granted by them subject to the jus publicum, which could not be alienated by conveyance of the property.

In two cases that came before it during the latter part of the nineteenth century the Supreme Court held that the principles enunciated in Martin v. Waddell were equally applicable to all navigable waters. The question of which waters were navigable was decided based on whether the waters were navigable in fact, rather than by the English common law which defined them as only those in which the tide ebbs and flows.[89] This modification in the common law was made because the only waters in England navigable in fact were considered to be those in which the tide ebbed and flowed, whereas in America there happened

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88. Den v. Jersey Company, 56 U.S. 426 (1853).

89. Barney v. Keokuk, 94 U.S. 324 (1876); Packer v. Bird, 137 U.S. 661, 667 (1891).

to be a great many bodies of water, such as inland rivers and streams, not subject to tidal action. In Packer v. Bird in 1891 the Court stated that under English common law the title of owners of land bordering on waters of a river affected by tides is limited to the ordinary high water mark, with the title to land below that mark in the Crown; in the United States, title to that land is in the state.[90] Navigability became the rule of thumb, not tidal flow. The Court also noted in Morris v. United States in 1899, an action brought by the heirs of Chief Justice Marshall who claimed ownership of land below the high water mark in the District of Columbia, that the various charters granted by the Stuart kigns for territory along the Atlantic coast were intended, "to be a trust for the common use of the new community about to be established, as a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery, and not as private property, to be parcelled out and sold for individual emolument."[91]

When New Jersey sued Delaware in 1934 to determine the boundary line between the two states the Court again had the opportunity to reiterate its original decision in Martin v. Waddell with regard to the states being successors of the Crown to lands under water and thus subject to the restrictions of the jus publicum under which the Crown originally held title. Quoting from the nineteenth century case, the Court declared that, "Never has it been doubted that the grant will be upheld where the soild has been conveyed as an incident to the grant or delegation of powers strictly governmental. In such circumstances, 'the land under the navigable waters passed to the grantee

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90. Packer v. Bird, 137 U.D. 666.

91. Morris v. United States, 174 U.S. 196, 227 (1899).

as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the Crown.'"[92]

The doctrines of jus publicum and public trust came before the Supreme Court sufficiently often and at widely spaced intervals so that it had a number of opportunities over the years to clarify and refine its stand. In the famous case of the Illinois Central Railway Company v. State of Illinois in 1892 the Court dealt with the power of a state to alienate property held in trust.[93] Back in 1869 the state had granted title to more than one thousand acres of submerged land in Lake Michigan to the railroad, comprising most of the commercial waterfront of the city of Chicago, without receiving a valuable consideration. The grant included all submerged land for one mile out from the waterfront extending one mile in length along the city's main business district. Four years later the state legislature revoked the grant by repealing legislation and brought suit to quiet title and confirm the state's ownership of the land granted. The Court upheld the right of the state to revoke the grant, rejecting the claim of the railroad that the grant was an absolute conveyance of title to the submerged lands giving it as full power to use and dispose of the land in any manner it chose as if it were uplands. The Court observed that the grant gave the railroad the power to manage and practically control the harbor of Chicago for its own profit and posed the questions, "whether the legislature was competent to thus deprive the state of its ownership of the submerged lands in the harbor of Chicago, and of the

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92. New Jersey v. Delaware, 291 U.S. 361, 374 (1934).

93. Illinois Central Railway Co. v. State of Illinois, 146 U.S. 387 (1892).

consequent control of its waters," and, "whether the railroad corporation can hold the lands and control the waters by the grant, against any future exercise of power over them by the state."[94]

That each state had ownership and dominion of and sovereignty over its tidewaters and navigable waters, with the right to use or dispose of any portion thereof, was not questioned by the Court. However it noted that whether or not navigable waters and the land under them is privately owned, they are subject to the right of the public to use the waters and to the power of Congress to regulate navigation under the commerce clause. Also, the power of the state to alienate such property, which was held in trust, was limited.[95]

> That the state holds the title to the lands under the navigable waters of Lake Michigan, within its limits, in the same manner that the state holds title to soils under tide water, by common law, we have already shown; and that title necessarily carries with it control over the waters above them, whenever the lands are subjected to use. But it is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to pre-emption and sale. It is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them and have liberty of fishing therein, freed from the obstruction or interference of private parties. The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein for which purpose the state may grant parcels of the submerged lands; and, so long as their disposition is made for such purpose, no valid objections can be made to the grants. It is grants of parcels of lands under navigable waters that may afford foundation for wharves, piers, docks, and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the

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94. Ibid., 453.

95. Ibid., 453-454.

public interest in the lands and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the state. But that is a very different doctrine from the one which would sanction the abdication of the general control of the state over lands under navigable waters of an entire harbor or bay, or of a sea or lake. Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public. The trust devolving upon the state for the public and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining. It is only by observing the distinction between a grant of such parcels for the improvement of the public interest, or which when occupied do not substantially impair the public interest in the lands and waters remaining and a grant of the whole property in which the public is interested, that the language of the adjudged cases can be reconciled. General language sometimes found in opinions of the courts, expressive of absolute ownership and control by the state of lands under navigable waters, irrespective of any trust as to their use and disposition, must be read and construed with reference to the special facts of the particular cases. A grant of all the lands under the navigable waters of a state has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of peace. In the administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the state the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. So with trusts connected with public property, or property of a special character, like lands under navigable waters; they cannot be placed entirely beyond the direction and control of the state.

Stated in its simplest terms, the Court declared that there could be no irrepealable contract to convey property in disregard of a public trust if the grantor is bound to hold and manage it for the benefit of a cestui que trust, which in this case happened to be the people of the state of Illinois.[96] Even though the Illinois Central decision resulted in a four to three division of the Court, the dissenters concurred in the statement of the majority as to the rights of the public in navigable waters and of the limitations of the powers of the state to part with its control over them.

The principles stated in the above case with respect to the power of a state to alienate trust property has been approved by subsequent decisions of the Supreme Court. In Long Sault Development Company v. Call in 1916, in dismissing a writ of error from the New York Court of Appeals for want of jurisdiction by the Court, the Court took the opportunity to repeat and summarize the ruling in the Illinois decision.[97] In Morris v. United States the Court also cited the Illinois decision insofar as the principle that lands below tidewaters could be used and disposed of only when it was done without substantial impairment of the public interest.[98] Five years after the Illinois decision certain riparian owners along the Mississippi River sued a government agency which diverted some of the waters for use as in power generation. The Supreme Court held that the corporate charter of the plaintiff authorizing them to build dams for power generation and to use water were subject to the paramount power of the state, as trustees for

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96. Ibid., 461.

97. Long Sault Development Company v. Call, 242 U.S. 272, 249 (1916); 212 N.Y. 1 (1914).

98. Morris v. United States, 174 U.S. 196, 236 (1899).

the public, to divert the waters for public uses and of the federal government to regulate commerce and navigation, thus maintaining the basic principle of public use of lands held in public trust.[99]

Shively v. Bowlby ranks with Martin v. Waddell and Illinois Central in importance with respect to public rights in the sea and seashore. This case was a suit to quiet title to lands below the high water mark in the Columbia River in Oregon. One party claimed title under a patent from the United States, while the other party claimed title under a deed issued by Oregon which authorized the sale of tidelands, with the state reserving the public right of easement to tidelands to remove oysters and other shellfish and the right to regulate the building of wharves, docks, and similar structures. The Court held that rights and interest in the tidelands, which are subject to the sovereignty of the state, are questions of local law.[100] Because the suit involved the foreshore, the Court reviewed the English common law with respect to public rights therein.[101]

> By the common law, both the title and the dominion of the sea, and of rivers and arms of the sea, where the tide ebbs and flows, and of all the lands below high water mark, within the jurisdiction of the crown of England, are in the King. Such waters, and the lands which they cover, either at all times or at least when the tide is in, are incapable of ordinary and private occupation, cultivation and improvement; and their natural and primary uses are public in their nature, for highways of navigation and commerce, domestic and foreign, and for the purpose of fishing by all the King's subjects. Therefore, the title, jus privatum, in such lands, as of waste and unoccupied lands, belongs to the King as the sovereign; and the dominion thereof,

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99. St. Anthony Falls Water Power Company v. St. Paul Water Commissioners, 168 U.S. 349 (1897).

100. Shively v. Bowlby, 152 U.S. 1 (1894).

101. Ibid., 11.

> jus publicum, is vested in him as representative of the nation and for the public benefit.

The Court went on to note that under common law where the title, the jus privatum, to the soil below high water mark in the sea or arms of the sea was in the Crown, or in private individuals or a corporation by express grant, prescription, or usage, the jus privatum was held subject to the public right, the jus publicum, of navigation and fishing.[102]

The Court also reviewed its position with respect to the colonial charters and the consequences of the American Revolution. Pointing out that the King had held possessions in America as representative of and in trust for the nation, the Court claimed that the colonial charters under the Stuart dynasty conveyed both territory and the powers of government, including the property and the dominion of lands under tide water. From this it reasoned that,[103]

> At common law, the title and the dominion in lands flowed by the tide were in the King for the benefit of the nation. Upon the settlement of the colonies, like rights passed to the grantees in the royal charters in trust for the communities to be established. Upon the American Revolution, these rights, charged with a like trust, were vested in the original states within their respective borders, subject to the rights surrendered by the Constitution to the United States.

Later in McGilvra v. Ross the Supreme Court applied this ruling to the waters of navigable lakes in the state of Washington. This suit contested title to lands below the high water mark of lakes Washington and Union, the plaintiff alleging title under a federal patent while the state claimed title pursuant to the state constitution and passage of title upon admission to the

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102. Ibid., 13. The Court also quoted Lord Hale's De Jure Maris, in support of this point.

103. Ibid., 57.

union. The Court affirmed the dismissal of the case, holding that it was a question of state law and thus agreeing with the position of the state that it owned the lands below the high water mark.[104]

As recently as 1940 the Supreme Court ruled that there is no right of private property in the flow of navigable rivers. In that year a suit was brought against a power company by the federal government to enjoin further construction of a dam on grounds that the company needed a Federal Power Commission license in order to proceed. The Court held that the river where the dam was to be built was navigable and therefore such licensing was required. The company could not claim private ownership.[105] This decision reiterated that in Morris v. United States in 1899 when the Court declared that lands covered by tidewaters are incapable of ordinary and private occupation, cultivation, and improvement since their natural and primary uses are public in nature as highways for navigation and commerce.[106]

As for who could do what with the lands under waters of navigable rivers the Court considered this aspect of ownership in two suits related in topic but separated in time by almost forty years. In 1933 Vermont sued its sister state of New Hampshire to determine the boundary line between the two. The Court based its decision on the colonial charters involved and acts of Congress admitting the plaintiff to statehood. It concluded that the boundary line was on the western side of the Connecticut River at low water mark, thus

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104. McGilvra v. Ross, 215 U.S. 70, 77 (1909). In New York, of course, the rights and duties established by colonial charters prior to the Revolution were recognized by the New York State Constitution.

105. United States v. Appalachin Power Company, 311 U.S. 377, 427 (1940).

106. Morris v. United States, 174 U.S., 235.

giving New Hampshire ownership and control over the soil under the river. preventing Vermont from taking sand, gravel, or other minerals from the shallow parts of the river or islands.[107] When the Indian tribes of Oklahoma sued the state to recover royalties from gas, oil, and other mineral leases granted by the state and enjoin it from issuing leases in the future, the Supreme Court agreed in Choctaw Nation v. Oklahoma that the Indians had title to lands under certain navigable portions of the Arkansas River under treaties long since signed with the federal government. They could put a stop to such exploitation.[108]

Having used the term "high water mark" a number of times, the Court came to the point where it had to define it in 1935 in Borax, Ltd. v. Los Angeles. The City of Los Angeles attempted to quiet its title to lands claimed to be tideland on Mormon Island in the harbor, basing its claim on title received under a state legislative grant. The company claimed title under a federal grant which had been issued after California gained statehood. The Court affirmed a federal court of appeals decision for the city, contending that the federal government had no authority to issue such a grant since the state acquired title when it became a state. During the course of the suit the trial court was directed to determine the boundary between the upland and the tideland, as either the boundary as mean high high tide or the line of the neap tide. The Court accepted the high water mark as the mean of all the high tides over a period of 18.6 years and not the neap tide which is the tide when the moon is in its first and third quarters.[109] The Court described

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107. Vermont v. New Hampshire, 289 U.S. 593, 606 (1933).

108. Choctaw Nation v. Oklahoma, 397 U.S. 620, 635 (1970).

109. Borax, Ltd. v. Los Angeles, 296 U.S. 10.

the high water mark as not being a physical mark on the ground made by the water, but rather a line determined by the course of the tides during its daily ebb and flow, that is, the foreshore would be the land between ordinary high and low water marks.[110]

Beginning in 1855 a number of cases came before the Supreme Court having to do with the regulation of fishing and shell fishing. In that year a ship owned by a citizen of Pennsylvania was seized by a sheriff in Maryland while it was engaged in dredging for oysters in the Chesapeake Bay. Later the ship was forfeited to Maryland under a state statute regulating the means by which oysters could be harvested in state waters. The Supreme Court upheld the conviction stating that the statute was within the power of the state as trustee over navigable waters and the lands under them because it held it for conservation of the public rights of fishery and could regulate the mode of enjoyment of that right so as to prevent destruction of that resource.[111] The Court upheld the Maryland statute on the grounds that it did not affect the common right of taking oysters, except for the purposes of protecting the public right from injury, and that it was in furtherance of and not in conflict with the public right of taking oysters.[112] According to the Court, the soil below low water mark is subject to the exclusive propriety and ownership of the state on whose maritime border and within whose territory it lies, "subject to any lawful grants of that soil by the state, or the sovereign power which governed its territory before the Declaration of Independence."[113] The

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110. Ibid., 22-23.

111. Smith v. Maryland, 59 U.S. 71 (1855).

112. Ibid., 75.

113. Ibid., 74.

state held such lands, "not only subject to, but in some sense in trust for, the enjoyment of common liberty of taking fish, as well as shell-fish as floating fish."[114]

The question of whether citizens of a state had a common property right in the shell-fish in the tidewaters within the jurisdiction of the state which the state could reserve exclusively to its own citizens came before the Court in McCready v. Virginia in 1876. The Court rejected the contention that state statutes in that respect violated the privileges and immunities clause, Article 4, Section 2 of the United States Constitution and said that,[115]

> Each state owns the beds of all tidewaters within its jurisdiction, unless they have been granted away. In like manner, the states own the tidewaters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the state represents its people, and the ownership is that of the people in their united sovereignty. Martin v. Waddell, 16 Pet. 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and inter-state commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the state, which has consequently the right, in its discretion, to appropriate its tidewaters and their beds to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the United States thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship.

The Court reaffirmed this position in later cases. When it upheld a conviction for violation of a Massachusetts law prohibiting fishing with a

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114. Ibid., 74.

115. McCready v. Virginia, 94 U.S., 391, 394-395 (1876).

purse seine in Buzzard's Bay, the Court, in Manchester v. Massachusetts, cited the McCready decision.[116] Although the Court rejected the right of Louisiana game and fish officials to seize fishing equipment allegedly used in violation of a tidewater fishing law in Leong Mow v. Board of Commissioners, it did state that Louisiana could charge higher license fees to out-of-staters than to its own citizens.[117] In a squabble between the states of Oregon and Washington over concurrent jurisdiction over the Columbia River, in which the former claimed its laws against fishing on Sunday applied, the Court pointed out that this would be the case only if Washington acquiesced in the application of Oregon law to its territory to which it had title, including those portions of the river within Washington's boundaries.[118]

The regulatory power of a state to control the removal of oysters on state owned lands under water came under attack in 1929 as deprivation of property without due process of law. In Gloucester Seaford Workers' Association v. Houston the Court dismissed the suit claiming that licensed oyster tongers had no property right in natural oyster beds, but only the privilege of removing the oysters subject to the state's power to regulate their activity as owner of the tidelands and the fish therein.[119] That is to say, citizens of a state have a right growing out of their sovereign capacity as citizens of the state, but it is subject to reasonable rules and regulations by the state legislature. In another case, this one having to do with the catching

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116. Manchester v. Massachusetts, 138 U.S. 240 (1891).

117. Leong Mow v. Board of Commissioners, 185 F. 223, (C.C.E.D.La. 1911).

118. In re Mattson, 69 F. 535, 542 (C.C.D. Ore. 1895).

119. Gloucester Seafood Workers' Association v. Houston, 35 F. 2d 193, 196 (E.D.Va. 1929).

of shrimp off the coast of South Carolina, the Court held that the state has a sufficient interest in the shrimp industry within the three-mile marginal belt off its coast to exercise policy power to protect and regulate it. It could impose a tax on any catch, but when the state charged its own citizens $25.00 per boat and non-citizens $2,500.00 per boat the Court felt this was a bit outlandish and violated the privileges and immunities clause of the federal constitution.[120]

The lower federal courts have also frequently had occasion to comment on the common law of public rights and the public trust in the sea and seashore. In 1867 in Mobile, Alabama, the city attempted to declare all wharves in the city to be free and to discharge all persons from paying any wharfage dues. The state court quoted authorities to the effect that the king had no power to grant exclusive privileges to the sea and seashore impairing the right of the public to take fish and that grants of such exclusive privileges were void ultra vires. The king was trustee for his subjects for the purpose of securing to them collectively all of the privileges and advantages which can accrue from lands under tidal or navigable waters, including the collection of wharfage fees. Since the city's action was in violation of the riparian and property rights of a citizen Mobile was enjoined from continuing in that course.[121] And in Chisolm v. Caines, a South Carolina case having to do with the right of the state to divest itself of navigable streams on private property, the state court held that the sovereign could not grant exclusive use of public navigable streams, bays, and harbors, or the beds thereof, so as to prevent their use by the public for commerce, travel, or pleasure.[122]

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120. Toomer v. Witsell, 334 U.S. 385 (1948).

121. Leverich v. Mayor of Mobile, 110 F. 170, 177, C.C.S.D. Ala. 1867.

122. Chisolm v. Caines, 67 F. 285, 291, C.C.D. S.C. 1894.

When an action came before the courts having to do with property held in trust they paid careful attention to an enforcement of the doctrines. In United Thacker Coal Company v. Red Jacket, Jr. Coal Company, which had to do with the quieting of title to granted lands the court returned it to a lower court partly because public trust property was not involved. Yet it did take the opportunity to point out that grants of property held in trust by the states are to be strictly construed against the grantee.[123]

In order to recover lands under water from a private company in 1929 the federal government brought an action of ejection based on ownership by Maryland when it became a state and then ceded the land to the United States for inclusion within the District of Columbia. The court of that district said that by the nature of the grants along the Atlantic coast, the sovereign ownership of navigable waters, "belongs by virtue of the prerogative of the sovereignty and is held in trust for the nation and subject to public uses."[124] The same construction was given to the doctrine of public trust in Pike Rapids Power Company v. Minneapolis, St. Paul & S.S.M.R. Company in 1939 because the defendant, a railway company, had begun construction of a bridge by placing bridge piers in the bed of a river with the consent of Congress. The court held they could do so because it was using public land to the advantage of the public.[125]

Attempts to restrict the rights of the public to fish in public waters

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123. United Thacker Coal Company v. Red Jacket, Jr. Coal Company, 232 F 49. 59, 4 Cir. 1916.

124. Maine Railway and Coal Company v. United States, 265 F. 437, 441, C.A.D.C. 1920.

125. Pike Rapids Power Company v. Minneapolis, St. Paul, & S.S.M.R. Company, 99 F. 2d 902, 908; 8 Cir. 1938, cert. den 305 U.S. 660 (1939).

and to use them for legitimate purposes have been thwarted a number of times. In 1934 a suit was brought by some property owners of Pine River, Michigan, to force the state to enjoin the Michigan Conservation Department and the state's attorney-general from making them remove obstacled from a stream, they claiming it was their property and the public had no right of passage to fish. The court replied that there could be no narrowing of rights of the public to fish in public waters in light of the increasing private ownership of lands bordering lakes and streams. In this case, Ne-Bo-Shone Association v. Hogarth, the court observed that, "The citizen ought not (for other than the most compelling reasons) to be deprived of those blessings which nature's bounty has provided."[126] This, of course, simply restated one of the basic points in the 1894 decision of the South Carolina court in Chisolm v. Caines. At that time the court stated that at common law the riparian rights of the owner of land bordering on a navigable stream are subordinate to the rights of the public to use of the waters for navigation, fishing, skating, and all other purposes. The seashore, the beds of harbors, and the channels of rivers, "must always be kept open for public use, commerce, trade, and pleasure."[127]

Only a few cases remain to be cited that had to do with the sea, seashore, and lands under water. In general they are repetitions of the principles upheld in all previously cited cases and only require passing mention. Western Pacific Railway Company v. Southern Pacific Company pertained to ownership of land in San Francisco Bay which the plaintiff wished to use for

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126. Ne-Bo-Shone Association v. Hogarth, 7 F. Supp. 885, 890, W.D. Mich. 1934.

127. Chisolm v. Caines, 67 F. 291.

railroad tracks and wharves. The Court stated that the grant did not give exclusive title to the public land.[128] In 1903 some riparian owners attempted to enjoin the city of Chicago from interfering with construction of a dock in front of lands owned by the plaintiffs on the Calumet River. They had a permit from the U.S. Army Corps of Engineers but had disregarded a local ordinance which required that permission be obtained from the city's Department of Public Works. The Supreme Court dismissed the suit on the grounds that approval of federal, state, and municipal governments were required in order to erect structures in navigable waters.[129] A similar situation developed in Portland, Oregon in the same year when the defendant, armed with an Army Corps of Engineers' permit proceeded to extend a dock out to a new harbor line in the Willamette River. The Board of Commissioners of the city ordered him to cease construction and obtained an injunction from the state's supreme court. The Supreme court affirmed the opinion of the lower court that the defendant had to have permission from local authorities.[130] In 1967 a Norfolk, Virginia dredging company sued a shellfish dredging company for damages to a channel it had scooped out. The Court decided, based on innumerable precedents by that time, that the Army Corps of Engineers permit to dredge did not pass any title either in real property or any exclusive privilege, that the permit was simply to insure the safety of navigation, and that the plaintiff did not have sufficient claim to title in the public lands to bring suit.[131]

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128. Western Pacific Railway Company v. Southern Pacific Company, 151 F. 376 (C.C.A. 9 Cir. 1907).

129. Cummings v. Chicago, 188 U.S. 410 (1903).

130. Montgomery v. Portland, 190 U.S. 89 (1903).

131. Norfolk Dredging Company v. Radcliff Materials, Inc. 264 F. Suppl 399 (Ed. Va. 1967).

Finally, one cannot ignore the famous United States v. California case of 1947 in which the federal government sued the state to determine which government owns or has paramount rights in and power over the submerged land off the coast of California between the low water mark and the three-mile limit.[132] The controversy came about as an outgrowth of the argument over which one had the superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land. Money, of course, was a major concern also since whoever won stood to receive a substantial income from royalties and lease rentals paid by the oil and gas companies that exploited these vital natural resources. The Supreme Court held that the state is not the owner of the three-mile marginal belt along its coast and that the federal rather than the state government has paramount rights in and power over that belt. The Court also considered the various colonial charters of the original thirteen states submitted as evidence to prove that each had separately acquired ownership of the three-mile belt after the Revolution. In the opinion of the Court this was not the case; the states did not come into possession of the area individually but as a single unit known as the United States.

Because rights and interests in tidelands are also questions of state law,[133] decisions of the New York courts with respect to the rights of the public to use of the sea and seashore must be studied. Also decisions of these courts with respect to interpretations of colonial patents, which should be subject to Martin v. Waddell, are of primary concern here. Since these patents have to do with property held in trust and the extent to which it can

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132. United States v. California, 332 U.S. 19 (1947).

133. See U.S. v. Chandler-Dunbar Company, 229 U.S. 53 (1914); Borax, Ltd. v. Los Angeles, 296 U.S. 10 (1935); Shively v. Bowlby, 152 U.S. 1 (1894).

be alienated, Illinois Central should be considered as the governing case. In the former case constitutionally protected rights of property were involved; in the latter, the power of the state legislature as it relates to lands held in trust. How the courts of the state of New York dealt with these issues will be discussed in the next chapter.

Chapter VII

The Trust Doctrine, The Colonial Patents and the New York State Courts

Judicial interpretation of the three Huntington patents should normally be based on the law in England at the time they were drafted. However, these patents were confirmed in the first New York Constitution in 1777 and all subsequent state constitutions are subject to article I, section 14 which adopted the English common law and acts of the colonial legislature that formed the law of the colony prior to April 19, 1775.[1] Under the article decisions of the English courts before that date are the "best and highest evidence of such common law."[2] Where no decision by an English court before 1775 on a particular subject under consideration can be found,[3]

> the statement of the courts of this country and of England subsequent to that time, especially when they do not purport to modify the common law, are not only entitled to careful consideration but to great weight in determining the common law rule prior to 1775. An unreserved statement by a court as to the common law rule will be in the absence of other authority be assumed to be based upon custom and the unwritten law antedating such time.

The New York Court of Appeals upheld this rule at the end of the nineteenth century in a suit involving a Long Island Town and its claims under colonial grants. The town of Southampton became involved in a law suit when it exercised its colonial charter rights in 1899. The state became a party

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1. Knapp v. Fasbender, 151 N.Y. S. 2d 668, 1 N.Y. 2d 212, 134 N.E. 2d 482, the most recent case deciding this, in 1956, has been discussed extensively elsewhere in a previous chapter.

2. Waters v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907).

3. Ibid., 302.

to the suit and disputed the town's claims under its charter. Originally the defendant had erected a road on piles and a draw bridge across Great South Bay with the permission of the trustees and inhabitants of the town, but the state questioned the authority to do so. The court held that the colonial charters brought into question should be interpreted according to the law of the period of their execution in People ex rel. Howell v. Jessup[4] and declared that the town did indeed have title to the lands under water by virtue of colonial patents. This gave them the right to authorize any such structures so long as they did not interfere with navigation. The state had no recourse unless it could prove an unreasonable obstruction to navigation.

An examination of the common law of England has found no significant differences in the applicable English common law at the dates of issuance of the colonial charters to Huntington and of 1775, so that choice of the latter date as a basis for interpretation of the patents does not affect the interpretation of them. These patents, of course, should be considered to be consistent with and controlled by the English common law with respect to the duties of the trustees and the rights of the cestui que trust under them.

Under the English common law of public rights in tidal areas, members of the public had a right to use the sea for fishing, navigation, and bathing. They had a right to passage across the seashore to exercise these rights as well as the right to collect sea shells, and and sea weed on the seashore. The Crown, which held the seashore subject to these public rights, could not defeat such rights by grant of the seashore to private individuals. Though an individual could obtain title from the Crown to the seashore by grant, prescription, or custom and usage under certain circumstances, such individuals

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4. People ex rel. Howell v. Jessup, 160 N.Y. 249, 59 N.E. 682 (1899).

held the seashore subject to the jus publicum. The patents, once issued, became cloaked with the dignity and responsibilities of the Crown in this respect. They should be regarded as making the trust property held by them inalienable and of affording all the residents of Huntington the rights of navigation, fishery, bathing, and collecting materials from the tidewaters and seashores as well as access thereto. The fact that tidewaters and seashores, which are considered held under a public trust under the English common law, were conveyed to the trustees of the town, should be interpreted as precluding further inalienability of these areas. Even if the property were considered to be alienable by the trustees under the patents, the English common law requires that the conveyees and their successors in interest be held to hold the property subject to the jus publicum. But, the woods, pastures, meadows, and uplands in general conveyed to the trustees were not subject to the rights of the public under the common law. Such property might be considered alienable to private individuals without regard to the rights of the public therein. "The rights of private prerogatives of the crown [in such land] being of a secondary nature, and not necessarily dependent on the public rights, or affecting the common utility of the realm were allowed to be transferred..."[5]

Under the common law of England the King had the right of dominion over lands under tide waters which he held in trust for the public and which he was powerless to alienate. Nevertheless, the Crown, and later the municipalities receiving grants from it, could use such lands if it appeared to be in the public interest to do so and if the use did not interfere with access rights. A public utility company in North Hempstead, New York, tested this principle

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5. Schultes, Aquatic Rights, 11.

in 1909 when it proceeded to erect a line of poles and wires between high and low water mark in front of the upland of private individuals who did not particularly appreciate these unaesthetic additions to their view of the harbor. Putting aesthetics aside they protested on the grounds that the poles restricted their access as riparian owners to the water. The Appellate Division of the state's Supreme Court took the position in Oelsner v. Nassau Light and Power Company that riparian upland owners have not succeeded to all of the proprietary rights of the sovereign in the foreshore, and do not have title to or control over the land under water. They only have an easement.[6]

In its decision the court stated that royal grants conveying land under water did not convey the right of dominion for purposes of navigation only, but also the title and the proprietary rights of the king. Riparian owners are entitled only to a reasonable use of an easement consistent with the right of the royal grantee (the state or municipality) to make use of the land as the public interests may require, "Where the land under water is included within the precise terms of the [colonial] grant, such grant operates as a conveyance of it. Since the town has title, it has the right, subject to the easement of the upland owner, to make such public use of it as it deems proper, precisely as the state has that right respecting the land under water to which it has title."[7]

Generally speaking, in New York the state, as the successor to the Crown of England, is the owner of the foreshore or tideway, except where the Crown had parted with the title to such lands by grants before the state succeeded

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6. Oelsner v. Nassau Light and Power Company, 134 App. Div. 281, 118 N.Y.S. 960 (1909).

7. Ibid., 963.

the Crown as sovereign. A state court expressed this opinion in Best Renting Company v. City of New York in 1928 when a question of the title to a point of land in Rockaway was brought before it. The defendant claimed ownership by virtue of two grants from the state, but the court held that the city could have gained title only if the state had title to convey, which it did not because the plaintiff could prove his title originated in a colonial grant and thus antedated any state claims.[8]

The validity of the Huntington patents has been upheld by the Supreme Court of the United States and by the New York Court of Appeals, which have held that the patents have been confirmed by the first New York constitution and all subsequent state constitutions.[9] This has been accepted by the courts in People ex rel. Howell v. Jessup, in which a court declared they had been confirmed but not otherwise affected,[10] in Lowndes v. Huntington in which it was affirmed that the Town of Huntington, through its trustees and in its corporate capacity, gained legal title to the uplands and lands under water described in the patents, and in Knapp v. Fasbender which reaffirmed the patents and outlined the scope of the jurisdiction and authority of the trustees.[11]

The Nicolls, Dongan, and Fletcher patents are grants of territory and corporate franchises, according to the Lowndes v. Huntington decision, and, though the territory and corporateness was granted to the Trustees of the

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8. Best Renting Company v. City of New York, 248 N.Y. 497 (1928).

9. Lowndes v. Huntington, 153 U.S. 1 (1894). This case was discussed extensively in a previous chapter.

10. People ex re. Howell v. Jessup, 160 N.Y. 249, 266-267 (1899); see also Sage v. the Mayor, 154 N.Y. 61, 82-83.

11. Knapp v. Fasbender, 1 N.Y. 2d, 212; 151 N.Y.S. 2d 668; 134 N.E. 2d 482 (1956).

Freeholders and Commonalty of the Town of Huntington, they were not granted to the town itself. When a local resident of the town brought suit against Huntington to force the renewal of a lease in 1918 the court decided that it was proper to name the Town of Huntington as a defendant, even though the lease was with the trustees, because in 1872 the Trustees of the Freeholders and Commonalty had been replaced by the supervisor, town clerk, and the assessors who then acted as a board of trustees. "It must be presumed that such town officials have since exercised the functions of such former trustees of the freeholders and commonalty of Huntington," but the property in question under the patents is, "the proprietary, private property of the town of Huntington, which is not held or managed in its governmental capacity."[12] Therefore, these local officials had to act in their capacity as the Board of Trustees and no legislative authority is necessary to enable them to deal with the property as the town's interests may require. Since they, as town officials, had so acted, then a suit against the town was deemed proper in such instances when the officials put on their trustee hats and doffed their government official hats. Thus, the Town of Huntington, since it holds land under the patents as a proprietor and not in a political or governmental capacity is entitled to the same remedies for the protection of its property rights as are available to an individual. Needless to say, this latter statement by the court is somewhat modified by the fact that, in addition to the rights available to any private property owner, Huntington has the added factor of holding the property in public trust, which adds yet another dimension to the property and its use.

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12. Sammis v. Huntington, 186 App. Div. 463; 104 Misc. 7; 171 N.Y.S. 965 (1918); 174 N.Y.S. 610 (1919).

These patents vested ownership of the property in the town in its corporate capacity and not in the patentees individually named in the grants nor in the freeholders and commonalty individually, at least according to the decision in Sammis v. Huntington. Somewhat in contradiction to this case is that of People ex rel. Palmer v. Travis, in which the court said not only that the patentees of another colonial charter town did not receive title as individuals but that they also did not receive it as tenants in common.[13] This case dealt with the question of whether title to certain lands belonged to private individual claimants, the State of New York, or New York City. The lower courts, affirmed by the Court of Appeals, decided in favor of the private individuals and awarded damages. When payment was not forthcoming from the state comptroller a writ of mandamus was sought. The court held that the Court of Claims had jurisdiction to decide this question of title and also held that the colonial charters of the city gave them title as public trustees, which title the city held for governmental and public uses. The court also said that such property, held as a public trust under colonial charters, could not be appropriated so as to interfere with the rights of the public.[14]

It has been said that a court should look to when a patent was made in order to determine what estate was vested in a town. In Trustees of Brookhaven v. Smith, a case which will be more fully discussed later, the New York Court of Appeals stated,[15]

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13. People ex rel. Palmer v. Travis, 223 N.Y. 150, 162; 119 N.E. 437 (1918).

14. Ibid., 223 N.Y., 164.

15. Trustees of Brookhaven v. Smith, 98 App. Div. 212; 90 N.Y.S. 646, 648 (1904); reversed on other grounds, 188 N.Y. 74; 80 N.E. 665 (1907).

> The title to lands under tide waters, within the realm of England, were by the common law deemed to be vested in the king as a public trust, to subserve and protect the public right to use them as common highways for commerce, trade, and intercourse. The king, by virtue of his proprietary interest, could grant the soil so that it should become private property, but his grant was subject to the paramount right of public use of navigable waters, which he could neither destroy nor abridge. In every such grant there was an implied reservation of the public right, and so far as it assumed to interfere with it, or to confer a right to impede or obstruct navigation, or to make an exclusive appropriation of the use of navigable waters, the grant was void. In his treatise De Jure Maris (page 22) Lord Hale says: "The jus privatum that is acquired by the subject, either by patent or prescription must not prejudice the jus publicum, wherewith public rivers and the arms of the sea are affected to public use." And Mr. Justice Best in Blundell v. Catterall, 5 Barn. & Ald. 268, in speaking of the subject, says: "The soil can only be transferred subject to the public trust, and general usage shows that the public right has been excepted out of the grant of the soil." The principle of the common law to which we have adverted is founded upon the most obvious principles of public policy. The sea and navigable rivers are natural highways, and any obstruction to the common right, or exclusive appropriation of their use, is injurious to commerce, and, if permitted at the will of the sovereign, would be very likely to end in materially crippling, if not destroying it. The laws of most nations have sedulously guarded the public use of navigable waters within their limits against infringement, subjecting it only to such regulation by the state, in the interest of the public, as is deemed consistent with the preservation of the public right.

When one considers the extent to which lands held in public trust could be granted, there is a principle which must not be ignored. If an exclusive right which impairs the jus publicum is claimed by an individual under such a grant of by statute, the rule of strict construction applies, and the individual "must be able to show clear warrant of law in support of his claim, and inferences or implications will not be indulged in to sustain it."[16] This was brought out in three cases. First, in People v. New York and Staten Island Ferry Company, the state was upheld in its efforts to restrain a

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16. People v. New York and Staten Island Ferry Company, 68 N.Y. 71, 78 (1877).

private company from building piers into the bay of New York because the company had gone beyond its grant privileges and the state had the power to regulate the use of the area in the public interest.[17] In a vaguely similar type of action brought by the Town of Smithtown against a private oyster firm which persisted in planting and harvesting oysters within the limits of St. James Bay or Stony Brook Harbor, the court declared in Town of Smithtown v. St. James Oyster Company that the actions of the firm threatened to destroy the oyster beds, that the town could enjoin it from further activity because long and peaceful use and possession by the town for the benefit of the town's inhabitants had given it continuous, exclusive, open, and notorious control, that long use showing control over the oyster fisheries gave the town the benefit of any presumption which may be used to show title by prescription, and that, therefore, it had the right to restrain the private company from using what was tantamount to public lands.[18] And finally, when the state disputed the title of the Town of Brookhaven to lands under water, claiming a superior title, the court, in response to an action for a declaratory judgment, decided that the Nicolls and Dongan charters to that town gave them clear and undisputed title, and the town had the law to support its claim to the beds of Mount Sinai Harbor, Port Jefferson Harbor, Setauket Harbor, and Conscience Bay, to hold in trust for the people of the town.

Another case involving Brookhaven further highlight the rights that colonial charter towns acquired under their patents. In Trustees of Brookhaven v. Strong the town trustees attempted to recover damages from the defendant who had been oyster fishing in Great South Bay for commercial profit and not

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17. Ibid., 71.

18. Town of Smithtown v. St. James Oyster Company, 80 Misc. 173; 140 N.Y.S. 981, 984 (1913).

for his own consumption. If Strong had paid the fee fixed by the trustees for commercial oystering, or if he could have proved he engaged in the activity for his own personal use, he would have been conforming to local practices. However, he disputed the trustees' right to so control the oyster fishery in the bay, but did agree that if the town did have title he would have to pay the fee required. The court, after reading the colonial charters, agreed with the trustees that the charters did in fact grant them the lands under water and that the defendant, therefore, was subject to the local ordinances of the town's trustees.[19] Sixty years later the court had not changed its mind insofar as such local regulatory ordinances were concerned. In People v. Brennan, the court upheld the conviction of the defendant, a non-resident, for digging for sand worms within the boundaries of a town without paying the non-resident fee as required by local law.[20]

Under the English common law there was an inherent trust which attached to lands under tidewaters, whether title to such lands was held by an individual or by a public or private corporation. Under that trust there were certain public rights, such as that of navigation in the navigable waters of the realm, which the king, particularly after Magna Carta, could not alienate since they were vested in him as the crown or sovereign and held in trust for the people at large and not individually. Nevertheless, the king could convey title of lands below high water mark, subject to the public rights of navigation and fishing for example. The conveyee then held his title subject to the same trusts as the conveyor, the king. This principle carries with it

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19. Trustees of Brookhaven v. Strong, 60 N.Y. 56 (1875).

20. People v. Brennan, 255 N.Y.S. 331; 142 Misc. 225 (1931).

special meaning for the colonial charter towns when it comes to determining what activity is superior to another as a matter of public right. For example, in Lewis Blue Point Oyster Company v. Briggs in 1908 the oyster company brought a suit for damages against the defendant, a dredging company, because it held a lease from Brookhaven, by virtue of the town's colonial patent, to plant, cultivate, and harvest oysters. The defendant had entered into a contract with the federal government to dredge a channel for the improvement of navigation and, in carrying out its terms, channeled through some of the plaintiff's oyster beds.

The case went through the New York courts and eventually came to the U.S. Supreme Court, which affirmed the state court's decision. Basically, it was held that it was true that the king could dispose of his jus privatum in lands under navigable waters as he saw fit, without hindrance or restrain from the law, but since his title included a jus publicum and was held in trust for his people, he could not dispose of this aspect of it by grant of otherwise. Citing Lord Hale's De Jure Maris, the court declared that jus privatum was subject to jus publicum. The former was granted, locus in quo, to the colonial grantees, the trustees of the town, but the jus publicum insofar as navigation was concerned went to the original thirteen states. In grants from the sovereign to the subject the terms of the grant are taken most strongly against the grantee and, therefore, there is an implied reservation in the grants of the right of navigation which Congress can make use of to improve navigation by deepening the waters over land even though such land under water is leased to a private individual for a particular purpose. In such cases there is no taking of property in violation of the Fifth Amendment since the land is held subject to such rights.[21]

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21. Lewis Blue Point Oyster Company v. Briggs, 129 App. Div. 574; 114 N.Y.S. 313 (1908); affirmed 198 N.Y. 287, 91 N.E. 846 (1910); affirmed 229 U.S. 82 (1913).

Indirectly the same view was held in the middle of the nineteenth century in People v. Canal Appraisers. In that case some riparian owners along the Mohawk River brought suit against the Erie Canal appraisers for diverting the waters of the river for purposes of the canal. The court held that the river was a navigable stream and riparian owners were not entitled to damages for a diversion or use of the water when it was done by the state for a public canal beneficial to all.[22]

In general the New York Court of Appeals followed Lord Hale's De Jure Maris, with respect to the king's title in the sea and seashore, in this and similar cases. It recognized that under the common law every subject had a common right to fish in the sea, in navigable rivers, and in navigable arms of the sea. Private rights were subordinate to public rights when it came to exercise of these common rights or when the lands and lands under water were to be used for a public purpose other than that specifically intended by any private owner if the latter proved in conflict with the former.[23] This court also followed the U.S. Supreme Court in defining "navigable" as navigable in fact, rather than in the English common law definition of navigable subject to the ebb and flow of the tides. The proprietors of land on navigable rivers had a right to the soil only to high water mark, with the Crown having title to all soil below high water mark as publici juris.[24]

According to this doctrine of the courts the king could grant no title other than what he himself held; the title in his hands being subject to a trust, it passed to his grantee subject to the same trust.[25] The king's

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22. People v. Canal Appraisers, 33 N.Y. 461 (1865).

23. Ibid., 468-469, 470-476.

24. Ibid., 487.

25. Lewis Blue Point Oyster Company v. Briggs, 110 N.Y.S. 37, 39.

proprietorship of lands under tide water passed to the states except as such property rights had been granted by royal charters to the original colonial proprietors, who took the title to those lands in their corporate capacity in trust for the communities established or later to be established by them.[26] This was construed by one court decision in Oelsner v. Nassau Light and Power Company as meaning that riparian owners had no title to lands under water and by another court, in Lewis Blue Point Oyster Company v. Briggs, as meaning that grants from the Crown granted no rights unless granted expressly, and even then such grants would be interpreted most favorably for the sovereign and against the grantee. One relevant case in this respect is Appleby v. City of New York. The City had granted lands under the Hudson River to private individuals which it had received under its own colonial charter. For these grants it received a substantial consideration. Many years later the City began to dredge the lands for harbor improvement and an injunction against it was sought by the private owners. The U.S. Supreme Court held that the plaintiffs were indeed entitled to an injunction against the dredging, which would be an unconstitutional impairment of contract, and reversed the decision of the New York Court of Appeals which had held that the City was only required to pay compensation to reacquire title to the land in order to dredge.[27]

However, even though a patent from a sovereign to a subject is to be construed more strictly in favor of the Crown, it is less so in the case of a patent from a sovereign to a town, which is to be construed liberally to effect its object. This point was made in People v. Foote in 1934. Three parties,

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26. Oelsner v. Nassau Light & Power Company, 118 N.Y.S. 963.

27. Appleby v. City of New York, 235 N.Y., 351 (1923); reversed 271 U.S. 364 (1937).

the state, the towns of Oyster Bay and Hempstead, and private individuals laid claim to a parcel of land on the south shore of Long Island, known as Seaman's Gore, which included part of Jones Beach State Park. The court affirmed the title of the state against the other contenders, based upon the reservation to the state of beach, meadow land, and land under water which passed from the Crown to the state. The private parties' colonial grants were not interpreted as specifically passing title to the land nor were the towns' claims upheld for the same reason, because "land under water, particularly navigable waters, is presumptively the property of the State and the burden is upon one claiming the contrary."[28] In the case of the Town of Huntington no such obstacle is present because it's patents are quite explicit as to what is granted. The burden, if any, is a light one.

Even though the colonial patents of towns were intended to convey to the towns certain rights belonging to the public, on at least one occasion the rule, as enunciated in Trustees of East Hampton v. Vail, that, "their language should be construed most favorably to the people, and in....words or phrases which are ambiguous or admit of different meanings are to receive a construction most favorable to the public," did not prevail for East Hampton.[29] The town tried to eject the defendant from a tract of land covered with water known as Fort Pond Bay. Unfortunately for the town it did not, according to the court, sufficiently prove its title as a matter of law and Vail retained ownership of the land in question.

The New York courts are also very strict with respect to alienation of

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28. People v. Foote, 242 AD 162; 273 N.Y.S. 567 (1934); appeal dismissed 273 N.Y. 629, 630 (1937).

29. East Hampton v. Vail, 151 N.Y. 463, 472 (1897).

property held in trust by towns and municipal coporations. Where a municipal government conveys land granted to it under colonial patents to private citizens, the conveyance will be presumed to have included only uplands to high water mark, with the municipal government retaining tideways and lands under water as trustees for the public. In the words of the court in Matter of Mayor of New York, "in the absence of language clearly indicative of any different intent, grants of land by municipalities or other governmental bodies, where the lands are bounded by navigable waters or by waters whose tides ebb and flow, carry title only to the high water mark."[30]

That case had to do with the efforts of the city to acquire the title and interests of all persons, including upland and land under water or the rights thereto, abutting Riverside Drive between 72nd and 129th streets. The city based its case on its Dongan patent of 1686; those who resisted laid claim to the area in question by tracing title back to a grant from the city in 1701 to a private individual. The court held that it is a presumption that, unless there are specific words or clauses to the contrary, the intent of the 1701 grant was to convey title only to the high water mark. It agreed that the king did have the right to convey tideways on the shores of high seas and on navigable rivers, but he is not to be presumed to have done so merely by bounding the conveyance upon the sea or the river. Such terms granted only to the high water mark and other more explicit words of conveyance had to be in the instrument to convey lands under water. The court also held that the Dongan charter granted the city the foreshore in the interests of commerce and of the public as well as the right to charge wharfage on docks built there, but also, both expressly and inferentially gave the city the power to make laws, rules, and regulations with reference to the use of the foreshore. Thus,

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30. Matter of the Mayor of New York, 182 N.Y. 361; 75 N.E. 156 (1905).

the 1701 grant gave only to the high water mark with the city retaining the tidelands and lands under water as trustee.[31]

One court decision went so far as to state quite clearly that a grant to a private citizen of land held under colonial patents did not pass title, nor could it, to land below the high water mark even though the grant was for a valuable consideration. In Somerville v. City of New York, where a court judgment was sought to quiet title to certain permises on Coney Island which had been under tidal water, the court held that the test of title under a colonial grant was not the extent of ebb and flow, or the depth of water at high tide, but was whether the tide ebbed and flowed over the land itself at all. Fee title, then, was held by the city and a later grant from the state did not really convey legal title. The fee title could not have been granted to any part of the land under the bay to a private citizen, because "It is no answer to say that the depth of the water was not sufficient to make the public right important, or that a road ran across the foreshore traveled at low tide. The public right in the foreshore is one of the most ancient rights, and of recent years its importance to the public as a whole is becoming more important in this vicinity."[32] Again public rights prevailed over private interests.

When Huntington received its patents the trustees created by them held some lands which they could dispose of and others, such as lands below the high water mark, for public purposes. Even at the time of the grant legal opinion in England accepted the rule that such grants passed certain lands which could only be administered for the public good and not be appropriated by others or by the town for uses which would substantially interfere with the rights of

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31. Ibid., 316.

32. Somerville v. City of New York, 89 Misc. 188; 153 N.Y.S. 253, 255-256 (1915).

the public.[33] By inference from English common law of the period neither the Nicolls, the Dongan, nor the Fletcher patent specifically authorized the trustees to convey lands vested with a public trust. If the trustees did convey any of them, they breached the trust. If they breached the trust for a valuable consideration, the conveyee is subject to the same trust if he had notice that the property conveyed was subject to a trust.[34]

Applying these principles to an interpretation of Huntington's colonial patents, some of the property the town trustees received should be held to have been inalienable. At the very least these patents should be construed as making any conveyances of property held in trust under the patents, such as the foreshore and lands under water, subject to the jus publicum, the public rights to use of them. The New York Court of Appeals has, to all intents and purposes, accepted this doctrine as enunciated in Illinois Central Railway Company v. State of Illinois. In fact, in decisions similar to the one in that case, the Court of Appeals has on several occasions declared grants of land below tidewaters or navigable waters to be void. Three such decisions can be found in Matter of Long Sault Development Company v. Kennedy, Coxe v. State, and Marba Sea Bay Corporation v. Clinton St. R. Corporation.

With respect to alienability of property under tidewaters and navigable waters held in trust for the public, in 1907 the New York legislature passed an act incorporating the Long Sault Development Corporation and granting it an

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33. See People ex rel. Palmer v. Travies, discussed earlier, for an expression of this.

34. Mansell v. Mansell, 2 P. Wms. 678 (1732); Gorges v. Pye, 7 Bro. Parl. Cas. 221, 3 E.R. 144 H.L. (1712); Pye v. Gorge, 1 P. Wms. 128 (1710); Saunders v. Dehew, 2 Vem. 271, 23 E.R. 775 (1692); sub nom. Sanders v. Deligne, Freem. Ch. 123; Syndam v. Courtney, Moore, K.B. 567, 72 E.R. 763 (1598); Rooke v. Staples, Cary 76, 21 E.R. 40 (1579); Ellison v. Ellison, 6 Ves. 656, 31 E.R. 1243, L.C. (1802).

important franchise on the St. Lawrence River. One of the conditions of the grant was the payment of $25,000.00 to the state treasury. When the corporation made the payment the State Treasurer declined to accept it on the grounds that the state's Attorney General had declared the 1907 statute unconstitutional. Shortly thereafter the corporation filed suit, but, while appeals were pending in 1913, the legislature repealed the objectionable statute. The Court of Appeals pointed out that the statute had virtually turned over to the corporation the entire control of nagivation at the Long Sault rapids and precluded the state from attempting any improvements to navigation in the future. The Court, citing Illinois Central, said that the grant was, "incapable under law then and now of conveying the foreshore to private individuals for private purposes."[35] In order for a grant of land under navigable waters to a private person or corporation to be valid, "the contemplated use must be reasonable and one which can be said to be for the public benefit or not injurious to the public."[36] The Court concluded that,[37]

> [T]he legislature cannot authorize the conveyance of a navigable portion of the St. Lawrence to a private company to maintain and control navigation thereon, thereby parting for all time with its own power to improve such navigation. The privilege of the state to control the St. Lawrence as a navigable river (subject to the direction of Congress) cannot be assigned to others in the manner attempted by this legislation. As long as the waters are maintained as navigable they remain public waters of the state; and as long as they remain public waters of the state, the state is bound to retain control over them in the public interest.

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35. Matter of Long Sault Development Corporation v. Kennedy, 212 N.Y. 297-298, 108 N.E. 849 (1914); appeal dismissed 242 U.S. 272 (1916).

36. Ibid., 8.

37. Ibid., 10.

Some years earlier in Coxe v. State the Court reached the same conclusion. As in the above suit the state legislature had granted all lands below the high water mark in four counties to a private corporation. Subsequently the legislature repealed the grant and the corporation sued for damages, including the $25,000.00 paid by it for the grant, plus interest. The Court of Appeals first stated that any attempt by the state to confer title to such a vast domain which the state held in trust for the benefit of the public would be absolutely void for it was in violation of Congress' power to regulate commerce under the federal constitution.[38] Referring to Illinois Central and Shively v. Bowlby, the Court held that the title and the power of disposition under which the state held the lands under water and navigable waters, "is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, except for some public purpose, or some reasonable use which can fairly be said to be for the public benefit."[39] Furthermore, the Court declared that,[40]

> The title of the state to the seacoast and the shores of tidal rivers is different from the fee simple which an individual holds to an estate in lands. It is not a proprietary, but a sovereign right, and it has been frequently said that a trust is engrafted upon this title for the benefit of the public of which the state is powerless to divest itself.

Therefore, concluded the court, since the legislative grant had been invalid, the legislature had the power to revoke such a grant, yet it awarded the private firm its $25,000 plus accumulated interest.

The third case having to do with this principle revolved around the

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38. Coxe v. State, 144 N.Y. 396, 39 N.E. 400 (1895).

39. Ibid., 406-407.

40. Ibid., 405-406.

interpretation of a grant made in 1685 to a private individual of eleven miles of ocean frontage in the borough of Queens, which in reality constituted the entire ocean frontage of that borough. It is now Rockaway Beach. Almost two and a half centuries later the state of New York conveyed the area to New York City which filled it in for use as a public beach. Naturally those who claimed to be successors in title to the 1685 grant brought a suit to determine ownership. The Court held that a colonial patent made in 1685, which granted the entire foreshore along the ocean in Queen's County to private persons for their own private purposes, was not in the interest of commerce, navigation, or other governmental purposes, and was one "not recognized by the law."[41] Since neither the king nor the state could grant away for private purposes so much of the public's rights in the lands under water," the Court interpreted the grant as giving the grantee only to the high water mark, claiming such an interpretation has been recognized from 1828 to at least 1929. The grant was incapable of conveying the foreshore to private individuals for private purposes.[42] As an incidental part of its decision, the Court drew a distinction between grants to private persons and grants to towns and said that grants to towns or other bodies endowed with local sovereignty form an exception to the above rule as applied in the case.[43]

Generally speaking, then, these three cases, in conjunction with Illinois Central, lend extremely strong support to the belief that any conveyances by Huntington of similar lands can be thrown into question and quite likely be

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41. Marba Sea Bay Corporation v. Clinton St. R. Corporation, 272 N.Y. 292, 296, 5 N.E. 2d 824 (1936).

42. Ibid., 296.

43. Ibid.

declared invalid and subject to revocation. Yet another case in point is Smith v. City of Rochester. That case had to do with the owners and lessees of mills and factories situated along the banks of a creek trying to restrain the city from diverting the navigable waters of a lake from the creek to furnish water to the inhabitants. The court stated that the state could divert the waters of fresh water navigable streams and small lakes for purposes of navigation, even where the tide did not ebb and flow, without paying any compensation. However, compensation must be paid if the purposes were for other than navigation. The court went on to explain that the rights of riparian owners on fresh water lakes or inland seas, or streams forming boundaries between states, are not the same as riparian rights on navigable waters where by the common law the titles of riparian owners extended only to the high water line.[44] Again, as in other cases cited, a court held that the navigable rivers of the state were held by the state as trustee for the use of the public, that these public rights were inalienable, and that "the rights and interests of the public, such as fishing, ferrying, and transportation, are preserved in all navigable waters by the inherent and inalienable attributes of the sovereign."[45]

There are, of course, cases which do not fully support these legal decisions. Yet even in them the implied reservation of public rights in patents for land below the high water mark granted by the state is invariably mentioned. In People v. Steeplechase Park Corporation, the state had granted

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44. Smith v. City of Rochester, 92 N.Y. 463 (1883). Later court decisions modified the portion of the decision having to do with riparian rights, as in Rumsey v. New York, 133 N.Y. 79. This will be discussed below later.

45. Ibid., 477-478, 480.

the defendant some land below high water mark and later the defendant erected and maintained a number of structures on the foreshore. This prevented use of the foreshore by the public and a lower court found that the structures were purpresture and a nuisance which could be removed by the plaintiffs. However, the Court of Appeals held the state grant to be sufficiently exclusive and clear as to allow him to do what he did. Yet the Court did point out that the case should have been brought as a direct attack against the issuance of the grant or an action in equity to set aside the grant.[46] This happened to have been a divided court and the three dissenting judges urged that there should be read into the grant an implied reservation of public rights.

The New York courts have recognized that the rights of the public to the use of the seashore and sea include more than just the rights of navigation and fishing. In Barnes v. Midland Railroad Terminal Company the Court of Appeals did so by declaring, for example, that the "right of the public to use the foreshore upon the margin of our tidewaters for right of passage may be a necessary incident."[47] This suit had its origins in a dispute between an upland owner on New York Bay who used his property as a public recreation and amusement area and a railroad company which had constructed a pier and sheds on the foreshore in front of him, thus blocking his direct access to the foreshore and water. The defendant had a state patent to lands under water which prohibited the company from obstructing or interfering with the public right of passage "in any manner." A lower court took the stand that riparian and littoral owners have the right to construct and maintain piers as part of

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46. People v. Steeplechase Park Corporation, 218 N.Y. 459 (1916).

47. Barnes v. Midland Railroad Terminal Company, 193 N.Y. 378, 85 N.E. 1093 (1908).

their right of access to navigable waters. Further, although it recognized the public's right of access to use the foreshore of tide waters for fishing, bathing, and boating as a necessary incident, it did so only insofar as the Crown's jus privatum devolved upon littoral and riparian owners. Otherwise it resides in the people in their sovereign capacity.

The court held that as to the balance between littoral rights and rights of the public there is no difference whether it rested upon the defendant's patent or upon the rights of a littoral owner. Either as littoral owner or by virtue of its patent the company had the right to construct and maintain piers that were reasonably adopted to the purpose for which it was primarily intended, and that was to provide a means of passage from the upland to the sea. To the extent that the reasonable exercise of this right necessarily interfered with the right of the public to pass along the foreshore, the former was paramount and the latter subordinate; the logical corollary to this being that just insofar as the attempted exercise of the littoral or riparian right passed the prescribed bounds of necessity and reason, the conditions were reversed and the right of passage along the foreshore remained paramount. But, according to the court, in this instance the riparian's reasonable exercise of his right of access was only subject to the power of Congress and state legislation.

The Court of Appeals reversed the lower court's decision and held that the maintenance by a littoral owner of planks run from spile to spile under the pier barred the public from access as did the shed on a platform next to the pier. This violated the public right of access and the plaintiff suffered special damages as well as injury to his rights as a member of the public. The Court must, therefore, redress the wrong by appropriate remedies. The Court of Appeals declared that the public did have a right of passage between high

and low water marks where the defendant's structures were and ordered a new trial to determine the remedies.[48] Upon being remanded to a lower court, that court held that the plaintiff was entitled to access all along the shore but that the existing pier and one authorized to be built had to be modified only to that extent. The major point here, of course, is that public right of access along the entire foreshore was upheld even when the area was being used reasonably by a littoral owner with a legally acceptable patent.

The Barnes v. Midland decision has been interpreted as recognizing a public right of passage over all lands over which the tide ebbs and flows and as constituting a beach between the high and low water marks as a sort of natural public highway. People v. Steeplechase Park Corporation reiterated this as did Tiffany v. Town of Oyster Bay, when the court said in the latter case, that, "The foreshore or land under waters of the sea and its arms, between high and low water mark, is subject, first, to the jus publicum, the right of navigation, and when the tide is out, the right of access to the water for fishing, bathing, and other lawful purposes to which the right of passage over the beach may be a necessary incident."[49]

But what of those private individuals who, in ignorance of or intentionally ignoring all these principles as laid down by the courts, come onto public land, use it for many years and then claim ownership by adverse possession, that is, by long and continuous use to the exclusion of others? Once it comes to public notice and their titles are questioned can they successfully maintain their claims? Three cases speak against them, based on the principle that one

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48. Ibid.

49. People v. Steeplechase Park Corp., 218 N.Y. 459 (1916); Tiffany v. Town of Oyster Bay, 234 N.Y. 15, 20, 136 N.E. 224 (1922).

cannot claim by adverse possession from the sovereign--from another private individual yes; from the sovereign, no. In other words public rights to the use of navigable waters cannot be foreclosed by prescription. And so it was held in Burbank v. Fay, a case involving some plaintiffs who lived around a basin which they had connected to the canal in the city of Rochester. They wished to prevent the canal commissioners from closing off the connection between the basin and the canal, claiming over fifty years use. The court held that the commissioners could close off the basin. The fact that the plaintiffs had fifty years use of the basin connected with the canal gave them no prescriptive right to such connection.[50]

The same question came before the courts under somewhat different circumstances in Gunn v. Bergquist. A suit was brought by the town board of Hempstead to establish its status as the fee owner with rights to possession of certain tide lands. The court decided that where the boundary of land owned by the contesting defendant was the waters of Manhasset Bay at mean high water mark, and the land below that mark was reserved to the town by its 1686 Dongan patent, even though the land under water had been filled in and upland brought into existence and the defendant had built bath houses thereon, the town still retained title. Even though the defendant's use of the land was that of a riparian owner and not hostile to or in derogation of the town's title, he could not claim by adverse possession because tidal lands held by a town in its governmental capacity may not be the subject of acquisition by such form of possession by a private individual.[51] The same point was made in Trustees of Brookhaven v. Dyett Sand - L.B. Co. The trustees moved to recover possession

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50. Burbank v. Fay, 65 N.Y. 57 (1875).

51. Gunn v. Bergquist, 210 Misc. 992; 108 N.Y.S. 2d. 644, 646-647 (1951).

of a stretch of shoreland between the waters of Port Jefferson Harbor and a cliff in the town. They traced their claim of title to patents from Nicolls and Dongan in the seventeenth century. The court stated that the actual extent to which the public had used the area was not material; the fact that they had in fact used it, however infrequently, as a sort of highway to pass to and fro dedicated it as a public highway for public use. This coupled with the title claims of the trustees by virtue of colonial patents blocked any claims by adverse possession.[52]

When the rights of the public the owners of the foreshore, and the rights of the riparian owner conflict, they both must be exercised in a reasonable way. So the court said in Tiffany v. Town of Oyster Bay.[53] And even though, as the court decided in Barnes v. Midland, the reasonable exercise of passage by the littoral or riparian owner is paramount in some instances to the public right to pass along the foreshore,[54] the courts with few exceptions have been consistent in holding, as was the case in Johnson v. May, that the public right in the foreshore is, "to pass and repass when the tide is out, the tide is in, and to make such other reasonable use of the foreshore as may be consistent with the rights of others."[55] The Johnson case had to do with a woman who went to a beach and erected a tent along the foreshore. The defendant, a riparian owner, had her arrested for trespass after she refused to move. The court held that if she had been above the high water mark she would have been

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52. Trustees of Brookhaven v. Dyett Sand - L.B. Co., 75 Misc. 310; 135 N.Y.S. 165, 167 (1912).

53. Tiffany v. Town of Oyster Bay, 234 N.Y., 20.

54. Barnes v. Midland Railroad Terminal Co., 193 N.Y., 386.

55. Johnson v. May, 189 App. Div. 196; 178 N.Y.S. 742, 747 (1919).

trespassing, but, since she was not, the real question was whether or not she placed an obstruction so as to block the passage of the public along the foreshore. That "depends on the surrounding conditions whether the structure is an unreasonable use of the beach at a particular point in question and whether it interferes with the rights of the other members of the body politic using the beach for legitimate purposes."[56] The court said that public use cannot block a riparian owner's right of access, but this did not seem to be the case here.

Every principle has one or more exceptions. So it is with those cited above. In Bardes v. Herman, the court agreed that, "The jus publicum or the right of the public is a right of access to the water for the purpose of navigation, boating, bathing, and fishing," but decided that such rights under certain circumstances could be extinguished. In this particular case the question of who had title to filled-in land came before the court, because there was some doubt as to its marketability. The court held that the jus privatum, the complete title, including the soil between high and low water marks was abandoned to the upland owners, but the jus publicum passed to the state, which gave the public the usually recognized rights. Nevertheless, the court pointed out that the jus publicum had been extinguished over the land in question by the state having granted the land under water and authorizing filling it in to an established bulkhead line. Thus, the title was not burdened by any public use and was marketable.[57]

Courts have held that the right to enter upon privately owned land

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56. Ibid.

57. Bardes v. Herman, 62 Nusc, 428; 114 N.Y. N.Y.S. 1098, 1103 (1909); affirmed, 207 N.Y. 745 (1913).

between high and low water mark to take shell-fish on the land and the right of fishing on the soil of another, when it is overflowed with the tide from the sea or arm of the sea, is a common right of each citizen as in Peck v. Lockwood and Smith v. Maryland.[58] This does not, in the opinion of some courts, give each citizen carte blanc. In at least one instance a New York court limited such rights. An individual went bathing one day in the Great South Bay, gaining his access to the water by crossing the beach in front of the Amity Harbor Corporation. That corporation, with the permission of the Secretary of War and town authorities, had dredged a channel in aid of navigation. The bather drowned in the channel. A suit was brought in court against the corporation for wrongful death, alleging that the channel was a nuisance and the decedent should have been warned of its existence. The court held that the decedent was neither a licensee nor an invitee whom the defendant had to warn of danger in the channel. Furthermore, the court said that unless he was invited or permitted by license, he had no right to cross the private lands of the defendant for purposes of enjoying his right as one of the public to use of the foreshore and to bathe in the waters of the bay.[59]

The courts have also established some limits to the ability of a municipality to use or alter the foreshore as it sees fit in accord with what the municipality construes as the public interest. In spite of the commonly held view, as expressed in Sage v. The Mayor, that, "When any public authority conveys land bounded by tidewater, it is impliedly subject to those paramount uses to which the government, as trustee for the public, may be called upon to

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58. Peck v. Lockwood, 5 Day (Conn.) 22 (1811); Smith v. Maryland, 59 U.S. 71 (1855).

59. Fischer v. Amity Harbor Corporation, 237 AD 196; 261 N.Y.S. 41 (1932).

apply the waterfront for the promotion of commerce and the general welfare,"[60] in Matter of City of New York, the court modified this stand. The city, acting pursuant to authorization from the state legislature, sought to construct a roadway on tideland and the riparian owner sued for damages to his riparian rights. The court held that the riparian owner was entitled to compensation, since the taking of the land for a roadway not to be used by commercial vehicles but only by equestrians and carriages was not connected with navigation or commerce. It did point out, however, that compensation would not be required to be paid to the riparian owner when the state or municipal government interferes or destroys riparian rights of access for public use connected with navigation or commerce.[61]

So far the rights of the sovereign, the state, and the colonial charter towns or those municipalities incorporated by the state, have been the focus of attention. What of the private property owner and the commercial enterprises, those known as riparian or littoral owners, who occupy shore front property along rivers, streams, harbors, and bays? Have they no rights against the sovereign? Yes, they do--and, on first reading, their rights appear to be paramount to those of the sovereign. Under the English common law a littoral owner, an owner of lands bordering the sea, had no right to wharf out to navigable waters. Such right, if it existed, had to be based upon the permission of the king or some legislation of the state. According to the decision in Western Pacific Railway Company v. Southern Pacific Railway Company, "By the common law any erection below high water mark, without license, is regarded as an

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60. Sage v. The Mayor, 154 N.Y. 61; 47 N.E. 1096 (1897).

61. Matter of City of New York, 168 N.Y. 134; 61 N.E. 158 (1901).

encroachment and intrusion on the King's soil, which the King may demolish, seize, or arrent at his pleasure."[62] New York, however, has rejected this common law doctrine in favor of a policy permitting littoral owners to build piers, wharves, or docks out from their land to gain access to navigable waters. The right of riparian and littoral owners in New York to the use of land below the high water mark for purposes of access to navigable waters is not measured by the rule of the English common law. Though contrary to the common law, New York's rule is permitted by Shively v. Bowlby, which left each state free to establish their own law with respect to rights to tidelands and tidewaters.[63]

In New York a riparian owner has the right of access to navigable waters from the front of his property for navigation, fishing, and "other uses as commonly belong to riparian ownership," and the right to make, "a landing wharf or pier for his own use, or for that of the public, with the right of passage to and from the same with reasonable safety and convenience."[64] This doctrine found expression in Town of Brookhaven v. Smith and Barnes v. Midland Railroad Terminal Company.[65] The two principles as stated are applicable to littoral owners whose lands front upon the sea shore of the open ocean as well as to riparian owners whose lands border upon bays of the sea, inland lakes,

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62. Western Pacific Railway Company v. Southern Pacific Railway Company, 151 F. 376, 390 (C.C.A. 9 Cir., 1907).

63. Shively v. Bowlby, 152 U.S. 1 (1894). This case is already discussed elsewhere. In this chapter "littoral" and "riparian" are considered to be synonymous despite minor nuances of difference in the dictionary definition of each, such as littoral owners being those along the seashore and riparian owners being those along streams and rivers.

64. Town of Brookhaven v. Smith, 188 N.Y., 74, 82; 80 N.E. 665 (1907).

65. Ibid., and Barnes v. Midland Railroad Terminal Company, 193 N.Y. 383, 384 (1908).

or other navigable waters.[66]

Brookhaven v. Smith was an action in trespass for building a pier on certain lands under water in Great South Bay of which the town was seized in fee under colonial charters. Smith owned the upland. Although the town acknowledged that the pier itself was unobjectionable it contended that it could not be built without the permission of the trustees of the town. The court's response was that Smith, the riparian owner, had a right to construct a pier as part of his rights of access to navigable waters and did not need the permission of the trustees to do so because the plaintiff's title to lands under water were subject to the public's rights of navigation and to reasonable exercise of access by riparian owners. The court based its ruling in part on the belief of the majority, for it was a four to three split decision, that the jus privatum whereby the King owned the soil of the sea and of navigable rivers in his own right rather than as a sovereign holding it in trust for his people was "totally inapplicable to the situation of the colonists of this country," and that the colonists had been left to do as they pleased with respect to riaprian rights.[67] Both Brookhaven v. Smith and Barnes v. Midland agreed that the right of access to navigable waters in front of a riparian owner's land encompasses whatever is needed for "the complete and innocent enjoyment of that right" and that this included the right to construct and maintain a pier that is reasonably adapted to provide a means of passage from the upland to the sea.[68]

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66. 193 N.Y. 384.

67. Town of Brookhaven v. Smith, 80.

68. 188 N.Y. 83, 87; 193 N.Y. 386.

Two cases that touch upon structures built out into the water by riparian owners are Hinkley v. State of New York and City of New York v. Third Avenue Railway Company. In the latter case the city moved to recover possession of certain lands formerly under water but later filled in, claiming title was in the city under their colonial grants. The railway company rested its case on the fact that they were riparian owners and had a right to use the filled-in land. In rebuttal the city claimed that the actual use made of the disputed parcel exceeded that appropriate to the right of access to deep water and the right of wharfing out. The court decided that the small power house, the two trolley tracks with poles and wires, and the coal hoppers, conveyors, pocket screeners, scales, and small office building used by the railway company and its lessee, a coal company, were incident only to their reasonable use and enjoyment of their right to transport merchandise to and from the navigable waters and the upland. Hence, the city was not entitled to possession of such lands or damages on the theory that the use made by the defendant exceeded that appropriate to riparian rights. The court also held that even if it were a fact that the defendant had leased to the coal company only the right to use the filled-in lands, entirely apart from the uplands, such leasing would not be an illegal exercise by the railroad company of its rights as a riparian owner. Furthermore the court felt that the right of access included what is useful for loading, unloading, and transporting merchandise, but that the defendant could not use the filled-in portion for purposes unrelated to commerce and navigation, such as a restaurant or an amusement park.[69]

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69. City of New York v. Third Avenue Railway Company, 294 N.Y. 238; 62 N.E. 2d, 52 (1945).

The Hinkley case also involved filled-in land. The state sought to acquire land for a barge canal terminal along the Hudson River, but Hinkley claimed possession of some of the filled-in land by adverse possession. The court doubted that there could be adverse possession against property which the state holds in trust for the public, but did not directly decide this issue since it found that Hinkley's possession was not adverse. Nevertheless, the court did state that even though the exercise of riparian rights was involved, the use to which Hinkley put the land could constitute adverse possession merely by erecting buildings on piers or wharves or filling in land under water for bulkhead and wharf purposes.[70]

In these two cases and in the previously cited Gunn v. Bergquist, the courts greatly expanded the rights of riparian owners. First, the right to wharf out includes the right to erect buildings on the wharf, and the form or shape or size the wharf or pier may take vary with use and necessity. Second, the use of a small wooden structure as a bathing house on city-owned shore land is a lawful exercise of a riparian right. And third, upland owners can build piers which rest upon land under water, or can build wharves and erect bulkheads. He can also, according to the Hinkley decision, fill in marshy ground and erect a substantial wharf for the use of navigation and commerce connected with his business, but the filled-in land must be connected with commerce or navigation.[71] In addition, the Brookhaven v. Smith decision allows a riparian owner to construct a pier without a grant from the state or local municipality.[72] In other words, the proprietary rights of a town are

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70. Hinkley v. State of New York, 234 N.Y. 309; 137 N.E. 599 (1922).

71. 234 N.Y., 309, 317-318; 294 N.Y. 238, 243-244; 108 N.Y.S. 2d, 644, 646.

72. 188 N.Y. 74, 83-84, 87-88.

subject, at least according to that case, to what is considered to be a reasonable exercise by the riparian or littoral owner of his right of access to navigable waters.[73]

But the riparian owner cannot acquire title to land under water by filling it in.[74] Nor can he appropriate land under water except for the soil to hold the piles.[75] Where an upland owner enters upon land below high water mark for the purpose of erecting piers, wharves, or filling in to establish a bulkhead or wharf, his use does not become adverse against the state or the municipality merely by the erection of buildings on the filled in portion. Actually, he could only obtain title to land under water, the title to which is held by the state of municipality, by accretion, that is, the gradual filling in of land below the high water mark. This latter point was brought out in Saunders et al. v. NYC & HRRR Company in 1894 when riparian owners brought suit to enjoin and restrain the defendant from maintaining or operating its railroad over a parcel of land situated below the high water mark but which had been filled in by the plaintiffs by cutting down the banks and bluffs above the shore. According to the court this did not give them title by accretion. Plaintiffs could not gain title by filling in lands under water that belonged to the state.[76] The court, citing Illinois Central, held that the state's grant of land below the high water mark was not void because the legislature is competent to authorize and regulate grants of lands under navigable waters

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73. Ibid., 79-80.

74. 234 N.Y. 319.

75. 188 N.Y. 87.

76. Saunders et al. v. NYC & HRRR Company, 144 N.Y. 75; 38 N.E. 992 (1894).

for public purposes, such as a railroad. However, the grant could not be such as to extinguish or impair the easement or riparian rights of upland owners. The railroad was obliged to construct such a right of way across the filled-in land to the water as would allow the riparian owners their reasonable access to the water.[77]

Oddly enough in Tiffany v. Town of Oyster Bay the court upheld the right of a riparian owner to maintain a pier outshore of an illegal fill which extended beyond his upland ownership, even if the owner did the filling himself.[78] This is the companion case to the one which attempted to settle the boundary dispute between Oyster Bay and Huntington. Tiffany claimed the right to land below the high water mark along the western shore of Cold Spring Harbor, adjacent to his land, by virtue of a grant from the state of New York. Oyster Bay challenged the validity of the grant and the court agreed that the town owned the land under water in the harbor. Before the decision was handed down, the plaintiff proceeded to fill in a part of the area in dispute and, upon receiving an adverse decision, offered to restore it to its original condition. The town refused the offer and contracted to build public bath houses on the filled in area. Tiffany sued to enjoin such construction and to be restored to his earlier, per-fill rights as a riparian owner. In a lengthy decision the court stated that when the sovereign grants to the owner of the adjacent upland (in this case the town) the title to the lands under navigable waters, such owner may, subject to any limitations in

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77. The obvious inference here, in the case of Huntington, is that those who have in the past made it a practice either openly or covertly to dump fill along the shore in front of their property and then claim it as theirs and build upon it really have no claim to title as some of them are now alleging.

78. Tiffany v. Town of Oyster Bay, 234 N.Y. 15; 136 N.E. 224 (1922).

the federal constitution, fill in such lands, make uplands out of them, and extinguish public rights. The town of Oyster Bay has the title to the foreshore and the land under water the jus privatum, which it holds in its corporate political capacity for the public good and for the improvement of navigation and commerce. Its rights are general and not defined with accuracy beyond the ownership and regulation of oyster beds and general aids to navigation, commerce, fishing, or bathing. Such rights are at all times subject to the public rights and to the right of the riparin owner to access to the water. In general, the rights of riparian owners over the foreshore are rights of reasonable, safe, and convenient access to the water for navigation, fishing, and other common riparian rights, but each right, the right of the public, of the owner of the foreshore, and of the riparian owner must be exercised in a reasonable manner. Therefore, the court decided, the town holds title to the filled-in area subject to the plaintiff's riparian rights; the filled-in land retains it character as land under water and plaintiff, as owner of the adjacent upland, has the same rights and no greater rights in and across the same as if no filling has taken place, or as if the fill had been done lawfully by the town. Thus the rights of the riparian owner continue and he has not become an inland owner to the extent of the fill. The town was enjoined from constructing a fifty foot long bath house on the fill which would interfere with the plaintiff's suitable and reasonable means of access.[79]

Yet the New York Court of Appeals has stated that an upland owner's riparian or littoral rights of access are subject to the superior rights of the public. The City of New York v. Third Avenue Railway Company decision in

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79. Harway Improvement Company v. Partridge, 203 A.D. 174, affirmed 236 N.Y. 563 (1923) upheld the rules laid down in the Tiffany case.

1945 reversed earlier statements by that court that the reasonable exercise of a riparian right of access was paramount to the right of the public to pass along the foreshore, as stated in Barnes v. Midland, and that "riparian rights are absolute rights as against all but the state," as in Matter of City of New York.[80] In the Barnes case the Court of Appeals, despite its strong stand on riparian rights, did recognize that the exercise of riparian rights could not unreasonably interfere with the rights of the public to use the foreshore.[81]

> [J]ust in so far as the attempted exercise of this littoral or riparian right passed the prescribed bounds of necessity and reason, the...right of passage along the foreshore remained the paramount right. That is so because the littoral or riparian owner, in his capacity as such, acquires only those rights which are necessary to enable him to make a reasonable use of his upland; and the principal attribute of such use is access to and egress from the open water. The defendent, therefore, had the right to erect and maintain a pier for the purpose of connecting its upland with the sea. Just so far as it was a necessary consequence of the reasonable exercise of that right to obstruct the foreshore and thus to limit the free and convenient passage of the public, the defendant's rights are superior to all others save these reserved to Congress and the state legislature. To the extent that the defendant transcended these bounds, the rights of the public remain unaffected.

In effect the Court of Appeals stated in Barnes v. Midland that a riparian owner cannot interfere with the right of passage of the public along the foreshore. Illustrative of this is the position of the Court that Midland could not maintain planks secured from spile to spile under the pier so as to form a fence barring passage of the public, nor erect a shed on a platform alongside

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80. 294 N.Y. 294; 168 N.Y. 134, 143.

81. 193 N.Y. 383, 386.

the pier extending to the sea end of the pier, which obstructed the passage of the public under the pier. Also, in People v. Steeplechase Park Company, the same court held that riparian rights do not include the right to maintain obstructions erected below the high water mark and seaward from the uplands.[82]

The right to build a wharf out into the water has been held not to include the right to construct buildings which constitute such an appropriation of the foreshore as to prevent appropriate public use. This was the holding of the court in City of New York v. Third Avenue Railway and in an earlier decision was made rather explicit in Barnes v. Midland.[83] In the latter case the court stated that a riparian owner was permitted only the minimum degree of interference with the public's right of passage which was necessary to the reasonable enjoyment of his upland. The passage under a riparian owner's pier should be free and substantially unobstructive over the entire width of the foreshore.[84]

> This means that from high to low water mark it must be at such a height that the public will have no difficulty in walking under it when the tide is low or in going under it in boats when the tide is high. If at any point it is too low, it should be raised to the required height; and until raised, there should be a substituted right of passage over the pier where passage under it is impeded....Even if the height is adequate today, the advancing and receding beach may make it inadequate hereafter....interference with the right of passage must be limited by necessity;...a pier is an unnecessary obstruction unless there is free passage under it over the entire width of the foreshore;...it must be maintained at a height which will make passage possible; and...if at any point it does not comply with these requirements then, until it is made to comply with them, there must

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82. 218 N.Y. 467.

83. 294 N.Y. 243-244; 218 N.Y. 91.

84. 218 N.Y., 96.

be, at such points, a right of passage over it.

In this light one must also consider the decision in the case of People ex rel. Howell v. Jessup in which the court stated that a riparian owner cannot interfere with the right of the public to fish or navigate in public waters.[85] This, of course, is simply another expression of the reasonable use rule.

Riparian rights of access are not absolute, even though a reading of some of the court decisions might lead one to think so. State and local governments have the power to regulate these rights in the public interest. In Thousand Islands Steamboat Company v. Visger the Court of Appeals stated that these rights are, "subject to such general rules and regulations as the legislature may see proper to impose for the protection of the rights of the public."[86] The case had to do with a petition to enjoin the defendant from using wharves on the St. Lawrence River for their business purposes. Both plaintiff and defendant were steamboat companies carrying passengers and freight along the river. The plaintiff claimed it had leases from the owners of the wharves in question to exclusive use of the wharves. The court held that the possession of the plaintiff's lessors did not permit them to limit the use of the wharves by lease or otherwise in favor of any particular persons. The court based its holding on the conditions of the state grant of the lands under water to the owner of the wharves, which it interpreted as requiring the wharves to be open to the public for commercial purposes on the payment of proper compensation. Even the Brookhaven v. Smith case, which is one of the strongest cases for proponents of riparian rights, admitted that these rights could be regulated

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85. People ex rel. Howell v. Jessup, 160 N.Y. 249, 254.

86. Thousand Islands Steamboat Company v. Visger, 179 N.Y. 206 (1904).

in the public interest if and when a structure constituted a nuisance or an obstruction to navigation.[87]

The New York riparian rights doctrine cannot interfere with the power of the state to improve navigation. In the first case which established the state's doctrine and rejected the English common law of riparian rights, Rumsey v. New York L.N.E.R. Company in 1892, the suit dealt with an action brought by the plaintiffs to recover damages from the defendant for obstructing access from their lands to the Hudson River. The defendant had built a railroad, pursuant to legislative authorization, in front of the plaintiffs' property and they demanded they be given a right of way to the water. The court decided that a riparian owner is entitled to damages when deprived of access to the navigable part of the stream unless he has granted away the rights or they have been obtained by eminent domain. However, damages for deprival of access need not be paid where the state is acting to improve the navigation of the river or where Congress is regulating commerce.[88] In this instance the court held that the defendant did in fact obstruct access to the river without sufficient right or authority to do so. The only conclusion that can be drawn from this case and Brookhaven v. Smith is that the rights of riparian owners are subordinate to the power of the legislature to improve navigation or to regulate commerce.[89]

The Court of Appeals has also stated that the appropriation of the foreshore by the state government by a grant to a municipality or for navigation

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87. 188 N.Y. 82.

88. Rumsey v. New York L.N.E.R. Company, 133 N.Y. 79; 30 N.E. 654 (1892).

89. Ibid.; and 188 N.Y. 79, 87.

purposes is superior to the riparian rights of access.[90] Furthermore, where the foreshore has been appropriated to some public use, the riparian rights of the upland owners may be restricted thereby. This qualification of the riparian rights doctrine of the state came in City of New York v. Wilson and Company in 1938 when the city commenced an ejectment action against the defendant to obtain immediate possession of certain property lying offshore of the original high water line of the East River. The court affirmed the verdict for the city by the lower court, but held that the defendant, being the owner of the original upland, still owns a right to access to navigable waters with the right to maintain a pier. It went on to say that riparian rights may not be impaired by reason of an illegal fill extending beyond the upland ownership, yet the defendant did not have the right to use a pier it then maintained on piles it leased from the city if there remained otherwise available to the defendant an access to the navigable waters.[91] This again supported the Brookhaven v. Smith decision to the extent that the latter admitted that the right of access did not permit construction of a nuisance or obstruction to public navigation; the exercise of the right cannot be unreasonable, for such rights are qualified and subordinate to the public right of navigation and must be subject to such rules as the legislature may impose for the protection of the public rights in navigable waters.[92]

A municipal government may regulate the rights of access of a riparian owner when acting pursuant to its charter and state statutes. This was

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90. 188 N.Y., 80, 87.

91. City of New York v. Wilson and Company, 278 N.Y. 86; 15 N.E. 2d 408 (1938).

92. 188 N.Y. 74, 80, 87.

decided in Matter of Del Balso H. Corporation v. McKenzie when the plaintiff petitioned for a permit from New York City to construct a pier on land under water. The court held, first, that if the pier extended beyond the pier line of the city, as established by law, it could be held to be a public nuisance, but that within these limits the city had no right to charge a rent as a condition for granting the permit since neither its charter nor state legislation allow it to do so.[93] Huntington is not comparable in that both its charter and the law of 1952 expressly allow it to lease land, in other words to charge a rent.

Frequently riparian owners are threatened with basic alterations in the shore front, either by natural or human action, which might affect their rights. Such could be the case when dredging operations are carried on. Riparian owners may not dredge in front of their property without the permission of local, state, and federal authorities. However, governmental authorities may dredge in front of upland owners' property without their consent. In 1963 the Village of Old Field on Long Island, in concert with a local riparian owner, sued the Commissioner of General Services of the state of New York to review and annul a license granted to a private corporation to dredge on state land under water. The Court of Appeals upheld the right of the Commissioner to issue such a license on the grounds that the purpose was to clear a channel to improve navigation and that the permit issued by the U.S. Army Corps of Engineers was sufficient certification that dredging was necessary for that purpose. The Court stated that riparian rights of access to navigable water

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93. Matter of Del Balso H. Corporation v. McKenzie, 271 N.Y. 313; 3 N.E. 2d 438 (1936); see also People v. Vanderbilt, 26 N.Y. 287, which supports the position on the extension beyond the pier line being a public nuisance.

does not mean that such rights include the right to dredge under navigable waters without the consent of the appropriate governmental agencies. Nevertheless, the state exercised its proper function when it issued the license. Because the plaintiffs alleged that a pond, Flax Pond, was threatened by the dredging operation, they could take any action necessary to halt the dredging only if the company actually did enter the pond and dredge any part of it since it was above the high water mark. But, they had not proven their rights were prejudiced by the granting of the license to dredge on state land.[94]

When a dredging company, upon authorization by the state and federal governments, dredged an area in the Hudson River and dumped the material in another part of the river, the local riparian owner brought an action of trespass, claiming his rights of access to the navigable waters to cut ice in the winter and fish in the summer had been impaired and destroyed. The court replied that he had no redress since the operation had been approved by the government to improve navigation and riparian owners were not entitled to damages where the state or federal government injures their rights in its power of regulating commerce and improving navigation. The riparian owner could obtain no exclusive title to the river against the state or the rights of the public to fish, nor did riparian rights include an exclusive right to take materials such as ice from a navigable stream since the right to do so is one owned in common with the public.[95]

Occasionally riparian owners gain or lose land as a result of natural causes. Imperceptible erosion can eat away upland; gradual accretion can add

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94. Village of Old Field v. Schuyler, 13 N.Y. 2d 6; 240 N.Y.S. 2d 980; 191 N.E. 2d 460 (1963).

95. Slingerland v. International Contracting Company, 169 N.Y. 60 (1901).

to it. Who then has the title to upland that is transformed into land under water or to new upland that appears slowly over the years? This question came before the courts in 1912 in Matter of City of Buffalo. The city took steps to acquire certain lands in the city along the shore of Lake Erie for park purposes. The land in question had originally been upland but was now under water. The court denied compensation to those owners whose lands, through the natural cause of gradual erosion, had become land under water. Such action placed the title in the state. This is the basic doctrine of accretion: riparian owners either gain or lose title to upland depending on natural actions, but boundaries do not change by avulsion, the sudden and violent action of the elements the effect and extent of which is perceptible while in progress.[96]

It has been pointed out that just compensation need not be paid to a riparian owner whose rights of access have been denied by public works projects promoting commerce or navigation. Compensation is required, however, when such public works utterly destroy navigation and commerce.[97] Where the state or local government has acted so as to cut off upland access and prevent the construction of a pier, the state may provide the means of access other than a pier, dock, or wharf, rather than pay compensation. In Saunders et al, referred to previously, the state had granted shoreland to a railroad which had built tracks along it, thus preventing a riparian owner from building a pier for access to the navigable water. The court held that though the state had acted within its powers it could not cut off the riparian owner's access

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96. Matter of City of Buffalo, 206 N.Y. 319; 99 N.E. 850 (1912).

97. Matter of the City of New York, 168 N.Y. 134, 146; City of New York v. Wilson and Company, 278 N.Y. 102-103.

and could remedy the situation by creating passes across or roads under the railroad tracks which would then allow person and vehicles access to the water fronting their lands.[98] Thus, Saunders stands for the proposition that a state or local government, when exercising a legitimate governmental function, can limit the riparian owners' right of access to a means other than by use of a pier, wharf, or dock. An access road, as a result, can be the sole means of access permitted to riparian owners if the government is acting in the public interest. For instance, the town of Huntington, if acting pursuant to a legitimate governmental power in furtherance of a public purpose, might provide that riparian owners use one of several piers or docks in the town for commercial purposes. All riparian owners would have access by connecting roads and have access only by foot or vehicle across the foreshore in front of their uplands for purposes of fishing, bathing, or recreational boating.

The public purposes which have traditionally been recognized as permitting the limitation of riparian rights through the exercise of governmental powers are promotion and improvement of navigation and regulation of commerce. But recent developments in the law of New York require that the courts recognize that state and local governments have the power to limit riparian and littoral rights of access to preserve ecosystems of the tidal areas and to protect other ecological and environmental values. Such a holding would be in accord with the pronouncement of Judge Cardozo, in Howard v. City of Buffalo, with respect to riparian rights, "The law of water rights is not an inflexible body of precedent. It takes heed of the varying wants of varying localities."[99]

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98. Saunders et al v. NYC & HRRR Company, 144 N.Y. 75.

99. Howard v. City of Buffalo, 211 N.Y. 241, 263 (1914).

In that case plaintiffs had sued for damages because their farms had been flooded by the actions of the city in changing the grade of a street and through the actions of a railroad company in building embankments and bridges for tracks. The court decided that because of the use of the embankment for many years by the railroad company, the plaintiffs were not entitled to have outlets made through the embankments. The railroad company was not to be held liable for obstructions to a stream caused by the construction of a bridge, built under authority of law, unless by due care the obstruction could have been avoided. Also the plaintiffs failed to show that, in the absence of the railroad embankments, the actions of the city would have caused flooding.

The adoption of Article XIV of the New York State Constitution by the voters of the state on November 2, 1969, literally demands that Judge Cardozo's holding be extended to today. Article XIV states that it, "shall be" the "policy of the state...to conserve and protect its natural resources and scenic beauty..." The foreshore and tidal areas of Huntington are clearly areas which encompass significant natural resources and scenic beauty, despite the ugliness of the more commercialized portions, which justify the exercise of governmental powers to halt further deterioration. Promotion of this constitutional policy justifies and requires regulation of riparian owners' rights of access to protect the ecosystem of Huntington's harbors, bays, and wetlands. The exercise of such governmental powers by the town, a creature of the state legislature when exercising governmental powers (i.e. police powers), is required by the additional provision in Article XIV that, "[T]he Legislature...shall include adequate provision for...the protection of agricultural lands, wetlands, and shorelines, and the development and regulation of water resources."

The power of a local governmental body to regulate the exercise of riparian and littoral rights in order to preserve the ecosystems and ecology within its jurisdiction is supported in Nattin Realty, Inc. v. Ludewig which held, as recently as 1971, that ecology is a proper factor to be taken into account by a municipality in making zoning decisions.[100] Nattin Realty stands for the larger proposition that protection of the environment is a proper basis for the exercise of state and local police powers. Protection of the environment is a public purpose comparable to promotion and improvement of navigation and the regulation of commerce which justifies the restriction of riparian and littoral owners' rights of access without payment of just compensation.

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100. Nattin Realty, Inc., v. Ludewig, 324 N.Y.S. 2d 668 (1971).

Chapter VIII

Epilogue

For two hundred seventy-eight years a trust obligation has existed in the town of Huntington. So too, in one guise or another, have trustees. During the first two hundred years the powers and responsibilities of the trustees was unquestioned. Admittedly, they did become involved in law suits, but these had to do with boundary controversies with adjoining towns. None disputed the proprietary rights of the trustees granted them by the charters of 1688 and 1694. As the trustees alienated much of the upland over which they had control and, concurrently, the common lands diminished in extent, their governmental functions became less and less important to their primary function of land management for the "use and behoof" of the people of Huntington. This should not be used to disparage the role of the trustees, nor be employed as proof that successive acts of the provincial and state legislatures could and did so erode the alleged governmental functions of the trustees that, by analogy, they now have the power to eliminate both the trustees and the trust res itself. Actually the governmental functions the two charters did grant to the trustees had to do primarily with the management of the lands they received. According to the Fletcher patent, the trustees had the power to,[1]

> make such acts and orders in writing for the most orderly doing of the premises as they, the said Trustees of the Freeholders and Commonalty of our said town of Huntington and their successors, from time to time, shall and may think convenient; so always as the said acts and orders be in no way repugnant to the laws of our kingdom of England and of this our court which now or hereafter shall be established, and that be not in anyways against the true intent and meaning of these presents.

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1. HTR, II, 148.

The key words here are "doing of the premises"--the management of the lands for the people of the settlement. This interpretation is borne out by a later clause in the charter which, in addition to making arrangements for the yearly election of the trustees, specifically designates other local officials, the town clerk, constable, and two assessors, who are given the administrative and police powers common to a town during the seventeenth century.[2] Already one can see here a division between the governmental and the trustee functions. The trustees are to be guided in their trusteeship by the charter; the town clerk, constable, and assessors are to be governed by enacted legislation. It is true that the trustees were also named as the commissioners of the town, "to execute and officiate in the said office to all intents, constructions, and purposes whatsoever,"[3] but this office had to do with the yearly town budget and directing the assessors in their task of collecting the taxes to defray local expenses and whatever charges might be imposed by the provincial assembly. The officers associated with local administration and justice, such as overseers of highways and the poor, surveyors, justices of the peace, supervisor, and the like had been either elected by the people or appointed by the governor ever since the Duke's Laws went into effect in 1665.[4] They continued in this vein after the issuance of the charters, so that to say that the trustees constituted the government of the town is erroneous and does not accord with the facts.[5] The town

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2. Ibid., 148-149.

3. Ibid., 149.

4. Colonial Laws of New York...1665, 43, 55-56.

5. HTR, II, 174-175, 242-243, 300-301.

meetings played a major role in the government of the town as did these officials. To imply as did a dissenting judge in Knapp v. Fasbender that the trustees were the governmental agency in Huntington is a gross over-simplification.[6] When the legislature exercised its prerogatives in shifting governmental functions to other bodies or assigning new functions to other officials it did not take away from the trustees any more than it had the right to do nor did it diminish the purely trustee functions in any way. The charters had foreshadowed the decline of the trustees importance in local government; the legislature simply implemented this policy as the need arose.

Throughout their existence the trustees exercised wide powers over the land they held in trust for the people of Huntington. To some they granted land according to hundreds or division allotments; to others they gave franchises to use the land and streams for recognized public services such as grist and saw mills. They sold thatch grass, but not the thatch beds, yearly to farmers who needed the salt hay. When it came time each spring to select a location and time for grazing purposes, or when farmers allowed their livestock to ramble about without restriction and damage the common lands, the trustees passed ordinances to handle the situation, usually in conjunction with a decision of a town meeting. As the colonial and later the state economy flourished and expanded so too did that of the town as it came into increasing commercial contact with the outside world. A need arose to utilize the fore-shore and lands under water to the best advantage to capitalize on this expansion. Docks must be built and ferries authorized to handle the flow of agricultural commodities and townspeople to and from market centers.

When the people of Huntington wanted more land for their farms and did

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6. Knapp v. Fasbender, 151 N.Y.S. 2d, 695-696.

not wish to purchase it from a private owner, or when they still held equitable rights in the undivided lands and sought a division of them, they went to the trustees. When anyone decided to build a mill requiring water power from a stream or by tidal flow he first asked permission from the trustees to construct a dam or tidal gates. If a husbandman knew he could use more thatch grass or hay than his land could produce, he rented additional areas from the trustees to fulfill his needs. When those harvesting shellfish to supplement their diet discovered nonresidents clamming or oystering in Huntington's waters they sought out the trustees to have them pass an ordinance restricting this natural resource to residents only. Anyone who wanted to bulkhead anywhere along the shore front and build a dock for his own use or for some budding commercial venture petitioned the trustees for a lease covering the upland and land under water involved. Custom and usage, buttressed by the seventeenth century charters, dictated that this was the way things were done. The trustees accepted it as a legitimate function of their existence; the townspeople accepted it as a fact of life.

The law and the courts of the land supported the trustees. During the colonial period they inherited, by charter, the jus privatum of the Crown in the foreshore and lands under water. Like the Crown, they had the right to authorize use of these areas or to remove structures if they proved to be a nuisance or purpresture. As with the Crown their rights were somewhat circumscribed by the jus publicum, at least insofar as not interfering with the use of local waters for navigation, commerce, and fishing. This is so because, in addition to their functions as proprietors of all the lands and waterways in the town and the recipients of whatever "franchises, profits, benefits, commodities, and hereditaments whatever to the said tracts of land...belonging

or in any ways appertaining, or therewithal used, accepted, reputed, and taken to belong, or in anyways appertaining, to all intents and purposes and construction whatsoever," in whatever form they might arise, they also had the obligation to administer these lands and waterways as a public trust for the benefit of all the people in the town. They accomplished the latter by regulating the use of the public trust res and controlling, through lease arrangements, the activities of private individuals to insure that none would so encroach upon any part of it as to exclude the cestui que trust from the benefits and use thereof.

Both the constitution and laws of the state of New York and decisions of the U.S. Supreme Court accepted this situation and continually reinforced it throughout the nineteenth century. The law of 1872 which replaced the Trustees of the Freeholders and Commonalty of the Town of Huntington with the Board of Trustees of the Town of Huntington did not in any way affect the trust, for it vested in the new Board "all the rights, privileges, powers, duties, and jurisdiction heretofore enjoyed and exercised by such trustees, over the real and personal property of the town of Huntington."[7] In Lowndes v. Huntington the Supreme Court, in 1894, upheld the proprietary rights and public trust of the Board of Trustees. In 1929 and again in 1952 the state legislature reaffirmed the powers of the trustees, the latter specifically ratifying and confirming to the Board of Trustees the power,[8]

> to continue to hold, manage, lease, convey, grant, invest, and reinvest such property and funds as the Trustees for the residents and taxpayers of the Town of Huntington, and in furtherance of its said trust to acquire in its

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7. Laws of New York...1872, II, 1159.

8. Laws of New York...1952, 1778, Chapt. 816.

> own name by gift, purchase, or lease and to maintain and improve property of any nature either real or personal for the benefit of the residents and taxpayers of the Town of Huntington.

The law of 1962 which merged the Board of Trustees more closely with the Town Board did not materially alter or in any way diminish the powers, privileges, and responsibilities of the trustees.[9]

Some might point to the 1962 repeal by the voters of the state of Article 1, section 15 of the state constitution, which had validated and confirmed colonial charters, as the final coup de grace to the trustees and the trust doctrine as it applied to Huntington. This is sophistic reasoning to say the least. The New York courts have interpreted this section as confirming the property rights of the trustees under their patents. These property rights were proprietary property rights, subject to the protection of the due process and just compensation clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution and the state constitution just as property rights of private individuals are protected. These rights of the trustees have been recognized before the repeal as recently as 1956 in Knapp v. Fasbender and after it in 1965 in Nance v. Town of Oyster Bay. If the repeal of this section of Article I is interpreted as destroying the trustees' rights to property and the profits therefrom under the colonial charters, the repeal would be in violation of the more specific protection of private property of both the federal and state constitutions. Courts would be very reluctant to hold that the repeal made the protection of private property clauses inapplicable to the property held for almost three hundred years in trust by the Huntington trustees. Even if all other arguments fail, long judicial recognition of this

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9. Laws of New York...1962, 3660-3663, See especially para. 2-a, 4-b, 3.

makes them vested rights entitled to constitutional protection. The courts would undoubtedly take the position voiced in Beers v. Hotchkiss, that "there was surely no purpose by the repeal to overturn or unsettle titles of immemorial acceptance."[10] The recent Nance decision in 1965 and the lack of legislative history showing that repeal of section 15 was to have a nullifying effect give the lie to any contention that the trustees, by whatever name, and the trust res no longer exist. It is more likely that the section was repealed in 1962 because statutes and vested rights, as well as the perpetuity of a public trust, left no room for it to be operable in this day and age.

The basic cases which have upheld the colonial charters to the towns on Long Island are: Brookhaven v. Strong (60 N.Y. 56 in 1875), Lowndes v. Huntington (153 U.S. 1 in 1894), People ex rel. Howell v. Jessup (160 N.Y. 249 in 1899), Sammis v. Huntington (186 App. Div. 463 in 1918), People ex. rel. Palmer v. Travis (223 N.Y. 150 in 1918), Knapp v. Fasbender (1 N.Y. 2d 212 in 1956), and Nance v. Town of Oyster Bay (258 N.Y.S. 2d 156 in 1965). Those which recognize the right of the state or a charter town to regulate the use of the foreshore and lands under water, including the charging of fees in at least one case, are: People v. Vanderbilt (26 N.Y. 287), Town of Brookhaven v. Strong (60 N.Y. 56 in 1875), People v. New York and Staten Island Ferry Co. (68 N.Y. 71 in 1877), Saunders et al v. NYC & HRRR Co. (144 N.Y. 75 in 1894), Matter of the Mayor of New York (182 N.Y. 361 in 1905), Town of Smithtown v. St. James Oyster Co. (140 N.Y. 981 in 1913), People v. Brennan (255 N.Y.S. 331 in 1931), People v. Foote (273 N.Y.S. 567 in 1934), Matter of Del Balso H. Corp. v. McKenzie (271 N.Y. 313 in 1936), and Village of Old Field v. Schuyler

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10. Beers v. Hotchkiss, 256 N.Y. 41, 58-59; 175 N.E. 506, 512.

(240 N.Y.S. 2d 980 in 1963). One case that slightly weakens these is Easthampton v. Vail (151 N.Y. 463 in 1897) in which the town of Easthampton did not sufficiently prove its title to lands under water.

The controversy in the courts, and it can well be called that, over whether the rights of the public, the jus publicum, are superior to those of riparian owners, the jus privatum, has never been clearly resolved one way or the other. In the broadest sense it can be said that the courts have leaned toward upholding the English common law rights of the public of use of the foreshore and lands under water freely for fishing, navigation, bathing, which also carries with it the right of access to enjoy these rights. Many decisions have flatly stated that such property, even though it falls into private hands, is vested with and subject to the jus publicum. Some have gone so far as to void grants of land below the high water marks; others have declared that unless otherwise expressly stated title to such lands is in the sovereign. Cases cited in these respects are: People v. Canal Appraisers (31 N.Y. 461 in 1965), Burbank v. Faye (65 N.Y. 57 in 1875), Coxe v. State (144 N.Y. 396 in 1895), People ex rel. Howell v. Jessup (160 N.Y. 249 in 1899), Matter of Mayor of New York (182 N.Y. 361 in 1905), People v. Steeplechase Park Corp. (218 N.Y. 459 in 1906), Barnes v. Midland Railroad Terminal Co. (193 N.Y. 378 in 1908), Trustees of Brookhaven v. Dyett Sand - L.B. Co. (135 N.Y.S. 165 in 1912), Somerville v. City of New York (153 N.Y. 253 in 1915), Matter of Long Sault Development Co. v. Kennedy (212 N.Y. 297 in 1914, 242 U.S. 272 in 1916), Johnson v. May (178 N.Y.S. 742 in 1919), Lewis Blue Point Oyster Co. v. Briggs (198 N.Y. 287 in 1910, 229 U.S. 82 in 1913), Tiffany v. Oyster Bay (234 N.Y. 15 in 1922), Appleby v. City of New York (235 N.Y. 351 in 1923, 271 U.S. 364 in 1926), Marba Sea Bay Corp. v. Clinton St. Railway Corp. (271 N.Y. 292 in 1936), Gunn v. Bergquist (108 N.Y.S. 2d 644 in 1951), and Nattin Realty, Inc. v.

Ludewig (324 N.Y.S. 2d 688 in 1971). Some of these, of course, although reaffirming the rights of the public, stress more the rights of riparian owners, as in the Tiffany case. A few decisions have upheld the right of the sovereign, and even occasionally a riparian owner to extinguish public rights: Peck v. Lockwood (5 Day. Conn. 22 in 1811), Smith v. Maryland (59 U.S. 71 in 1855), Sage v. The Mayor (154 N.Y. 61 in 1897), and Bardes v. Herman (207 N.Y. 749 in 1913). These had to do with superior public uses but dealt more with riparian owners than with the general public.

All the cases mentioned heretofore have firmly established the recognition of colonial charters or asserted the rights of the public. Most have strongly underlined the public trust doctrine vested in the sovereign, whether it be state or charter town. However, there are a number of cases which can be so construed as to weaken them, in some instances to an inchoate bundle of rights which are incapable of being exercised. These are the decisions supporting claims of riparian owners to open and unrestricted access to navigable water and the right, without question or challenge, to construct docks, wharves, piers, and bulkheads to accomplish their purposes. The most notable ones usually cited are: Smith v. City of Rochester (92 N.Y. 463 in 1883) but qualified it as to rights only to the high water mark, Matter of City of New York (168 N.Y. 134 in 1901), Thousand Island Steamboat Co. v. Visges (179 N.Y. 206 in 1904), Town of Brookhaven v. Smith (188 N.Y. 74 in 1907), Western Pacific Railway Co. v. Southern Pacific Railway Co. (151 F. 376 C.C.A. 9 Cir. in 1907), Barnes v. Midland Railroad Terminal Co. (193 N.Y. 378 in 1908), People v. Steeplechase Park Co. (218 N.Y. 459 in 1916), Tiffany v. Town of Oyster Bay (234 N.Y. 15 in 1922), Hinkley v. State of New York (234 N.Y. 309 in 1922), Harway Improvement Co. v. Partridge (236 N.Y. 563 in 1923), Fischer v. Amity Harbor Corp. (261 N.Y.S. 41 in 1932), and City of New York v. Third Avenue Railway Co. (294 N.Y.

238 in 1945).

In at least four cases, although riparian rights were upheld, a modification was introduced by the courts as to the extent of riparian rights. Two of them, Slinger v. International Contracting Co. (169 N.Y. 60 in 1901) and City of New York v. Wilson and Co. (278 N.Y. 86 in 1938) stated that riparian rights could be restricted because they were not absolute. One decision, Oelsner v. Nassau Light and Power Co. (134 App. Div. 281 in 1909), declared that riparian owners had only an easement to be exercised at no greater extent than that accorded the general public. This was supported in Best Renting Co. v. City of New York (248 N.Y. 497 in 1928) wherein riparian rights were recognized, but so too were those of the public based on the law that the sovereign has title to the foreshore.

Two cases, Rumsey v. New York L.N.E.R. Co. (133 N.Y. 79 in 1892) and Town of Brookhaven v. Smith (188 N.Y. 74 in 1907) rejected the English common law principle of the jus publicum and the superior rights of the sovereign, claiming such principles were inapplicable in New York and that riparian owners did not have to seek the permission of the sovereign before exercising his rights of access to navigable waters by constructing docks and other devises. Despite the fact that these cases have been relied upon heavily by protagonists of riparian rights and more than once have had imparted to them an inflexibility which seems to emasculate any contrary contentions concerning the rights of the public and of the sovereign, a clear warning against such rigidity was voiced by Judge Cardozo in Howard v. City of Buffalo (211 N.Y. in 1914) in which he cautioned that such doctrines should be flexible and depend upon the locality in which they are applied.

Of all the cases which might be used to weaken the powers and privileges of the Board of Trustees of Huntington with respect to regulating the foreshore

and lands under water (the principal portions of the trust res still in existence) so that the Board is stripped of its ability to protect the trust res, Brookhaven v. Smith and Tiffany v. Oyster Bay are the ones most likely to be employed. One can protest strongly against the decision in each case, which asserted that public rights and riparian rights are superior to colonial charter town rights, by pointing out, amongst other things, that one of the essential features of a trust is the creation of an estate from which rents or profits may be derived[11] or that the real property laws of the state recognize the right of trusts to lease land for the benefit of the cestui que trust and to collect rents therefrom.[12] It will avail them nothing because these rules apply to private express trusts and a public trust is another matter entirely. Because it includes lands and lands under water the trust administered for the public by the Board of Trustees is imbued with certain peculiar and contradictory features. It is a trust for the benefit of the townspeople who, in a generic sense, have the right to fully enjoy the use of it and the profits derived from it without fear of having no remedies against arbitrary encroachment or damage to the res. Because of the nature of the trust res the taxpayers and residents of the town are as a group riparian owners as well as owners of lands under water, yet this ownership, administered for them by the Board of Trustees, has no meaning if the doctrine of riparian rights in its extreme pronouncement is permitted to take precedent. In part this latter doctrine is also a part of the trust as a public trust. Individuals cannot be denied access to navigable water as members of the public and more especially if they are riparian or littoral owners. This is the con-

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11. Gifford v. Rising, 51 Hun 1, 3 N.Y.S. 392 (1889).

12. Garvey v. McDevitt, 72 N.Y. 556 (1878).

tradiction. The taxpayers and residents are supposedly guaranteed access to, use of, and enjoyment of the profits from the foreshore and lands under water, as well as the waters, not only as members of the public but also as beneficiaries of a trust. Because the trust is public and because the trust res is what it is, riparian owners cannot be denied access or use, but in fact are given special privileges over and above the remainder of the public in that by virtue of their position they can, without fear of restriction, build "reasonable" docks, wharves, piers, and floats to reach navigable water. More often than not this has had the effect of shutting off access to the public, as in the case of almost all of Huntington Harbor. A reading of the various pro riparian owner decisions leads one to the conclusion that "reasonable" as interpreted by the courts can mean a dock or wharf extending the entire length of the property (the many marinas and commercial boat sales and repair enterprises, for example) which has the effect of excluding the public with the exception of a small ramp at the head of the harbor and the Town Dock on the east side of the harbor. Neither can be looked on as adequate in fulfilling the needs and requirements of either the public trust doctrine or the trusteeship in the town.

Since the Brookhaven v. Smith decision stands as one of the landmark decisions in this state with respect to riparian rights it is important to understand it. To recapitulate the facts of the case, Smith, a riparian owner, built a one hundred fifty foot long dock from his property out to the navigable waters of the Great South Bay. In doing so, he drove some piles into land under water leased by Post from the town of Brookhaven. Smith claimed he was exercising his rights as a riparian owner to gain access to navigable water. The town and the lessee brought an action of trespass and claimed the dock was a purpresture. The town based its claim on colonial patents which gave them

fee title to the bay bottom and the right to enter into an exclusive lease agreement with the lessee for a portion of that bottom. Although the town did not contend the dock was overly long, and thus not constituting a nuisance or hazard to navigation, it held that it was a purpresture built without the permission of the town and encroached upon lands assigned by the town for another purpose.

The court rested its decision as to the application of the English common law, the rule that none may build a structure into the water without the permission of the sovereign, on the reasoning that,[13]

> The adoption by the people of this state of such parts of the common law, as were in force on the 20th day of April 1777, does not compel us to incorporate into our system of jurisprudence principles, which are inapplicable to our circumstances and which are inconsistent with our notions of what a just consideration of those circumstances demands. The common law of England, upon the subject of the rights of riparian owners, had but an imperfect application to the situation in a state like this, with its numerous large navigable bodies of water, in bays, rivers and inland lakes. To borrow the language of Judge Bronson, in his opinion in Starr v. Child, (20 Wend. 149), "no doctrine is better settled than that such portions of the law of England, as are not adapted to our condition, form no part of the law of this state." Such as were inconsistent with the spirit of our institutions, or had special reference to the physical conditions of a country widely differing from our own, never became a part of our law, upon the organization of this state. We have but to consider the position of Great Britain, as an island, with short rivers, navigable only as far as the tide flows and ebbs, and a reason for the rigidity of the rule early asserted as to the extent of the rights attaching to riparian ownership may appear, in the apprehension of the "straitening of the port by building too far into the water." (From Hale's de Portibus Maris.) Our position is different physically and governmentally.

Obviously this obiter dictum is based on the contention that different

13. 188 N.Y. 74, 79.

physical circumstances make for different laws as between the two countries. He has a point, but does not carry it to its logical conclusion which is that if conditions are the same or essentially similar then the same law, the English common law, should still apply. Even a cursory review of the evolution of the English common law of riparian rights will indicate that it grew out of conditions where an increasing population was dependent upon limited access to the water. Harbors, bays, and rivers, of which England has many, were relatively short, navigable, within the ebb and flow of the tide, and needed for use by the people for the survival of their economy and national strength. To turn these resources over to uncontrolled and indiscriminate use by private individuals probably would have been disastrous.

Is Long Island any different? In reality its physical features and geography which include an extensive shore and many bays, harbors, inlets, and large streams (can they really be called rivers?) subject to tidal flow are quite similar to England. People's demand for access to and use of these areas, when combined with recent tremendous increases in population density on the Island, more strongly suggest similarities with England than with other regions of the state inland or the vast interior expanses of this country. The latter is what the judges had in mind in 1907. In that sense they may have been correct even when considering Long Island. In 1907 it was a rural area, sparsely settled, and with few population demands on its resources. Seventy years ago is not today, and their statement can be easily turned on its head, for it is no longer applicable.

At another point, the decision quotes with approval from Gould on Waters, that,[14]

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14. Ibid., 80.

> There is no evidence that the jus privatum...was ever asserted in the colony as the right of the Crown, or that it has, until recently, been claimed by the States; but there is, on the contrary, in my opinion, the strongest evidence that this right has been abandoned to the proprietors of the land from the first settlement of the province and exercised by them to the present day, so as to have become a common right and thus the common law.

Little need be said here except to observe that there is a reliance upon an author whose knowledge of history appears to be incomplete and faulty. Both Gould and the court had only to read the local town records of any town on Long Island, or the records of the Mayor and Council of New York to obtain ample evidence to the contrary. Both entities exercised their rights as municipal corporations as had any of their counterparts in England. They controlled the waters; they regulated dock construction. They restricted use of the lands under water and acted in every sense as sovereign powers with authority delegated from the Crown. The nineteenth century was little different in this respect, except that the state supplanted the Crown. Gould was a poor historian; the decision a poor one for having accepted his opinion without question.

Furthermore, the majority opinion observes that,[15]

> In our democratic form of government, the residuary sovereignty not granted to the departments and offices of the government is in the people of the state. The residuary ownership of all property held by the state is in the people of the state and may not the accustomed exercise by property owners of some incidental rights with respect to it, as in the use of the soil of navigable arms of the sea, or rivers, for the support of piers and docks, become a common right and, as it has been suggested before, the common law of the state? I think so.

Somewhat earlier the court explains what it means by residual powers

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15. Ibid., 87.

vested in the people and the "incidental" rights of riparian owners,[16]

> Upon the organization of the state government, it [Brookhaven] continued to hold the soil of the bay in that capacity, and, representatively, for the benefit of the members of the community. Whatever its rights acquired by the grant, they were and are, nevertheless, subject to the public rights of navigation and to the rights of access or riparian owners. These rights have ever existed....The proprietary rights of the town were, and they must continue to be, subject to what, under the circumstances, is decided to be a reasonable exercise by the riparian owner of his right of access to the navigable waters of the bay.

In one breath it upholds the rights of the community and the general rights immemorially recognized in English common law; in the next breath it subordinates them to the whims of individuals who happen to own property at the water's edge. The People as a group are relegated to second class citizenry. This is the epitome of the laissez-faire philosophy current in 1907, but already on the wane. The court is right in stating that public rights of navigation and riparian owners' access to water "have ever existed", but not in the sense it implies. Access is one thing, construction of docks and piers and the obstructing of the access of others and impeding their use of the foreshore and the waters offshore is quite another. English common law saw the inequities that might develop; the majority decision in Brookhaven v. Smith did not.

Finally, with respect to this decision, it should be noted that it has a built-in inconsistency when it states that, "The right of access is conceded to be a valuable one and unless the foreshore has been appropriated by the general government to some superior, and lawful, public use, as for example, by grant to a municipality, or for navigation purposes, it is entitled to the

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16. Ibid., 78-79.

protection of the law." (emphasis added).[17] Can it not be said that the constitutional acceptance by the new state in 1777 of the colonial charters is tantamont to full recognition of Crown grants to municipalities? By itself this constricts the blanket application of protection to riparian owners espoused by the decision. This statement also appears to offer protection to one group, the small group of riparian owners, and ignore the need to protection the majority, the People, the cestui que trust of the colonial charters.

It should be pointed out that the Brookhaven v. Smith decision was handed down by a court divided four to three. The dissenting judges took the position espoused by this author. The English common law should not only be considered relevant but should be taken as the governing system of law. This is so for at least two reasons: the many cases at the U.S. Supreme Court and state court levels which have held that the charters are to be interpreted in the light of the law at the time of their issuance and later decisions commenting on the common law; and, the fact that the basic rationale for rejecting the common law position on riparian rights, that of great physical and governmental differences between the two countries, simply is not applicable to the situation and the locus in quo.

Some might contend that the Tiffany v. Town of Oyster Bay decision also gives strong support to riparian owners in their claim that the law and court decisions have consistently supported their right of access by docks and other structures to navigable waters. A reading of the case from its inception through the appeals does not support this position. If anything, the case is

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17. Ibid., 87.

tangential if not actually irrelevant. The case had to do with Tiffany filling in land in front of his house, thus encroaching up land under water owned by the town under its colonial grant. The many decisions accepted the fee title of the town as a fact supported by the law. The fundamental difference between the two parties had nothing to do with docks, wharves, and like structures; it had to do with whether the filled-in area removed Tiffany from a riparian to an inland owner and, if the former, did the town have the right to construct a building on the new land and block Tiffany's access to the water. The final decision, upheld by the Court of Appeals, simply stated that Tiffany remained in his rights as a riparian owner because of the nature and extent of the fill, that the town could not extinguish his rights by construction of a building, and that he still had the right of access to the water. No mention is made of how he is to gain access; there is no discussion of docks, wharves, piers, or other means of access. In this case access, by inference, is the fundamental right to get to the water and to use it in a general way and not, as some might interpret it, as recognition of a special right to build specific types of structures to capitalize on the right of access.

There are now two major points to consider: the ability of the Board of Trustees to retain effective control over the trust res even to the extent of recapturing some which has slipped into private hands; and, the right of that Board to charge rents and demand a lease from all who use local lands under water to erect docks and wharves for private use or as commercial operations. Two cases of vital concern to the Board of Trustees are now being processed through the Court of Appeals, the highest court in the state, each having to do with one or the other of these major points.

Dolphin Lake Associates, Ltd., v. Town of Southampton, reported in the New York Law Journal on January 5, 1972, deals with title to certain lands

under water and lands subject to the ebb and flow of daily tides. The court, in awarding the disputed land to the town even though plaintiff claimed title by quit-claim deeds dating from the nineteenth century, stated that,

> with respect to the land under navigable or tide waters an important limitation has been engrafted upon this power [to alienate] from the nature of the title. The title of the state to the seacoast and the shores of tidal rivers is different from the fee simple which an individual holds to an estate in lands. It is not a proprietary, but a sovereign right, and it has been frequently said that 'a trust is engrafted upon this title for the benefit of the public of which the state is powerless to divest itself.'

In the light of this and other similar decisions cited previously it is possible that the Board of Trustees can move to recapture virtually all the land under the waters of its bays and harbors. One area of interest is that in Northport Bay abutting Asharokan. A substantial quantity of land under water was granted to private individuals at the turn of the century. The question of the validity of the grants is well worth considering.

There is, in addition, the nagging question of the ownership of the northern half of Lloyd Harbor. This has been in controversy ever since the seventeenth century and there are those today who would dispute the claims of private individuals on Lloyd's Neck to the ownership of the land under water. Early conveyances to the original owners made no mention of land under water, but used the term "south beach" or similar descriptive phrases to designate the southern boundary. The act of certain townsmen in 1734 when an agreement was reached with the owner of the Neck, dividing the harbor almost in half, can no longer be considered a binding agreement between the two parties. Those representing the town, whether they were trustees themselves or merely representatives who later obtained ratification by the trustees, had no right to divest the town of lands held in public trust. Long usage cannot divest the town of its title because it had clear title to the area long before

the compromise settlement went into effect in the eighteenth century. The state cannot claim title as a consequence of the Revolution and attainder proceedings against the loyalist owner of the Neck. The town had the true title then and all later state conveyances of any of the Neck used the south beach as the southern limit. The Board of Trustees have solid ground on which to base a claim of title.

The second case now in the courts has to do with the right of the Board of Trustees of the Town of Huntington, or any other town for that matter, to demand a lease and the payment of rent from private and commercial operations which make use of local lands under water for docks and similar structures. Town of Hempstead et al. v. Oceanside Yacht Harbor, Inc., as reported in the New York Law Journal on March 16, 1972, is being appealed from a decision of the New York State Supreme Court Appellate Division, Second Department handed down on February 14. Here the plaintiff claims the right to force an openly commercial operation, which happens to be an upland owner of waterfront property, to pay rent to the town for use of land under water to hold piles for a number of floats and mooring facilities. The defendant's claim is based solidly in the doctrine of riparian rights. Although a lower court decided in favor of the town and reasoned that since it is a commercial operation, one which excludes the public from use of a portion of the water and land under water and which charges fees for the use of its facilities, the town as trustee for and representative of the public has a right to demand a rent from a profitable enterprise which far exceeds the minimum exercise of riparian rights. This has been reversed by the Appellate Division which held that use of the entire frontage by a riparian owner for that or similar purposes falls well within the acceptable standards of use by a riparian owner, basing its decision on Brookhaven v. Smith.

> We cannot say on this record that the defendant overstepped the bounds of reasonableness by renting the mooring slips to individual owners of boats, even though the number of boats is considerable. The policy of the state, since an early time in the history of our state, has been directed toward encouraging the private development of waterfronts, subject only to the condition that the use be reasonable and not obstructive of navigation (Town of Brookhaven v. Smith, 188 N.Y. 74, 79-80, 97, supra). If a different policy is to be formulated at this time, favoring the right of the foreshore owner to be compensated when the riparian uses the right of access by operating a marina, accommodating the mooring of a substantial number of small private boats, the change ought to be accomplished by the Court of Appeals which established the policy.

This is tantamont to the court refusing to make a decision on the merits of the case or to take into its consideration the vastly changed circumstances from the time of the decision on which it rests its case. In 1936 President Franklin D. Roosevelt, while Hurling other epithets at the U.S. Supreme Court, dubbed it a "horse-and-buggy court." The same can be said for the second department of the Appellate Division today. What has been said for Brookhaven v. Smith applies in this case.

Only one or two issues remain to be discussed. First, there is the role of the U.S. Army Corps of Engineers in issuing permits to local residents to construction docks, piers, wharves, and other structures in the waters of Huntington. Second, there is the matter of a decision now being written by a federal court judge dismissing two suits brought in the name of the Trustees of the Freeholders and Commonalty of the Town of Huntington against the federal government's Environmental Protection Agency and a private individual who plans to erect a large restaurent on the eastern shore of Cold Spring Harbor.

In the past persons desirous of building some kind of structure extending into navigable waters had to file plans with the Corps of Engineers, which

would then review the project to determine its effect, if any, on navigation. If it found that there would be no adverse effect a permit would be issued to the applicant stating that in the opinion of the Corps the plans constituted no danger to navigation. Most individuals, upon receiving the permit, felt this was governmental authorization to proceed with construction. Many still think so today. They are wrong.

In order for anyone to build piers, docks, or similar structures which extend into navigable waters they must obtain not only a permit from the Corps of Engineers, pursuant to 33 U.S.C. 403 and 404, but they must also obtain permission from local and state authorities if there are laws or ordinances in each respective instance requiring that they do so. Without the latter the permit from the Engineers is useless except insofar as it is a written expression of some obscure Army engineer's opinion that the planned structure will not endanger navigation. It is nothing more than that.

The right of private persons to erect structures in navigable waters of the United States that are entirely within the limits of a state, current applications of the riparian rights doctrine notwithstanding, is subject to veto by federal authorities pursuant to 33 U.S.C. 403 and 404, and by state and local authorities as decided in Montgomery v. Portland (190 U.S. 89, 106, in 1903), North Shore Boom Company v. Nicomen Boom Company (212 U.S. 406 in 1909), Cummings v. Chicago (188 U.S. 410 in 1903), and Wisconsin v. Illinois (278 U.S. 367 in 1929). In the latter case it was also determined that federal authority under 33 U.S.C. 403 does not override the authority of the state to veto the construction of objectionable and obstructive structures in navigable waters within the state.

Permits issued by the Corps of Engineers do not obviate the necessity for obtaining state assent to work authorized or to comply with state and local laws

or regulations.[18] Cummings v. Chicago makes clear that both state and local governments, when acting consistent with the constitution and laws of the state, have the power to veto the construction of piers, docks, or wharves in navigable waters. That case had to do with some riparian owners efforts to enjoin the City of Chicago from interfering with construction of a dock in front lands owned by the plaintiffs on the banks of the Calumet River within the city's limits. The plaintiffs had obtained a permit from the Corps of Engineers, but had disregarded a city ordinance requiring the permission of its Department of Public Works before any such structures could be built. Because they had not received such permission, the city police forcibly prevented construction of the dock. The U.S. Supreme Court held that 33 U.S.C. 403 did not mean that the plaintiffs, having simply a permit from the Secretary of the Army and the Corps of Engineers, could erect structures in the Calumet River without the assent of the State of Illinois and the City of Chicago.[19]

It is possible that the Board of Trustees of Huntington could bring an action against anyone attempting to erect structures in the navigable waters of the town based on the proprietary character of the trust as recognized in Lowndes v. Huntington, Knapp v. Fasbender, and the laws of 1952 and 1962 of the State of New York. A suit in the nature of a trespass to enjoin such construction without the permission of the Board has been upheld in Wilson v. Hudson County Water Company (76 N.J. Eq. 543, 76 A. 560, in 1910), Cobb v.

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18. Norfolk Dredging Company v. Radcliff Materials, Inc., 264 F. Supp. 399 (E.D. Va., 1967).

19. Cummings v. Chicago, 188 U.S. 427, 431.

Lincoln Park (202 Ill. 427, 67 N.E. 5 in 1903), and Commonwealth v. Pennsylvania Railroad Company (72 Pa. Super. Ct. 353 in 1919). In the first case cited the court held that a permit issued by the Corps of Engineers pursuant to 33 U.S.C. 403 is only a finding or declaration that the proposed structure will not interfere with or be detrimental to navigation and is not a positive declaration by Congress that the licensee may make such obstruction without obtaining the consent of the owner of the submerged land. However, until Brookhaven v. Smith and subsequent cases are reversed or drastically modified to conform to present-day conditions, a trespass action is of dubious value.

Ever since 1970 the Corps of Engineers, in addition to their usual concern with obstructions to navigation, must now consider the effect of proposed structures on wildlife and environmental values. In that year the Fifth Circuit Court of Appeals in Florida reversed a lower court decision which would have permitted a developer to fill in eleven acres of tidelands for use as a commercial mobile trailer park. The lower court had held that the Secretary of the Army and the Corps had no power to consider anything except interference with navigation. Contrarily the Circuit Court of Appeals in Zabel v. Tabb held that,[20]

> nothing in the statutory structure compels the Secretary to close his eyes to all that others see or think they see. The establishment was entitled, if not required, to consider ecological factors and, being persuaded by them, to deny that which might have been granted routinely five, ten, or fifteen years ago before man's explosive increase made all, including Congress, aware of civilization's potential destruction from breathing its own polluted air and drinking its own infected water and the immeasurable loss from a silent-spring-like disturbance of nature's economy.

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20. Zabel v. Tabb, 430 F. 2d 199 (5 Cir. 1970), cert. den. 401 U.S. 910 (1971).

Actually the assertion that individuals must obtain state and local permission in addition to that of the Corps of Engineers is supported by the regulations of the Corps governing such permits. The Corps requires that applications for permits for minor structures and work in unimproved waterways or in waterways where such structures and works are well removed from "the fairways used by navigation" be accompanied by copies of approval required by state and local ordinances.[21]

> The decision as to whether a permit will be issued must rest on an evaluation of all relevant factors, including the effect of the proposed work on navigation, fish, and wildlife, conservation, pollution, aesthetics, ecology, and the general public interest. In cases where the structure is unobjectionable but when State or local authorities decline to give their consent to the work, it is not usual for the Corps of Engineers to issue a permit. It practically becomes of no value in the event of opposition by State or local authority. In such cases the applicant is informed that the structure is unobjectionable and that the permit would be issued were the consent of the local authority also forthcoming....

This regulation of the Corps of Engineers makes clear that approval of local authorities is a prerequisite to application for a permit from the Corps.

The final issue to be considered, and it is a crucial one, is the recent oral decision by Judge Zavatt of the U.S. District Court, Eastern District of New York, dismissing suits brought in the name of the Trustees of the Freeholders and Commonalty of the Town of Huntington against the U.S. Environmental Protection Agency, the County of Suffolk, and others. The suit requested an injunction against the implementation of multi-million dollar sewer facility on ecological grounds and contended that the Trustees, by their colonial charters, had control over the natural resources of the

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21. 33 C.F.R. para. 209, 120.

town and, therefore, could bring such an action. The primary thrust of Judge Zavatt's decision is that the Trustees no longer exist and have no standing in law.

It is unnecessary to waste time on the glaring errors in historical fact liberally sprinkled throughout the oral decision of the judge and the written memorandum of law submitted by the Suffolk County Attorney's Office.[22] Yet it is necessary to take into account certain assertions made by Judge Zavatt in his decision delivered from the bench. The judge does not question the existence of the Trustees prior to 1872 or of a Board of Trustees between 1872 and 1962. Since he cites the colonial charters, the various laws of 1872, 1929, and 1962 as well as Knapp v. Fasbender he cannot fail to do so. Yet he ignores the law of 1952 which clearly spelled out the rights and duties of the Board of Trustees and seems unaware of the far reaching extent of the jurisdiction of the Trustees clearly described in the original charters. He also appears to be totally ignorant of the innumerable historical facts and obvious trends cited herein which support the contention that the Trustees did in fact have the power to control the local environment and regulate human use of it.

In 1962 the state legislature exercised its powers over the successors to the Trustees of the Freeholders, the Board of Trustees, and provided for a merger of the Board of Trustees into the Town Board. Judge Zavatt claims that, "the powers and duties of the said Trustees (Board of Trustees) shall be

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22. Trustees of the Freeholders and Commonalty of the Town of Huntington v. Environmental Protection Agency of the United States of America et al., "Memorandum of Law on behalf of defendant, County of Suffolk", by George W. Percy, Jr., County Attorney; transcript of oral decision of Judge Zavatt. Supervisor Files, Town of Huntington, 1972.

exercised by the Town Board and, further, the Town Board shall be the Board of Trustees." By implication he is stating that the Board of Trustees was eliminated for all practical purposes and its place taken in all respects by the Town Board. A careful reading of the 1962 statute shows that at all times when trustees matters are before the Board it must sit as a separate entity and maintain a separate record of minutes distinct from the Town Board. The Town Board, by that law, cannot act as the Board of Trustees while sitting as the Town Board. It must recess from its discussion of town matters and reassemble as the Board of Trustees.

The judge asserts that "from the legislative history it is clear that the plaintiffs (the Trustees of the Freeholders) are a nonexistent body nor do they exist as individual members thereof, and, therefore, have no standing to institute this action." Here he is referring to the old Trustees of the Freeholders and Commonalty, a title and a group of persons in existence from 1694 to 1872. This was the title used in the action by the plaintiff. By rights the action should have been taken in the name of the Board of Trustees of the Town of Huntington, or, "The Town Board of Huntington acting in its capacity as the Board of Trustees of the Town of Huntington." If even then the good judge had rejected the suit, he would have been better on stage in Marat-Sade than on the bench. He could not, either in conscience or in law, have dismissed the suit on the grounds he did.

The judge has raised a number of serious questions which must be answered. First, do the Trustees of the Freeholders and Commonalty of the Town of Huntington still exist? If one accepts the position that the state legislature has the power to abolish one group of trustees and transfer its powers to another, then obviously they no longer exist. If this power is acknowledged, then, by inference and extension, the legislature had the power to do what it

will with the trustees and the trust res, for, by shifting the duties of the trustees from one group to another, it can indeed shift it to itself and quickly eliminate any consideration of the town and its people in the administration and disposition of the trust res. The constitutionality of this is open to question.

If the Trustees are eliminated and their functions and property merged with that of the town, as is the case under the 1962 law, what has happened to the trust doctrine itself? Who really acquired the trust. By such a merger the trust res can be considered, to all intents and purposes, as indistinguishable from the real and personal property of the town. It then becomes subject only to town law and the laws of the state which regulate the activities of local officials. This is in complete disregard of the interests of the cestui que trust and stands in direct opposition to the laws of equity and the rules governing trusts.

Throughout his decision the judge assumes that the Trustees of Huntington have always been limited to two functions, as implied in a number of past court decisions in related cases. The two functions are that of governmental administration and proprietary rights of a normal private property owner. The first is no longer relevant today; the second reduces the trust property in value and significance to that of any private property owner. If this becomes reality, the state could easily take the entire trust res. There is, however, a third function, that of the public trust, which transcends the rights and powers of the state to eliminate. The private property is in reality property held in a public trust for the benefit of all in the town and is thus cloaked with a perpetual existence with which the state should not be permitted to tamper.

What, then, are the rights, powers, and duties of the present Board of

Trustees if they are de jure and de facto the successors in interest to the original Trustees of the Freeholders and Commonalty of the Town of Huntington? Only a federal court can answer. A three-judge court could give a declaratory judgment in favor of the Trustees. If not, the Board must be prepared to take the issue to the U.S. Supreme Court, for if Zavatt's decision is allowed to stand, the Trustees and possibly even the trust res have been abolished for all practical purposes. The town of Huntington will no longer have the power to exercise strong controls over wetlands, shorefronts, lands under water, and similar areas other than through the usual zoning codes of any normal town. Certain present restraints on commercial firms, yacht clubs, marinas, and individuals as to their use of the shorefront and lands under water will be forever removed. The cestui que trust will lose any financial or aesthetic advantages it might otherwise have derived from the trust. The consequences are already evident in the activities of persons locally who bulkhead and fill in along the water's edge and extend piles and piers farther and farther into the waterways of the town without any regard for the public. As the population inevitably increases such activities in callous disregard of their future impact on the area will, without the restraints the Board of Trustees could exercise over them, multiply tenfold.

TABLES

Table IV

Supervisors of Huntington, N.Y., 1694-1972

1694-1699	John Adams
(1700-1709	not recorded)
1710	Justice Wickes
1711-1712	Epenetus Platt
1713-1714	John Wicks
1715-1726	Epenetus Platt
1727	Alexander Bryan
1728	Jacob Conline
1729	Alexander Bryan
1730-1734	Epenetus Platt
1734-1736	John Wickes
1737-1747	Isaac Brush
1748-1776	Platt Conkline
1777	John Brush
1778-1785	Timothy Carll
1786	Epenetus Conking
1787	Stephn Kelcy
1788-1790	Timothy Carll
1791	Jacamiah Brush
1792-1793	Ebenezer Platt (to Oct. 22)
1793	Jacamiah Brush
1794-1795	Israel Carll
1796	Timothy Carll
1797-1809	Israel Carll
1810	Phineas Carll
1811-1813	Samuel Carll
1814	Samuel Fleet
1815	Samuel Carll
1816	John Rogers
1817	William Wickes
1818	Samuel Carll
1819	Elias Baylis
1820-1822	Abel Ketcham
1823-1828	Moses Rolph
1829	Abel Conklin
1830-1831	Isaac Conklin
1832-1837	Gilbert Carll
1838-1839	Timothy Carll
1840	Charles A. Floyd
1841-1842	Timothy Carll
1843	Charles A. Floyd
1844-1849	Lawrence Seaman, Jr.
1850-1851	Charles A. Floyd
1852	Lawrence Seaman, Jr.
1853	Zophar Oakley
1854	Charles A. Floyd
1855	Stephen Leek
1856	Lawrence Seaman, Jr.
1857-1865	Charles A. Floyd
1866	Martin Willetts
1867	Stephen Rogers
1868-1869	Henry M. Purdy
1870-1873	J. Amherst Woodhull
1874-1882	Stephen R. Street
1883-1884	Charles R. Street
1885-1886	John Fleet Wood
1887-1888	Elbert Arthur
1889-1895	George M. Tileston
1896-1897	Emmet B. Hawkins (to June 29)
1897-1902	Henry S. Brush
1903	Walter Lindsay (to April)
1903-1904	John W. Arthur
1905-1912	Edward S. Ireland
1913-1916	Edgar Lewis
1917-1927	Abraham L. Field
1928-1931	Richard Hawkins
1932-1935	William Watt
1936-1943	Arthur Kreutzer
1944-1953	Walter Fasbender
1954-1957	Joseph Cermak
1958-1959	Ernest W. Johnson
1960-1965	Robert J. Flynn
1966-1967	John P. Kane (to July)
1967-	Quentin Sammis (to December)
1968-1972	Jerome A. Ambro

Table V

Town Clerks of Huntington, N.Y., 1659-1972

	1659	Thomas Powell
	1660	Thomas Skidmore
Listed as Recorder	1660	Jonas Holdsworth
	1663-1679	John Core, Joseph Bayley, William Jones, Thomas Powell
	1680-1686	John Corey (to August, 1686)
	1686-1690	Isaac Platt
	1691-1710	John Ketcham
	1711-1743	Epenetus Platt
	1744-1748	Philip Ketcham
	1749-1750	Eliphalet Wickes
	1751-1780	Solomon Ketcham
	1781-1804	John Ketcham
	1805-1838	Moses Rolph (to September, 1838)
	1838-1839	Jarvis R. Rolph
	1840-1859	Josiah Smith
	1860-1864	Jeffrey Woodhull
	1865-1866	Stephen C. Rogers
	1867	Hiram V. Baylis
	1868-1869	Fayette Gould
	1870-1878	Daniel L. Baylis
	1879-1881	Douglas Conklin
	1882-1886	Brewster Sammis
	1887-1889	Philip Pearsall
	1890-1893	George R. Rogers
	1894-1903	Philip Pearsall
	1903-1904	Daniel Gerard
	1905-1914	Stanton Sammis
	1915-1945	William B. Trainer
	1946-1949	Joseph Cermak (to August 1, 1949)
	1949	Mrs. Goldhorn (temporary)
	1949-1959	Robert J. McNulty
	1960-1965	Norman Olsen
	1966-1967	Charles Probeck
	1968-1972	Maryrose McGee

Table VI

Population of Huntington, 1653-1970[1]

1653	25 or 30	1905	10,236
1777	696	1910	12,004
1782	1,100	1915	15,224
1810	4,425	1920	13,893***
1820	4,935	1925	20,955
1835	5,498	1930	25,852
1840	6,562	1940	31,768
1845	6,746	1950	47,506
1850	7,481	1960	126,595
1855	8,142	1962	138,656
1860	8,924	1964	156,219
1865	7,809*	1965	170,000 (estimate)
1870	10,704	1967	178,318****
1875	7,739**	1970	198,867 (federal)
1900	9,483	1970	203,093 (LILCO)

* Reflects Civil War losses.
** Reflects secession of Babylon in 1872.
*** Reflects World War I losses.
**** Local census under federal supervision.

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1. Table prepared by local historian Roy Lott in 1968, supplemented for 1970.

Table VII

Huntington Town Beaches, 1972[1]

Local Residents of Town or Village only	Members Only, Private-Restricted
Asharokan Beach, Asharokan	Bay Hills Property Owners, Inc. Huntington Bay
Centerport Beach, Centerport	Baycrest Association, Huntington Bay
Crabmeadow Beach, Northport	Camp Alvernia, Centerport
Crescent Beach, Huntington	Centerport Yacht Club, Centerport
Fleets Cove, Huntington	Coindre Hall, Huntington
Gold Star Batallion Park, Huntington	Cold Spring Harbor Beach Club, Cold Spring Harbor
Halesite Beach, Huntington	Eagle Dock Community Beach, Cold Spring Harbor
Hobart Beach, Eatons Neck	Huntington Bay Club, Huntington
Lloyd Harbor Village Park, Huntington	Huntington Beach, Huntington
Scudder Park Bathing Beach, Northport	Lloyd Neck Bath Club, Lloyd Harbor
Steers Beach, Northport	Nathan Hale Beach Club, Huntington
West Neck Beach, Cold Spring Harbor	

1. Newsday, August 16, 1971, 13A.

Table VIII

Trustees of Huntington, N.Y., 1688-1972

1688*	Thomas Fleet, Sr., Epenetus Platt, Jonas Wood, Sr. James Chichester, Sr., Isaac Platt, Joseph Bayley, Thomas Powell, Jr., Thomas Weeks.
1694**	John Wood, John Wickes, Capt. Wickes, Thomas Brush, Jonas Wood, John Adams, Capt. Bailey.
1695-1698	Joseph Bailey, Justic Wickes, John Wood, Capt. Wickes, John Adams, Jonas Wood, Thomas Brush.
1699-1711	Justes Wickes, Justes Wood, Capt. Wickes, Epenetus Platt, John Adams, Jonas Wood, John Ketcham.
1711-1714	John Wickes, John Wood, Thomas Wickes, John Ketcham, John Brush, Joseph Rogers, Epenetus Platt.
1715	Justis Wickes, Justis Wood, Capt. Higbie, Epenetus Platt, John Adams, Joseph Rogers.
1716	John Wickes, John Wood, Thomas Wickes, Thomas Higbie, Epenetus Platt, John Adams, Joseph Rogers.
1717-1719	John Wickes, John Wood, Thomas Wickes, Thomas Higbie, Epenetus Platt, John Platt, Joseph Rogers.
1720	John Wickes, John Wood, Epenetus Platt, Thomas Wickes, Joseph Rogers, John Platt, Lt. John Wickes.
1721-1723	John Wickes, John Wood, Epenetus Platt, Joseph Rogers, John Platt, John Whitman, Lt. John Wickes.
1724-1725	Epenetus Platt, John Wickes, Joseph Rogers, John Platt, Jacob Conkline, Alexander Bryan, Jeremiah Wood.
1726-1727	John Wickes, Alexander Bryan, Jacob Conkline, Joseph Rogers, John Platt, William Jarvis, Epenetus Platt.
1728-1730	Epenetus Platt, John Wickes, Joseph Rogers, Jacob Conkline, Alexander Bryan, John Platt, William Jarvis.
1731	Epenetus Platt, William Jarvis, Jonathan Wickes, Nathaniel Ketcham, Philip Ketcham, Thomas Wickes, Thomas Brush.
1732	Epenetus Platt, John Wickes, Thomas Wickes, Nathaniel Ketcham, Jonathan Wickes, Thomas Brush, Philip Ketcham.
1733	Philip Ketcham, Nathaniel Ketcham, Jonathan Wickes, Thomas Brush, William Jervis, James Chichester, Isaac Brush.
1734	Charles Sexton, Nathaniel Ketcham, Thomas Brush, Jonathan Wickes, Thomas Wickes, William Jarvis Jr., Samuel Brush.
1735	Charles Sexton, Nathaniel Ketcham, Samuel Brush, William Jarvis Jr., Daniel Kelcy, Joseph Stratton.
1736	John Wickes, Alexander Bryan, Nathaniel Ketcham, Jonathan Wickes, Daniel Kelcy, Samuel Brush, Isaac Platt.
1737-1738	Charles Sexton, Thomas Wickes, Thomas Brush, Isaac Platt, John Titus, Samuel Brush, Obadiah Rogers.
1739-1740	Nathaniel Ketcham, William Jarvis Jr., Jonathan Wickes, Daniel Kelcy, Isaac Brush, Annias Karl, Thomas Gildersleeve.

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* Appointed by Dongan Patent
** Appointed by Fletcher Patent

1741-1742 Nathaniel Ketcham, Daniel Kelcy, Isaac Brush, Jonathan Wickes, William Jarvis Jr., Ananias Karle, Augustine Bryan.

1743 Nathan Ketcham, Daniel Kelcy, Jonathan Wicks, William Jarves, Isaac Brush, Isaac Platt, Elipelet Wicks.

1744 Nathaniel Ketcham, David Kelcy, Jonathan Wicks, William Jarvis, Isaac Platt, Eliphulet Wickes, Robert Brush.

1745-1746 Isaac Brush, Daniel Kelcy, William Jarvis, Isaac Platt, Eliphalet Wickes, Robert Brush, Jonathan Wickes.

1747-1748 Isaac Platt, Daniel Killsy, Joseph Whitman, Robert Brush, Eliphalet Wickes, David Sammis, Alexander Smith.

1749-1750 Isaac Platt, Daniel Kelcy, Eliphalet Wickes, Alex Smith, Joseph Whitman, Moses Scudder, Reuben Brush.

1751-1752 Isaac Platt, Joseph Whitman, Reuben Brush, Moses Scudder, Eliphalet Wickes, Thomas Conklin, Joseph Lewis.

1753-1754 Joseph Lewis, Eliphilit Wickes, Moses Scudder, Samuel Brush, Ruben Brush, Joseph Whitman, Thomas Conklin.

1755-1762 Joseph Lewis, Moses Scudder, Samuel Brush, Thomas Conkling, Nathaniel Ketcham, Justis Wickes, Zophar Platt.

1763 Reuben Brush, Cornelius Hartt, Capt. Scudder, John Wood, Israel Wood, Obediah Platt, Jeremiah Wood.

1764 Reuben Brush, Cornelius Hartt, Capt. Scudder, Jeremiah Wood, Justis Williams, Solomon Ketcham.

1765 Reuben Brush, Capt. Scudder, Cornelius Hartt, Jeremiah Wood, Israel Wood, Solomon Ketcham, Thomas Wickes.

1766 Nathaniel Ketcham, Cornelius Hartt, Jeremiah Wood, Thomas Brush, Thomas Wickes, Solomon Ketcham, Joshua Wood.

1767 Nathaniel Ketcham, Cornelius Hartt, Capt, Scudder, Augustine Bryant, Solomon Ketcham, Thomas Brush, Thomas Wickes.

1768 Nathaniel Ketcham, Capt. Timothy Scudder, Doctor (Gilbert) Potter, Solomon Ketcham, John Wood, John Wickes, Timothy Conkling.

1769 Nathaniel Ketcham, Justice Williams, Timothy Conkling, John Wood, Zophar Platt, Isaac Ketchan, Solomon Ketcham.

1770-1771 Nathaniel Ketcham, John Wood, Timothy Conkling, Mathew Bunce, Henry Scudder, Justice Williams, Solomon Ketcham.

1772-1775 Israel Wood, Jonas Williams, John Wood, Timothy Carll Jr., Stephen Kelly (Kelcy), Henry Scudder, Solomon Ketcham.

1775-1779 Israel Wood, Samuel Oakley, Capt. Timothy Carll, Stephen Kellcy, Gilbert Fleet, Solomon Ketcham, Timothy Conkling.

1780 Joseph Lewis, Capt. Timothy Carll, Samuel Oakley, Stephen Kellcy, Gilbert Fleet, Timothy Conkling.

1781 Joseph Lewis, Eliphelet Chichester, Capt. Digbe, Jonah Scudder, Timothy Conkling, Stephen Kelcy, Solomon Ketcham.

1781 John Brush, Thomas Jarvis. (replaced Ketcham & Lewis, deceased)

1782 Thomas Jarvis, John Brush, Timothy Conkling, Eliphelet Chichester, John Wickes, Epenetus Conkling, Platt Carll.

1783 Thomas Jarvis, John Wickes, Timothy Conkling, Platt Carll, Epenetus Conkling, Eliphelet Chichester, Scudder Lewis.

1784 John Brush, John Wickes, Platt Carll, Silas Sammis, Henry Scudder, John Oakley, Epenetus Conkling.

1785 John Wickes, Henry Scudder, Silas Sammis, Platt Carll, John Oakley, Epenetus Conkling, David Rusco Jr.

1786 Timothy Conkling, Stephen Kelcy, Zophar Platt, Eliphelet Jarvis, David Rusco Jr., John Ketcham, Henry Jarves.

1787	Zophar Platt, John Wickes, Platt Carll, Timothy Conkling, Stephen Kelcy, John Oakley, Henry Scudder Lewis.
1788	Zophar Platt, John Wickes, Stephen Kelcy, John Oakley, Timothy Conkling, Platt Carll, John Ketcham.
1789-1793	Zophar Platt, Henry Scudder, John Wickes, John Ketcham, John Oakley, Ananias Carll, Silas Sammis.
1794	Jacamiah Brush, John Ketcham, Timothy Conkling, Timothy Carll Jr., John Oakley, Zophar Platt, Henry Scudder.
1795	John Brush, Henry Scudder, John Oakley, David Rusco, Timothy Carll Jr., Philip Conkling, John Brush deceased, Timothy Conklin apptd. Nov. to Apr. following.
1796	Jacamiah Brush, Henry Scudder, John Oakley, David Rusco Jr., Philip Conkling, John Ketcham, Timothy Carll Jr.
1797-1799	Timothy Conkling, John Ketcham, Phineas Carll, Jesse Conkling, Gilbert Platt, John Oakley, Daniel Jarvis.
1800-1801	Timothy Conkling Jr., Phineas Carll, John Oakley, John Ketcham, Daniel Jarvis, John Snedicor, Gilbert Platt.
1802	Timothy Conkling Jr., Phineas Carll, John Oakley, Gilbert Platt, Timothy Carll Jr., Samuel Skidmore.
1803-1804	Timothy Conkling, Phineas Carll, David Rusco, John Oakley, Gilbert Platt, Samuel Scidmore, Timothy Carll Jr.
1804	Thomas Roe (replaced David Rusco, deceased)
1805	Timothy Conkling Jr., Phineas Carll, Gilbert Platt, Thomas Ketcham, John Oakley, Samuel Scidmore, Moses Blachley.
1806	Timothy Conkling Jr., Nathaniel Biggs, Samuel Fleet, John Oakley, Phineas Carll, Samuel Scidmore, Richard Conkling Jr.
1807-1810	Timothy Conkling, Phineas Carll, Samuel Scidmore, Richard Conkling Jr., Solomon Ketcham, Eliphalet Chichester, Moses Blachly.
1811-1812	Timothy Conkling, Samuel Carll, Samuel Scidmore, Phineas Carll, Elias Baylis, Richard Conkling Jr., Solomon Ketcham.
1813	Nathaniel Potter, Alexander Lewis, Phineas Carll, Richard Conkling, Solomon Ketcham, Elias Baylis.
1814	Timothy Conkling, Alexander Lewis Samuel Carll, Richard Conkling Jr., Charles Baylis, Solomon Ketcham.
1815-1816	Timothy Conkling, Alexander Lewis, Phineas Carll, Samuel Carll, Solomon Ketcham, Elias Baylis, Richard Conkling Jr.
1817	Timothy Conkling, Samuel Carll, Solomon Ketcham, Divine Hewlett, William Wickes, Samuel Scidmore, Thomas Ketcham.
1818	Timothy Conkling, Solomon Ketcham, Divine Hewlett, Phineas Carll, Gilbert Platt, Samuel Carll, Samuel Scidmore.
1819	Timothy Conkling, Solomon Ketcham, Divine Hewlett, Phineas Carll, Gilbert Platt, Moses Scudder, Jesse Scudder.
1820	Timothy Conkling, Phineas Carll, Divine Hewlett, Moses Scudder, Samuel Flett, Henry Scudder Jr., Simon W. Cooper.
1821	Timothy Conkling, Solomon Ketcham, Jesse Scudder, Selah Carll, John Oakley Jr., Platt Ketcham, Platt Conkling.
1823	Nathaniel Potter, Divine Hewlett, Timothy Carll, Platt Conkling, Selah Carll, Jesse Scudder, John Oakley Jr.
1824	Nathaniel Potter, Timothy Carll, Divine Hewlett, Platt Conklin, John Oakley Jr., Jesse Scudder, Selah Carll.
1825	Nathaniel Potter, Divine Hewlett, Selah Carll, Platt Conklin, John Oakley Jr., Azel Lewis, Timothy Carll.
1826	Isaac Conklin, Selah Carll, Platt Conklin, John Oakley Jr., Azel Lewis, Thomas Ketcham, Jacob Smith.

1827	Isaac Conklin, Selah Carll, Platt Conklin, Thomas Ketcham, Azel Lewis, John Oakley Jr., Richard Van Wyck.
1828	Isaac Conklin, Selah Carll, Platt Conklin, Thomas Ketcham, Richard Van Wyck, John Oakley Jr., John Ketcham.
1829	Isaac Conklin, Platt Conklin, John Ketcham, John Oakley, Richard Vay Wyck, Selah Carll, Joel Jarvis.
1830	Isaac Conklin, Platt Conklin, Richard Van Wyck, John Oakley, John Ketcham, John Wood, Platt Ketcham.
1831	Isaac Conklin, Richard Van Wyck, John Oakley, Joel Jarvis, John Ketcham, John Wood, Platt Conklin.
1832	Nathaniel Potter, Selah Carll, Joel Jarvis, Lemuel B. Rogers, Joel Scudder, Samuel A. Van Wyck, Nathaniel Chichester.
1833-1835	Nathaniel Potter, Selah Carll, Joel Jarvis, Isaac Baylis, Lawrence Seaman Jr., Joel Scudder, John Oakley.
1836	Selah Carll, Platt Conklin, Isaac Baylis, John Oakley, Lawrence Seaman Jr., Lemuel B. Rogers, Joel Jarvis.
1837	Charles Floyd, Selah Carll, Platt Conklin, Lemuel B. Rogers, Joel Jarvis, John Oakley, Isaac Baylis.
1838	Charles A. Floyd, Selah Carll, Joshua Hartt, Lemuel B. Rogers, Platt Conklin, John Oakley, Alanson Seaman.
1839	Charles A. Floyd, Selah Carll, Azel Lewis, Joshua Hartt, Platt Conklin, John Oakley, Alanson Seaman.
1840	Charles A. Floyd, Selah Carll, John Oakley, Joel Jarvis, Alanson Seamen, Thomas B. Smith, Platt Conklin.
1841	Lawrence Seaman, Selah Carll, John Oakley, Joel Jarvis, Joel Bryan, George Oakes, Platt Conkling.
1842	Lawrence Seaman, Selah Carll, John Oakley, Joel Jarvis, Jesse Carll, George Oakes, Isaac Conklin.
1843	Lawrence Seaman, Selah Carll, John Oakley, Stymest Smith, Bryan Scidmore, Samuel A. Van Wyck, Isaac Conklin.
1844	Samuel A. Van Wyck, Selah Carll, John Oakley, Stymest Smith, Bryan Scidmore, Isaac Conklin, Joshua Hartt.
1845	Gilbert Carll, Richard B. Post, Israwl Denton, John Oakley, Stymest Smith Bryant Scidmore Elbert Carll.
1846	Gilbert Carll, Israel Denton, John Oakley, Stymest Smith, Elbert Carll, Shubal M. Nicoll, Gilbert P. Williams.
1847-1848	Gilbert Carll, Israel Denton, David Jarvis, Ebenezer Kellum Jr., Samuel Robbins, Gilbert P. Williams, Shubal M. Nicolls.
1849	Gilbert Carll, Richard Sammis, Gilbert P. Williams, Samuel Robbins, Thomas J. Seaman, David Jarvis, Melancton Bryan.
1850	Gilbert Carll, Timothy Carll, David Jarvis, James F. Hartt, Richard Sammis, Gilbert P. Williams, Samuel Robbins.
1851	Lawrence Seaman, Platt Conklin, Jesse Conklin, James B. Cooper, Gilbert P. Williams, Samuel Robbins, Gilbert Carll.
1852	Daniel Baylis, Jesse Conklin, Gilbert P. Williams, Israel Carll, Smith Burr, Samuel Robbins, Israel Denton.
1853	Richard M. Conklin, Daniel Baylis, Timothy T. Terry, Eliphalet Chichester, Benjamin B. Doty, James Wood.
1854	Lawrence Seaman, Gilbert Carll, Henry Smith, Jesse Conklin, Henry M. Purdy, William Smith, Gilbert P. Williams.
1855	James P. Shipman, Smith Burr, Brewster Conklin, Henry M. Purdy, Israel Carll, Noah Seaman Jr., George D. Cooper.
1856	Gilbert Carll, Elbert Walters, Zebulon Buffet, Timothy J. Terry, Elbert Carll, John D. Hewlett, Charles V. Scudder.
1857	Gilbert Carll, Timothy J. Terry, Brewster Conklin, Zebulon Buffet, Elbert Carll, John D. Hewlett, Israel Carll.

1858	Gilbert Carll, Brewster Conklin, Zebulon Buffet, Elbert Carll, Andrew Ketcham, John D. Hewlett, Israel Carll.
1859	Gilbert Carll, Andrew Ketcham, Brewster Conklin, Elias Baylis, Smith Burr, Elbert Carll, Israel Carll.
1860	Gilbert Carll, Brewster Conklin, Elias Baylis, Elkanah Soper, Smith Burr, Henry M. Purdy, Elbert Carll.
1861	Brewster Conklin, Elias Baylis, Gilbert Carll, Henry M. Purdy, Elkanah Soper, Abel C. Vail, Elbert Carll.
1862	Brewster Conklin, Elias Baylis, Gilbert Carll, Thomas Ireland, Elkanah Soper, Abel C. Vail, Elbert Carll.
1863	Brewster Conklin, Thomas Ireland, Elkanah Soper, Elias Baylis, Elbert Carll, Richard Sammis, Gilbert Carll.
1864	Brewster Conklin, Stephen C. Rogers, Richard Sammis, Gilbert Carll, Elias Baylis, Thomas Ireland, Elbert Carll.
1865	Brewster Conklin, Morris R. Brush, Richard Sammis, Gilbert Carll, Elias Baylis, Thomas Ireland, Elbert Carll.
1866	Brewster Conklin, Elias Baylis, Stephen K. Gould, Jesse Conklin, Thomas Ireland, Gilbert Carll, Richard Sammis.
1867	Elbert Carll, Elias Baylis, Stephen K. Gould, Elkanah Soper, Thomas Ireland, Samuel O. White, Richard Sammis.
1868-1869	Elbert Carll, Elias Baylis, Stephen K. Gould, Elkanah Soper, Thomas Ireland, Timothy Oakley, Richard Sammis.
1870	Elias Baylis, Stephen K. Gould, Selah Smith, Stephen J. Wilson, Isaac W. Roe, Timothy Oakley, Thomas Ireland.
1871	Stephen K. Gould, Isaac W. Roe, Selah Smith, Selah Bunce, Isaac Ireland, Platt Ketcham, Benjamin Doty.
1872*	William W. Wood, W.B. Sammis, Buel Titus, William H. Sammis, Joseph Matthias, Isaac C. Ireland (April to July).
1872-1873	J. Amherst Woodhull, Oliver Smith Sammis, Selah Smith, John Carll, Daniel L. Baylis.
1874	Stephen C. Rogers, John Carll, William H. Sammis, Oliver S. Sammis, Daniel L. Baylis.
1875	Stephen C. Rogers, William H. Sammis, W.B. Sammis, John Carll, Daniel L. Baylis.
1876	Stephen C. Rogers, William H. Sammis, W.B. Sammis, Timothy Oakley, Daniel L. Baylis.
1877-1878	Stephen C. Rogers, Wm. B. Sammis, Timothy Oakley, Charles V. Scudder, Daniel L. Baylis.
1879-1881	Stephen C. Rogers, Charles V. Scudder, Timothy Oakley, Benjamin Doty, Douglas Conklin.
1882	Stephen C. Rogers, Charles V. Scudder, Timothy Oakley, Benjamin Doty, Brewster G. Sammis.
1883	Charles R. Street, Benjamin Doty, Timothy Oakley, Charles S. Sandford, Brewster G. Sammis.
1884	Charles R. Street, Timothy Oakley, Charles S. Sandford, Thomas H. Brush, Brewster G. Sammis.
1885-1886	John F. Wood, John Carll, Charles S. Sandford, Thomas H. Brush, Brewster G. Sammis.

*Trustees of the Freeholders and commonalty replaced by Board of Trustees: supervisor, town clerk, assessors.

1887	Elbert Arthur, Thomas H. Brush, Charles S. Sandford, John Carll, Philip Pearsall.
1888	Elbert Arthur, Thomas H. Brush, Charles S. Sandford, John P. Dole, Philip Pearsall.
1889	George M. Tileston, Henry S. Lewis, John P. Dole, Thomas H. Brush, Philip Pearsall.
1890-1891	George M. Tileston, Henry S. Lewis, John P. Dole, Edward S. Ireland, George R. Rogers.
1892	George M. Tileston, John P. Dole, Edward S. Ireland, Hewlett Scudder, George R. Rogers.
1893	George M. Tileston, John P. Dole, Edward S. Ireland, Edward Thompson, George R. Rogers.
1894	George M. Tileston, Edward S. Ireland, Tunnis Burr, Horace Rusco, Philip Pearsall.
1896	Emmet B. Hawkins, Edward S. Ireland, Tunnis Burr, Stephen K. Gould, Philip Pearsall.
1897	Emmet B. Hawkins, Stephen K. Gould, Edward A. Mathias, Philip Pearsall (to July).
1897	Henry S. Brush, Edward S. Ireland, Stephen K. Gould, Edward A. Mathias, Philip Pearsall.
1898-1902	Henry S. Brush, Edward S. Ireland, Edward A. Mathias, Isaac Rogers, Philip Pearsall.
1903	Walter Lindsay, Edward S. Ireland, Edward A. Mathias, Isaac Rogers, Philip Pearsall (to Jan.).
1903-1904	John Arthur, Edward S. Ireland, Stephen Gould, Edgar Lewis, Daniel Gerard.
1905-1910	Edward S. Ireland, Philip Pearsall, Will H. Barto, William S. Buffet, Stanton E. Sammis.
1911-1912	Edward S. Ireland, Philip Pearsall, Will H. Barto, Edgar L. Lewis, Stanton Sammis.
1913-1914	Edgar Lewis, Philip Pearsall, Benjamin Blydenburgh, William McBrien, Stanton Sammis.
1915-1916	Edgar Lewis, Philip Pearsall, Benjamin Blydenburgh, William McBrien, William B. Trainer.
1917-1919	Abraham L. Field, Benjamin Blydenburgh, Walter Stilwell, Charles Lewis, William B. Trainer.
1920-1921	Abraham L. Field, Charles Lewis, Benjamin Blydenburgh, William McBrien, William B. Trainer.
1922-1923	Abraham L. Field, William McBrien, Chauncey Fox, Benjamin Blydenburgh, William B. Trainer.
1924	Abraham L. Field, Gustave A. Holzaphel, Wm. McBrien, Benj. Blydenburgh, Wm. B. Trainer.
1925	Abraham L. Field, Benjamin Blydenburgh, Harry A. Howard, Gustave A. Holzaphel, William B. Trainer.
1926	Abraham L. Field, Charles Newman, Gustave A. Holzaphel, Benjamin Blydenburgh, William B. Trainer.
1927	Abraham L. Field, Harry Howard, Benjamin Blydenburgh, William B. Trainer. (4)
1928	Richard Hawkins, Harry Howard, Benjamin Blydenburgh, William B. Trainer. (4)

1929-1931*	Richard Hawkins, John Deans, Henry A. Murphy, Floyd Baylis, Roscoe Leighton, William B. Trainer.
1931-1935	William Watt, John Leiper, John King, John Toaz, Charles Sullivan, William B. Trainer.
1936-1937	Arthur Kreutzer, John King, Richard Fraff, Joseph Cermak, John Toaz, William B. Trainer.
1938-1939	Arthur Kreutzer, Bertha Rembaugh, Richard Graff, Joseph Cermak, Richard Cotter, William B. Trainer.
1940-1943	Arthur Kreutzer, Bertha Rembaugh, George A. Hahn, Frederick Knell, Richard Cotter, William B. Trainer.
1944-1945	Walter Fasbender, Bertha Rembaugh, George A. Hahn, Frederick Knell, Richard Cotter, William B. Trainer.
1946	Walter Fasbender, George A. Hahn, Frederick Knell, Percy Ingerman, Thomas Hackett, Joseph Cermak.
1947-1949	Walter Fasbender, Frederick Knell, William Titus, George A. Hahn, Percy Ingerman, Joseph Cermak.
1950-1953	Walter Fasbender, George A. Hahn, William Titus, Percy Ingerman, Joseph Landry, Robert J. McNulty.
1954-1957	Joseph Cermak, Percy Ingerman, Joseph Landry, Robert J. McNulty.
1958-1959	Ernest Johnson, Percy Interman, John Kane, Robert J. McNulty.
1960-1961	Robert J. Flynn, Percy Ingerman, John Kane, Norman Olsen.
1962-**	Robert J. Flynn, John Kane, Frank P. deLuca, Norman Olsen (to July)
1962-1963	Robert J. Flynn, Ruth Corcoran, Donald Driscoll, Frederick Preston, George Smith. Preston, Smith, Driscoll resigned. Replaced by Duncan Elder, F. Robert Halton, George Kerr).
1964-1965	Robert J. Flynn, Ruth F. Corcoran, John F. Dolan, Richard D. Kinsella, Duncan Elder.
1966-1967	John P. Kane, Quentin Sammis, Duncan Elder, John F. Dolan, Richard Kinsella. (John P.Kane resigned July, 1967)
1968-1969	Jerome A.Ambro, Richard D. Kinsella, Leonard Horn, Thomas J, Casey, Clayton Mugridge.
1970-	Jerome A. Ambro, Leonard Horn, Thomas J. Casey, Clayton Mugridge, Richard V. Holahan.

*Board of Trustees changed to supervisory, town clerk, justices of the peace, assessors dropped.

**Trusteeship transferred to Town Board councilmen, who are to act as a Board of Trustees in addition to Town Board functions.

APPENDIX

Appendix A

Trustees Leases, 1786-1899.[1]

Lessee and Purpose	Date	Location
1. Jonathan Titus* Ferry to Norwalk	March 4, 1786	Huntington Harbor. Yearly.
2. Phineas Carll, meadow grass*	Oct. 1786	Undivided land on the plains, 1 year.
3. Platt Kelsey* Ferry to Norwalk	April 18, 1789	Huntington Harbor. 5 years.
4. James Chichester* Pasturage land	April 18, 1791	Parsonage lot adjoining Selah Sammis home. Year.
5. James Bryan et al* Dock	May 18, 1802	At Bryant's Landing, e. part of Town. (No term cited)
6. David Harrison Dock	Feb. 10, 1805	Cold Spring Harbor. E/common land, W/low water, S/50 ft. from well, N/100 ft. from well. 150 ft. wide. 21 years.
7. Samuel Fleet Dock	March 28, 1805	Land under water, e. side Hunt. Harbor. E/shore road to low water by land formerly Jonathan Titus. Keep road open. 20 years.
8. Nathan Smith* Ferry to Norwalk	April 1, 1806	Huntington Harbor. 5 years.
9. Gilbert Platt* Dock	Feb. 20, 1810	E. side Hunt. Harbor. E/common land, W/low water, N/old dock, S/125 ft. from old dock. Trustees to use 40 ft. of dock. 21 years.
10. Samuel B. Kelsey* Ferry to Norwalk	April 2, 1817	Huntington Harbor. Six years.

*Not included in Appendix B.

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1. Sources: Trustees Records, 1872-1893, 1893-1914; Huntington Lease File, Land Under Water, in Town Historian's Office.

	Lessee and Purpose	Date	Location
11.	Alexander Lewis Dock	Sept. 20, 1820	Land under water, e. side Cow Harbor called Bryant's Landing. E/shore road, W/low water, N/100 ft. from s. bounds, S.24 ft. from old dock.
12.	Titus Conklin Built dam	Dec. 25, 1822	Land under water, Cold Spring Harbor. beg. at stake 9 rods w. of corner of Conkling yard, nw across cove to stake, then e. to foot of Rogers dock then to rock in se of dove then s to beg. 20 years.
13.	Joseph C. Lewis Dock	March 1, 1824	Land under water, Cow Harbor w. side. beg. -ft. n. dock at Lewis mill, e into harbor to low water mark, n. 100 ft., w. to high water mark, s. to beg. 50 years. Not to obstruct free passage of public.
14.	Benjamin Kieler Dock	April 5, 1825	Land under water, e. side Hunt. Harbor. Opposite land sold by Jon. Titus to S.J. Whitmore & Co., freedom pf passage to public. 40 years.
15.	Hawley Beers Dock	Aug. 7, 1827	Land under water, Cold Spring Harbor. E/road betwn Beers and land leased W. by channel 100 ft., widen N. and S. to 160 ft. (renewed Stp. 18, 1852, 21 years; renewed June 15, 1872, 5 years; renewed to Henry T. Seaman, February 20, 1879, 7 years; renewed to Henry T. Seaman, 1882).
16.	Henry Williams Dock	March 31, 1828	Land under water, e. side Hunt. Harbor. Beg. 20 se of se corner of dock, w. to channel, s. 200 ft. se to common land, then 200 ft. to beg. Right of reentry. 21 years.
17.	Samuel Whitson Dock	April 5, 1830	Land under water, e. side Cold Spring Harbor, opp. land of Whitson, E/ highway, W. to channel, 80 ft. by channel. Renewed 1852.
18.	William Jones Dock	June 15, 1830	Land under water w/dock. e. side Cold Spring Harbor. opp. house of Hewlett. E/highway 280 ft., W/harbor 88 ft. from highway and 110 ft. long on harbor side. 21 years. Right of Reentry.

Lessee and Purpose	Date	Location
19. Divine Hewlett Steamboat Dock	April 4, 1831	Land under water, e. side Cold Spring Harbor. N/line fence betwn Titus & Rogers, E/30 ft. from high water mark, S/350 ft. from N bnds, W/both ends 5 ft. to low water. 21 years. Right of reentry.
20. Jesse Bunce Dock	Sept. 5, 1832	Head of Gr. Cow Harbor at Jamespoint. W/highway, E/by channel, 70 ft. front and rear. Keep new highway clear. 30 years.
21. Walter R. Jones* Dock	Sept. 4, 1833	Land under water, e. side Cold Spring Harbor, E/highway btwn Jones and lease land, W/ channel 100 ft. to widen N. and S. 160 ft. w. fndation of dock not to be w. of line from Seaman-Jones dock to nw corner of Whitson dock and extend back to highway. 21 years. Right of reentry. Renewed, 1855.
22. Thomas Hendrickson Dock	May 1, 1835	Land under water, e. side Hunt. Harbor opp. land of Hendrickson, extend on shore at high water mark 200 ft., W/200 ft. to channel. 21 years. Right of reentry.
23. Joseph Dixon* Dock	Sept. 19, 1837	Bunce lease of Sept. 5, 1832 assigned to Samuel Bryan, Feb. 16, 1837. Bryan assigns to Dixon this date.
24. John Velsor* Dock	Sept. 5, 1839	Head of Northport Harbor (formerly called Great Cow Harbor), at Jamespoint. W/highway, E/channel, to be 70 ft. front and rear. 23 years. Right of reentry.
25. Melancthon Bryan (not stated)	March 3, 1840	Shore and land under water, e. side Great Cow Harbor. Beg. s. side ground already leased to Bryan at highwater mark, s'ly to n. side bridge, w'ly 300 ft. into bay, n'ly to Bryan leased land. Keep open common way.
26. John Wood Dock	June 9, 1840	Land under water, w. side Hunt. Harbor. beg. 24 ft. from nw corner of mill run ne'ly 90 ft. then n'ly 60 ft., then w'ly to high water mark. 21 years. Right of reentry.

Lessee and Purpose	Date	Location
27. William B. Selleck et al Dock	April 4, 1842	Land under water, e. side Hunt. Harbor. Beg. sw corner of Post and Scudder bnds, s'ly by and with channel 150 ft., se'ly to common land to Post and Scudder bnds, then to beg. Right of reentry. 21 years.
28. Samuel P. Hartt Dock/railway to repair boats.	Aug. 31, 1844	Land under water, Northport Landing. beg. at bndry of Platt Lewis and S.P. Hartt, run w'ly 60 ft. into harbor, s'ly 20 ft short of Malanchton Bryan's dock, e'ly to willow tree, in corner S.P. Hartt's garden, n'ly to beg. Right of reentry. 15 years.
29. William L. Titus Dock	Sept. 27, 1844	Land under water, Centerport w. side harbor. Formerly leased to Joseph C. Lewis (Mar. 1, 1824, lease nr. 13). 15 years. Shore under dock sold to Titus, May 26, 1860.
30. Smith Woodhull (not stated)	Feb. 28, 1846	Land in front of his property. E/ highway, SW/highway, N/parallel line with his n. line. 7 years.
31. Moses Hartt* Dock	Sept. 24, 1846	Land under water, Northport Harbor. beg. on parallel line with Platt Lewis, n. line adjoin highway running e. by Selah Bunce at high water mark, w'ly 70 ft. from low water mark into harbor, s'ly 495 ft. e'ly to high water mark, n'ly 490 ft. to beg. Free passage of vehicles e. side dock. 21 years. Right of reentry.
32. Joseph Starkins (not stated)	Nov. 30, 1852	Land on East Street, village of Hunt., beg. at highway opp. ne corner blacksmith shop, n'ly by highway 60 ft., w'ly 4 ft. short of foot path, se'ly to sw corner blacksmith shop, e'ly to beg. 10 years.
33. Israel Carll* Sell sand	Feb. 7, 1854	All Eaton's Neck Beach owned by town. 6 years. Right of reentry.
34. Isaac B. Arthur* Fish breeding	March 24, 1856	All rights of trustees in area to erect fishpond in Northport Harbor at place most convenient. Right of reentry. 10 years.

Lessee and Purpose	Date	Location
35. Moses L. Scudder et al Build sea wall	May 31, 1856	Land adjoining Huntington Harbor shore. beg. from n. line of Scudder, w'ly in harbor 2 rods from w. side of road, s'ly along shore 7 chains. 12 years.
36. William C. Stout et al* Steamboat dock	July 26, 1856	Land under water at East Neck in Hunt. beg. center of highway leading from village to E. Neck through estate of Titus Conklin from center e'ly 40ft., thence rt angles with shore (high water mark) into bay 130 ft., w'ly parallel with shore 200 ft., rt angles to shore, e'ly to beg. Right of reentry. 12 years.
37. Michael W. Divine Dock	March 1, 1859	Land under water, e. side Hunt. Harbor, opp. house of Divine to extend on shore at high water mark 200 ft., then w'ly 200 ft. to channel. 12 years.
38. William Spriggs and* Charles S. Hartt. Fish Pound	April 30, 1859	Northport Harbor, to put down fish pounds (2). 5 years.
39. David Carll Dock/railway to build, repair boats.	Nov. 15, 1859	Land under water, e. side Northport Harbor. btwn land of Milton Smith, n., and Joseph Lewis, s. Beg. high water mark and extend full width of front, abt 195 ft., and 200 ft. w'ly into harbor. 12 years.
40. David Carll* Sand mining	Nov. 19, 1859	All Eaton's Neck Beach owned by town. 5 years.
41. Elbert Arthur, et al* Build dock, sell sand	Dec. 1, 1859	With David Carll, William Gardiner, Jesse Carll. To sell sand. E/Elbert Arthur, N/L.I. Sound, W/Charles Jones, S/Northport Harbor. 5 years.
42. Henry P. Sammis Dock	Jan. 12, 1860	Land under water, Northport Harbor. Beg. 15 ft., se of present dock, w'ly to channel, n'ly by channel 30 ft. north of present dock, e'ly to highway on shore, s'ly 127 ft. to beg. 21 years.

	Lessee and Purpose	Date	Location
43.	Jesse Jarvis Dock	Jan. 2, 1860	Land under water, Northport Harbor. beg. 15 ft. se of se corner of dock, w'ly to channel, n'ly by channel 30 ft. n. of dock, e'ly to shore road, s'ly 127 ft. to beg. 21 years.
44.	Huntington Harbor Dock Co. Build Dock	Mar. 12,	Land under water, w. side Hunt. Harbor, adjoin land of Platt Conklin and Brewster Conklin. Beg. sw corner at high water mark adjoining B. Conklin's land, n'ly 210 ft. into harbor, e'ly parallel shore 55 ft., s'ly to high water mark on shore adjoining P. Conklin land, w'ly along shore 65 ft. to beg. 15 years.
45.	Jacob Scudder* Erect horse shed	Mar. 29, 1860	Upland, e. side Hunt. Harbor opp. J. Scudder house. Land 20ft. n. and s., 12 ft. e. and w. 15 years.
46.	William G. Gardiner* (not stated)	July 1, 1860	Land under water on Eaton's Neck at place called Winkle Point. Beg. high water mark, s'ly into harbor 150 ft., w'ly 40 ft., n'ly to high water mark, e'ly 12 ft to beg. 15 years.
47.	Joseph Conklin (not stated)	Mar. 26, 1861	Upland, Huntington. Opp. residence of George W. Conklin. Beg. w. side highway opp. nw corner old store, w'ly to high water mark, s'ly by high water mark to opp. sw corner of garden fence, e'ly parallel fence to w. side highway, n'ly on w. side highway to beg. 5 years.
48.	Orlando & Thomas Rogers David & Alanson Wood. Dock	Mar. 26, 1861	Land under water, head Northport Harbor. James Point. W/highway, E/channel, 70 ft. front and rear. Keep highway open. 15 years.
49.	W.W. Wood Build dock	June 9, 1861	Land under water, w. side Hunt. Harbor. Beg. 24 ft. from nw corner of mill, nw'ly 90 ft., n'ly 160 ft., w'ly to high water mark. Not to incumber highway. 21 years.
50.	Henry Williams Dock	Nov. 5, 1863	Renewal of lease of 1828 (see nr. 16), not renewed since 1849. Beg. 60 ft. se of se corner of dock, w'ly to channel, n'ly along channel 240 ft., se'ly to common land, then 240 ft. to beg. 21 years.

Lessee and Purpose	Date	Location
51. William G. Gardiner* Build dock, sell sand.	Nov. 12, 1864	Renewal of lease of 1864 with added terms: Use for sand/gravel as right only; build dock, barns, sheds, railway as necessary. 5 years.
52. George R. Johnson Fill in, Build dock	June 4, 1866	Land under water, e. side Hunt. Harbor; Dock built by Isaac Ketcham. Beg. high water mark sw corner land of G.R. Johnson adjoining dock land and land of David C. Scudder, s'ly 78 1/2 deg. w., 183 ft. to sw corner of dock, n. 13 deg. w. along channel 174 ft., n. 78 1/2 deg. e., 65 ft. to dividing line btwn land of Johnson and Stephen Brown & Bros. at high water mark. se'ly to beg. 21 years.
53. Elbert Arthur Build dock	June 30, 1866	Land under water, Northport Bay adjoining Eaton's Neck Beach, near Arthur's land which he bought from trustees, being 60 ft. in front at high water mark, not to exceed 175 ft. out into harbor. 21 years.
54. Henry J. Scudder (not stated)	Oct. 1, 1866	Beg. at stake by stone seawall on road from Hunt. to tavern at Northport, n. 69 1/2 deg. w to main channel of Northport Harbor, n. along channel to point where line run from lands of Jesse Jarvis would intersect, e'ly and along Jarvis bndry to highway, s'ly along highway to beg. 50 years. Renew or trustees take buildings for value, not including earth fill as part of value.
55. Chas. A. Cheesbrough* Dock	Jan. 20, 1868	E. side Northport Harbor; area leased to Samuel Hartt, 1844 (see item 28). New bnds: beg. at bndry of Edward Lefferts on n. w'ly on course dock runs to channel, s'ly along channel to opp. n. line of dock of Henry Sammis, e'ly along Sammis dock to land of Elkanah Soper, n'ly along high water to beg. 20 years. Cancelled June 6, 1885.
56. Henry J. Scudder and Henry S. Lewis. To Gather drift, cut thatch	May 26, 1869	Land, on beach or strip, projecting west into Northport Harbor contiguous to lessees' land. All lying n. and w. of their lands to line parallel and 100 from them. 20 years.

	Lessee and Purpose	Date	Location
57.	M.D. Bougart* Dock	1869	Land under water, East Neck. 21 years.
58.	Elbert Arthur and William Gardiner. Mine sand.	Nov. 25, 1869	Privilege of taking sand from Eaton's Neck Beach. 5 years.
59.	James Eckerson To bulkhead, build dock, build ramps to load brick	June 1, 1870	Land partly under water on north shore btwn Hunt. inlet and Centerport inlet adjoining brickyard of lessee, land undefined but sufficient to build 1,500 ft. bulkhead not to extend over 30 ft. below high water. Runs not over 30 ft. below low water, extend present dock 60 ft. Reserve free passage through all of premises for townspeople btwn kilns and bulk- head. 21 years. Renewable. Right of reentry.
60.	George W. Scudder* Repair/maintain dock	Aug. 8, 1871	E. side Hunt. Harbor. Former dock leased to Henry Williams (see nr. 16/ 50). Land under water nearly all filled in, being w'ly extension of Williams dock, 30 ft. wide, 240 ft. long covers entire front of Williams lease. to Nov. 5, 1884.
61.	Brickyard of John C.,* Andrew J., and William Y. Provost. Build canal or artificial harbor.	Sept. 1, 1871	At Fresh Ponds in Hunt., east of land of lessees and w. of lands of Dr. Cheeseman. All shore front and land under water of the Sound in Front thereof. Shall not destroy or impair public easement along shore. Construct bridge over any canal or artificial harbor. 99 years.
62.	W.H. Seaman* Dock	Feb. 28, 1874	Renewal of dock lease, Cold Spring Harbor. 10 years.
63.	Elbert Arthur Sand mining	Sept. 23, 1874	Renewal of lease to Eaton's Neck Beach. 5 years.
64.	Noah Seaman estate* Dock	June 19, 1875	E. side Cold Spring Harbor. 5 years.
65.	Samuel Jones, Francis* Hill.	June 19, 1875	Land in front of their property. 10 years.
66.	John R. Scudder,* Thatch grass	July 3, 1875	South of mill dam, meadow. One year.

Lessee and Purpose	Date	Location
67. D. Dodd* Cut Cedar Trees	Sept. 11, 1875	Eaton's Neck Beach. One year.
68. George VanAusdell* Dock	Sept. 11, 1875	Renewal of dock lease, e. side Cold Spring Harbor. 5 years.
69. Jesse Jarvis* (not stated) (dock?)	March 20, 1876	Shore and land under water, e. side Northport Harbor. Formerly Melancthon Bryan (see nr. 25); assigned to Jarvis (see nr. 43). 5 years.
70. Sanitary Commissioner*	Feb. 8, 1878	E. side Hunt. Harbor. Shore front, 50 years.
71. Charles H. Jones* Dock, fill with refuse from brick yard	Feb. 8, 1878	East Neck shore.
72. Elbert Arthur Sand Mining	Dec. 13, 1879	Eaton's Neck Beach lease renewal. 3 years. (see nr. 41, 53, 63).
73. George Van Ausdell and ? Hewlett. Dock	Mar. 6, 1880	Renewal of dock lease, e. side Cold Spring Harbor (see nr. 68).
74. H.S. and J.M. Brush Dock	Feb. 25, 1881	E. side Hunt. Harbor. 50 years.
75. J. Jarvis Johnson Dock	Mar. 26, 1881	Shore and land under water, e. side Hunt. Harbor in front of land of Alex. and Abiatha Johnson. beg. w. side highway on line with s. line of Alex. Johnson land, extend n. enough to leave space of 15 ft. btwn s. line of Wood and Carll dock, into harbor on line from sw corner of Wood/Carll dock to ne corner Caire's dock. 50 years.
76. Mose L. Scudder (not stated)	Mar. 26, 1881	Shore and land under water, e. side Hunt. Harbor in front of lessee land reserving to town distance 15 ft. btwn n. line land leased to Brush and 15 ft. btwn land applied for by J.J. Johnson (nr. 75), into harbor to line from sw corner Wood/Carll dock to nw corner Caire's dock. 25 years.

Lessee and Purpose	Date	Location
77. N.S. Ackerly* Gravel mining	Sept. 13, 1881	Adjacent to west beach from point at entrance to duck pond inside beach s. around point to west beach at Great Gut 150 ft. from high water, n. along w. side beach to pt opp. beg. of upland of Eaton's Neck belonging to C.H. Jones, 250 ft. from high water. Land under water. 5 years.
78. W.W. Wood Dock	Nov. 5, 1881	W. side Hunt. Harbor, land under water. Lease renewal (see nr. 25, 49). Extend dock further east (8 ft. if not injurious to navig.) and 180 ft. n. 25 years.
79. Elwood Abrams Dock, marine rr	Nov. 5, 1881	Shore front, Cold Spring Harbor at old steamboat dock. beg. point at high water 85 ft. n. from monument under old dock, n. at high water 300 ft., w. 300 ft., s. 300 ft., e. 300 ft., to beg. 20 years.
80. N.S. Ackerly Gravel Mining	Nov. 5, 1881	Surrendered lease of nr. 77 for larger area West Beach.
81. Levinus Sammis Dock	Dec. 28, 1881	Land under water, e. side Northport Harbor. beg. w. side highway at point where line drawn parallel to south face of H.J. Scudder dock intersects line drawn at rt angle to s. face of dock, 50 ft. from s. face til it meets line formed by extension of w. face of Scudder dock, e. along last line 42 ft., e. and parallel to s. face of dock to point of w. bndry of first mentioned highway, n. long highway to beg. Reserve transit of public over property along shore. 10 years.
82. Charles Sammis* (not stated)	Dec. 28, 1881	Land under water, e. side Northport Harbor. beg. foot of bank in front of lessee land, 52 ft. front and extend 50 ft. into harbor on line parallel s. face of J. Scudder dock. 10 years.

	Lessee and Purpose	Date	Location
83.	Mary T. Kane* Dock	Jan. 26, 1882	Land under water, e. side Hunt. Harbor. beg. high water mark at center of boat house of lessee, along high water mark n. 25 ft., then center of boat house s. 25 ft., being 50 ft., extend w. at rt angles to high water mark 100 ft. into harbor.
84.	N.S. Ackerly Gravel Mining	Feb. 4, 1882	Renewal and expansion of lease (see nr. 77). Subject to rts of Albert Arthur to clam. Can build buildings btwn high-low water marks subject to inspection by trustees. 5 years.
85.	W.B. Gerard Dock/bath house	May 20, 1882	Land under water, e. side Cold Spring Harbor. In front of his land, extend 50 ft. from low water into harbor. 20 years.
86.	Mrs. Eckerson* (not stated)	May 20, 1882	Shore front adjoining her property. 10 years.
87.	N.S. Ackerly Dock	June 16, 1882	Land under water, Eaton's Neck Beach adjoining upland lease by lessee from W.G. Gardiner (see nr. 46, 51, 77, 79). 5 years.
88.	H.S. Sammis Dock	Sept. 21, 1882	Lease of dock, no location given in minutes. 21 years (could be nr. 42 renewal).
89.	Jim (Jesse?) Carll Dock	Sept. 21, 1882	Bnded n. by land of Daniel Thompson, e. by high water mark, s. prop. of edwin Leffert, extend w. into harbor 200 ft. from high water mark. 21 years. Northport.
90.	Dr. Oliver Jones (not stated)	Nov. 23, 1882	E. side Cold Spring Harbor, land under water. In front and n. of old steamboat dock at Cove Beach btwn dock and land leased by Elwood Abrams (see nr. 79), w. line being 50 ft. w. along s. line of dock, extend w. and run n. along line extending from said pt. 50 ft. w. from dock to pt. 300 ft. w. from high water mark at s. corner of land of Caroline Gerard to s'ly line of land leased to Abrams. Also land under water to n. of and

Lessee and Purpose	Date	Location
90. continued		adjoining Abrams land, beg. at pt in high water mark of Cold Spring Bay where division line btwn lands of Mary E. Jones and Gerard lands, w. 300 ft. to pt 95 ft. n. from nw corner of Abrams lease land, s. along w. line of said lands extended n. 95 ft. to nw corner of leased land to Abrams 300 ft. to high water mark, n. along that line to beg. 25 years.
91. William G. Gardiner* Oyster house	Jan. 8, 1883	Land near Winkle Point to build oyster house. 14 years.
92. Elbert Arthur Gravel mining	Jan. 8, 1883	Lease renewal, Eaton's Neck Beach (see nr. 41, 53, 63). He is not to employ machine for taking sand and gravel. 2 years.
93. W. Wilton Wood (not stated)	June 9, 1882	Land under water, w. side Hunt. Harbor adjoin lands under water granted Wood, beg. at locust stake at nw corner of lands leased to Wood, n. 29 deg. 04 min. e. 350 ft., s. 60 deg. 56 min. e. 150 ft., s. 31 deg. 53 min. w. 338 9/10 ft. to ne corner lease land under water, then n. 65 deg. 53 min. w. 133.75 ft. to beg. (map made Dec., 1885 by Oscar Darling in Town Clerk office. This may be an 1885 lease).
94. Joseph H. Scudder* (not stated)	April 23, 1883	Land under water w. side Little Neck. 2 acres and 3 rods. E/Stanley Lowndes, W/W. Clark, S/shore, N/ point adjoining Harvey Smith. (Leased to Ebenezer Velsor, Sept. 3, 1887).
95. Caroline A. Gerard (not stated)	July, 1883	Land under water in front of her premises. 20 years. E side Cold Spring Harbor includes part of beach below water separated from shore by a cove, on dividing line of lands of lessee and Caroline B. Gerard on n. which pt is 77 ft. w. side of shore road running w. across cove and beach.

Lessee and Purpose	Date	Location
96. Abbie A. Baldwin* (not stated)	Aug. 4, 1883	Land under water, s. side Hunt. Bay at East Neck adjoining n. side lessee land. Beg. at pt wherein lessee land adjoins Willet Bronson on e. at line of high water mark, n. at rt angles with shore into harbor 50 ft., w. 50 ft. into water to opp. where e. side of public highway (Bay View Ave.) comes to shore, s. at rt angle with shore 50 ft. to high water mark, e. along high water mark and lessee upland to beg.
97. Townsend and W.R. Jones* (not stated)	Sept. 28, 1883	Land under water, e. side Cold Spring Harbor. S/Lease to Caroline Gerard, W/low water mark on outside beach and run n. on low water line to pt opp. n. side new cottage on upland, E/line parallel with n. side of cottage to high water mark, thence to beg. 20 years.
98. Dr. Oliver L. Jones (not stated)	Sept. 28,	Land under water, e. side Cold Spring Harbor. Beg. at pt 200 ft. n. from Henry Seman's line at high water, w. into harbor at distance on Oscar Darling map, n. on straight line to pt within 15 ft. of line parallel with s. side of Spring St. extended, which pt. also 300 ft. w. of Oyster Pond dam, e. and parallel with s. line of Spring St. extended w. to a pt in range of Dr. Forest's west gate, w. of blacksmith shop, s. to high water mark, w. and s'ly along high water line to beg. 50 years. If highway laid out on lessee land across Oyster Pond, lessee waives damages.
99. Charles N. Johnson Dock	Oct. 10, 1883	Land under water, e. side Hunt. Harbor. Lease renewal. See nr. 52, 75 for possible same location. 21 years.

	Lessee and Purpose	Date	Location
100.	Charles T. Sammis Dock	Oct. 10, 1883	Land under water (e. side Northport Harbor?) (possibly same as nr. 82 and renewal of). Beg. at pt n'ly by land of lessee e'ly by high water mark w'ly by line extended s'ly parallel with H.S. Scudder dock, e'ly 50 ft. parallel with Scudder dock, s'ly rt angles to pt within 60 ft. on Scudder dock, e'ly parallel with dock to high water. Space btwn two docks left open. To bulkhead as dock and fill in in five years. 30 years.
101.	George VanAusdell, Walter R. and John D. Hewlett. Dock	Feb. 20, 1884	Renewal of lease, e. side Cold Spring Harbor. Based on old lease of 1833 (see nr. 21). 21 years.
102.	John Drohan* Dock	Mar. 20,	Old Steamboat Dock. 2 years.
103.	N.S. Ackerly and Thompson Gravel mining	Oct. 9, 1884	Cancellation of lease of West Beach. Lessees quit-claim all rights to area (see nr. 77/79).
104.	Elbert Arthur* Sand mining	Feb. 14, 1885	Lease renewal. East Beach. (See nr. 53, 58, 63, 72). One year.
105.	William Simpson* Dock	Feb. 21, 1885	Land and land under water, e. side Hunt. Harbor in front of lessee's land. 30 ft. on n. side, 25 ft. on s. side. 10 years.
106.	Charles A. Cheesebrough* Dock	June 5, 1885	Cancellation of lease (see nr. 55) Area leased to Lefferts (nr. 107).
107.	Edwin Lefferts* Docks, railways, shipyard	June 5, 1885	Land under water, e. side Northport Harbor. opp. lessee shipyard. E/high water mark, S/by n. line of Sammis's lease extending w'ly into harbor 250 ft. from high water, n. by line of Jesse Carll lease, extend w'ly into harbor 200 ft., bnded w'ly by straight line run from nw corner leased land to pt 250 ft. from high waters on s'ly bndry. On e. width 194 ft. 21 years.

	Lessee and Purpose	Date	Location
108.	Elbert Arthur* Bulkhead-dock	Oct. 16, 1885	Land and land under water, Northport Harbor. Beg. pt on w. line of highway leading from Hunt. to Northport being pt of ne corner of lands leased to Levinus Sammis, n. ... deg.... to build bulkhead. Town has right to pass and repass. 25 years.
109.	N.S. Ackerly Bulkhead, pier (public clamming permitted)	Mar. 25, 1886	Land under water, Northport Harbor. Build bulkhead 8 ft. out from high water mark, extend pier 40 ft. wide into harbor. 21 years.
110.	Edward Thompson Bulkhead, pier (public clamming permitted)	Mar. 25, 1886	Land under water, Northport Harbor. Build bulkhead 8 ft. wide from high water mark, 20 ft. wide, s'ly line of pier 15 ft. n. of n'ly line of Jesse Carll lease. 5 years.
111.	David Scudder* Bulkhead, pier	Mar. 25, 1886	"agree to lease premises applied for" 21 years.
112.	Mrs. Louis Carll* Dock	May 11, 1886	East side Crabmeadow inlet adjoining high water mark extending into creek 25 ft. and 143 ft. long. Beg. at pt 300 ft. n'ly of dividing line btwn beach and Crabmeadow at creek side. 21 years.
113.	John Drohan and David D. Sammis Dock	Feb. 15, 1887	Hunt. Harbor, old steamboat dock. Extend into harbor 210 ft., width 55 ft. To be public, free for all vessels. 10 years. (see nr. 102).
114.	Brown Brothers Dock	Mar. 9, 1887	Hunt. Harbor. Beg. at pt at high water mark at sw corner lessee land, w'ly into harbor 75 ft., n'ly parallel with high water 60 ft., e'ly along n. line of dock to high water, s'ly to beg. 21 years.
115.	Oscar Kissam Dock	Mar. 9, 1887	Renewal of lease. Can extend dock 10 ft. more w'ly. 21 years.
116.	Sarah E. Rogers, Ella J. Sammis Bulkhead	June 30, 1887	Northport Village s. side Scudder dock, s'ly along highway 98 ft. to Elbert Authur, w'ly 70 ft., n'ly 98 ft., e'ly 70 ft. to beg. No obstructions within 30 ft. of face of bulkhead. "On execution all previous leases annulled." 10 years. Approved Dec. 1887.

	Lessee and Purpose	Date	Location
117.	Charles L. Sammis Dock	June 30, 1887	Cancelled two previous dock leases, consolidated all into one lease. 40 years. (See nr. 82, 100). Approved, Dec. 27, 1887.
118.	Alanson Wood* Dock	June 30, 1887	At Bullcalf Landing where old dock is, extend 75 ft. into water to repair dock. 5 years.
119.	Richard H. Poillon* Dock	Oct. 17, 1887	At East Beach. By low water on inside, high water on outside, Can dock anywhere east of Oyster Pt not exceeding 300 ft.; west of Pt not exceeding 200 ft. No picnic or excursion business, no earth to be taken from land. Clamming, boating, landing for public til land opp. is improved by building houses. 50 years.
120.	Levinus Sammis, C.L. Sammis, S.S. Brown	Dec. 30, 1887	Accept cancellation of lease to L. Sammis of Dec. 28, 1881; C.L. Sammis of Jan. 4, 1884, S.S. Brown now held by C.L. Sammis, June 26, 1882.
121.	Henry L. Seaman Dock	Dec. 30, 1887	E. side Cold Spring Harbor. Dock property. 10 years. Changed to 21 years, Mar. 1, 1888.
122.	John W. Arthur* Dock	Jan. 25, 1888	Eaton's Neck dock.
123.	H.L. Washburne* Oyster bed	Feb. 10, 1888	Hunt. Bay
124.	A.H. Daily, thatch grass	1888	Huntington Harbor. Renewed, 1889.
125.	Huntington Dock Co.*	April 30, 1888	Foreshore in front of property bought by company from Titus Conklin. 10 years.
126.	Irving P. Titus and William J. Mills Dock	Nov. 27, 1888	Land under water, Northport Harbor. Fronting lessee land, Bulkhead. Extend 40 ft. from high water mark. 21 years. (Approved Jan. 1, 1889).
127.	Charles N. Johnson (not.stated)	Jan. 31, 1889	Hunt. Harbor. Strip of land under water n. side of dock (see nr. 99).

	Lessee and Purpose	Date	Location
128.	Ida A. Smith* Poillon lease assignment	Oct. 14, 1889	Poillon not paying rent (see nr. 119). Lease assigned to Smith. East Beach.
129.	Henry T. Seaman, Fanny P. Leek,* Evelyn A. Halsey Dock	Oct. 16, 1889	Land under water, e. side Cold Spring Harbor. This replaces lease of Mar. 22, 1889 (see also nr. 121) not recorded.
130.	H.S. and J.M. Brush Dock	Oct. 16, 1889	Land under water, Hunt. Harbor to extend dock and build new one.
131.	Estate of H.J. Scudder (Hewlett, E.M. and Lewis Scudder)	Oct. 29, 1889	Land under water(?) at Northport harbor, head of (see nr. 54).
132.	Alexander Johnson* (not stated)	Mar. 14, 1890	Land in front of lessee land 50 ft. w. of w. line of highway, n. and s. lines at rt angles to highway. 20 years.
133.	George Shaw* (not stated)	Mar. 14, 1890	Land under water btwn high-low water mark in front of lessee land at East Neck. Under same conditions as Hunt. Improvement Co.
134.	Elbert Arthur (not stated)	April 11, 1890	Shore front, Northport Harbor. High water mark to 150 ft. into harbor. N/lease of Andrew Ackerly, S/lease of Edward Thompson. 17 years.
135.	Saul Walters, Joseph L. Smith,* Thomas Smith, George Jenkins, George Bunce, Henry Bunce, Richard N. Conklin, Warren M. Conklin, Charles Smith, Wm. Gardiner, Charles N. Newman. Oyster lease	May 5, 1890	37.28 acres in Cold Spring Harbor 10 years. Oyster cultivation.
136.	Andrew N.S. Ackerly Dock extension	Sept. 9, 1890	Northport Harbor dock extension.
137.	Saul Walters* Dock	Oct. 23, 1891	Land under water, e. side Cold Spring Harbor btwn Mrs. White's land and Long Dock, about 1 1/2 acres. 10 years.

	Lessee and Purpose	Date	Location
138.	George Donohue (not stated)	Jan. 27, 1891	Northport harbor shore front in front of lessee land. 50 ft. wide, 150 ft. into harbor. 20 years.
139.	John Donohue (not stated)	Jan. 27, 1891	Northport harbor shore front in front of lessee land. 50 ft. wide, 150 ft. into harbor. 20 years. (next to nr. 137).
140.	Joseph Tillott (not stated)	June 3, 1891	Shore front, Hunt. Harbor btwn leases of Moses L. Scudder and Jarvis Johnson. N/Johnson lease, W/imaginary line from sw corner Johnson dock to nw corner Fred Caire dock, S/n. line of Scudder lease, E/w. line of highway. 10 years.
141.	Judge Daley* (not stated)	July 30, 1891	Shore front adjoining East Bridge on Mill Dam Road, s. side of bridge. 50 ft. water front, 100 ft. deep on line of highway. 5 years.
142.	Huntington-Norwalk Steam Ferry Co. Build Dock, drive piles	Jan. 26, 1892	Shore front n. of lease to Joseph Tillot extending to within 35 ft. of s. side of Chas. Johnson dock. (Jarvis Johnson had asked for this land but rejected terms). 25 years.
143.	Fred. N. Selleck (not stated)	Feb. 21, 1892	Shore front adjoining lessee prop. n. of Charles N. Johnson dock. 25 years.
144.	Mary P. Kane Boat house	Feb. 21, 1892	Shore front e. side Hunt. Harbor. To run 50 ft. on w. line of highway extend into harbor 100 ft. 10 years.
145.	Benjamin Mitchell of* Arlington, N.Y. Excursion boat dock	Aug. 10, 1892	Land under water, e. side Cold Spring Harbor. Already leases 15 acres from J. Bush there bonded W/harbor, n/Chas. E. Brush, W.B. Sammis, E/Edgar Sammis, S/road to Dock Hollow Landing. Lease land under water south portion of above, extend 300 ft. into harbor to edge of soft bottom, 75 ft. wide at outer end for bulkhead connected to shore by a bridge. 10 years.

	Lessee and Purpose	Date	Location
146.	Robert L. Belknap Dock for small boats	Dec. 14, 1892	Shore front at cove at Hunt. inlet at stake above high water to e. of small dock, e'ly toward shore 100 ft., s'ly 280 ft., w. parallel to shoreline 280 ft., n'ly parallel e. line 280 ft. to beg. For pleasure boats to have 4 ft. water at dead low tide. 10 years.
147.	Mary L. Parraga* (not stated)	Dec. 14, 1892	Strip of land 10 ft. wide from New York Ave. w. to creek run parallel with n'ly bndry of lessee's land. 10 years. Approx. 55 ft.
148.	Selah Smith (not stated)	Dec. 23, 1892	Land in front of his prop. N/Mrs. Wright, S/Mrs. Joseph Hartt, extend into harbor 250 ft. from high water mark, W/line parallel w. line of highway. 10 years.
149.	George C. Hendrickson* (not stated)	Aug. 18, 1893	Shore front, e. side Hunt. Harbor.
150.	John H. Ripley (not stated)	Nov. 2, 1894	Land under water, Hunt. Bay in front of his land. 200 ft. wide, extend 150 ft. into bay. rt of public to pass over. 10 years.
151.	Oliver W. Ingersoll (not stated)	Nov. 2, 1894	Land under water, e. side Hunt. Harbor in front of his land. Beg. nw corner his land w'ly on line with n. bndry to e. side channel thence s'ly along e. side channel to pt opp. s'ly bndry, e'ly to sw corner his land, n'ly to beg. Rt of public to pass over. 10 years.
152.	Stanley H. Lowndes Dock	Nov. 20, 1894	Land under water Northport Harbor. Beg. at pt. formed by intersection of division line betwn land of lessee and P.V. Stanton, near harbor high water mark, s. 72 deg. 43 min. 200 ft. into water to line from sw corner Edward Thompson dock to nw corner Henry S. Sammis dock, s'ly to pt where division line btwn lessee land and James Ackerly intersect, n. 73 deg. e. to pt formed by intersection high water line with division line btwn lessee and Ackerly, n'ly 100.43 ft. to beg. 25 years.

	Lessee and Purpose	Date	Location
153.	Mary (Joseph) L. Parraga (not stated)	June 4, 1895	Land in front of lessee's land, known as "Daily Prop." Beg. pt on bndry line btwn Scudder and Daily, w'ly to creek, n'ly not exceeding 100 ft., e'ly to New York Ave. and along highway to beg. Public easement over road to mill. Also leased shore front in front of lessee land purchased from William Simpson, e. side Hunt. Harbor, 100 ft. along high water mark w'ly to e. side channel 10 years. Rt of public fishery/ passage, and to and from creek.
154.	George Hendrickson*	Mar. 31, 1896	Cancellation of shore front lease, e. side Hunt. Harbor (see nr. 148)
155.	Knickerbocker Steamboat Co. Dock	May 21, 1896	Lease of May 5, 1896, w. side Eaton's Neck beg. at high water extend into Hunt. Bay over oyster lots 14 and 27. Dock to be 50 ft. wide, 500 ft. long. On May 9, 1896 lessee asked for extension of lease w. shore of Eaton's Neck and also lease of shore front Northport Harbor at Price's Bend for dock and float. Early lease cancelled, new one issued to include added footage, making it 825 ft. Includes strip 10 ft. wide to extend 4 ft. of water at low tide near center of Price's Bend. 10 years.
156.	Charles A. Klots (not stated)	Dec. 11, 1896	Land under water, w. side Hunt. Harbor, 50 ft. wide extend into harbor 159 90/100 ft. Rt of public over land under water and fish. 10 years.
157.	James S. Ott (not stated)	May 27, 1897	Land under water, e. side Hunt. Harbor adjoin his land. Beg. nw corner lessee land w'ly 140 ft. parallel with n. line of his land, s'ly 51 ft. e'ly to sw corner, n'ly to beg. Rt of public to pass over, fish. 10 years.
158.	Henry M. Drohan,* David W. Conklin, Mary A. Klots, John D. Sammis Dock	June 9, 1897	Dock w. side Hunt. Harbor formerly leased to John Drohan, Joseph G. Conklin, and David C. Sammis on Mar. 19, 1887 (see nr. 113) as part of land leased to Hunt. Harbor Dock Co., Mar. 12, 1860 (see nr. 44). 10 year

	Lessee and Purpose	Date	Location
159.	Huntington R.R. Co. Buildings rr switches	Mar. 2, 1898	Upland e. side Hunt. Harbor known as Public Landing. N. and E. of r.r. tracks there. For this use only, revert to town if other uses; Co. not to use any land beyond line running 4 ft. s. and w. of tracks. 50 years. Void if no construction within year.
160.	Huntington Gas Co. Storage Tank	Mar. 3, 1899	Upland e. side Hunt. Harbor, plot 3 on Oscar Darling map of public lands. 4 years.
161.	August Heckscher* Breakwater	Sept. 1, 1899	Land under water, Hunt. Bay, adjoining his land, abt 100 ft. wide (terms and size not stated in minutes).

Appendix B

Trustees Leases, 1805-1970[1]

Huntington-Huntington Harbor

Date	Term	Lessee/Grantee	Purpose
5/28/1805	20 years	Samuel Fleet	land under water
3/1/1824	deed	Trustees of Huntington	thatch bed or salt meadow
3/1/1824	deed	Thomas Hendrickson	thatch bed or salt meadow
4/5/1825	40 years	Benjamin Keiler	dock
10/1/1827	21 years	Gilbert Platt	land under water
3/31/1828	21 years	Henry Williams	dock
11/5/1863	21 years	Henry Williams	land under water
3/29/1830	15 years	Jacob Scudder	land to build horse shed
5/1/1835	21 years	Thomas Hendrickson	dock
5/1/1835	21 years	Elbert Walters	dock
4/3/1837	20 years	Henry Lewis	dock
6/9/1840	21 years	John Wood	land under water
6/9/1861	21 years	W. Wilton Wood	land under water
6/9/1882	21 years	W. Wilton Wood	dock
12/15/1885	25 years	W. Wilton Wood	dock lease
6/9/1903	21 years	W. Wilton Wood	land
9/1/1911	25 years	W. Wilton Wood	land under water
12/22/1924	20 years	W. Wilton Wood	land under water
3/1/1841		Richard B. Post	assignment of land under water by Henry Williams.
1/12/1844		Richard B. Post	assignment of lease by David C. Scudder.
4/4/1842	21 years	William B. Sellick	land under water

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1. Source: Deed and Lease Books, Town Clerk's Office.

Date	Term	Lessee/Grantee	Purpose
5/31/1856	12 years	Moses L. Scudder	land
7/22/1881	24 years	Moses L. Scudder	shore front
7/11/1887	25 years	Moses L. Scudder	shore front
9/1/1905	25 years	Moses L. Scudder	land under water
3/1/1859	12 years	Michael W. Divine	dock
3/12/1860	15 years	Huntington Harbor Dock Company	dock
3/6/1861	5 years	Joseph Conklin	land
6/4/1866	21 years	Oscar Kissam	dock lease made to George R. Johnson
3/30/1887	21 years	Oscar Kissam	dock lease
6/4/1866	21 years	George R. Johnston	land under water
1866	21 years	Brown Brothers	dock lease
3/30/1887	21 years	George Brown & Son	dock lease
4/3/1908	21 years	George Brown & Son	land & dock under water
6/18/1870	21 years	James Eckerson	shore front
2/28/1881	50 years	Henry S. & James M. Brush	shore front for docking
10/28/1889	52 years	Henry S. & James M. Brush	dock lease
12/19/1881	50 years	J. Jarvis Johnson	shore front
2/20/1884	10 years	Edwin Lefferts	dock
11/5/1884	21 years	Charles N. Johnson	land
11/5/1884	21 years	Thomas Archer	dock rent
1/1/1904	20 years	Thomas F. Archer	shore front
2/5/1904	20 years	Thomas Archer	land under water
4/1/1904	20 years	Thomas Archer	land under water
3/19/1888	8 years	John Drohan	dock lease
1/1/1897	10 years	John Drohan	dock
6/9/1897	10 years	Henry M. Drohan	upland and land under water
12/7/1906	10 years	Henry M. Drohan	upland and land under water
8/8/1888	25 years	Huntington, Norwald, & Bridgeport Steam Ferry Co.	dock lease
2/1/1892	15 years	Huntington, Norwalk, & Bridgeport Steam Ferry Co.	shore front

Date	Term	Lessee/Grantee	Purpose
2/1893	3 years	Huntington, Norwalk & Bridgeport Steam Ferry Co.	shore front
7/18/1889		A. Dailey	salt grass
6/1/1891	10 years	Joseph Tillot	shore front
1/1/1902	10 years	Joseph Tillott	shore front
6/6/1902	10 years	Joseph S. Tillott	land under water
2/1/1892	25 years	Frederick H. Selleck	land under water
6/24/1892	10 years	Hunt. Gas Co.	land
3/3/1899	4 years	Hunt. Gas Co.	land
6/6/1902	5 years	Hunt. Gas Co.	land
1/1/1892	10 years	Mary P. Kane	dock
2/2/1892	10 years	Mary P. Kane	shore front
12/31/1893	10 years	Robert L. Belknap	dock
1/1/1893	10 years	Robert L. Belknap	assigned shore front to August Heckscher
11/1/1894	10 years	Oliver W. Ingersoll	shore front
11/1/1894	10 years	Oliver W. Ingersoll	land under water
11/1/1894	10 years	John Howard Ripley	land under water
6/4/1895	10 years	Joseph L. Parraga	land under water
6/4/1895	10 years	Joseph L. Parraga	land
7/1/1895	10 years	Joseph L. Paraga	shore front
12/14/1896	4 years	Joseph L. Paraga	shore front
1/1/1897	10 years	Charles A. Klots	shore front
1/1/1897	10 years	Mrs. Charles A. Klots	land under water
1/1/1897	10 years	James S. Ott	dock
6/9/1897	10 years	James Ott	land under water
8/1/1903	4 years	James Ott	shore front
8/7/1903	4 years	James Ott	land under water
4/16/1906	10 years	James S. Ott	land under water
3/2/1898	50 years	Huntington RR Co.	power house
3/3/1899	15 years	Second Presbyterian Church of Huntington	land
1/1/1901	25 years	Halesite Fire Dept.	land
3/22/1901	25 years	Halesite Fire Dept.	land
4/24/1923	25 years	Halesite Fire Dist.	land

Date	Term	Lessee/Grantee	Purpose
5/1/1902	10 years	Caroline B. Gerard	shore front
6/6/1902	10 years	Caroline B. Gerard	land
6/6/1902	10 years	John P. Kane	assigned land under water to F.L. Upjohn
9/2/1902	20 years	Charles A. Yost	land under water
9/1/1902	20 years	Charles A. Yost	shore front
12/6/1902	50 years	Hunt. Light & Power Co.	land
8/1/1903	4 years	George Hewlett	shore front
8/7/1903	10 years	George Hewlett	land under water
12/1/1904	10 years	Mary E. Smith	shore front
12/16/1904	10 years	Frank A. Berthold	land under water
10/6/1905	10 years	William Simpson	land under water
10/6/1905	10 years	Wm. Simpson	shore front
5/1/1905	7 years	Alice W. Marsh	land under water
5/1/1912	10 years	Alice W. Marsh	land
5/1/1912	10 years	Alice W. Marsh	land under water
5/5/1922	10 years	Alice W. Marsh	land
4/6/1906	10 years	The Girls Friendly Society Vacation House	land
6/2/1916	10 years	Girle Friendly Society	land under water
6/20/1906	11 years	August Heckscher	dock lease
6/20/1906	21 years	August Heckscher	land under water
8/7/1921	10 years	August Heckscher	land under water
9/1/1910	20 years	Cottrell Wheeler	land under water
3/29/1913	20 years	Cottrell C. Wheeler	substitution of leased land
3/11/1911	25 years	George McKesson Brown	land under water
4/3/1914	10 years	Ketewemoke Yacht Club	land under water
4/6/1923	7 yrs.3 mos.	Ketewemoke Yacht Club	land under water
6/19/1931	25 years	Ketewemoke Yacht Club	land under water
6/13/1956	5 years	Ketewemoke Yacht Club	land
6/12/1961	5 years	Ketewemoke Yacht Club	land
4/8/1968	5 years	Ketewemoke Yacht Club	land
8/7/1914	5 years	Mary A. George	land under water

Date	Term	Lessee/Grantee	Purpose
5/1/1915	7 years	E.T.T. Marsh	land
5/5/1922	7 years	E.T.T. Marsh	land
2/1/1917	25 years	Allen Roselle	land under water
11/2/1917	15 years	Frederick H. Eaton	land under water
2/7/1919	11 years	Wheeler Shipbuilding Co.	land under water
6/19/1919	3 years	Thomas H. Roulston	land under water
5/7/1920	10 years	William H. Parsons	land under water
8/4/1922	5 years	Chauncey Drohan	upland and land under water
4/20/1923		Trustees of the Town of Huntington	land
4/24/1923	25 years	Huntington Traction Co.	land
12/7/1923	10 years	Henry H. Gordon	land under water
3/12/1924		Henry H. Gordon	land under water
3/12/1924		Lillian B. Birch	assignment of lease from Henry H. Gordon
10/31/1934	10 years	Lillian M. Birch	land under water
3/2/1945	9 years	Lillian M. Birch	extension of original lease
3/13/1956	9 years	Lillian M. Birch	land under water
4/10/1924	10 years	LILCO	land for park
11/9/1949	5 years	LILCO	reduce area of previous lease
4/25/1950	8 years	LILCO	upland and land under water
5/1/1924	10 years	William E. Gormley	land under water
3/6/1925	11 years	Walter E. Abrams	land under water
9/5/1930	10 years	Walter E. Abrams	land under water
4/1/1926	10 years	Henry Gilsey	land under water
3/2/1928	10 years	Ridgefield Highlands Beach Club	land under water
9/9/1939	3 years	Ridgefield Highlands Beach Club	land under water
9/9/1947	1 year	Ridgefield Highlands Beach Club	land under water

Date	Term	Lessee/Grantee	Purpose
4/13/1950	3 years	Ridgefield Highlands Beach Club	land under water
7/21/1953	3 years	Ridgefield Highlands Beach Club	land under water
10/10/1961	5 years	Ridgefield Highlands Beach Club	land under water
9/4/1930	10 years	Marine Oil Co.	land under water
7/1940	10 years	Marine Oil Co.	land under water
2/28/1931	10 years	R.W.S. Corporation	land under water
12/14/1931		Town of Huntington	land
5/26/1936	5 years	Beachcroft Assoc.	land under water
5/26/1941	5 years	Beachcroft Assoc.	dock
5/26/1946	5 years	Beachcroft Assoc.	dock & landing place
5/26/1951	5 years	Beachcroft Assoc.	land under water
9/4/1958	5 years	Beachcroft Assoc.	land under water
6/26/1964	5 years	Beachcroft Assoc.	land
10/24/1968	5 years	Beachcroft Assoc.	land
8/8/1939	50 years	American Legion Post 360	land
8/14/1962	5 years	American Legion Post 360	land
11/24/1967	5 years	American Legion Post 360	land
9/5/1939	10 years	Anoatok, Inc.	land
10/11/1939	3 years	Anoatok, Inc.	land
11/20/1939	deed	Town of Huntington	land
2/1/1944	5 years	Minnie Roselle	land under water
12/13/1948	5 years	Herbert Roselle	land under water
5/28/1945	15 years	August F. Carbone	town beach
4/22/1947	5 years	Marine Model Company	land
7/8/1952	5 years	Marine Model Company	land
5/1/1947	1 year	U.S.A.	land
6/8/1949		U.S.A.	amendment modifying lease
2/5/1957		U.S.A.	land
2/5/1957		U.S.A.	amendment to lease
5/16/1960		Town of Huntington	renewal of govt. lease
5/17/1961	1 year	Town of Huntington	renewal of govt. lease
5/19/1965	1 year		renewal of govt. lease on land
5/31/1968		U.S. Govt.	land

Date	Term	Lessee/Grantee	Purpose
3/13/1948	5 years	Piping Rock Petroleum Co.	land
11/1950		Piping Rock Petroleum Co.	
8/30/1966		Piping Rock Petroleum Co.	lease extended
12/14/1948	5 years	John & Pauline B. Thomsen	land under water
7/26/1949	5 years	Huntington Boating Club	land under water
1/1/1951	deed	Town of Huntington	land
4/13/1955	deed	Town of Huntington	land
12/30/1957	deed	Town of Huntington	land
4/15/1963		Town of Huntington	land
7/1/1967	1 year	Town of Huntington	land
4/13/1955	deed	Alfons J. and Therese Lueders	land
7/22/1955	deed	Alfons J. and Therese Lueders	land
3/13/1956	5 years	Walton D. and Lillian G. Lynch	upland and land under water
1/9/1962	5 years	Walton D. and Lillian G. Lynch	upland and land under water
4/4/1950	10 years	Richard W. Duggan	land under water
6/1/1957		Russell C. Shadbolt	tender service
4/25/1961		Shadbolt Marine Service	expanding services
12/29/59	1 year	Harbor Boating Club	land under water
4/1/1961	5 years	Harbor Boating Club	land under water boating & docking
7/12/1961		Edwin S. Voorhis	land
?/?/1961		Huntington Baymen Association	land under water transplanting shellfish
7/6/1964	5 years	Lillian G. Lynch	assigns lease to the Swansons
5/28/1965	4 years	Thomas Knutson Shipbuilding Copr.	upland and land under water
12/29/1967	10 years	Robert and Irene Swanson	upland and land under water
6/20/1967		Board of Trustees & Brown's Marine, Inc.	tender service
4/17/1969	1 year	Brown's Marine, Inc.	tender service

Huntington Village

Date	Term	Lessee/Grantee	Purpose
3/2/1812	deed	Trustees of Hunt.	land
1/15/1814	deed	Trustees of Hunt.	land
2/28/1846	7 years	Smith Woodhull	land
11/30/1852	10 years	Joseph Starkins	land
7/1/1908	15 years	Edith L. Fullerton	land
1/1/1922	20 years	Willoughby C. Pendill	land
12/1/1931	10 years	Benjamin F. Gallant	land
8/4/1934	deed	Town of Huntington	land
4/27/1951	deed	Town of Huntington	land
6/1/1957	deed	Town of Huntington	land
7/1/1946	5 years	Neil M. Falkenburg	land
6/25/1951	5 years	Neil M. Falkenburg	land

Centerport

Date	Term	Lessee/Grantee	Purpose
9/27/1844	15 years	William L. Titus	dock
6/3/1904	25 years	Centerport Fire Dept.	land
6/1/1909	50 years	Centerport Fire Dept.	land
6/13/1938	50 years	Centerport Fire Dept.	land
6/16/1906	25 years	Henry H. Denton	land under water
5/1/1914	20 years	Edward N. Murphy	land under water
8/2/1918	10 years	Fata Morgana	land under water
2/4/1921		Charles E. Burling	
4/1/1927	15 years	Mary Clark DeBrabant	land under water
9/3/1927	25 years	Mary Clark DeBrabant	land under water
1/30/1927		Mary Clark DeBrabant	discontinuance;renewal
1/30/1930	15 years	Mary Clark DeBrabant	land under water
8/4/1943		William K. Vanderbilt	assigned all leases of Mary Clark DeBrabant
6/19/1931	25 years	Centerport Yacht Club	land under water
1/11/1949		Dr. C. Austin Kosik	land under water
9/2/1954	5 years	Marion A. Kosik to Walter E. Hadler	land under water
9/8/1954		Dr. Austin A. Kosik	assigned land under water to Walter E. Hadler
9/10/1958	deed	Louisa E. Rommelsbacher	boating; bathing
4/28/1964		Nicholas Siakules	land under water
4/1/1970		Nicholas Siakules	land under water

Incorporated Village of Northport

Date	Term	Lessee/Grantee	Purpose
10/1/1866	50 years	Charles T. Sammis	dock
2/24/1882	30 years	Charles T. Sammis	dock
2/25/1882	21 years	Charles T. Sammis	
1/11/1884	30 years	Charles T. Sammis	premises
1/1/1888	50 years	Charles T. Sammis	dock
2/24/1903	21 years	Charles T. Sammis	dock
5/28/1903	21 years	Charles T. Sammis	land partly under water
5/8/1903	35 years	Charles T. Sammis	land
6/23/1931	25 years	Charles T. Sammis	upland and land under water
4/19/1933		Charles T. Sammis	changes in lease
12/21/1926	40 years	Village of Northport	upland and land under water
5/12/1936	20 years	Village of Northport	land under water
12/12/1950	6 years	Village of Northport	land
3/3/1959		Village of Northport	upland and land under water
12/6/1959	2 years	Village of Northport	land
12/6/1961		Village of Northport	land
4/10/62		Village of Northport	upland and land under water
6/22/62		Inc. Vill. of Northport	land
7/12/1916	50 years	LILCO	land
6/28/1917		LILCO	land
10/18/1919	45 years	LILCO	land
12/21/1927		LILCO	land under water
2/20/1938	10 years	LILCO	land under water
4/10/1929	15 years	LILCO	land
10/23/1931	45 years	LILCO	land
11/9/1949		LILCO	surrender agreement
11/9/1949	50 years	LILCO	land
8/4/1961	22 years	LILCO	land
9/15/1961		LILCO	upland and land under water
1/9/1962	deed	LILCO	land
3/16/1962	deed	LILCO	land
8/29/1924	10 years	Northport Trans. Co.	land
6/19/1956	2 years	Town of Huntington	land

Northport Harbor

Date	Term	Lessee/Grantee	Purpose
3/1/1824	50 years	Joseph C. Lewis	dock
9/5/1832	30 years	Jesse Bunce	dock
2/25/1836	21 years	Melancton Bryan	dock
3/3/1840		Melancton Bryan	upland and land under water
9/5/1839	23 years	John Wilson	dock
8/31/1844	15 years	Samuel T. Hart	dock; railway
2/7/1845		Josias Higbee	land under water
11/15/1859	12 years	David Carle	dock; railway
1/12/1860	21 years	Jesse Jarvis	land under water
1/12/1860	21 years	Henry S. Sammis	land under water
7/24/1882	21 years	Henry S. Sammis	dock
3/26/1861	15 years	Orlando Rogers	dock
10/1/1866	50 years	Henry J. Scudder	land
10/1/1866	50 years	Henry J. Scudder	dock
5/21/1869	20 years	Henry J. Scudder	land
5/26/1869	20 years	Henry J. Lewis; Estate of Henry J. Scudder	shore front
12/28/1881	10 years	Levinus Sammis	shore front
11/15/1882	21 years	Jesse Carll	dock
11/15/1903	21 years	Jesse Carll	land under water
6/17/1885	21 years	Edwin Lefferts	uplands and land under water
3/29/1886	21 years	John L. Knight	dock
3/29/1886	4 years	J.L. Knight	shore front
3/29/1886	21 years	Edward Thompson (now D.K. Cole)	shore front
3/29/1886	21 years	Dexter K. Cole	dock
6/25/1907	21 years	Dexter K. Coles	land under water
3/19/1886	21 years	N.S. & Andrew Ackerly	shore front
3/29/1886	21 years	N.S. & Andrew Ackerly	shore front
3/29/1890	17 years	Andrew Ackerly	dock
8/4/1906	21 years	N.S. Ackerly	land under water

Date	Term	Lessee/Grantee	Purpose
1/1/1888	21 years	Sarah E. Rogers Ella J. Sammis	shore front
12/31/1892	3 years	Sarah E. Rogers	dock
1/1/1901	20 years	Sarah E. Rogers	land under water
8/1/1906	15 years	Sarah E. Rogers	land under water
1/1/1888	1 year	Alanson Wood	land under water
1/1/1889	21 years	Wm. G. Mills	shore front
1/31/1889	21 years	Irving P. Titus	shore front
12/2/1889	20 years	Hewlett Scudder	shore front
1/1891	20 years	John Donahue	shore front
1/1/1891	20 years	George H. Donahue	shore front
12/31/1892	10 years	Selah Smith	shore front
1/1/1893	10 years	Selah Smith	dock
9/1/1894	25 years	Claude D. Sanford	shore front
11/1/1894	25 years	Stanley H. Lowndes	land under water dock
11/1895	3 years	Stanley H. Lowndes	shore front
5/21/1896	10 years	Knickerbocker Steamboat Co.	land under water
7/1/1900	15 years	Charles H. Dumont	dock
7/6/1900	15 years	Charles W. Dumont	land under water
12/1/1900	20 years	John N. Williamson	dock
12/1/1900	20 years	John N. Williamson	land under water
12/14/1901		Northport Ice and Fuel Co.	shore front
5/1/1903	4 years	Northport Yacht Club	shore front
5/28/1903	21 years	Northport Yacht Club	land under water
7/8/1964	5 years	Northport Yacht Club	land under water
5/25/1970	4 years	Northport Yacht Club	renewal
8/25/1903	21 years	Ida A. Smith	land under water
8/1/1903	21 years	Ida A. Smith trans. to Judson S. Snyder	shore front
12/12/1906	deed	Ida A. Smith	land between high and low waterlines

Date	Term	Lessee/Grantee	Purpose
7/1/1904	3 years	Christopher Peterson	shore front
8/5/1904	5 years	Christopher Peterson	dock; float
10/5/1905	10 years	Geo. M. Scudder	
4/1/1907	10 years	Geo. M. Scudder	dock; oyster house
6/16/1906	21 years	Murray S. Brown	land under water
8/1/1906	21 years	John H. Vanderveer	land under water
8/1/1906	21 years	John H. Vanderveer	dock
7/2/1908	20 years	Wm. H. Wells	land under water
9/5/1908	21 years	James R. Ross	land under water
6/1/1909	25 years	Independent Yacht & Boating Club of Northport	land under water
12/1/1909	10 years	Loring H. Ehlers	land under water
1/8/1910	10 years	William F. Burns	land under water
2/7/1910	10 years	Wm. M. Chesebrough	land under water
8/20/1910	25 years	Wm. K. Vanderbilt	land under water
8/14/1936	20 years	Wm. K. Vanderbilt	land under water
1/19/1938	25 years	Wm. K. Vanderbilt	land under water
1/1/1912	25 years	Miriam Mitchell	land under water
9/6/1912	10 years	Julia E. Bendernagel	land under water
12/6/1912	25 years	John N.R. Smith	land under water
5/1/1916	15 years	Arthur B. Reeve	land under water
1/1/1923	25 years	Ben Mitchell	land under water
2/27/1924	15 years	Henry Steers	land under water
2/27/1940	5 years	Henry Steers, Inc.	land under water
3/1/1946	10 years	Henry Steers, Inc.	land under water
3/1/1950	5 years	Steers Sand and Gravel Corp.	
9/3/1964	deed	Steers Sand and Gravel Corp.	beach land
3/22/1966	1 year	Steers Sand and Gravel Corp.	dock
1/22/1925	24 years	Etta Mitchell	land under water
7/7/1925	1 year	George E. Huntley	land

Date	Term	Lessee/Grantee	Purpose
4/1/1927	10 years	Mary A. Ackerly	land under water
9/7/1927	10 years	Henry C. Moore	land under water
10/13/1937	10 years	Henry C. Moore	land under water
10/21/1931	deed	Town of Huntington	land
5/12/1937	19 years	Inc. Village of Northport	land under water
3/29/1943	1 year	Dexter Seymour	land under water
6/12/1962	5 years	Dexter Seymour	land under water
4/30/1969	3 years	Dexter Seymour	land under water
5/9/1944	10 years	Paul Kirchbaum	land under water
7/13/1948	10 years	Paul Kirchbaum	land under water
12/12/1944	5 years	Leda Von Wrangel	land under water
11/1/1949	5 years	Leda Von Wrangell	land under water
10/10/1961	6 years	Eleanor H. Richardson	upland and land under water
12/12/1967	5 years	Henry F. Richardson	upland and land under water
2/21/1962	deed	Town of Huntington	land
11/23/1964	5 years	Harold W. Sherwood Jane C. Sherwood	land under water
2/13/1965	5 years	Michael J. DeMarco	land under water
7/8/1965	5 years	Edwin M. Corns Mattie P. Corns Charles R. Hoesel Rayanna Hoesel	land under water
9/1/1965		Edith Consiglio	assing. of lease
9/1/1965	5 years	Karsten Taraldsen Barbara Taraldsen	land under water
12/29/1967	5 years	Leonard Marchese	land under water
12/29/1967	5 years	Hector J. Battaglia	dock
1/1/1968	9 years	L.I. Oyster Farms	land for loading and unloading vessels
5/26/1970	5 years	Sea Spray Boating Assoc.	land under water

Northport Bay

Date	Term	Lessee/Grantee	Purpose
6/30/1866	21 years	Elbert Arthur	dock
12/15/1885	25 years	Elbert Arthur	shore front
6/30/1866	21 years	John W. Arthur	dock (Eaton's Neck)
3/24/1888	20 years	John W. Arthur	dock
3/24/1909	21 years	John W. Arthur	land under water
5/3/1912	5 years	F.E. Wood	land under water
10/3/1919	10 years	John F. Klein	land under water
12/29/1937	15 years	John N.R. Smith	land under water; cultivating oysters
2/9/1938	15 years	John N.R. Smith	land under water; oyster business
8/5/1954		Board of Trustees	land for public beach
9/11/1954		Town of Huntington	land

East Northport

Date	Term	Lessee/Grantee	Purpose
4/23/1949	15 years	Carl Bongiorno	land

Lloyd Harbor

Date	Term	Lessee/Grantee	Purpose
5/5/1911	25 years	J. Herbert Johnston	land under water
5/4/1923	15 years	George Allen Fuller	land under water
1/13/1928	15 years	George Allen Fuller	land under water
6/26/1924	deed	State of N.Y.	lighthouse
9/1/1929	10 years	Panfield Corp.	land under water dock
11/21/1934	10 years	Edwin Arthur Scudder	land under water culture of shellfish
1/6/1937	10 years	Susan L. Suydam	land under water cultivation of shellfish
5/27/1947	10 years	Susan L. Suydam	land under water cultivation of shellfish
2/9/1938	10 years	Joel K. Skidmore	land under water cultivation of shellfish
1/1/1948	15 years	Joel K. Skidmore	land under water cultivation of shellfish
12/12/1960		Joel K. Skidmore LILCO	electric cable
3/26/1965	14 years	Joel K. Skidmore	land under water
2/16/1938	10 years	J. Whitney Scudder	land under water oyster business
1/9/1943		Richard B. Scudder	land under water
1/1/1948	4 years	Richard B. Scudder	land under water cultivation of shellfish
12/12/1944	10 years	William A. Scudder	land under water cultivation of oysters
12/30/1965	5 years	William A. Scudder	land under water cultivation of oysters
12/22/1954	10 years	William H. Strorhback	land under water
5/16/1960	10 years	Marguerite Dayton	land under water

Date	Term	Lessee/Grantee	Purpose
12/20/1960	deed	LILCO	electric cable
4/1/1970	5 years	L.I. Oyster Farms	oyster farming

Cold Spring Harbor

Date	Term	Lessee/Grantee	Purpose
2/16/1805	21 years	David Harrison	dock
12/25/1822	20 years	Titus Conkling	land under water
8/7/1827	21 years	Hawley Beers	land under water
4/5/1830	21 years	Samuel Whitson	dock
9/18/1852		Samuel Whitson	dock
6/15/1830	21 years	William Jones	dock
9/4/1833	21 years	Walter R. Jones	land under water
4/4/1831	21 years	Divine Hewlett	dock
4/4/1836	21 years	Divine Hewlett	dock
12/8/1832		Richard Colyer	dock
6/15/1877	10 years	Henry T. Seaman	dock
6/1/1888	20 years	Henry T. Seamen	dock
5/1/1926	5 years	Henry T. Seaman & Henry Leek	land under water and upland
9/4/1880	21 years	Geo. Van Ausdale	dock
12/5/1902	20 years	Geo. Van Ausdale	wharf
9/4/1922	20 years	Geo. Van Ausdale	dock
11/5/1881	20 years	Elwood Abrams	land under water
11/5/1881	20 years	Elwood Abrams	dock
6/1/1883	20 years	Caroline A. Gerard	land under water
10/1/1883	50 years	Oliver L. Jones	land under water
11/1/1901	20 years	Robert W. DeForest	land
10/2/1911	20 years	Robert W. DeForest	land under water
12/1/1901	20 years	Walter Jennings	land under water
1/1/1902	15 years	Joshua T. Jones	land under water
9/5/1902	15 years	Joshua T. Hones	land under water
12/5/1905	50 years	CSH Fire Dept.	land
1/3/1913	50 years	CSH Vill. Improvement Society	land under water
11/23/1928	50 years	CSH Vill. Improvement Society	land under water and upland

Date	Term	Lessee/Grantee	Purpose
1/1/1917	10 years	Alethea A. Stewart	land under water
4/19/1921	5 years	Gilbert Valentine	land under water
4/19/1921	10 years	Samuel A. Walters	land
4/1/1930	6 years	Samuel A. Walters	land under water
12/24/1935	10 years	Samuel A. Walters	land under water
8/5/1922	10 years	Oakwood Company	land under water
5/1/1931	3 years	Edward L. Lewis	land under water and upland
8/1/1933	10 years	Minadelle Oper. Cor.	land
8/1/1933	10 years	Minadelle Oper. Cor.	land under water
9/14/1938	5 years	Minadelle Oper. Cor.	land under water and upland
2/1/1944		Catherine Whitman Minadelle Oper. Co.	land under water and upland
9/5/1933	5 years	Harbor Terrace Civic Assoc.	land
11/22/1938	4 years	Harbor Terrace Civic Assoc.	land
6/17/1947	5 years	Harbor Terrace Civic Assoc.	land
7/22/1952	5 years	Harbor Terrace Civic Assoc.	land
4/6/1963	5 years	Harbor Terrace Civic Assoc.	land
12/29/1967	10 years	Harbor Terrace Civic Assoc.	dock and rec.
6/16/1937	5 years	Paul Arata	land under water
6/16/1943		Paul Arata	land under water
6/16/1948		Michael R. Arato Paul E. Arato	land under water (now filled)
4/15/1953		Michael Ralph Arato	land under water
6/16/1937	5 years	Luigi Pesce	land under water
3/1/1943	5 years	Giuseppe and Lucy Pesce	land under water
3/1/1948	5 years	Giuseppe and Lucy Pesce	land under water
3/1/1953	5 years	Giuseppe and Lucy Pesce	land under water
12/12/1954		Joseph and Lucy Pesce	land under water (now filled)
1/22/1959		Joseph Pesce	land under water and upland
4/14/1954		Joseph Pesce	land under water and upland
12/8/1959	8 years	Joseph Pesce	land under water (now filled)
11/21/1964		Joe's King Neptune, Inc.	land under water (now filled)
6/1/1964	38 1/2 mos.	Joe's King Neptune, Inc.	land under water (now filled)

Date	Term	Lessee/Grantee	Purpose
3/15/1968	5 years	Joe's King Neptune, Inc.	land
3/12/1940	3 years	Henry J. Powles, Jr.	land under water and upland
11/14/1940		Harry J. Powles, Jr.	land under water and upland
9/1/1942	20 years	Patsy Pappalardo	land under water and upland
9/1/1942	20 years	Harry J. Powles, Jr. Milton Powles Patsy Pappalardo	sublet
9/1/1942	20 years	Harry J. Powles Jr. Milton Powles	land under water and upland
1/9/1962	5 years	Harry J. Powles, Jr. Milton Powles	land under water
12/28/1967	11 years	Harry J. Powles, Jr. Milton Powles	land under water
12/8/1942		August Carbone	land under water cultivation
12/8/1947		August Carbone	land under water cultivation
11/15/1946	deed	Mary E. Jones to Town of Hunt.	land
7/9/1953	deed	Theodore B. Klapper to Town of Hunt.	land
4/7/1954		Pietro Ricci Edgar Saglio	land under water (now filled)
9/16/1954	quit claim deed	CSH Beach Club	land under water
12/3/1958	deed	Eliz. V. Fox & Anna E. Girgan	land
6/12/1958		Edwin B. and Walter A. Katey	yacht club
6/22/1962		Garlin Realty	land under water
12/29/1967		CSH Marina Inc.	land under water
6/4/1963		Jayrich Realty Inc.	land under water and upland
9/3/1965		Jayrich Realty Inc.	land under water and upland
9/16/1965		Jayrich Realty Inc. Emil Siegel	land

Date	Term	Lessee/Grantee	Purpose
5/17/1966	license	Agreement/Board of Trustees & CSH Seafarers, Inc.	dock, boating, parking

Appendix C

Official List of Leases for 1958, 1966, 1971

Lessee	Year Listed 1958	1966	1971
1. Albicocco, Salvatore	x	x	
2. American Legion	x		
3. Beachcroft Association	x	x	x
4. Birch, Lillian M.	x	x	x
5. Bongiorno et al.	x	x	x
6. Brown's Marina	x		x
7. Carbone, August	x		
8. Centerport Fire Dept.	x	x	x
9. Consiglio, Santo	x	x	x
10. Corns, Edwin & Hoesel, Chas.	x	x	x
11. Crockett, John	x	x	x
12. Dayton, John	x	x	x
13. DeMarco, Michael	x	x	x
14. Duggan, R.	x		
15. East Riding Co.,Inc.	x	x	x
16. Faulkenburg, Niel	x	x	
17. Garlin Realty, Inc.	x	x	
18. Halesite Fire District	x		
19. Halesite Yacht Service	x	x	
20. Harbor Boating Club	x	x	x
21. Harbor Terrace Civil Assn.	x	x	x
22. Huntington Yacht Club	x		x
23. Juliano, Ben.	x		
24. Kelsey, William	x		
25. Kenfyl, Inc.	x		
26. Ketewomoke Yacht Club	x	x	x
27. Kirchbaum, Paul	x		
28. Knutson Shipbuilding Co.	x	x	x
29. Kosik, Marion	x		
30. Landau, Claire	x	x	x
31. Long Island Lighting Co. (2)	x	x	
32. Long Island Oyster Farms (2)	x	x	x
33. Lynch, Lillian	x		
34. Northport Village (3)	x	x	
35. Northport Yacht Club	x	x	x
36. Pappalardo, Patsy	x		
37. Pesce, Joseph	x	x	x
38. Piping Rock Petroleum Co.	x	x	
39. Powles, Harry	x	x	x
40. Quakenbush	x		
41. Richardson, Eleanor	x	x	x
42. Ridgefield Highlands Beach Club	x	x	x
43. Roselle, H.	x		
44. Scudder, Richard B.	x		

	1958	1966	1971
45. Scudder, William A.	x	x	x
46. Seymour Boat Shops	x	x	x
47. Sherwood, Harold	x	x	x
48. Siegel, Emil	x		
49. Skidmore, Joel	x	x	x
50. Soper, George S.	x		
51. Steers Sand and Gravel Co.	x	x	
52. Strohback, W.	x		
53. Von Wrangell, Leda	x		
54. Wood, W. Wilton	x		
Additions: 1966			
1. Cold Spring Harbor Village Improvement Society, Inc.		x	x
2. Jayrich Realty (Moorings Rest.)		x	
3. Pettit, Wm (Wyncote Club)		x	x
4. Siakules, Nicholas		x	x
5. Swanson, Robert		x	x
6. U.S.Dredging Corp.		x	
Additions: 1971			
1. Cold Spring Harbor Marina (formerly Gerlin Realty)			x
2. Northport Boat Station (Maaser)			x
3. Northport Ice Company			x
4. Jorgensen's Service Station			x
5. Sea Spray Boating Assn.			x
Total Leases Each Year:	54	39	36

Source: 1958, survey authorized by Board of Trustees, possibly done by Town Historian; 1966, survey done by Mrs. W. Mock; 1971, list of current lease rentals in Town Comptroller's Office.

Status of Use

(* = no known lease)	Location	Area (sq.ft.)	Assessed Value 1971/2	Assessed Value 1972/
A. Commercial Use:				
1. Augie's Boat Shop *	Huntington	-	-	-
2. Cold Spr. Harbor Marina	Cold Spr. Harb.	78,290	$1,500	$6,600
3. Halesite Marine, Inc. *	Huntington	4,200	2,900	1,650
4. Joe's King Neptune	Cold Spr. Harb.	21,450	8,250	24,700
5. Jorgensen's Svc Station	Huntington	8,400	2,000	3,500
6. Karl's Mariners Inn *	Northport	2,548	-	300
7. Knutsen Shipbuilding Co.	Huntington	46,400	5,000	3,900
8. Knutson Marine Center *	Huntington	194,800	-	-
9. Nick Bros. (Albicocco) *	Huntington	13,200	-	5,200
10. Northport Ice Co.	Northport	-	-	-
11. Seymour Boat Shop	Northport	23,166	2,950	1,300
12. Simpson Boat Shop *	Centerport	4,544	-	500
13. Socony Oil Corp. *	Cold Spr. Harb.	1,180	-	1,000
14. Sports Boats *	Huntington	-	-	-
15. Veteran's Fishing Sta	Cold Spr. Harb.	19,700	8,000	22,700
16. W.W. Wood (Regal Marine)	Huntington	24,800 land 28,800 water		
B. Public Service Facility				
1. American Legion Post 360	Huntington	42,000	-	-
2. Cold Spr. Harbor Improvement Society	Cold Spr. Harb.	162,430 land 1,430,000 water	-	-
3. U.S. Naval Reserve Stn	Huntington	-	-	-

1. Some figures were not available when this table was made up.

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i and Land Under Water, 1972[1]

Market 1971/2	Est. Market Value 1972/3	Lease Expiration	Lease Rent	Rent Based on 8% of Estimate Market Value: 1971/2	1972/3	Remarks
-	-	-	-	-	-	210 ft. of bulkhead and floats. Possible fee title
),500	$47,000	5/1/77	$1,000	$ 840	$3,760	Dock, float, piles
),300	11,800	3/31/70	200	1,624	708	Old lease: Brown's Marin
,750	176,371	2/28/73	4,800	4,620	14,110	Bulkheaded upland with floats.
,000	25,000	2/28/75	2,000	1,120	2,000	Upland. Former Albicocco lease.
-	2,038	-	-	-	165	
,000	27,840	12/31/69	500	2,800	2,220	Land under water, some encroachment.
-	-	-	-	-	-	Figures not available. Claims fee title to all.
-	37,000	-	-	-	2,960	Filled in land.
-	-	-	40	-	50	Month-to-month concession
),650	9,266	2/28/73	300	1.652	741	
-	3,652	-	-	-	292	Encroachment by filling
-	7,100	-	-	-	568	Claims fee title from State patent 3/31/64 (Jon
-	-	-	-	-	-	Jin Knutson Marina Center
,000	162,347	8/31/77	6,500	4,480	12,987	Bulkheaded upland with floats.
						In litigation
					(1%)	
-	117,500	Oct. 1972	10	-	1,175	
-	-	11/22/78	1	-	-	
-	300,000	June, 1972	1	-	3,000	

Apr

Status of Use of Land

(* = no known lease)	Location	Area (sq.ft.)	Assessed Value 1971/2	Assessed Value 1972/3
C. Private Clubs/Associations				
1. Anoatok Civic Assn. *	Huntington	195(dock)	-	-
2. Bay Crest Beach Club *	Huntington	960 "	-	-
3. Beechcroft Assn.,Inc.	Huntington	1,200	$ 50	-
4. Camel Hollow Assn. *	Cold Spr.Harb.	1,152	-	-
5. Centerport Yacht Club *	Northport	2,716	-	-
6. ColdSpr.Harbor Bath and Beach Club *	Cold Spr.Harb.	16,300	-	-
7. Columbia Yacht Club *	Cold Spr.Harb.	420	-	-
8. Eagle Dock Assn.	Cold Spr.Harb.	340	-	-
9. East Riding Corp.	Huntington	192,500	750	10,800
10. Gold Star Battalion	Huntington	58,050 land 1,750 water	-	-
11. Harbor Boating Club	Huntington	1,300 land 38,000 water	1,000	6,600
12. Huntington Beach Assn. *	Centerport	500	-	-
13. Huntington Yacht Club	Huntington	66,200	1,000	14,900
14. Ketewomoke Yacht Club	Huntington	7,300 land 4,700 water	2,100	3,400
15. Nathan Hale Beach Club *	Huntington	775	-	-
16. Northport Yacht Club	Northport	3,480 dock; 1,260 bkhd	1,500	2,500
17. Plaisance Beach Club *	Northport	2,640	-	-
18. Ridgefield Highlands	Huntington	23,160	250	2,900
19. Seaferers Yacht Club	Cold Spr.Harb.	12,200 land 1,800 water	-	-
20. Sea Spray Boating Assn.	Northport	2,300	300	-
21. Wincoma Assn *	Huntington	680	-	-
22. Wyncote Club	Huntington	37,000	3,000	-

1. Some figures were not available when this table was made up.

D

nd U[illegible]r Water, 1972[1]

5	6	7	8	9	10	12
arket 1971/2	Est. Market Value 1972/3	Lease Expiration	Lease Rent	Rent Based on 6% of Estimated Market Value 1971/2	1972/3	Remarks
-	-	-	-	-	$ 50**	300ft of fenced beach.
-	-	-	-	-	100**	
50	$750	4/30/73	$100	$ 21	43	200ft wood dock/floats
-	-	-	-	-	150	Upland, Bulkhead, buildin[illegible]
-	-	-	-	-	300	docks.
-	-	-	-	-	785	
-	-	-	-	-	50	
-	-	-	-	-	-	Claims fee title from [illegible] state patent to Mary [illegible]
,250	77,000	2/28/69	50	315	4,620	Known as Bay Club. Open membership. 250ft dock.
-	-	-	-	-	-	Forest Harbor Beach Marina yearly concession.
,000	47,280	2/31/71	840	420	2,836	piles/floats for marina
-	-	-	-	-	50	7 acres reclaimed beach.
,000	106,320	5/31/73	300	420	6,379	250ft wood bulkheading
,700	24,277	6/18/73	1,000	882	1,456	
-	-	-	-	-	100	
,500	17,800	12/31/74	300	630	1,068	
-	-	-	-	-	300	330 ft wood dock with floats.
,750	21,000	2/28/73	100	105	1,260	
-	-	-	-	-	150	New lease negotiated [illegible] 300 ft wood dock with [illegible]
,100	-	3/31/75	100	180	-	Formerly August Heckse[illegible] lease [illegible]
-	-	-	-	-	100	Beach bulkheaded; [illegible] under wood with floats.
,000	22,200	1971	25	1,260	1,332	

Status of U

(* = no known lease)		Location	Lease date	Lease rent	Propose Flat Fe
D. Private Dock Owners					
1. Battaglia, Hector J.		Northport	12/28/72	$40	$50
2. Bergman, John E.	*	Huntington	-	-	50
3. Bongiorno, Carl		Northport	4/30/73	40	50
4. Branch, George	*	Northport	-	-	50
5. Brown, Russell F.	*	Huntington	-	-	50
6. Coindre Hall	*	Huntington	-	-	-
7. Castro, Bernard	*	Lloyd Harbor	-	-	50
8. Condello, Victor	*	Huntington	-	-	50
9. Consiglio, Santo		Northport	3/31/70	35	50
10. Corns & Poschman		Northport	7/31/70	25	50
11. Dayton, John W.		Lloyd Harbor	5/15/70	15	50
12. Fitzsimmons, Ann		Northport	7/31/69	25	50
13. Hillman, Kurt	*	Northport	-	-	50
14. Hoesel, Charles		Northport	7/31/70	25	50
15. Joline, Everett	*	Huntington	-	-	50
16. Kane, Daniel	*	Northport	-	-	50
17. Knutson, Ruth E.		Huntington	12/28/72	50	50
18. Knutson, Thomas A. Jr.	*	Cold Spr.Harb.	-	-	50
19. Landau, Claire		Duck Island	3/31/75	75	50
20. Nexell, Dana W.	*	Huntington	-	-	50

1. Some figures were not available when this table was made up.

ppendix D

d and Land Under Water, 1972

marks			Location	Lease date	Lease Rent	Proposed Flat Fee	Remarks
	21. Payfer, Gustave E.	*	Lloyd Harbor	-	-	$ 50	375 sq.ft.
lease '72	22. Peterson, M.	*	Northport	-	-	50	
er R.Iler	23. Phelps, Alfred E.		Huntington	12/31/64	$60	250	Filler [illegible] with house
nd	24. Quinn, Alonzo	*	Northport	-	-	50	
	25. Richardson, Henry		Northport	2/28/72	50	50	
	26. Robertson, Charles	*	Cold Spr.Habr.	-	-	50	State [illegible] 1906
ious	27. Sammis, Marion	*	Huntington	-	-	50	
6 sq.ft.	28. Schipper, J.F.,Jr.	*	Huntington	-	-	50	
	29. Sherwood, Harold		Centerport	7/31/69	25	50	See Fitzsi[illegible]
	30. Siakules, Nicholas		Centerport	7/31/69	25	50	
ease '72	31. Simmons, Peter	*	Northport	-	-	50	
0 sq.ft.	32. Stattel, P.F.	*	Huntington	-	-	50	
rwood	33. Swanson, Robert		Huntington	3/28/76	50	50	
	34. Tasman, Ben	*	Huntington	-	-	50	Man-made accretion
	35. Thompson, Albert	*	Northport	-	-	50	
	36. Tosz, John C.		Huntington	-	-	50	
	37. Tobiasson, Harry S.	*	Huntington	-	-	50	
sq.ft.	38. Vogel, Charles		Northport	1/31/76	50	50	
	39. Webb, Dwight	*	Huntington	-	-	50	
sq.ft.							

Appendix E

Deeds of Land From Trustees to Individuals 1809-1894

Date	Grantee	Location
1. Jan. 4, 1809	Selah Wood	In Old Purchase lying e. of road leading from Charles Peters to George Everston, n'ly by land sold to Gilbert Valentine, W and SW by lands of grantee. One acre twenty-six rods.
2. June 7, 1810	Prusil Woodward	In Old Purchase lying btwn South Path and path from Huntington to Richard Brown's separates. E/South Path, S/land of James Jones, W/Path to Brown's, to beg. Half an acre.
3. April 30, 1811	Selah Wood	In Old Purchase. Bnded nw and sw by land of grantee, n'ly by land of Gilbert Valentine. Triangular piece of one acre twenty-six rods.
4. Nov. 18, 1819	Vendue Sale	Common land near house of Caleb Ketcham. Sold to: Lot 1, Gilbert Sammis; Lot 2, Phineas Ketcham; Lot 3, Gilbert Sammis; Lot 4, David Ketcham.
5. Mar. 1, 1824	Thomas C. Hendrickson	E. side of channel in Hunt. Harbor, salt marsh or thatch bed. Reserve rts of fishing, fowling, public passage, shellfishing. Grantee can erect fence and dock. Not to obstruct carriages.
6. July 26, 1826	Jacob Brush/ John Cannon	Opinion of Silas Wood as to title: Cold Spring Harbor head April 18, 1707: Town grant to Brush to run field fence into water of Cold Spring Harbor. May 2, 1717: Laid highway by consent of Brush from his house toward mill. Gave him equivalent parcel. June 6, 1722: Gave Brush, as rt held, five acres joining his land, 52 rods long by harborside, 15 1/2 rods wide. April 4, 1723. Granted John Cannon 10 or 12 rods against tract he bought from Jacob Brush, not to obstruct channel. Oct. 15, 1723: Brush to Cannon. Beg. at channel below Rocky Pt, up bank to chestnut tree, e. 15 deg 50 rods 5 links, 10 e. 40 rods, w. 2 n. 32 rods, w. 22 n. 28 rods to bank,

Date	Grantee	Location
		then on same line to channel and along channel n. 8 deg e. 46 rods to beg. 16 1/2 acres and 15 rods. Bnded N and E/ Jacob Brush, S/ David Rogers, W/ channel.
7. Nov. 1, 1841	Solomon Ketcham	Recorded May 16, 1843. Quit-claim. Thatch meadow w. side Hunt. Harbor, narrow strip extending from spring on shore below John Wood's mill to opp. east line of Platt Conklin's land. Bnded w. by highway laid out, recorded from Wood's mill to Platt Conklin's house. One half acre. Reserve to public fishing, sailing, "and such as are common to the harbors, creeks, etc."
8. Nov. 1, 1841	George Conklin	Thatch meadow e. side Hunt. Harbor bnded N/ by course ranging from ne corner Thomas Scudder, Jr. lot to spring on opp. side of harbor below John Wood's mill, E/ line parallel with w. fence of Scudder lot 40 ft. therefrom to small creek below store of grantee, S/ by creek or drain to course of main creek, W/ by main creek toward dock of R.B. Post & Co. to beg. Two acres. Reserve public rt to fish, shellfish and such as are common to harbors and creeks.
9. Nov. 1, 1841	Jacob Scudder	Thatch meadow "at the request of the proprietors of the Old Purchase," Hunt. Harbor bnded N/ by course ranging from ne corner of Thomas Scudder, jr. lot to spring on opp. side of harbor below John Wood's mill, E/ passage of main creek to dock on east side of harbor, S/ salt meadow of John Wood, W/ by original flood gate channel leading from Wood's mill pond. 2 acres. Reserve to public fishing, shellfishing, boating, etc.
10. Aug. 31, 1850	Jarvis R. Rolph	"all the right, title and interest of the proprietors of the aforesaid 'purchase', in the original grants to them made of lands or other property in the said 'Old Purchase'... claim and demand whatsoever of the proprietors of the said 'Old Purchase'... (see deed from Rolph to Trustees, Feb. 1, 1866, Table).
11. Mar. 6, 1868	Trustees of the First Universalist Church	Land in village of Hunt., s. side Main Street next e. of old burying ground, triangular piece. Subject to public rts of highway on either side. .

	Date	Grantee	Location
12.	May 29, 1869	Union Church	Land in Centerport. Beg. se corner adjoining highway from Centerport to Northport and highway to Sill's Neck, run n. 38 1/2 deg., w. 75 links; n. 49 deg., w. 76 links to pt bearing s. 42 deg. w. 44 links from se corner of church; n. 64 1/4 deg., w. 27 3/4 links; n. 6 deg. 20 min. w. 1 chain, 86 links; s. 82 1/4 deg., e. 1 chain, 46 3/4 links to highway to Sill's Neck, s. 1 deg. 5 min., e. 2 chains, 90 links to beg.
13.	Nov. 19, 1870	Henry G. DeForest	Salt marsh and land under water, e. side Cold Spring Harbor. Bnded S/ by straight line bnded by extension in w'ly direction of s'ly line or side of Spring St, from its intersection with e'ly side of Paper Mill Dam Road and across road into harbor, being over and across the cove to the old oyster pond dam; W/ waters of harbor; N/ and E/ by high water mark. "It being understood that the covenants herein do not apply to any part of the premises lying outside of low water mark."
14.	July 28, 1883	A.H. Baldwin	Hunt. Harbor shore front. In front of land of grantee beg. e. of highway unto inlet 50 ft. wide from highway line as far e. as grantee prop. extends. "advantage to be gained in preventing the said from washing into Huntington Harbor."
15.	July, 1883	W.B. Gerard	Resolution to quit-claim to grantee land leased to him.
16.	Feb. 13, 1884	Edward Carll	E. Side Hunt. Harbor, parcel opp. his land btwn his house and land of Thomas Scudder.
17.	Mar. 20, 1884	Townsend Jones	Grantee claims he bought dock prop. from town; asks for strip of land bnded S/ lands of Caroline Gerard, W/ low water mark and as far as flat rock on e. by high water mark. Quit-claim granted to dock and strip.
18.	Feb. 21, 1885	William C. Scudder	Land in east part of village bnded S/ W.C. Scudder land, W/ W.C. Scudder, N/ Mrs. W. Siles, E/ Park Ave.
19.	Feb. 21, 1885	O.L. Jones	Land in Cold Spring Harbor oyster pond covered by his dock lease on the west, n'ly as far as line of 15 ft. s. of s. line of Spring St. Fill in area to level of high

	Date	Grantee	Location
			water in 5 years, whenever owner to east takes same type conveyance.
20.	June 12, 1885	Wilton G. Smith	To correct deed dated Aug. 3, 1861 from trustees of dock and land under water at Northport Harbor. Quit-claimed to wife, Ada A. Smith approved Feb. 23, 1886.
21.	May 11, 1886	Louisa Carll	Crab Meadow beach. Quit-claim to beach from inlet to public road on east, not to include any meadow, town not to be held to any manner of guarantee of title. Accompanies lease for dock at same place.
22.	Oct. 5, 1886	Isaac Herbert	Hunt. Harbor opp. grantee land, lying and adjoining highway at harbor opp. his land n. of line formed by extension of s. fence of grantee w'ly to creek. Reserve rt of passage 50 ft. wide parallel with Thomas Scudder s. fence to and across creek. Deed executed Jan. 4, 1887.
23.	Oct. 5, 1886	Thomas Scudder	40 ft. passageway in rear of grantee land, bnded N/ Edward Carll, E/ grantee, S/ Town lands, W/ grantee.
24.	July 20, 1888	Edwin Lefferts	E. side Hunt. Harbor, land occupied by dock.
25.	May 28, 1890	Soldiers and Sailors Monument Committee	Hunt. Village, land on s. side of Main St. adjoin and w. of old burying ground. To be used only for monument to those who died in Civil War.
26.	Sept. 2, 1890	Ida A. Smith	Partly beach, partly land under water beg. at pt in high water line of L.I. Sound where division line btwn land of Elbert Arthur and town land intersect high water mark, thence s. 12 deg. 53 min. 50 sec. w. along Arthur land 635.64 ft. to monument; s. 60 deg. 10 min. 20 sec. w. along Arthur land 418.46 ft. to high water line of Northport Bay to land of Donahue; n. 29 deg. 17 min. 05 sec. e. along Donahue land and land of Mary E. Jones 692.22 ft. to high water mark of L.I. Sound; se following high water line of Soung to beg. 104.232 acres. Also land below high water mark of Northport Harbor and extending under waters of bay in front of premises beg. at pt in high water line of harbor where division line

Date	Grantee	Location
		btwn land of Arthur and of Town intersect high water line, run s. 60 deg. 10 min. 20 sec. w. into bay 343.01 ft.; s. 85 deg. 48 min. 20 sec. w. 1296.2 ft; n. 73 deg. 55 min. 10 sec. w. 568.63 ft; n. 37 deg. 52 min. 40 sec. w. 613.05 ft; n. 28 deg. 37 min. 30 sec. w. 1127.53 ft; n. 61 deg., 11 min. 10 sec. w. 1006.19 ft; n. 29 deg. 17 min. 05 sec. e. 214.86 ft. to high water mark of harbor where division line btwn land of Donahue and town intersect said high water line; then se along high water line to beg., containing 33.077 acres. Subject to public roadway easements, rt of public to travel in area btwn high and low water marks, subject to leases to N.S. Ackerly (Oct. 2, 1882) and another to him (April 3, 1883). All mortgaged by town; Price, $20,000.00
27. June 7, 1894	John Wicks	Requests and gets quit-claim to piece of land surveyed by Jonathan Sammis, Mar. 27, 1865, recorded in Book B of Highways. Land in front of and within bnds of grantee's land on highway.

(Source: HTR, III; "Huntington Lease File", Town Historian's Office; "Trustee Records, 1872-1893," Ms. Town Clerk's Office.)

Appendix F

Report of the Huntington Conservation Advisory Council

January 21, 1971

Much of the work of the Conservation Advisory Council deals with problems and projects involving the ecological management of lands owned by the Board of Trustees. It has become apparent to us over our years of experience that the management and protection of these lands have been sorely neglected by Town Government. Many violations have gone unprosecuted or have been unsuccessfully prosecuted. Specifically:

1. The Board of Trustees has no accurate inventory of the lands it holds in trust for the taxpayers and commonality;
2. The Trustees have allowed encroachment upon these valuable lands without permission or lease by individuals, private groups and commercial interests;
3. The Trustees have allowed some lease holders to use Trustee properties for years without payment of fees and/or without lease renewal.

One example of apparent flagrant encroachment on Trustee underwater property is shown by the attached concerning the Knutson Shipyard lease. In this case, the property leased by Mr. Knutson is delineated on the map. It is also shown on the attached poloroid picture as the area on the shore side of the overlaid red line. The spiles and floats on the water side of this red line apparently are encroaching on may bottom not covered by the lease. It is our understanding that the floats are being used for marina purposes. A survey should be made of this property in order that the Board of Trustees can maintain control over and receive proper revenues from this commercial enterprise. Further, all the past leases on this property should be studied to determine how much underwater property has been turned into upland by filling. Legal action should be brought to reclaim these lands, if necessary.

The Knutson Shipyard case is but one current example brought to your attention to illustrate the tremendous problems and obligations facing the Board of Trustees. Other cases that we have brought to your attention and/or to the attention of the Town Attorney's office are appended. These clearly demonstrate the need for the services of a full time attorney knowledgeable about Trustee affairs. While many of these cases and projects have been handled successfully, many others have been neglected. Others have been unsuccessfully prosecuted. This is perhaps due to an overload of work in the Town Attorney's Office and insufficient knowledge and records of Trustee ownership.

The purpose of this letter is to call these problems to your attention and to suggest a way that the Board of Trustees can better meet its responsibilities to the people. We feel that three steps are necessities:

1. A title search of all waterfront property in the Town should be made to determine those lands which the Board of Trustees own and to determine encroachment upon those lands.

2. A full-time lawyer should be retained to handle legal aspects of problems dealing with Trustee-owned lands and to inventory or help inventory all Trustee-owned lands;

3. A Commission whose principal duty would be to direct and aid in the determination of Trustee ownership should be appointed. This Commission might have a limited life, based on the completion of the project. It is suggested that representation on this Commission include a representative of each of the following groups as well as the individuals listed below.

Board of Trustees
Dept. of Harbors and Waterways
Conservation Advisory Council
Harbors and Boating Advisory Committee
Town Surveyor
Town Engineer
Town Historian
One to three citizens at large known for their interest in public lands.

It is apparent that members of the Commission would be exposed to privileged information and must be considered on the basis of integrity as well as ability and lack of personal or commercial interest in these lands.

We realize that making an inventory of these lands is a major and potentially expensive undertaking. However, with the services of an unpaid Commission and a full-time lawyer, the work could be handled over a period of time at minimal expense. We would be happy to meet with you to discuss implementation, Commission membership and other matters bearing on the success of this project.

Very truly yours,

/s/ William A. McAneny, Chairman
Huntington Conservation Advisory Council

CASES AND PROJECTS SUBMITTED FOR LEGAL ACTION
by the
TOWN OF HUNTINGTON CONSERVATION ADVISORY COUNCIL

21 January 1971

Not Prosecuted or Unsatisfactorily Prosecuted

Castro Dock-Lloyd Harbor
Mustapick Dock-Northport Bay
Mustapick Dock-Centerport Harbor
Waters Edge-Northport Harbor filling
Rocke Filling-Centerport Harbor
Huntington Yacht Club Filling-Huntington Harbor
Kessler Filling-Centerport Mill Pond
Centerport Fire Dept. Filling-Centerport Mill Pond
Cold Spring Harbor Civic Improvement Society Filling-Cold Spring Harbor
Powles-Bulkhead extension-Cold Spring Harbor
Huntington Beach Community Assoc. Encroachment onto Trustee-owned beach without lease or agreement-Centerport Harbor
Whalers' Cove Yacht Club Filling-Cole Spring Harbor
Seafarers' Yacht Club Filling of Trustee Upland-Use of bay bottom for dock with no lease-Cold Spring Harbor
Boxhoorn Filling-Northport Harbor

Under Consideration or to be Considered

Livingston Dock-stop work order-Northport Harbor
Regal Marine, ownership, building permit, zoning-Hunt. Harbor
Wilton Wood-ownership-Huntington Harbor
Whalers' Cove Yacht Club-buldhead extension-Cold Spring Harbor
Knutson Shipyard, probable encroachment-Huntington Harbor
Simpson's Boat Yard, bulkhead extension-Centerport Harbor

Other Cases and Projects
*Trustee Responsibilities

*Marine Conservation Law	Complete
Health Laws Re: Commercial Sewage Disposal	Dropped
*Clamming Permits	Incomplete
*Shellfish Ordinance	Complete
*Glenver Homes	No Action
Crabmeadow Pond Clean-up	Complete
*Sand City Vehicle Ordinance	Complete
*Centerport Mill Pond Ownership	Complete
*Centerport Mill Pond Pollution	In Process
Sesti Filling (Centerport-Upper Mill Pond)	Intermittant Problem
*Chichester Rd. Stream Ownership	Complete
*Acquisition U.S. Dredging Property Sand City for Erosion Control Work	Incomplete

Appendix G

Trustees' Resolutions, 1971

DECLARATION OF POLICY CONCERNING ENVIRONMENT

RESOLUTION FOR BOARD OF TRUSTEE MEETING DATED Feb. 23, 1971

The following resolution was offered by Trustee Casey and seconded by Trustee Horn:

WHEREAS, The Trustees of the Freeholders & Commonalty of the Town of Huntington, recognizing the profound impact of the actions of mankind upon the interrelations among all elements of the environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, technological advances, and

WHEREAS, recognizing further the critical importance of restoring and maintaining environmental quality for the overall welfare and development of man, in particular those residents of the Town of Huntington, not only in this generation, but of those generations yet unborn,

WHEREAS, the Trustees of the Freeholders & Commonalty of the Town of Huntington, under and by virtue of the powers granted by certain colonial patents, which powers and obligations were ratified and confirmed by the State of New York after the War of the Revolution against England,

DECLARE that it is the continuing policy of the Trustees of the Freeholders & Commonalty of the Town of Huntington, in cooperation with the Town Board of the Town of Huntington, and all other concerned public and private organizations, to use all practicable means and measures to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other needs of this and future generations, and

WHEREAS, in order to carry out such obligations, the Trustees of the Freeholders & Commonalty of the Town of Huntington declare that it is the continuing responsibility of the Town Board of the Town of Huntington to use all means necessary to:

(1) fulfill the responsibilities of the Trustees of the Freeholders & Commonalty of the Town of Huntington in each generation as trustees of the environment for succeeding generations;

(2) assure for all the people of the Town of Huntington, safe, healthful, productive and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesireable consequences;

(4) preserve important historic, cultural and natural aspects of our heritage and maintain an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities among all the residents of the Town of Huntington, not only during this generation, but in each succeeding generation;

(6) and enhance the quality of renewable resources and approach the maximum recycling of depletable resources attainable by the state-of-the-art, all the while recognizing that each person shall enjoy a salubrious environment and that each person has a responsibility and duty to his fellow man to contribute to the protection of a beneficent environment.

The Town Board, as the agent of the Trustees of the Freeholders & Commonalty of the Town of Huntington authorizes and directs that the policies, regulations, and public laws of the Town of Huntington, and as applicable,

the laws of the State of New York and the United States of America, shall be interpretated and administered in accordance with the following statement of policy:

(A) All agencies of the Town of Huntington and all agencies of the County of Suffolk, the State of New York or the United States of America, as their agency operations affect the natural resources or people of the Town of Huntington,

SHALL

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the arts of environmental design in the operations of planning and decision making, as such activities may have an impact on the residents of the Town of Huntington and their environment;

(2) identify and develop methods and procedures, in consultation with the Trustees of the Freeholders & Commonalty of the Town of Huntington, or such individuals, groups, agencies or organizations as such Trustees shall designate, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in the planning and decision making operations together with economic and technical considerations;

(3) include in every recommendation and report on proposals for legislative action, a detailed statement by the responsible official on:

(a) the environmental impact of the proposed action,

(b) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(c) alternatives to the proposed action,

(d) the relationship between local short-term uses of the

environment and the maintenance and enhancement of the long-term productivity of the environment, and

(e) any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible official or agancy shall consult with and obtain the comments in writing of any Federal, State or other local agency which has jurisdiction by law, or special experience with respect to any of the issues involved.

(4) study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the regional and long-range character of environmental problems and where consistent with the obligations of the Trustees of the Freeholders & Commonalty of the Town of Huntington to hold the natural resources of the Town of Huntington in trust, for the benefit, use and enjoyment of the freeholders & commonalty of the Town of Huntington, not only of this generation but for those generations yet unborn, cooperate and support initiatives, resolutions and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of the environment of the entire region;

(6) make available to the Villages, Special districts, Towns, Counties, States and the Federal Government, as well as concerned private individuals institutions and industry, advice and information useful in restoring, maintaining and enhancing the quality of the environment,

(7) initiate and utilize systems techniques in environmental science in the planning and development of projects utilizing the resources of the Town of Huntington;

and (8) assist the Trustees of the Freeholders & Commonalty of the Town of Huntington to maintain the natural resources of the Town of Huntington in trust for the benefit, use and enjoyment of all the residents of the Town of Huntington, in this and future generations.

(B) All agencies of the Town of Huntington shall review their present statutory authority, administrative regulations, current policies and procedures for the purpose of determining the effects thereof upon compliance with the provisions of this resolution, and such agencies shall present their reports to the President of the Trustees of the Freeholders & Commonalty of the Town of Huntington within sixty (60) days of the promulgation of this resolution, and each such agency shall, at that time, propose to the Trustees of the Freeholders & Commonalty of the Town of Huntington such measures, legislation or resolutions as may be necessary to bring their authority and policies in conformity with the intent, purposes and procedures set forth in this resolution.

VOTE: AYES: 5 NOES: 0

The resolution was thereupon declared duly adopted.

RESOLUTION AUTHORIZING THE TOWN BOARD TO ESTABLISH A DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE PURPOSE OF IMPLEMENTING THE POLICY OF THE TRUSTEES OF THE FREEHOLDERS & COMMONALTY OF THE TOWN OF HUNTINGTON

Resolution for Board of Trustees Meeting Dated: November 9, 1971

The following resolution was offered by Trustee Casey and seconded by Trustee Holahan:

WHEREAS, the Trustees of the Freeholders & Commonalty of the Town of Huntington, by resolution duly adopted on February 23, 1971, adopted a statement of policy concerning the environment and natural resources of the Town of Huntington; and

WHEREAS, the Town Board of the Town of Huntington was designated agent of and for the Trustees of the Freeholders & Commonalty of the Town of Huntington, and directed to interpret and administer the policies, regulations, and public laws of the Town of Huntington, and so far as applicable the laws of the State of New York and the United States of America in accordance with said statement of policy concerning the environment and natural resources of the Town of Huntington; and

WHEREAS, the Town Board of the Town of Huntington in furtherance of the direction of the Trustees of the Freeholders & Commonalty of the Town of Huntington and as agent of and for said Trustees intends to implement the mandate of the Trustees of the Freeholders & Commonalty of the Town of Huntington with respect to the environment and natural resources of the Town of Huntington.

NOW, THEREFORE, BE IT RESOLVED that:

THE TOWN BOARD OF THE TOWN OF HUNTINGTON is hereby authorized and directed to establish a DEPARTMENT OF ENVIRONMENTAL PROTECTION for the purpose of implementing the policy of the Trustees of the Freeholders & Commonalty of

the Town of Huntington concerning the environment and natural resources of the Town of Huntington.

VOTE: AYES: 5 NOES: 0

The resolution was thereupon declared duly adopted.

RESOLUTION OF THE TRUSTEES OF THE FREEHOLDERS & COMMONALTY OF THE TOWN OF HUNTINGTON

Resolution for Board of Trustees meeting: December 7, 1971

The following resolution was offered by Trustee Casey and seconded by Trustee Halahan

WHEREAS, the Trustees of the Freeholders & Commonalty of the Town of Huntington, under and by virtue of the powers granted by certain colonial charters, which powers and obligations were ratified and confirmed by the State of New York after the War of Revolution against England, have, by resolution duly adopted February 23, 1971,

DECLARED that it is the continuing policy of the Trustees of the Freeholders and Commonalty of the Town of Huntington, in cooperation with the Town Board of the Town of Huntington and all other concerned public and private organizations, to use all practicable means and measures to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other needs of this and future generations, and fully stated the elements of such policy in said resolution,

NOW hereby resolve that any person subject to the provisions of Title 33 United States Code, sections 401-413, generally referred to as the Rivers & Harbors Act of 1899, and/or the regulations contained in Title 33, Chapter II, Part 209 of the Code of Federal Regulations, issued under and by virtue of the authority of R. S. 161, Title 5, United States Code, section 301, relating to navigable waters, as currently supplemented or amended, shall submit a copy of the application and all supporting documents required under the provisions of such federal laws, rules and regulations to the Trustees of the Freeholders & Commonalty of the Town of Huntington, where such application involves the

waters, lands under the waters and lands adjacent thereto under the jurisdiction of the Trustees of the Freeholders and Commonalty of the Town of Huntington, prior to submission of such application and documents to the Department of the Army, Corps of Engineers.

UPON receipt of such application, the Clerk of the Trustees of the Freeholders & Commonalty of the Town of Huntington shall forward the application to the Director of Environmental Protection of the Town of Huntington for review and assessment of the environmental impact of the work proposed to be accomplished pursuant to the application upon the natural resources and environment of the Town of Huntington. The Director of Environmental Protection shall require the applicant to prepare and submit an Environmental Impact Statement pursuant to the resolutions of the Trustees of the Freeholders & Commonalty of the Town of Huntington heretofore adopted.

WITHIN thirty (30) days of receipt of such application, the Director of Environmental Protection shall file a report evaluating the impact of such application if approved, upon the natural resources and environment of the Town of Huntington. Such report shall be filed with the Trustees of the Freeholders & Commonalty of the Town of Huntington and shall become a public record.

WITHIN thirty (30) days after the report of the Director of Environmental Protection has been filed with the Trustees of the Freeholders & Commonalty of the Town of Huntington, said Trustees shall approve or disapprove the application as presented and shall notify the applicant and the Corps of Engineers of the Department of the Army of such determination.

It is further RESOLVED

that no person shall take any action subject to the provisions of Title 33 United States Code, sections 401-413, generally referred to as the Rivers &

Harbors Act of 1899, and/or the regulations contained in Title 33, Chapter II, Part 209 of the Code of Federal Regulations, issued under and by virtue of the authority of R.S. 161, Title 5, United States Code, section 301, with respect to the waters, lands under the waters and lands adjacent thereto, under the jurisdiction of the Freeholders and Commonalty of the Town of Huntington, unless and until such action has been approved by resolution of the Trustees of the Freeholders & Commonalty of the Town of Huntington, duly adopted.

It is further RESOLVED

that any person who shall be acting, or operating, or maintaining any structure, operation or activity, under and by virtue of any permit theretofore issued by the Department of the Army, Corps of Engineers pursuant to the provisions of Title 33, United States Code, sections 401-413, generally referred to as the Rivers & Harbors Act of 1899, and/or the regulations contained in Title 33, Chapter II, Part 209 of the Code of Federal Regulations, issued under and by virtue of the authority of R.S. 161, Title 5, United States Code, section 301, shall, within thirty (30) days of the publication of this resolution submit copies of the application and all documents in support thereof, together with a copy of the permit granted by the Corps of Engineers to the Trustees of the Freeholders & Commonalty of the Town of Huntington pursuant to the provisions of this resolution heretofore set forth.

The Clerk of the Trustees of the Freeholders & Commonalty of the Town of Huntington is hereby directed to publish this resolution in accordance with the procedures followed by the Town Board of the Town of Huntington for the publication of resolutions, and to forward a copy of this resolution, duly certified, to the Department of the Army, Corps of Engineers at its headquarters in Washington, District of Columbia, and also to the resident permit

agent of the Department of the Army, Corps of Engineers in the State of New York having jurisdiction over the navigable waters of the Town of Huntington.

VOTE: AYES: 4 NOES: 0

The resolution was thereupon declared duly adopted.

Appendix H

Patents: Charles II to Duke of York, 1664
Nicolls to Huntington, 1666
Dongan to Huntington, 1688
Fletcher to Huntington, 1694

Charter of New York From Charles II to The Duke of York, March 12, 1663/64

Charles the Second, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, etc. To all to whom these presents shall come greeting. Know that we, for diverse good causes and considerations, us thereto moving, have, of our special grace, certain knowledge, and mere motion, given and granted, by these presents for us, our heirs and successors, do give and grant to our dearest brother James, Duke of York, his heirs and assigns, all that part of the mainland of New England beginning at a certain place called or known by the name of St. Croix adjoining New Scotland in America, and from there extending along the seacoast to a certain place called Patuaquine or Pemaquid, and up the river thereof to the furthest head of the same as it tends northwards, and extending from there to the River of Kinebequi and upwards by the shortest course to the River Canada northward; also, all that island or islands commonly called by the several name or names of Matowacks or Long Island, situate, lying, and being towards the west of Cape Cod and Narro Higansetts, abutting upon the mainland between the two rivers there called or known by the several names of Connecticut and Hudson's River; together, also, with the said river called Hudson's River and all the land from the west side of Connecticut River to the east side of Delaware Bay; also, all those several islands called or known by the names of Martin Vinyards and Nantukes, otherwise Nantukett, together with all the lands,

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Commissioners of Statutory Revision, The Colonial Laws of New York from the year 1664 to the Revolution (Albany, 1896), I, 1-5.

islands, soils, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawking, hunting and fowling, and all other royalties, profits, commodities, and hereditaments to the said several islands, lands, and premises belonging and appertaining with their and every of their appurtenances and all of our estate, right, title, interest, benefit, advantage, claim, and demand of, in, or to the said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders, together with the yearly and other rents, revenues, and profits of all and singular the said premises and of every part and parcel thereof. To have and to hold all and singular the said lands, islands, hereditaments, and premises with their and every of their appurtenances hereby given and granted, or aforementioned to be given and granted, to our said dearest brother James, Duke of York, his heirs and assigns, forever, to be held of us, our heirs and successors, as of our Manor of East Greenwich in our county of Kent, in free and common soccage and not in capite or by knights service, yielding and rendering, and the said James, Duke of York, does for himself, his heirs and assigns, covenant and promise to yield and render to us, our heirs and successors, of and for the same, yearly and every year, forty beaver skins when they shall be demanded or within ninety days after. We do further, of our special grace, certain knowledge, and mere motion for us, our heirs and successors, give and grant to our said dearest brother, James, Duke of York, his heirs, deputies, agents, commissioners, and assigns by these presents full and absolute power and authority to correct, punish, pardon, govern, and rule all such the subjects of us, our heirs and successors, as shall from time to time adventure themselves into any parts or places aforesaid or that shall or do at any time thereafter inhabit within the same, according to such laws, orders, ordinances, directions, and instruments as by our said dearest

brother or his assigns shall be established, and in defect thereof in cases of necessity according to the good discretions of his deputies, commissioners, officers, or assigns, respectively, as well in all causes and matters capital and criminal as civil, both marine and others, so always as the said statutes, ordinances, and proceedings be not contrary to but as near as conveniently may be agreeable to the laws, statutes, and government of this, our realm of England; saving and reserving to us, our heirs and successors, the receiving, hearing, and determining of the appeal and appeals of all or any person or persons of, in, or belonging to the territories or islands, aforesaid, in or touching any judgment or sentence to be there made or given. Furthermore, it shall and may be lawful to and for our said dearest brother, his heirs and assigns, by these presents, from time to time, to nominate, make, constitute, ordain, and confirm by such name or names, style or styles as to him or them shall seem good and likewise to revoke, discharge, change, and alter as well all and singular governors, officers, and ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and islands; and also to make, ordain, and establish all manner of orders, laws, directions, instructions, forms, and ceremonies of government and magistracy fit and necessary for and concerning the government of the territories and islands, aforesaid, so always as the same be not contrary to the laws and statutes of this our realm of England but as near as may be agreeable thereto. The same at all times hereafter to put in execution or abrogate, revoke or change, not only within the precincts of the said territories or islands but also upon the seas in going and coming to and from the same, as he or they in their good discretions shall think to be fittest for the good of the adventurers and inhabitants there. We do further, of our special grace, certain knowledge, and mere motion grant, ordain, and declare

that such governors, officers, and ministers as from time to time shall be authorized and appointed in manner and form aforesaid, shall and may have full power and authority to use and exercise marshal law in cases of rebellion, insurrection, and mutiny in as large and ample manner as our lieutenants in our counties within our realm of England have or ought to have by force of their commission of lieutenancy or any law or statute of this our realm. We do, furthermore, by these presents for us, our heirs and successors, grant to our said dearest brother, James, Duke of York, his heirs and assigns, that it shall and may be lawful to and for the said James, Duke of York, his heirs and assigns, in his or their discretions, from time to time, to admit such and so many person and persons to trade and traffic to and within the territories and islands aforesaid, and into every or any part and parcel thereof, and to have, possess, and enjoy any lands or hereditaments in the parts and places aforesaid as they shall think fit according to the laws, orders, constitutions, and ordinances by our said brother, his heirs, deputies, commissioners, and assigns from time to time to be made and established, by virtue of and according to the true intent and meaning of these presents, and under such conditions, reservations, and agreements as our said brother, his heirs or assigns, shall set down, order, direct, and appoint and not otherwise, as aforesaid. We do, furthermore, of our special grace, certain knowledge, and mere motion, for us, our heirs and successors, give and grant to our said dear brother, his heirs and assigns, by these presents, that it shall and may be lawful to and for him, them, or any of them, at all and every time and times hereafter, out of any our realms or dominions whatsoever, to take, load, carry, and transport in and into their voyages, and for and towards the plantation of our said territories and islands, all such and so many of our loving subjects, or any other strangers being not prohibited or under restraint

that will become our loving subjects and live under our allegiance, as shall willingly accompany them in the said voyages, together with all such clothing, implements, furniture, and other things usually transported and not prohibited as shall be necessary for the inhabitants of the said islands and territories and for their use and defense thereof and managing and carrying on the trade with the people there and in passing and returning to and fro; yielding and paying to us, our heirs and successors the customs and duties therefore due and payable according to the laws and customs of this, our realm. We do, also, for us, our heirs and successors, grant to our said dearest brother, James, Duke of York, his heirs and assigns, and to all and every such governor or governors or other officers or ministers as by our said brother, his heirs or assigns shall be appointed, to have power and authority of government and command in or over the inhabitants of the said territories or islands, that they and every of them shall and lawfully may from time to time and at all times hereafter, forever, for their several defense and safety encounter, expulse, repel, and resist by force of arms, as well by sea as by land and all ways and means whatsoever, all such person and persons as without the special license of our said death brother, his heirs or assigns shall attempt to inhabit within the several precincts and limits of our said territories and islands; also, all and every such person and persons whatsoever as shall enterprise or attempt at any time hereafter the destruction, invasion, detriment, or annoyance to the parts, places, or islands aforesaid or any part thereof. Lastly, our will and pleasure is, and we do hereby declare and grant, that these our letters patents, or the enrollment thereof, shall be good and effectual in the law to all intents and purposes whatsoever, notwithstanding the not reciting, or mentioning, of the premises or any part thereof, or the meets or bounds thereof, or of any former or other letters patents, or

grants heretofore made or granted of the premises, or of any part thereof, by us or of any of our progenitors to any other person or persons whatsoever, bodies politic or corporate, or any act, law, or other restraint, uncertainty, or imperfection whatsoever to the contrary in any wise notwithstanding. Although express mention of the true yearly value or certainty of the premises, or of any of them, or of any other gifts or grants by us, or by any of our progenitors or predecessors heretofore, made to the said James, Duke of York, in these presents is not made, or any statute, act, ordinance, provision, proclamation, or restriction heretofore had, made, enacted, ordained, or provided or any other matter, cause, or thing whatsoever to the contrary thereof in any wise notwithstanding. In witness whereof, we have caused these our letters to be made patents. Witness ourself at Westminster the twelfth day of March in the sixteenth year of our reign.

By the King Howard.

The Patent Issued to the Town of Huntington, New York by Richard Nicholls, Deputy Governor of James Duke of York in the Colony of New York, Nov. 30, 1666.

To all to whom these presents shall come, sends greetings. Whereas there is a certain town within the government commonly called and known by the name of Huntington, situate and being in Long Island, now in the tenure or occupation of several freeholders and inhabitants there residing, who having heretofore made lawful purchase of the lands thereunto belonging, have likewise manured and improved a considerable part thereof and settled a competent number of families thereupon. Now, for a confirmation unto the said freeholders and inhabitants in their enjoyment and possession of the premises, know ye that by virtue of the commission and authority unto me given by his Royal Highness I have ratified, confirmed, and granted, and by these presents do hereby ratify, confirm, and grant unto Jonas Wood, William Leverich, Robert Seeley, John Ketcham, Thomas Scidmore, Isaac Platt, Thomas Jones, and Thomas Weeks, in the behalf of themselves and their associates, the freeholders and inhabitants of the said town, their heirs, successors, and assigns, all that land that already have been or hereafter shall be purchased for and in the behalf of the town of Huntington, either from the natives, proprietors, or others within the limits and bounds herein expressed; that is to say, from a certain river or creek on the west commonly called by the Indians by the name of Nackaquatok and by the English the Cold Spring, to stretch eastward to Nasaquack River; on the north to be bounded by the Sound running between Long Island and the main (land); and on the south by the sea, including there nine several necks of meadow ground. All which tract of land, together with the said necks thereunto belonging, within the bounds, limits aforesaid and all or any plantation thereupon are to belong to the said town of Huntington, as also all havens, harbors, creeks, quarries, woodland, meadow, pastures,

marshes, lakes, fishing, hawking, hunting, and fowling, and all other profits, commodities, emoluments, and hereditaments to the said land and premises, within limits and bounds aforementioned described, belonging or in anywise appertaining. To have and to hold the said lands and necks of lands, hereditaments and premises with their and every of their appurtenances and of every part, part and parcel thereof to the said patentees and their associates, to the proper use and behoof of the said patentees and their associates, their heirs, successors, and assigns forever. And I do likewise hereby confirm and grant unto the said patentees and their associates, their heirs, successors, and assigns, all the privileges belonging to a town within this government, and that the place of their present habitation shall continue and retain the name of Huntington, by which name it shall be distinguished and known in all bargains and sales, deeds, records, and writings. They, the said patentees and their associates, their heirs, successors, and assigns, rendering and paying such duties and acknowledgements as now are or hereafter shall be constituted and established by the laws of this colony under the obedience of his Royal Highness, his heirs and successors.

Given under my hand and seal at Fort James in New York, the 30th day of November in the 18th year of his Majesty's reign and in the year of Our Lord 1666.

Richard Nicholls

The Patent Issued to the Town of Huntington, New York by Thomas Dongan, Deputy Governor of James Duke of York in the Colony of New York, Aug. 2, 1688.

Thomas Dongan, Captain-General and Governor-in-Chief of New York and territories depending thereon in America, under his most sacred Majesty, James the Second, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, etc. To all to whom these presents shall come sends greetings.

Whereas Richard Nicolls, Esquire, Governor-General under his them Royal Highness James Duke of York and Albany, etc., now his present Majesty of all his territories in America, did by a certain writing or patent under his hand and seal, bearing date the thirtieth day of November in the eighteenth year of the reign of the late sovereign Lord Charles the Second, etc., of blessed memory, etc., in the year of Our Lord God sixteen hundred sixty-six, by virtue of the command and authority unto him given by his said then Royal Highness now his present Majesty as aforesaid, I ratify, confirm, and grant unto Jonas Wood, William Leverich, Robert Seeley, John Ketcham, Thomas Scidmore, Isaac Platt, Thomas Jones, and Thomas Weeks, as patentees in the behalf of themselves and their associates, the freeholders and inhabitants of the town of Huntington, situate, lying, and being within this government upon Long Island in the county of Suffolk, now in the tenure and occupation of several freeholders and inhabitants there residing, who having theretofore made lawful purchase of the lands thereunto belonging, have likewise manured and improved a considerable part thereof and settled a competent number of families thereupon all the lands that already had been or thereafter should be purchased for and on the behalf of the said town of Huntington, whether from the natives, proprietors, or others, within the limits and bounds herein expressed; that is from a certain river, creek, on the west, commonly called

by the Indians by the name of Nackquatack and by the English the Cold Spring, to stretch eastward to Nesaquas River; on the north to be bounded by the Sound, running between Long Island and the maine; and on the south by the sea, including therein nine several necks of meadow ground. Which tract of land, together with the said nine necks thereunto belonging within the bounds and limits aforesaid, and all or any plantations thereupon, are to belong to the said town of Huntington, as also all havens, harbors, creeks, quarries, woodlands, meadows, pastures, marshes, lakes, fishing, hawking, hunting, and fowling, and all other profits, commodities, emoluments, and hereditaments to the said land and premises, the limits and bounds aforementioned, described, belonging or in anywise appurtaining. To have and to hold all and singular the said lands and necks of lands, hereditaments and premises with their and every of their appurtenances and every part and parcel thereof to the said patentees and their associates, their heirs, successors, and assigns forever; and did likewise thereby confirm and grant unto the said patentees and their associates, their heirs, successors, and assigns, all the privileges belonging to any town within this government and that the place of their present habitation should continue and retain the name of Huntington, by which name it should be distinguished and known in all bargains and sales, deeds, records, and writings; they, the said patentees and their associates, their heirs, successors, and assigns, rendering and paying such duties and acknowledgements as then were or thereafter should be constituted and established by the laws of this colony under the obedience of his Royal Highness, his heirs and successors. As by the said patent entered and recorded in the Secretary's Office at New York, relation being thereunto had may more fully and at large appear.

And whereas the freeholders of the said town of Huntington have made

application unto me that I would grant and confirm the premises by patent under the seal of the province to them, their heirs and assigns, forever. Now, know ye that I, the said Thomas Dongan, by virtue of the power and authority to be derived from his most sacred Majesty aforesaid, in pursuance of the same, for and in consideration of the quit-rent hereinafter received and other good and lawful considerations me thereunto moving, have given, granted, ratified, and confirmed, and by these presents do give, grant, ratify, and confirm unto Thomas Fleet, sr., Epenetus Platt, Jonas Wood, sr., James Chichester, sr., Joseph Bailey, Thomas Powell, sr., John Jones, Isaac Platt, and Thomas (...), freeholders and inhabitants of Huntington, herein erected and made one body corporate and politic, and will and determined to be called by the name of the Trustees of the Freeholders and Commonalty of the Town of Huntington, and their successors, all the above-recited tracts of land within the limits and bounds aforesaid, together with all and singular the houses, messuages, tenements, buildings, mills, mill dams, fencing, enclosures, gardens, orchards, fields, pastures, woods, underwoods, trees, timbers, feedings and common of pasture, meadows, marshes, swamps, plains, rivers, rivulets, waters, lakes, ponds, brooks, streams, beaches, quarries, creeks, harbors, highways and easements, fishing, hawking, hunting, and fowling, mines, minerals (silver and gold mines excepted), and all franchises, profits, commodities, and hereditaments whatsoever to the said tracts of lands and premises belonging or in anywise appurtaining or therewithal used, accepted, reputed, or taken to belong or in anywise qppurtain, to all intents and purposes and constructions whatsoever, as also all and singular the rents, arrearages of rents, issues and profits of the said tract of land and premises heretofore due and payable. To have and to hold all and singular the before cited tract of land and premises within the bounds and limits aforementioned, with

their and every of their appurtenances, unto the said Thomas Fleet, sr., Epenetus Platt, Jonas Wood, sr., James Chichester, sr., Thomas Powell, sr., Joseph Bailey, Thomas (...), John Sammis, and Isaac Platt, trustees of the freeholders and commonalty of the town of Huntington, and their successors forever, to and for the several and respective uses following, and to no other uses, intents, and purposes whatsoever; that is to say, as for and concerning all and singular the several and respective parcel of land and meadows, part of the granted premises, in any way taken up and appropriated either by patent under the hand of any of his Majesty's governors in this province and sealed with the seal thereof or by particular divisions and allotments before the day of the date hereof unto the several and respective present freeholders or inhabitants of the said town of Huntington by virtue of the before recited deed or patent to the use and behoof of the said freeholders and inhabitants respectively, heirs and assigns forever, and as for and concerning all and every such parcel or percels, tract or tracts of land, remainder of the granted premises not taken up or appropriated to any particular person or persons by virtue of the before recited deed or patent, to the use and behoof of the present freeholders and inhabitants and their heirs, successors, and assigns forever in proportion to their several and respective settlements, divisions, and allotments as tenants in common without any manner of let, hindrance, or molestation to be had or reserved upon pretence of joint tenancy or survivorship, anything contained to the contrary in anywise notwithstanding; always saving to his most sacred Majesty, aforesaid, his heirs and successors, the several rents and quit-rents reserved, due, and payable from several persons inhabiting within the limits and bounds aforesaid by virtue of former grants to them made and given; and also saving to his most sacred Majesty aforesaid, his heirs and successors, all the necks of land that lie to

the south within the limits and bounds aforesaid, and the lands to the northward of the same that remains unpurchased from the native Indians, anything contained herein to the contrary in any ways notwithstanding. To be held of his Majesty's, his heirs and successors, in free and common socage according to the Manor of East Greenwich in the county of Kent within his Majesty's realm of England; yielding, rendering, and paying therefore yearly and every year from henceforth to our sovereign lord the King, his heirs and successors, or to such officer or officers as shall be appointed to receive the same, one lamb or five shillings lent(?) money of this province upon the five and twentieth day of March at New York in full of all rents or former reserved rents, services, acknowledgements, and demands whatsoever. And further, by virtue of the power and authority to me, the said Thomas Dongan, given as aforesaid, and in pursuance of the same, and for the reasons and considerations above recited, I have willed, determined, declared, and granted by these presents, do will, determine, declare, and grant that the said inhabitants and freeholders, the freemen of Huntington aforesaid, commonly called by the name of the freeholders and inhabitants of the town of Huntington, or by whatsoever name or names they are called or named, and their heirs and successors forever henceforward are and shall be one body corporate and politic in deed and name by the name of the Trustees of the Freeholders and Commonalty of the Town of Huntington, one body corporate and politic in deed and name I have really and fully for his said Majesty, his heirs and successors, erected and made, ordained, constituted, and declared by these presents, and that by the same name they have succession forever, and that they and their successors, by the name of the Trustees of the Freeholders and Commonalty of the Town of Huntington, be and shall be forever in future times

the limits and bounds aforementioned described, belonging or in any ways appurtaining. To have and to hold all and singular the said necks of land, hereditaments, and premises with their and every of their appurtenances and of every part and parcel thereof, to the said patentees and their associates, their heirs, successors, and assigns, all the privileges belonging to any town within our said government; and that the place of their present habitation shall continue and retain the name of Huntington, by which name it shall be distinguished and known in all bargains and sales, deeds, records, and writings; they, the said patentees and their associates, their heirs, successors, and assigns, rendering and paying such duties and adknowledgements as now are or hereafter shall be constituted and established by the laws of our colony and as by the said patent, entered and recorded in our Secretary's Office of our said court, relation being thereunto had may more fully and at large appear. And whereas our loving subjects, Joseph Bailey, Thomas Wickes, Jonas Wood, John Wood, John Wickes, Thomas Brush, and John Adams, in behalf of themselves and the rest of our loving subjects, the freeholders and inhabitants of our said town of Huntington, have by petition presented unto Benjamin Fletcher, our Captain-General, Governor-in-Chief of our said province of New York and territories depending thereon in America, praying our grant and confirmation of the premises, so only as that the limits and bounds of the said town of Huntington shall not be as abovementioned, but as hereafter expressed; that is to say, all those tracts and necks of land lying upon Long Island, or our Island of Nassau, within our county of Suffolk, being bounded on the west by a river called and known by the name Cold Spring, a line running south from the head of the said Cold Spring to the south sea, and on the north by the Sound that runs between our said Island of Nassau and the main continent,

and on the east by a line running from the west side of a pond called and known by the name of Fresh Pond to the west side of Whitman's dale or hollow, and from thence to a river on the south side of a neck called Sampawams, and from the said river running to the said south sea; and likewise that we would be graciously pleased to make, erect, and establish all our loving subjects, the inhabitants and freeholders of our said town of Huntington, within the limits and bounds next above expressed, into one body politic and corporate in deed and name. Which reasonable request we being willing to grant, not know ye that of our especial grace, certain knowledge, and mere motion, we have given, granted, ratified, and confirmed, and by these presents do, for us, our heirs, and successors, give, grant, ratify, and confirm unto the said Joseph Bailey, Thomas Wickes, Jonas Wood, John Wood, John Wickes, Thomas Brush, and John Adams, freeholders and inhabitants of our said town of Huntington, hereby erected and made one body and politic and corporate, and will and determined to be called by the name of the Trustees of the Free-holders and Commonalty of our said town of Huntington, and their successors, all the afore recited tracts and necks of land lying upon our said Island of Nassau within our said county of Suffolk, bounded on the west by a river called and known by the name of Cold Spring, a line running south from the head of the said Cold Spring to the south sea, and on the north by the Sound that runs between our said Island of Nassau and the main continent and on the east by a line running from the west side of a pond called and known by the name of Fresh Pond to the west side of Whitman's dale or hollow, and from thence to a river on the south side of our said Island of Nassau on the east side of a neck called Sampawams, and from the said river running south to the said south sea; together with all and singular the houses, messuages,

tenements, buildings, mills, mill dams, fencings, enclosures, gardens, orchards, fields, pastures, feedings, woods, underwoods, trees, timbers, commons, or pastures, meadows, marshes, swamps, plains, rivers, rivulets, waters, lakes, ponds, brooks, streams, beaches, quarries, trees, harbors, highways and easements, fishing, fowling, hunting, and hawking, mines and minerals (silver and gold mines excepted), and all other franchises, profits, benefits, commodities, and hereditaments whatever to the said tracts of land, within the limits and bounds next above mentioned, belonging or in any ways appurtaining or therewithal used, accepted, reputed, and taken to belong or in any ways appurtaining, to all intents and purposes and construction whatsoever; and also all and singular the rents, arrearages of rents, issues and profits of the said tracts of land and premises heretofore due and payable. To have and to hold all and singular the before recited tracts and necks of land and premises, within the limits and bounds next above mentioned, with their and every of their appurtenances unto the said Joseph Bailey, Thomas Wicks, Thomas Brush, Jonas Wood, John Wood, John Wicks, and John Adams, trustees of the freeholders and commonalty of our said town of Huntington, and their successors forever, with the sole license of purchasing from the natives any land or meadow within the limits and bounds next aforementioned, to and for the several and respective uses following, and to no other uses, intents, and purposes whatsoever; that is to say, as, for, and to concerning all and singular the several and respective parcels of land and meadow, part of the grant, and premises in any ways taken up and unappropriated by particular divisions and allotments, before the day of the date hereof, unto the several and respective present freeholders and inhabitants of our said town of Huntington, by virtue of the before recited deed or patent, to the only use, benefit, and behoof of the freeholders or inhabitants respectively and to

their several and respective heirs and assigns, forever; and as, for, and concerning all and every such parcel or parcels, tract or tracts, neck or necks of land, remainder of the granted premises, not taken up or appropriated to any particular person or persons by virtue of the before recited deed or patent to the use and behoof of the present freeholders and inhabitants, their heirs, successors, and assigns, forever, in proportion to their several respective settlements, divisions, and allotments, as tenants in common without any manner of let, hindrance, or molestation had or reserved upon pretense of joint tenantry or survivorship; anything contained to the contrary in anywise notwithstanding. To be held of us, our heirs and successors, in free and common socage according to the tenure of our Manor of East Greenwich in our county of Kent within our realm of England; yielding, rendering, and paying therefore yearly and every year, forever, unto us, our heirs and successors, the annual or yearly rent of one lamb or five shillings current money of our said province at our city of New York upon the first day of the Annunciation of our Blessed Virgin Mary, in view and stead of all other rents, dues, duties, services, and demands whatsoever for the said tract of land and premises. And, moreover, know ye that, of our special trust, certain knowledge, and mere motion, we have willed, determined, declared, made, and granted, and by these presents do, for us, our heirs and successors, will, determine, declare, make, and grant that the said freeholders and inhabitants, freemen of our town of Huntington aforesaid, commonly called by the name of the Freeholders and Inhabitants of our said town of Huntington, or by whatever name or names they are called or named, and their heirs and successors, forever hence forward, shall be one body corporate and politic in deed and name by the name of the Trustees of the Freeholders and Commonalty of our town of Huntington,

and them, by the name of the Trustees of the Freeholders and Commonalty of the town of Huntington, one body corporate and politic in deed and name we have really and fully made, erected, declared, constituted, and ordained, and by these presents do, for us, our heirs and successors, really and fully make, erect, declare, constitute, and ordain, and by these presents do, for us, our heirs and successors, really and fully make, erect, declare, constitute and ordain that by the same name of the Freeholders and Commonalty of the town of Huntington they have succession forever and that they and their successors, by the name of the Trustees of the Freeholders and Commonalty of the town of Huntington, be and shall be forever in future time persons able and capable in the law to have, perceive, receive, possess, not only all and singular the premises but other messuages, lands, tenements, privileges, jurisdictions, franchises, and hereditaments of whatsoever kind or species they shall be, to them and their successors in fee forever or for a term of a year or years, or otherwise, of whatsoever manner it be; and also goods, chattels, and all other things of whatsoever name, nature, quality, or species they shall be; and also to give, grant, release, allow, assign, and dispose of lands, tenements, and hereditaments and all and every other thing and things, act and acts, to do and execute by the name aforesaid; and that by the same name of the Trustees of the Freeholders and Commonalty of the town of Huntington to plead and be impleaded, answer and be answered unto, defend and defended, they are and may be capable in whatsoever place and places and before whatsoever judges or justices or other persons, officials of us, our heirs and successors, in all and all manner of actions, plaints, suits, complaints, causes, matters, and demands whatsoever of what kind, quality, and species the same be, in manner and form as any other our liege people within our said town can or

are able to have, require, receive, possess, enjoy, retain, give, grant, release, alien, assign, and dispose, plead and be impleaded, answer and be answered unto, defend and be defended, do, permit, and entrust. And for the better enabling the said Trustees of the Freeholders and Commonalty of our said town of Huntington in doing and executing all and singular the premises, we have willed, granted, and determined, and by these presents do, for us, our heirs and successors, will, grant, and determine that from henceforward and forever hereafter the said Trustees of the Freeholders and Commonalty of the town of Huntington do and may have and use a common seal which shall serve to execute the causes and affairs whatsoever of them and their successors.

And, moreover, we have willed and granted and by these presnets do, for us, our heirs and successors, will and grant that henceforward and forever there be and shall be Trustees of the Freeholders and Commonalty of our said town of Huntington, to be chosen and elected as in these presents hereafter is mentioned, who shall be and be called the Trustees of the Freeholders and Commonalty of the town of Huntington, and they and their successors shall and may at all convenient times hereafter, upon public summons from any three of the trustees aforesaid for the time being, assemble and meet together in the town house of the said town or in such public place as shall be from time to time appointed to make such acts and orders in writing for the most orderly doing of the premises as they, the said trustees of the freeholders and commonalty of our said town of Huntington, and their successors, from time to time shall and may think convenient; so always as the said acts and orders be in no way repugnant to the laws of our kingdom of England and of this our court which now are or hereafter shall be established and that be not in any ways against the true intent and meaning of these presents. And we further

will and determine that all and singular the aforesaid acts and orders from time to time shall be made and ordained by the vote of the major part of the said trustees of the freeholders and commonalty of our said town of Huntington or at least by the major part of such of them as shall from time to time assemble and meet together in manner as aforesaid, so always that they be not fewer in number than five of the trustees present at such meeting to be held as aforesaid. And for the better execution of this our grant in this behalf, we have assigned, nominated, created, constituted, and made Joseph Bailey, Thomas Wickes, Jonas Wood, John Wood, John Wickes, Thomas Brush, and John Adams to be the first modern trustees of the freeholders and commonalty of the town of Huntington to continue in the aforesaid office from and after the date of these presents until the time that others be elected and chosen in their stead according to the manner and form hereafter expressed. And, moreover, we do by these presents, for us, our heirs and successors, grant and appoint that the trustees of the freeholders and commonalty of the town of Huntington, aforesaid, and the town clerk of the town be yearly elected and chosen on the first Tuesday of May forever; that is to say, seven trustees of the freeholders and commonalty of the town of Huntington, aforesaid, one town clerk, one constable, and two assessors, in such public place as the trustees for the time being shall appoint and direct, and that the trustees, constables, town clerk, and assessors be chosen by the majority of votes of the freeholders and freemen of our said town of Huntington. And whereas by an act of General Assembly of our said province, entitled, <u>An Act for the Defraying the Public and Necessary Charges of Each Respective City, Town, etc.</u>, amongst other things it is enacted and provided that annually and once every year there should be elected a certain number out of each respective town by

The Patent Issued to the Town of Huntington, New York by the Royal Governor, Benjamin Fletcher, October 5, 1694.

William and Mary, by the grace of God, of England, Scotland, France, and Ireland, King and Queen, Defenders of the Faith, etc. To all to whom these presents shall come send greetings. Whereas Richard Nicols, Esquire, late governor-general of our province of New York and territories depending thereon in America, did by a certain deed or patent, sealed with his seal, bearing date the thirteenth day of November in the eighteenth of the reign of our royal ancestor Charles the Second, King of England, etc., and in the year of Our Lord one thousand six hundred sixty-six, grant, ratify, and confirm unto Jonas Wood, William Leverich, Robert Seeley, John Ketcham, Thomas Scidmore, Isaac Platt, Thomas Jones, and Thomas Wickes, as patentees, in behalf of themselves and their associates, the freeholders and inhabitants of the town of Huntington, their heirs, successors, and assigns, all the lands that already have been or hereafter shall be purchased for or on the behalf of the said town of Huntington, whether from the native proprietors or others, within the limits and bounds herein expressed; that is to say, from a certain river creek on the west, commonly called by the Indians by the name Nachquatack, and by the English the Cold Spring, to stretch eastward to Nesaquas River, on the north to be bounded by the Sound running between Long Island and the maine, and on the south by the sea, including therein nine several necks of meadow ground. All of which tract of land, together with the said nine necks thereunto belonging, within the bounds and limits aforesaid, and all or any plantations thereupon, are to belong to the said town of Huntington, as also all havens, harbors, creeks, quarries, woodlands, meadows, pastures, marshes, lakes, fishing, hawking, hunting, and fowling, and all other profits, commodities, emoluments, and hereditaments to the said land and premises, within

persons able and capable in law to have, perceive, and receive and possess not only all and singular the premises but other messuages, lands, tenements, privileges, jurisdictions, franchises, and hereditaments of whatsoever kind or species they shall be, to them and their successors in fee forever or for the tenure of a year or years or otherwise whatsoever manner it be, and also goods, chattels, and all other things whatsoever name, nature, quality, or species they shall be; and also to give, grant, release, alien, assign, and dispose of lands, tenements, hereditaments, and all and every other thing and things, act and acts, to do and execute by the name aforesaid, and that by the same name of Trustees of the Freeholders and Commonalty of the Town of Huntington to plead and be impleaded, answer and be answered unto, defend and be defended, they are and may be capable in whatsoever place and places and before whatsoever judges and justices or other persons, officials of his said Majesty, his heirs and successors in all and all manner of actions, plaints, suits, complaints, causes, matters, and demands whatsoever of what kinds, quality, of species of the same be in manner and form as any other of his Majesty's liege people within this province can or are able to have, require, receive, possess, enjoy, retain, give, grant, release, alien, assign, and dispose, plead, and be impleaded, answer and be answered unto, defend and be defended, do, permit, and execute. And for the better enabling the trustees of the freeholders and commonalty of the town of Huntington aforesaid in doing and executing all and singular the premises, I have willed, granted, and determined and by these presents do will, grant, and determine that from henceforward and forever hereafter the said trustees of the freeholders and commonalty of the town of Huntington do and may have and use a common seal which shall serve to execute the causes and affairs

whatsoever of them and their successors. And further, I will and by these presents in the behalf of his said Majesty, his heirs and successors, that henceforward and forevermore there be and shall be trustees of the freeholders and commonalty of the town of Huntington aforesaid to be chosen and elected in these presents hereafter is mentioned, who shall be and shall be called the trustees of the freeholders and commonalty of the town of Huntington, and they and their successors shall and may at all convenient times hereafter, upon a public summons from any three of the trustees aforesaid for the time being, assemble and meet together in the Town House of the said town or in such public place as shall be from time to time appointed, to make such acts and orders in writing for the more orderly doing of the premises as they, the said trustees of the freeholders and commonalty of the town of Huntington, aforesaid, and their successors from time to time shall and may think convenient, so always as the said acts and orders be in no way repugnant to the laws of England and of this province which now are or hereafter may be established, and that they be not in anyways against the true intent and meaning of these presents. And also, I will, ordain, and determine that all and singular the aforesaid acts and orders from time to time shall be made and ordained by the vote of the major part of the said trustees of the freeholders and commonalty of the town of Huntington, aforesaid, or at least by the major part of such of them as shall from time to time assemble and meet together in manner as aforesaid, so always as there be not fewer in number than six of the trustees present at such meetings so to be held as aforesaid. And for the better execution of this grant in this behalf I have assigned, nominated, created, constituted, and made, and by these presents do assign, nominate, create, constitute, and make Thomas Fleet, sr., Epenetus Platt, Jonas Wood, sr.,

James Chichester, sr., Thomas Powell, sr., Joseph Bailey, (...), John Sammis, and Isaac Platt to stand to be the first modern trustees of the freeholders and commonalty of the town of Huntington, to continue in the aforesaid office from and after the date of these presents until the time that others be elected and chosen in their stead, according to the manner and form hereinafter expressed. And, moreover, I do by these presents, for and on the behalf of his most sacred Majesty aforesaid, his heirs and successors, appoint that the trustees of the freeholders and commonalty of the town of Huntington and clerk within the town of Huntington, aforesaid, be yearly chosen on the first Tuesday of May forever, viz., nine trustees of the freeholders and commonalty of the town of Huntington, one clerk, one constable, and two assessors, in such public places as the trustees for the time being shall appoint and direct, and that the trustees, constables, and assessors be chosen by majority of voices of the freeholders and freemen of the town of Huntington, aforesaid. And whereas there is an act of the General Assembly of this province, entitled, An Act for the Defraying of the Public and Necessary Charge of Each Respective City, Town, and County throughout this Province, etc., wherein amongst other things it was enacted and provided that annually and once every year there should be elected a certain number out of each respective city, town, and county throughout this province, to be elected and chosen by the major part of all the freeholders and freemen, which certain number so duly elected should have full power and authority to make assessment or certain rate within their respective cities, towns, and county, annually and once every year, which assessment and certain rate, so established as aforesaid, should be paid unto a certain treasurer, who should be chosen by the major part of all the freeholders and freemen of each respective city, town, and

county as aforesaid. And whereas the said town of Huntington is to be regulated in the premises according to the tenure and effect of the aforerecited act of Assembly; now know ye likewise that I have given and granted and by these presents do give and grant, for and on behalf of his said Majesty, his heirs and successors, unto the said trustees of the freeholders and commonalty of the town of Huntington, and their successors, forever, that the said trustees for the time being shall be commissioners of the said town to execute and officiate in the said office to all intents, constructions, and purposes whatsoever, and further that the said trustees, as commissioners of the said town, shall have forever, from time to time and at all times hereafter, and by such ways and means, to levy and impose such sum and sums of money as they shall think fit for the defraying the necessary and public charges of the said town. And for the more orderly doing thereof, they shall and may, from time to time, give such directions unto the assessors yearly to be chosen for the said town, how and after what manner to proceed in their assessments for such sums or money as aforesaid on the estates of each of the respective inhabitants and freeholders of the said town, and the said sums when so raised and into the hands of the treasurer of the said town, as aforesaid, to order the payment, disbursement, and disposal of to such persons and to and for the uses aforesaid, in such manner as to them shall seem convenient, and further that all and singular the acts and orders of the said trustees in the premises shall be certified under the said common seal, signed by the president of the said trustees for the time being, who is always first to be chosen of the said trustees, of which the treasurer and the assessors of the said town for the time being, and all other persons, are to take due notice. And lastly, I give and grant, for and on the behalf of

his said Majesty, his heirs and successors, by these presents, to all and every person and persons and to whatsoever person subject to his said Majesty, his heirs and successors, free and lawful power and ability and authority that they or any of them any messuages, tenements, lands, meadows, feedings, and pastures, woods, underwoods, rents, reversions, services, and other hereditaments whatsoever which they hold of his said Majesty, his heirs and successors, unto the aforesaid trustees of the freeholders and commonalty of the town of Huntington, and their successors, shall and may give, grant, bargain, sell, alienate, to have and to hold and enjoy unto the said trustees of the freeholders and commonalty of the town of Huntington and their successors forever; yielding and paying therefore unto his said Majesty, his heirs and successors, on the said five and twentieth day of March, yearly and every year, forever, the full and just sum of twenty shillings, current money at New York. Wherefore, by virtue of the power and authority aforesaid, I do will and command for and on behalf of his said Majesty, his heirs and successors, that the aforesaid trustees of the freeholders and commonalty of the town of Huntington, and their successors, have, hold, use, and enjoy all the liberty, authority, customs, orders, ordinances, franchises, acquittances, lands, tenements, and hereditaments, goods and chattels, aforesaid, according to the tenure and effects of these presents, without the let or hindrance of any person or persons whatsoever. In testimony whereof, I have signed these presents with my handwriting, caused the same to be recorded in the Secretary's Office, and the seal of this his Majesty's province to be thereunto affixed this second day of August in the fourth year of his Majesty's reign and in the year of Our Lord one thousand six hundred eighty and eight.

Thomas Dongan

the major part of all the freeholders and freemen of each respective town, which certain number so duly elected shall have full power and authority to make an assessment, or certain rate, within their respective town, etc., which certain rate so established as aforesaid should be paid unto a certain treasurer, who should likewise be chosen by the major part of all the freeholders and freemen of each respective town. And whereas our said town of Huntington is to be regulated according(ly), know ye further that we have likewise given and granted, and by these presents do, for us, our heirs and successors, give and grant unto the said trustees of the freeholders and commonalty of the town of Huntington and their successors, forever, that the said trustees for the time being shall forever be the commissioners of the said town to execute and officiate in the said office to all intents, constructions, and purposes whatsoever; and the said trustees for the time being, as commissioners of the said town, shall have power from time to time and at all times hereafter, and by such ways and means, to levy and impose such sum or sums of money as they shall think fit for the defraying of the necessary and public charges of our said town; and for the more orderly doing thereof, they shall and may from time to time give such directions unto the assessors, yearly to be chosen for our said town, how and after what manner to be used in their assessments of such sums of money as aforesaid on the estates of each of the respective inhabitants and freeholders of our said town, and the said sums of money when so raised and paid into the hands of the treasurer of our said town, as aforesaid, to order the payment, disbursement, and disposal thereof to such persons and to and for the uses aforesaid, in such manner as to them shall seem convenient; and that all and singular the acts and orders of the said trustees for the time being, in the premises, shall be certified under the common seal,

signed by the president of the said trustees for the time being (which is always the first to be chosen by the trustees) or, in his absence, by any other two of the said trustees for the time being, of which the treasurer and assessors of our said town for the time being and all other persons are to take notice. And, further, we have also given and grant, and by these presents do, for us, our heirs and successors, given and grant to all and every person and persons, and to whatsoever persons subject to us, our heirs, and successors, free and lawful power and ability and authority that they or any of them, any messuages, covenants, lands, meadows, feedings, pastures, woods, underwoods, rents, reservations, services, and other hereditaments whatsoever which they hold of us, our heirs and successors, unto the aforesaid trustees of the freeholders and commonalty of our said town of Huntington and their successors, shall and may give, grant, bargain, sell, alienate to have, hold, and enjoy unto the said trustees of the freeholders and commonalty of our said town of Huntington and their successors, forever; yielding, rendering, and paying therefore yearly and every year, forever, on the first day of the Annunciation of our Blessed Virgin Mary at our city of New York, unto us, our heirs and successors, the yearly rent of forty shillings current money of our said court.

In testimony whereof, we have caused the great seal of our said province to be hereunto affixed, and witness, Benjamin Fletcher, our Captain-General, Governor-in-Chief of our province of New York, province of Pennsylvania, County of New Castle, the territories and tracts of land depending thereon in America, our Admiral of the Laws, our Lieutenant and Commander-in-Chief of the militia and of all the forces by sea and land within our colony of Connecticut, and of all the forts and places of strength within the same, in

council the fifth day of October in the sixth year of our reign, Anno. 1694.

By His Excellency's Command,

David Jamison, Secretary

GLOSSARY

Glossary[a]

advowson. The right of presenting a fit person to the bishop to be admitted and instituted to a certain benefice within the diocese, which is vacant. Types: appendant, attached to a manor and passes with it as incident to it; donative, the patron has the right to put his clerk in possession by his mere gift or deed of donation without presentation to the bishop; presentative, the most usual kind, where a patron has the right of presentation to the bishop and to demand of him to institute his clerk, if he is canonically qualified.

Aids. In feudal days a lord could call upon his tenants for help in emergencies. Magna Carta defined aids as ransom of the lord's person, help in knighting his eldest son, the marriage of his eldest daughter. Abolished in 1660.

Alien. Also, alienate. To convey or transfer property, title, or right to another voluntarily.

Allotment. Share or portion; apportionment, division. The distribution of land among themselves by town proprietors; the distribution of land under an enclosure act or agreement.

Amerce. Also amercement. A pecuniary punishment, the amount of which is not fixed by law but left to the discretion of the court or punishing agency.

Appurtenance. Something of lesser value annexed to another thing of greater value, and which passes as incident to it, such as a right of way or other easements to land. Otherwise, it usually refers to such items as barns, gardens, orchards directly associated with a specific house or messuage.

Aquitance. Also acquittance. A written discharge, whereby one is freed from an obligation to pay money or perform a duty. It differs from a release in that an acquittance does not require a seal.

Arrears. Also arrearages. Money unpaid at the time due; remainder due after a part that is owed is paid.

Assigns. Also assignees. Those to whom prpperty will have been transferred at some time in the future. It includes all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law.

[a]Sources: Henry C. Black, Black's Law Dictionary, definitions of the terms and phrases of American and English jurisprudence, ancient and modern, 4th ed.(St.Paul, Minn., 1951); Alan Harding, A Social History of English Law (Middlesex, England, 1966) Sir William Holdsworth, A History of English Law, 7th revised.(London, 1956) 16 vols; Sir William Holdsworth, An Historical Introduction to the Land Law (Oxford, 1927); T.F.T.Plucknett, A Concise History of the Common Law, 5th ed. (London, 1956); T.F.T. Plucknett, Taswell-Langmead's English Constitutional History, 11th ed.(London, 1960).

Assize. There are four general usages: an instruction, decree, or enactment made by a legislative assembly, usually regulating weights and measures; the regulation of the price of bread and ale by the price of grain; a trial or hearing in the nature of an inquest; the periodic sitting of the judges of the superior court in each county to administer justice in civil and criminal cases.

Behoof. Use, benefit, profit, service, or advantage; used in conveyances.

Benefice. In feudal law, a permanent stipendiary estate, or estate held by a feudal tenure; in ecclesiastical law, includes preferments to which rank or public office is attached such as bishoprics, deaneries, etc., popularly applied to vicarages, rectories, curacies, local churches.

Body Corporate and Politic. A collection of natural persons joined together by voluntary action, or legal compulsion, by the authority of an act of a legislature consisting of either a special charter or of a general permissive statute to accomplish some purpose, pecuniary, ideal, or governmental. The phrase "and politic" gives it public corporation status for political purposes as an administrative agency of civil government in a defined territory, and invests it with subordinate and local powers of legislation.

Burgage. Tenure in burgage. A form of town socage, applied to tenements in boroughs. As boroughs grew, the burgesses bought from their lords the *firmi burgi*, thus comuting individual payments to a single fixed sum to be paid by them for the whole borough, and apportioned among its members. This permitted them a large degree of local self-rule.

Chattels. A thing in law deemed personal property and is divisible into chattels real and chattels personal. It includes animate as well as inanimate property (whereas goods includes only inanimate items); chattels personal conerns itself with movables; chattels real includes all interests in real estate of a lesser dignity than a freehold estate, and which lesser interests descend under rules for personal property and not as freehold or fee simple estates.

Commodities. Things useful and serviceable, particularly articles of merchandise movable in trade; goods, wares, or merchandise of any kind; movables; It is broader than merchandise and, in referring to commerce, may include any articles of movable or personal prpperty.

Common. In English law, an incorporeal right which lies in grant, originally beginning as some agreement between lords and tenants, by passage of time it formed into a prescription and continued good although there may not have been a deed or legal instrument to prove its original contract. Common or Right of Common; the right or privilege which several persons have to the produce of the lands or waters of another; also an unenclosed piece of land set apart for public purposes. Types of common: of turbary, the right to cut turf for fuel; of estovers, the right to cut timber, underwood, furze(spinny evergreen shrub), etc for fuel or litter; of piscary, the right to fish in another waters;

of pasture, this is the most important and is divided into the following legal qualities: appendant, right of common to freehold tenants to feed cattle levant and couchant (getting up and lying down) on the lands of another, usually the owner of a manor, provided tenement was part of the ancient arable land of the manor, given by law it is said to be"of common right"; appurtenant, is not "of common right", and may be enjoyed by a person not a tenant of the manor and exists in respect of cattle other than commonable cattle, and may involve land not part of the ancient arable land; in gross, not annexed to the holding of any land and is personal as opposed to praedial (landed) rights; pur cause de vicinage, exists when there are adjoing wastes of two manors and tenants of each can pasture their beasts on either; of shack, after harvest and before sowing, or on fallow land, cattle can be pastured over the open fields, enjoyed both by freeholders and villeing (copyholders) of a manor; of pasture, in a broad sense, is the right to pasture one's cattle upon another man's land, either appendant, appurtenant, in gross, or vicinage. After the Statute of Quia Emptores, appurtenant came to dominate because, thereafter, with conveyances in fee, tenants did not hold of the manor lord in fee simple estates.

Commonality. Or commonalty. The great body of citizens, the mass of the people, excluding the nobility; the body of people composing a municipal corporation (such as an incorporated town), excluding the corporate officers.

Conveyance. The act by which the title to property is transferred; the transfer of the ownership; a written statement (deed, mortgage) by which title to property is transferred from one person to another.

Coparcenary. When several persons receive an estate as co-heirs they can compel a partition by writ of partition. Portions are conveyed to one another by feoffment with livery of seisin, or by a release. There is no right of survivorship if one of the co-heirs dies since each coparcenary's share descended to his heirs.

Copyhold. Copyholder. An estate held by a tenant at the will of the lord of the manor, the only record of it being a copy of an agreement in the court rolls of the manor agreeable to the customs of the manor; a customary tenure as opposed to free socage or freehold.

Court Baron. By the 16th century it was held, legally, that a manor must have both freeholders and copyholders (the villeins of the 13th and 14th centuries being the copyholders of the 16th and 17th centuries). The former did not have to submit a case or be bound by the by-laws made in the manorial court leet. His cases were tried in the Court Baron, wherein all the suitors of the court, the freeholders, were his judges. The presence of freeholders, who were above mere manorial custom by common law, divided the manor into two classes and made general feudal jurisdiction impossible. The common law created the peculiar status of the freeholder with reference to property and jurisdiction, and the court baron was the court of the manor lord's jurisdiction in his manor over all pleas of all land held of the manor and for debts of under 40 shillings.

Court Leet. Used in both manors and boroughs, and had jurisdiction over local peace and order, punishment of minor offenses, and supervision of a geographical area. It performed governmental as well as judicial work, and was valued by the manor lord because it gave him better hold over tenants, facilitated the work of managing the manor, and prevented a sheriff from interfering with his tenants.

Devise. The act of giving or disposing of property by bequest in a will, whether it be real or personal property.

Easement. A right held by the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property interest of the owner; a privilege or service which one neighbor has of another, as in the case of a way over his land, a gate-way, a water course, etc..

Emolument. The profit arising from office or employment; compensation for services, usually attached to an office, such as salary, fees, and perquisites.

Escheat. The right of the lord to resume land granted to a tenant on the death of the tenant without an heir, or upon his committing a felony. Land did not necessarily escheat to the crown if a mesne lord could be proved. In the case of a felony, the crown reserved the right of "a year, day, and waste" (holding land for that period, and wasting it before it went to the lord as an escheat).

Expectancy. Estate in Expectancy. If the donor gave less than a fee simple estate he did not give all he had to give. He might retain an interest or give it to another. This was a reversion when retained by the donor; a remainder when granted to another.

Farm Let. A "farm" was a rent payment. In contrast to "fee-farm", which was the form of tenure of a socage tenant or freehold tenant, farm-let was the term applied to leaseholds wherein tenancy was for a term of years and dependant upon the payment of a sum of money each year or the performance of a service.

Fealty. The oath a tenant swears to be faithful to his lord.

Fee. As in "in fee". Ordinarily applied to land, but was applicable to any kind of hereditament, corporeal or incorporeal, and was all the property in the thing referred to, or the largest estate therein which a person may have. A feehold estate in land was held of a superior lord as a reward for services, and on condition of rendering some service in return for it. It was the same as "feud" or "fief", and in its original sense was in contradistinction to allodial, or allodium, which means a man owns the land he possesses in his own right without owing any rent or service. A fee is inheritable. In the 12th century a knight's fee, based on the quantity of land held by an estate of inheritance or of annual income therefrom sufficient to maintain a knight, was estimated at £20 per year. By the 17th century it came to be an estate of 680 acres.

Fee Simple. Estate in fee simple. The largest estate known to law, which could descend to all heirs lineal or collateral of the tenant. Both lord and tenant had an equal, complete ownership of two different things in the estate, the tenant being the owner of the land and the lord being owner of the seignory. The words "and his heirs" were essential, and was a phrase of limitation, the heirs acquiring nothing except expectancy of inheritance. The heirs could not refuse to let the grantee alienate, nor could they restrict him from alienating.

Feoff. To invest with a fee or feud; put into possession of a freehold interest in a corporeal hereditament or of a leasehold.

Feoffee. The person to whom a feoffment is made.

Feoffment. The granting of a feudal fee; the act of granting a freehold estate in land by livery of seisin.

Fief. The right which a vassal had in some lands or some immovable thing of his lord's, to take the profits thereof, paying the feudal dues. See fee.

Fishing. The right to take all types of fish in an area unless specific types are ennumerated for exclusion.

Forfeiture. In cases of treason, all the land of the traitor went to the crown regardless of whom it was held.

Fowling. The right to seek, catch, or kill wild fowl for sport or food.

Franchise. A special privilege confered by a government upon an individual or corporation, and which does not belong to the citizens of a country generally by common right. As used in colonial charters, it had reference to a royal privilege or branch of the king's prerogative placed in the hands of the subject or subjects, and arose from the king's grant.

Frank Almoin. Tenure by which the church or a monastery held land. There was an absence of an obligation to perform a secular service; the only services being due were religious. Limited by the Statute of Mortmain, 127

Freehold. A freehold estate is a right of title to land; an estate in land or other real property of uncertain duration, either of inheritance or for life, at the least, as distinguished from leasehold.

Freeman. In feudal society it designated an allodial proprietor as distinguished from a vassal or feudal tenant. In old English law, it described a freeholder or tenant of free services; one who was not a villein. A term of exclusion, its liberties being associated with the exclusion of other "unfree" individuals from certain privileges and exemptions.

It also carried with it the duty to vote, to attend meetings, to serve on committees, and to accept an elective or appointive office. The right to refuse was not considered an implied part of the word, as illustrated by the many fines imposed for such refusal.

Gavelkind. Generally confined to the county of Kent (although recently found to be of wider extent), and dated at least to William the Conqueror. The lands were held by suit of court and fealty, considered to be a certain service. The gavelkind tenant could devise his land by will during the time when others could not; in cases of intestacy, lands descended to all sons equally; they were not liable to escheat for felony; and they could be alienated by the tenant at the age of fifteen.

Havens. A place of large enough size to allow ships to enter and ride at anchor, so situated or secured by the adjacent land as to protect ships from dangerous or violent winds.

Harbors. A haven or space of deep water so sheltered by the adjacent land as to afford a safe anchorage for ships; a sheltered place, natural or artificial, on the coast of a sea, lake, or other body of water. Port is a word of larger import than harbor since it implies the presence of wharves, docks, etc.

Hawking. The right to hunt birds by means of trained hawks.

Heir. In common law, the person appointed by law to succeed to the estate in case of intestacy; one who succeeds to an estate in lands, tenements, hereditaments upon the death of his ancestor, by descent or right of relationship. In civil law, the universal successor to the entire property or estate, rights, and obligations of the deceased, and occupies the place of the deceased, whether by act of decedent or by law.

Heirs. Used in deeds of conveyance where it is intended to pass a fee. It is a word of limitation and not of purchase(the acquisition of real estate by any means other than descent), unless there are other controlling words showing such intent by the person using it. Unless otherwise used or limited, it indicates the indefinite succession by inheritance.

Hereditaments. A thing capable of being inherited, corporeal or incorporeal, real, personal, or mixed property, and including not only lands and everything thereon, but also heirlooms and certain furniture which by custom may descend to the heir together with the land. It is used as the widest expression for real property of all kinds and is, therefore, employed in conveyances after the words "lands and tenements" to include everything of the nature of realty which they do not cover.

Homage. The ceremony making a tenant the man of a lord. Originally reserved for knight service, and later evolved into a prpprietary relationship obliging the lord to warrant a tenant's title to land. Abolished in 1660.

Hunting. The right to purse and take wild animals.

In Capite. As tenure in capite. Estates held directly of the king. The tenant could keep it for himself (hold in desmesne), or grant it to another, who would then hold it in service; the lord is then mesne lord of the tenant thus holding.

Inclosure. Or enclosure. In English law, the act of freeing land from rights of common, or commonable rights, and generally all rights which obstruct cultivation and the productive employment of labor on the soil.

Inhabitants. One who actually resides permanently in a given place and has his domicile there. The term "resident" and "inhabitant" are not necessarily synonymous, the latter implying a more fixed and permanent abode than the former, and implying privileges and duties to which a mere resident would not be subject. It is not synonymous with freeholder, unless the inhabitant owns a freehold in real estate.

Inquest. A judicial or official inquiry or examination, usually before a jury, to determine the circumstances or activities of an individual or groups of individuals preparatory to exonerating or indicting him or them.

Issues. As in "issues and profits". As applied to real estate it comprehends every available return therefrom, whether it comes from above or below the surface.

Joint Tenancy. Co-ownership of an estate. The estate cannot be partitioned unless all joint tenants consented. Each tenant was seised of the whole so if one wished to convey his share to the others or another person, he must do so by a release. All tenants had to get the estate by the same title, must have begun to enjoy it at the same time, and must have taken the same interest in it. If one died the remaining tenants took by survivorship.

Knight Service. Tenure by. The granting of land by the king to a lord in return for which the lord was obliged to perform military service for the king, such as providing men and arms. Abolished in 1660.

Land. Generally includes any ground, soil, or earth whatsoever (field, meadow, pasture, woods, moors, marshes, furzes, heath, etc.). In a more limited sense, it denoted the quantity and character of the interest or estate which the tenant owned in land, and was descriptive of the subject of ownership and not the ownership. Many colonial deeds ennumerated items on the land such as buildings, orchards, growing crops, etc., suggesting that these were often not considered to be included in the word.

Let. As in "without any let, hindrance, molestation, suit, or trouble." In conveyancing, it meant any obstruction or interruption.

Letters Patent. A patent which is delivered open and not closed from inspection; a patent made or able to be made public knowledge with no attempt to keep it a covert act.

Liberty. A privilege held by a grant or prescription by which men enjoyed some benefit beyond the ordinary subject.

Meadow. A tract of low or level land producing grass which is mown for hay.

Messuage. It is now synonymous with dwelling house, but during and for a time after the colonial period it meant the dwelling house with its adjacent buildings and curtilage (the enclosed space of ground and buildings immediately surrounding a dwelling house). It did not necessarily have to be enclosed, and could be used for grazing if immediately next to the house; the land surrounding a dwelling house used for family domestic use, including the buildings.

Mortmain. The condition of property, real or personal, left to an ecclesiastical organization in perpetuity; an inalienable possession or tenure of lands or buildings by an ecclesiastical organization from which escheats and reliefs could never arise.

Mulct. To punish or penalize by imposing a pecuniary fine or forfeiture; also, the fine itself.

Palatine. Or Palatinate. Independent principalities within which the king's writ did not run; small models of the government of the kingdom itself which granted the palatinate, and in which, at least in England, the judicial system was the same, the rules of common law applied, and acts of Parliament bound them. The distinguishing trait was their franchise to exercise local sovereignty in a king-like manner; actions in court were not against the peace of the king, but against the peace of the holder of the palatine.

Parcel. A part or portion of land, sometimes synonymous with lot; used formally in the description of property as set forth in a conveyance together with the boundaries thereof for more easy identification. Distinct from "part" which is an integral portion belonging essentially to a larger whole and which, together with another or other makes up a whole.

Partibility. Capable of being divided or partitioned.

Patent. In English law, a grant by the sovereign to a subject or subjects under the great seal, confering some authority, title, franchise, or property. The patentee was the receiver of it.

Perquisite. Anything obtained by industry or purchased with money; profits acrruing to a lord of a manor by virtue of his court baron over and above the yearly profits of his land; also other things that come casually and not yearly.

Personal property. All of the person's property not coming under real property, including corporeal tangibles and incorporeal intangibles; movables; chattels.

Plantation. In English law, a colony; an original settlement in a new country.

Pole. A unit of land measure no longer used. It varied with locality, measuring 9, 12, 15, 16 1/2, 18, 20, 21, or 24 feet, depending upon the type of land, its location, and use. A woodland pole, for example, was usually 18 feet.

Premises. In conveyances, the part of the deed preceeding the habendum ("to have and to hold") clause in which are set forth the names of the parties with their titles and additions, and in which are recited such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the transaction is founded. In estates, premises refers to the lands and tenements, and estate, lands, and buildings thereon; the subjectmatter of the conveyance.

Presentment. A complaint naming the offender and the offense to a court. It is an indictment if presented to a grand jury.

Pretence. A misrepresentation of existing facts or conditions whereby a person might obtain another's money or goods; false representation of past or existing facts made with the knowledge of the falsity, with intent to deceive or defraud.

Primer Seisin. The first right of possession of an estate upon the death of the tenant. This was reserved to the king, and when homage was done and relief paid the heir or newtenant received the land. Abolished in 1660.

Primogeniture. The estates which a man received from his forefathers must pass undiminished to his eldest son.

Probate. The process of proving before a competent judicial officer or tribunal that a document offered for official recognition and registration as the last will and testament of a deceased person is genuine; the judicial determination of the validity of a will.

Profits. The benefit, advantage, or pecuniary gain accruing to the owner or occupant of land from its actual use.

Proprietor. One who has the legal right or exclusive title to anything; one who holds the title to a thing in his own right. Also, proprietary, as a noun, is the owner of the exclusive title to a thing, and one who possesses the title to a thing in his own right (i.e., the grantees of Pennsylvania and Maryland were called the proprietaries of those provinces).

Pur Autre Vie. For the life of another. Used of an estate the tenancy of which is measured by the life of a person other than the tenant.

Quit-Rent. A rent paid by a tenant of a freehold by which he goes quit and free, that is, discharged from any other rent; by their payment the tenant was free and quit of all other services, certain or uncertain, to the lord.

Quo Warranto. A writ in the nature of a writ of right for the king against a person, corporation, or lesser government agency which claimed or usurped any office, franchise, or liberty, inquiring by what authority it or they supported their claim(s). See scire facia.

Real Action. Any action in which land was recoverable, the most important being the assertion of rights to freehold interest in land held by free tenure. Free tenure was protected by common law and the real action; unfree tenants (i.e., copyholders) were no so protected and were dependant upon the customs of the manor via the manor courts. They had no recourse in a real action. The test of free or unfree tenure was based on the nature and certainty of service due, those of an unfree tenant being uncertain in that the lord could order the tenant to do one of a number of thihgs, and the free tenant's duties were certain (a specific thing such as a money payment).

Real Propepty. That which will support a feud or fee, and is susceptible of tenure. Anything not a feud was a chattel. Generally construed as that which is immovable and the "property" in it is the right to use and enjoy it. It is not absolute since it cannot be picked up and moved.

Recognizance. An obligation of record entered into before a court of record or before a magistrate duly authorized that makes the performance of some act (appearing in court, keeping the peace, etc.) the condition of nonforfeiture.

Relief. The sum of money paid by an heir to the lord so he could succeed to the property of an ancestor. This began with knight service but was extended to all free tenure by the 14th century. Abolished in 166

Remainder. That which is left, corporeal or incorporeal, to the grantor of an estate in less than fee simple. Until recently, remainder interest had to be vested in a remainder-man at the same time as the smaller estate, on which the remainder depended, was vested in the grantee.

Rents. Services in return for which land might be granted, and which issued out of the land. By the Statute of Quia Emptores the grantee's land was charged with the payment of a rent of some form of certain service to the grantor. The idea that rent was a money payment due by virtue of a contract began to appear in law in cases of rents reserved on leases of property for a term of years, and was something, usually money, which the tenant rendered out of the profits of the land which he occupied and enjoyed.

Replevin. The return to or recovery by a person of goods or chattels claimed to be wrongfully taken or detained upon the person's giving security to try the matter in court and return the goods if defeated in an action.

Reversions. There are two meanings, first as designating the estate left in the grantor during the continuance of a particular estate, and, second, the residue left in a grantor or his heirs after termination of a particular estate. After the 13th century, a distinction was made between reversion and escheat. If a tenant in fee simple died without heirs his land escheated to the lord of whom it was held; if, however, the interest of a tenant for a smaller estate expired, the land reverted to the grantor of whom the estate was held (an estate in expectancy became an estate in possession).

Scire Facias. A judicial writ founded upon some matter of record and requiring the party proceeded against to show cause why the record should not be enforced, annulled, or vacated; a legal proceeding instituted by a scire facias. See Quo Warranto.

Scutage. A money payment in lieu of knight service, generally credited as being instituted during the reign of Henry II. Abolished in 1660.

Seisin. Livery of seisin. The regular method of creating or transferring a freehold interest in land was by a feoffment, but this was not perfect until seisin had been deliverged, that is to say, possession of the land and the giving, in whole or in part, the interests of the grantor to the grantee. Livery of seisin was given by putting the grantee into possession of the land, either by actually placing him there or giving him a symbolic twig, turf, or similar tangible object. In addition, the grantor had to quit the land. By the end of the medieval period, livery of seisin was evidenced by a written statement to that effect. Seisin described possession of freehold estates in land and were protected by real action; posseession referred to chattels real and personal and were protected by personal action.

Serjeanty. Tenure by. Distinguished from other similar services because this was preeminently service of a personal nature, such as marshall, sword-bearer, butler. It became a position of dignity by the 14th century and was divided into grant and petit, the former having the same incidents as knight service, the latter the same incidents as tenure by socage. It was not affected by the act of 1660.

Singular. As in "all and singular". Each, or iddividual.

Socage. Tenure by socage. The tenure by which all freehold lands were held if not held by frank-almoin, knight service, or serjeanty. Military service or scutage was not due; wardship and marriage did not apply. The socage tenant paid a rent in money, kind, or labor, and suit(see to the lord. Usually a money rent was due; frequently the rent was substantive (a gift of real value such as a pound of pepper), or nominal (a red rose); sometimes no rent was due but fealty was. This form gradually became the most free of all tenures, and, when the other three were abolished in 1660, it eventually superceded all other free tenures as "free and common socage". Primogeniture applied to socage land.

Successor. One that succeeds or follows; one who takes the place another left and keeps up or sustains the like part or character.

Summons. A legal notice requiring a court officer to notify a person that he is required to appear at a court or legal hearing.

Tail. Estate in fee tail or entail. Land descends according to the terms of the gift and a grantee can not deprive his issue (children born of his body), or persons entitled to reversions and remainders, of land given them. The grantee could alienate property for a period no longer than his own life, and it would then pass to his lineal descendants, and successively to their issue.

Tenancy In Common. A group of persons owns or has rights to property as a group with each member holding a share. It is, for all practical purposes, a sole and several tenancy or ownership. Each tenant in common stands toward his individual share in the same relation that, if he were sole owner of the whole, he would bear always the whole. Accordingly, one tenant in common must convey his share to another by some assurance which is proper to convey an individual hereditament or less than full, exclusive ownership. He cannot convey by a simple release.

Tenancy By Entireties. This exits only when an estate is given to husband and wife. During the marriage they are treated as one person in respect of the estate so gotten. If the husband dies, all of it must return to the wife, notwithstanding any alienation or forfeiture incurred by the husband.

Tenement. In its original and legal sense, it means everything that may be held, provided it be of a permanent nature, whether it be of a substantial and sensible or of an unsubstantial and ideal kind; used as an inclusive term to cover those items not specifically encompassed by words such as lands, buildings, hereditaments, profit

Tract. A lot, piece, or parcel of land, of greater or lesser size. The term, in itself, does not import any precise dimension.

Trustee. The person appointed or required by law to execute a trust; one in whom an estate, interest, or power is vested under an express or implied agreement to administer or exercise it for the benefit of to the use of another called the cestui que trust or use, the person or persons for whose benefit the trust was created or who is to enjoy the income or the services of it.

Villein Socage. In feudal and old English law, a specie of tenure in which a service to be rendered was certain and determinate, but of such base or servile nature as to be not suitable for a man of free and honorable rank.

Wardship and Marriage. In feudal times, a lord must be allowed, it was agreed, to educate a infant heir to be a worthy tenant, and to be sure a woman married properly so neither enemy nor a person of lower rank would get the land. As guardian the lord could not waste his ward's land or marry a woman wrongly; otherwise he had a free hand. Abolished in 1660.

Warrant. A legal order to arrest the body of a person named in a writ. A warrant to cause to appear allows the issuing officer (the sheriff) to physically take into custody a person and bring him to court; a warrant of arrest and attachment allows him to seize the goods, chattels, lands, or hereditaments of a person named in the warrant. A warrant of distress orders the sheriff to seize property and sell it to make up a fine, a debt, or cost of damages.

Writ. An order or mandatory process in writing issued under seal in the name of the sovereign or of a court or judicial officer from the proper authority commanding the person to whom it is directed to perform or refrain from performing an act specified therein