

THE TOWN PROPRIETORS IN VERMONT:
THE NEW ENGLAND TOWN PROPRIETORSHIP
IN DECLINE

BY

FLORENCE MAY WOODARD, M. A.

*Assistant Professor of Economics
University of Vermont*

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY



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INTRODUCTION

IN a country which is largely agricultural the land system is of paramount significance. The American colonies were essentially agricultural and there developed in different sections land systems adapted to the varying regional needs. One of the most outstanding and distinctive of these was the New England proprietary system. In this system the General Court made original grants to groups of proprietors who held the land in common but absolute ownership, unhampered by feudal restrictions, exercising exclusive control over its distribution and sale and being collectively responsible for its development.¹ As time passed, they distributed the land among themselves as personal holdings and made grants to those whom they voted into membership and to others who became inhabitants of the town. As an organized body they were known as the propriety and existed until the common and undivided lands were distributed. This distribution, usually, was not wholly accomplished by the original proprietors but was completed by their heirs and successors in succeeding generations. When the distribution was complete the organization terminated.² These organizations of proprietors were so prevalent in colonial New England that there was no land system apart from the body of proprietors.³

¹ R. H. Akagi, *The Town Proprietors of the New England Colonies* (Philadelphia, 1924), p. 3. This is the most recent and reliable source of information concerning the proprietors of colonial New England and their significance in the life of the township.

² *Ibid.*, p. 290.

³ *Ibid.*, p. 288.

Many studies have heretofore been made of the New England town proprietors. They have contributed valuable information concerning the proprietary system in the older New England colonies, particularly during the late seventeenth and early eighteenth centuries. No study, however, has been made of the propriety as it developed in the New England frontier in the latter half of the eighteenth century. During this period the system of proprietorship continued to be the dominant land system, but it had departed in many respects from the generally accepted form of colonial New England during the preceding one hundred years.⁴

The object of the present study is to round out the historical treatment by presenting a detailed account of the system during the eighteenth century in that part of the frontier now known as Vermont. Such an account will definitely show the departure which the frontier system made from its older prototype.

To appreciate adequately the story of the decline of the New England town proprietorship as shown in the Vermont organizations, a description of the system in colonial New England will be presented as well as an interpretation of why it originated as the established land system in that area.⁵

⁴ *Ibid.* Dr. Akagi indicates that change characterized the proprietary system after the middle of the eighteenth century and develops the contributing factors. The treatment is very general. No specific proprietors' organizations are dealt with to show the actual departure from the earlier procedure; therefore, inconsistencies occur. An illustration of such inconsistency is the fact that the author draws on certain features of selected Vermont town proprieties to illustrate the colonial New England proprietary system during the period in which it had reached its most effective organization and again to illustrate the system in a later period when it was definitely in decline.

⁵ *Ibid.*, see also chs. ii, iii, iv and v.

M. Egleston, *The Land System of the New England Colonies* (Johns-Hopkins University. Studies in History and Political Science, vol. iv, nos. 11-12).

The above authorities have been freely referred to in presenting the description of the New England town proprietors of the colonial period.

The description of the Vermont town proprietors will be accomplished by means of a detailed study of the town proprieties of Windsor and of Hyde Park. The former has been selected to illustrate the proprietary system at work under the New Hampshire government which issued its charter and set up the legal provisions governing the system of proprietorship. The latter has been selected to demonstrate the system at work under the Vermont government which issued its charter and provided the legal provisions under which it functioned. These two cases have been selected because their records are available and because they appear representative of the proprietary system as a whole in that frontier region.

The story of the Windsor propriety will be presented first because chronologically it takes precedence. In addition, the great difficulty which it and other Vermont proprieties encountered in defending their land titles as a result of the boundary dispute between New Hampshire and New York was the outstanding factor which contributed to the formation of Vermont as a new state. The story of the rise of the new state and the land system which it adopted will follow the chapter dealing with the Windsor propriety and thereby serve as a background for the description of the Hyde Park organization. The study will be concluded by a summary of the factors which contributed to the decline of the New England proprietary system.

The sources upon which this study has been based are many and varied. Besides the general accounts of colonial and Vermont history, my chief sources have been the proprietors' records and the land deeds of Windsor and Hyde Park; the statutes of New Hampshire; and the statutes and journals of the Vermont Assembly.

I acknowledge my indebtedness to Mr. Karl W. Perkins, Town Clerk of Windsor, Vermont; to Mr. Brigham W.

McFarland, Town Clerk of Hyde Park, Vermont, and to his assistant, Miss Sarah B. Chapin, for so generously providing access to the records of both towns. The late Mr. Henry S. Wardner of New York City and Windsor, Vermont, gave me much helpful criticism and many constructive suggestions in connection with the chapters dealing with the Windsor propriety. The officials of the Baker Memorial Library at Dartmouth College have placed at my disposal a large portion of the material for the New Hampshire background of the Windsor organization. Mr. Harold G. Rugg, the Assistant Librarian has been particularly helpful in locating the early Vermont sources. Mr. Otis G. Hammond, Director of the New Hampshire Historical Society, has been very generous in allowing me the use of New Hampshire material in the Society's Library. Mr. George E. Bowman, Secretary and Editor of the Massachusetts Society of Mayflower Descendants, extended a real privilege in allowing me to read the Jabez Fitch Diary which is now in the possession of the Society.

At the University of Vermont, the Wilbur Collection has made available to me the Vermont statutes. The Billings Library has cooperated in providing further material. Dr. George G. Groat of the Economics Department has given a great deal of encouragement and valuable criticism.

I am indebted to Dr. Vladimir G. Simkhovitch of Columbia University for the stimulation of my interest in land systems which led to the selection of the Vermont proprietors as the basis of this study. I especially acknowledge my indebtedness to Dr. Carter Goodrich of Columbia University under whose direction and guidance this study has been made and whose criticism and advice have been invaluable in bringing it to completion.

CHAPTER I

THE TOWN PROPRIETORS IN COLONIAL NEW ENGLAND

IN order to obtain an adequate understanding of the proprietary system in the frontier it is necessary to present the story of the system as it existed in older New England. Such a description will be restricted to the period during which it reached its most effective organization in Massachusetts Bay. Such restriction will not affect the accuracy of the general description as the system developed there earlier and more fully than in the other New England colonies. Also the Massachusetts Bay Colony exercised considerable influence and control over the colonies of Connecticut and Rhode Island as well as included within its territory during a part of the colonial period, the Plymouth Colony, the territory of Maine, southern New Hampshire and south-eastern Vermont.¹

The colonial governments of New England received title to the land through grants made by the English Crown in the form of a royal charter. Sometimes the process was not as direct and simple as the preceding statement seems to indicate. In the case of Massachusetts Bay Colony, for instance, the land was first granted by the Crown to the Plymouth Company in 1606. This company was reorganized in 1620 and known as "The Council established at Plymouth in the County of Devon for the Planting, Ruling, and Governing of New England in America." In turn, it granted lands in that territory to another company known as "The Governor and Company of the Massachusetts Bay in

¹ Egleston, *op. cit.*, pp. 17-18.

New England." The grant was confirmed by royal charter issued in March, 1628-9. A new charter was granted in 1691 and by it the Massachusetts Colony became a royal province and its claim to the land was established over what is at present the states of Maine and Massachusetts and the Canadian Province of Nova Scotia.

The Massachusetts Bay Colony by the action of the General Court transferred the title to the land within its territory either to individuals or to groups of individuals known as proprietors. The grants to the groups of proprietors were the most characteristic and important, for only in a limited number of cases were grants made directly to individuals. Although there are instances of the proprietors acquiring land through squatting or occupancy and purchase from the Indians, the accepted form was by means of a grant issued by the General Court which insisted upon its title to the unoccupied land and its exclusive right to make grants and to form townships.² This privilege is evidenced by the decrees of that body issued in the years 1630 and 1635.³

The General Court in making grants during the colonial period usually followed a certain procedure. A group of people who were anxious to settle a new area petitioned for the privilege to do so. Upon receipt of such petition, a special committee of the General Court considered the case carefully before the grant was made. Actual settlement and occupation on the part of the group was an essential condition to receiving title to the land. If this intention on the part of the group was evident, the committee surveyed and laid out a township, usually six miles square, and a charter or patent was issued to the proprietors. The title to the

² Akagi, *op. cit.*, p. 15.

³ *Records of the Governor and Company of the Massachusetts Bay in New England* (Ed. by Nathaniel B. Shurtleff, M. D., 1628-1686. 5 vols., Boston, 1853-1854), vol. i, pp. 76, 167.

land within the township was not sold but given to the group upon conditions of actual settlement and occupancy with the further understanding that religious and educational opportunities for the settlers must be provided. If a charge was made it was only a very nominal fee to help cover the cost of the survey and the laying out of the land. The proprietors in their turn were responsible for the final transfer of the land which they held in common to individuals.

Although under the terms of the charter the proprietors of the town held title to the lands within its bounds, they frequently found that their territorial rights were questioned and conflict ensued.⁴ One of the most serious attacks upon these rights was instigated by the British Crown which objected to certain features of the New England system of free land tenure which was unhampered by such feudal restrictions as a quit-rent. The attack upon the system was begun as early as 1677 by Edward Randolph but reached its height during the administration of Sir Edmund Andros. However the attempt to bring about royal control and to enforce such feudal forms as a system of quit-rents in the New England colonies came to naught.⁵

Boundary disputes between the colonial governments often endangered the territorial rights of the proprietors. The boundary between Massachusetts and New Hampshire was not clearly drawn until 1741. Meanwhile both governments had made grants in the same territory and a struggle over the validity of titles resulted. One of the most famous of these was the Bow controversy.⁶ This particular case in-

⁴ Akagi, *op. cit.*, ch. v.

⁵ B. W. Bond, Jr., *The Quit-Rent System in the American Colonies* (New Haven, 1919), pp. 42-50.

⁶ J. B. Walker, *The Controversy between the Proprietors of Bow and the Proprietors of Pennycok, 1727-1789* (New Hampshire Historical Society, Proceedings, vol. iii, 1895-1899), pp. 261-292. Akagi, *op. cit.*, pp. 165-174.

volved the proprietors of the town now known as Concord, N. H. The two groups of proprietors, the one created by Massachusetts and the other by New Hampshire, carried on a struggle over a period of forty years before a permanent settlement was reached in favor of the Massachusetts group who had actually settled the township.

The territorial jurisdiction of the proprietors in certain towns was at times infringed upon by the town organization which held the privilege of local political jurisdiction. Theoretically speaking the General Court made a distinction between the two. In practice, however, the town meeting in a great many cases handled matters pertaining to both the political and territorial affairs. Sooner or later this confusion or overlapping of jurisdiction led to serious controversy between the representatives of the two groups.⁷

General legal recognition of the rights of the proprietors in the Massachusetts Bay Colony was begun in 1692 by an Act passed by the General Court which provided that

The proprietors of the undivided and common lands within each town and precincts in this province, where same have been heretofore stated, each one's proportion being known, shall and hereby impowered to order, improve or divide in such way and manner as shall be concluded and agreed upon by the major part of the interested. . . . And the proprietors of all undivided common lands not stated and proportioned as aforesaid, shall and hereby [*sic*] impowered to manage, improve, divide, or dispose of the same as hath been or shall be concluded and agreed on by the major part of such proprietors.⁸

⁷ Akagi, *op. cit.*, pp. 50-54; C. F. Adams, *Genesis of the Massachusetts Towns, and the Development of the Town-Meeting Government* (Reprinted from the Proceedings of the Massachusetts Historical Society, January, 1892), p. 8 *et seq.*; H. L. Osgood, *The American Colonies in the Seventeenth Century*, 3 vols. (New York, 1904), vol. i, pp. 462-464.

⁸ *Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, 1692-1780*, in 19 vols. (Boston, 1869-1922), vol. i, pp. 64-68, Nov. 16, 1692.

In succeeding years further legislation was passed guarding and defending the rights of the proprietors and making the propriety legally independent, thus making clear separation between the political and economic phases of the town unit. The Act of 1698 declared that a third part of the propriety "shall and may summon a meeting of the whole from time to time as there shall be cause,"⁹ and the Act of 1713 added that at legal proprietors' meetings they alone had the right "to pass order for managing, improving, and dividing such common lands not before stated and divided."¹⁰ By means of statutory authority, the propriety was thereby recognized as a quasi-corporation with power to deal in its meetings with the division of the common and undivided lands and to provide for its improvement, management and regulation.

The meetings of the various proprietries were held according to colonial law. A portion of the members of the propriety issued to the justices of the peace a request for a meeting which indicated the time, the place and the proposed business. The justice, in turn, issued the warrant. The proprietors' clerk then issued a notice of the meeting either through the newspapers or posted it in a conspicuous place. When the proprietors met on the appointed day as a legal body the business which they transacted was sanctioned by law. Any business transacted in any other way was held illegal.¹¹

In some instances the proprietors' organization was divided into at least two separate groups and each group held its own meetings. This was likely to occur if the area granted was of large size or if it was divided by some natural barrier. The proprietors of Springfield, Massachusetts, for instance, divided themselves a few years after their organization was

⁹ *Ibid.*, vol. i, sec. 5, pp. 333-335, June 21, 1698.

¹⁰ *Ibid.*, vol. i, p. 704.

¹¹ *Ibid.*, vol. i, p. 704, March 25, 1713.

formed into groups known as the proprietors of the Inward Commons and the proprietors of the Outward Commons.¹²

The business transacted was usually the election of officers, the levying of taxes, the making of by-laws, the appointment of special committees whose business it was to carry out the decisions made by the group. Records were kept of those meetings and of the drawings of allotments by the various members.

The most important offices within the organization were that of moderator, clerk and treasurer. The moderator was the presiding officer and was usually elected at each meeting. The clerk was the most important officer and his term of office usually extended over a considerable period of time. It was the clerk who served notice of the meetings, recorded the business transacted and served as general representative of the propriety unless otherwise designated. The treasurer, of course, held the purse strings and was responsible for the collection of taxes. To this list of officers should be added the surveyor, the watchmen to guard the common field rights and the special agents and attorneys who were elected from time to time to represent the propriety in court. No pecuniary awards seem to have gone with these offices but in some cases there were awards in the form of land grants. This procedure of the proprietors' meetings seems to have been followed throughout all the New England colonies.¹³

The members of the propriety in the first place were the individuals to whom the colonial government granted the charter. Such persons were the original proprietors. It is difficult to determine what the General Court used as a criterion in selecting the members. Possibly its policy was summed up by the action taken in September, 1638, when it appointed a committee to take the names of those desiring

¹² Akagi, *op. cit.*, p. 72.

¹³ *Ibid.*, pp. 60-67.

lands, to consider the reasons for such and to retain the names of those thought fit to have lands. Fitness in the matter of receiving lands rested upon the ownership of common stock in the Massachusetts Bay Company, abilities to improve the land and the amount already held.¹⁴ Upon this basis, apparently, persons became original proprietors. The charter also carried the provision that the heirs, assigns or successors of the same should inherit their rights. With respect to inherited membership the Massachusetts Act of 1723 stated that the right of proprietorship could be assigned in any case only to the heirs.¹⁵

The proprietors admitted from time to time new members into their organization through formal vote at a legal meeting. In addition, membership in a propriety might be obtained by means of purchasing an original propriety right, for propriety shares were purchaseable. Such purchase was more generally practised in the eighteenth century when speculation in lands became more important than in the earlier part of the colonial period. The general policy in regard to membership, however, seemed to have been to keep the numbers small, really a limited or exclusive membership resting in the beginning in the hands of those legally admitted by charter and by legal vote of the original members.¹⁶ In conclusion, the proprietors possessed the privilege of dropping a member from the organization if he proved delinquent in the performance of his duties.

In order to carry out the division, improvement and management of the land it was necessary for the propriety to possess certain corporate powers. Such powers were to levy taxes, to sue and be sued, to levy penalties and to make by-

¹⁴ *Massachusetts Colonial Records, op. cit.*, p. 225.

¹⁵ *Massachusetts Acts and Resolves, op. cit.*, vol. ii, pp. 284-285, June 17, 1723.

¹⁶ *Akagi, op. cit.*, p. 71.

laws. Legal recognition of these was granted at one time or another by the Massachusetts General Court. It was not until 1726 that the Massachusetts Bay Province first took steps to confirm the power of taxation by stating that the proprietors had the power to raise money to enable them to carry out law suits arising in connection with the propriety.¹⁷ The Massachusetts Act of 1741 extended this power by providing for the right to levy taxes in connection with the common fields.¹⁸ Again, an Act passed in 1753 affirmed the provisions of the two earlier acts and added the right to tax "for carrying out and managing any other affairs for the common good of such properties."¹⁹

The right to sue and be sued was given legal sanction in Massachusetts by the Act of 1694 which stated that the propriety could "sue, commence, and prosecute any suits or actions in any court proper to try the same, either by themselves or their agents."²⁰ The Act of 1726 further provided for the serving of writs thirty days before the trial.²¹ The power to pass by-laws and issue orders and levy penalties was sanctioned in the Province by the Act of 1727.²²

In conclusion, with regard to the corporate powers of the proprietors, it is well to note that the right of inheriting all propriety shares perpetuated the propriety interest and "lay at the basis of all corporate powers and . . . solidified the proprietary right against the non-proprietor."²³

Records were kept of the meetings and transactions of the proprietors. At first this was not regularly or carefully

¹⁷ *Massachusetts Acts and Resolves*, vol. ii, pp. 407-408, Dec. 31, 1726.

¹⁸ *Ibid.*, vol. ii, p. 1066, August 8, 1741.

¹⁹ *Ibid.*, vol. iii, pp. 669-670, June 19, 1753.

²⁰ *Ibid.*, vol. i, p. 182, October 25, 1694.

²¹ *Ibid.*, vol. ii, pp. 407-408, December 31, 1726.

²² *Ibid.*, vol. ii, pp. 425-426, June 27, 1727.

²³ Akagi, *op. cit.*, p. 77.

done. But after the propriety was recognized by statute and its organization became distinct from that of the town, records seem to have been kept. In fact, the Massachusetts Act of 1713 made the specific provision that the proprietors' clerk should keep a record of the proprietors' meeting.²⁴ Later, by the Massachusetts Act of 1774 provision was made for a record of lands "after they have made a full and complete division of their land lying common and undivided."²⁵ Thus, the records of the propriety took two forms: the minutes of the meetings and the records of the land grants. The second of these was of particular importance because the titles to the land came directly from the proprietors' land records. The importance of these records in establishing claim to the land was upheld in many cases by the Massachusetts courts.²⁶

The activities of the proprietors of a town were various. The most significant, however, were the settlement of the town, the division of land, and the control of the common field system.²⁷

The settlement of the town seemed immediately to require the proprietors to lay out a plan of the town. Committees were appointed to do so and the expenses were taken care of by the propriety. Once the plan was drawn up the proprietors began immediately upon the task of building and keeping the highways in repair which gave them contact with

²⁴ *Massachusetts Acts and Resolves, op. cit.*, vol. i, p. 704, March 25, 1713.

²⁵ *Ibid.*, vol. v, June 17, 1774.

²⁶ Akagi, *op. cit.*, pp. 80-84.

²⁷ *Ibid.*, pp. 85-114; Osgood, *op. cit.*, vol. i, ch. xi; C. M. Andrews, *The River Towns of Connecticut* (Johns Hopkins University, Studies in History and Political Science, vol. vi, nos. 7-9), ch. ii; A. B. McLearn, *Early New England Towns; a comparative study of their development* (Columbia University Studies in History, Science and Public Law), vol. xxix, no. i, ch. iv.

the older settlements. The proprietors also were responsible for the development of the street or streets and the roads within the township.

Besides meeting the communication needs of the town, the proprietors very early were active in establishing saw mills and grist mills to meet the needs of the members of the self-sufficient community. They usually granted to a specific individual the water rights for such development. Often such right was made even more tempting by adding to it a grant of land and sometimes a sum of money as an additional inducement. In making such grants they usually inserted a specific time limit for the construction of the mill and if the conditions were not met the grant was forfeited. Later it was re-granted to such person as would actually meet the requirements. Besides attracting millers and settlers the proprietors often encouraged other artisans such as carpenters and blacksmiths with similar offers. In addition they tried various means to attract actual settlers other than those mentioned above but the most popular seemed to be either the granting of a small plot of land or a bounty in the form of a sum of money. During the seventeenth century most of the proprietors actually became settlers or resident-proprietors within the community but in the following century it appears that absentee-proprietors grew in number.

The propriety was responsible for establishing facilities for the religious life of the inhabitants. The charter carried provision for the settling of an orthodox minister by stating that one share or propriety right was for the minister who should settle there. They often made an additional grant and contributed a sum of money in order to provide the meeting house or church. The progress which the proprieties made in accomplishing the above program varied but in a great many cases it seemed to await the actual settlement of the community. However, many instances may be found

where religious facilities were provided shortly after the grant had been made and when only a few settlers had arrived.²⁸

The matter of defense seems to have been a problem for which the colonial government generally was responsible, though there are some instances in which the proprietors in their attempt to secure a more rapid settlement took it upon themselves to furnish defense by constructing a fort and providing ammunition.

Quite obviously one of the main functions of the propriety was to distribute the land to individuals who were finally to hold it in severalty. This process took a long period of time and very often was not entirely accomplished in a single generation.

To understand the basis of the division which the proprietors made involves first of all a description of the general plan of the community. A town plot or village common was first laid out in a central location where a meeting house could be built. Often besides the town plot there would be set out a plot of land for the church, another for the burying ground and still another for the school. The remaining territory was divided into house lots, meadow lots and woodlots or upland. The house lots consisted of a few acres and provided not only a building site but also a place for planting purposes. Meadows were usually located along the river banks or marshy lands and served for hay and pasturage. They were larger than the house lots. Finally came the woodlands which were laid out in still larger plots, often as large as one hundred acres, on the uplands or upper river terraces.

The division among the proprietors was generally upon the basis of the interest or share or right of the proprietors. Usually the charter granted a share or right equal in value to each proprietor, but a proprietor might purchase addi-

²⁸ Akagi, *op. cit.*, pp. 97-99.

tional shares or a share might be divided into parts and disposed of to others. In making the land division into shares, the aim in such self-sufficient communities would be an equitable one as to quality and quantity. If such a result was not attained corrections or adjustments were often accomplished by the system known as pitching^{28a} or by granting equivalent or equalizing lots. Sometimes, as in the case of Massachusetts, the dissatisfied proprietors, three or more in number, were given the right to petition for a division in another town.²⁹ In establishing an equitable distribution in this manner, one result was that the holdings of each proprietor were scattered over the township.

It should not be understood that a complete division of the land of a propriety was made at one time. There might be several divisions made at different times before the final assignment to individuals in severalty. When a division was made the prevailing custom was for each proprietor to draw his lot. Any land which remained after each division was known as the common and undivided land. In the older New England proprietries a particular division was often made in the form of a common field which was used in common for crops, pasturage or wood. The proprietors who had exclusive control of the field either set aside a given area *en bloc* or divided the area among the proprietors, each proprietor using his portion in a manner to suit himself. After the crops were removed the whole area was thrown open for common usage, usually for pasturage. The use which each proprietor could make of the common field was limited in the first case according to the proprietor's shares in the propriety and in the second case according to his acre-

^{28a} The term "pitch" is used here as meaning that the individual selects rather than draws a lot in order to adjust any difference in the quality and quantity of a particular allotment.

²⁹ *Massachusetts Acts and Resolves, op. cit.*, vol. iv, pp. 524-525, 679-680.

age in the field. The proprietor's right of commonage was transferable.

To carry out the common field system a great deal of regulation was necessary, both on the part of the proprietors themselves and on the part of the colony.⁸⁰ Regulations were called for in regard to the enclosure of the field which required the building and repairing of fences and the portion which each proprietor was responsible for. Meetings were regularly held to work out these regulations; to appoint fence-viewers and haywards to see that the same were followed out; and to settle disputes which arose concerning the usage of the common fields.⁸¹

The common field system for the most part was characteristic of the proprietorship system in only the New England towns which were settled during the seventeenth century. In the proprietries where it was the custom to do so, the system of commonage lasted for a long time, even over many generations and the rights involved were very highly prized by the proprietors.⁸² When all the common and undivided lands and the common fields in any town had finally been distributed to individuals in severalty, the system of proprietorship was at an end.

The existence of a common field and of lands remaining common and undivided very often caused the proprietors of the towns serious trouble. As the inhabitants of the township or village community increased, the numbers of the non-proprietors grew and they actively resented this concentration of common and undivided land in the hands of a relatively few proprietors who formed quite obviously a landed and

⁸⁰ *Ibid.*, vol. ii, pp. 100-101, 218, 466, etc.

⁸¹ Detailed descriptions of the common fields and the problems arising may be found in: Egleston, *op. cit.*, pp. 41-42; McClear, *op. cit.*, pp. 87-94; Osgood, *op. cit.*, vol. i, pp. 117-118, 440-441.

⁸² Akagi, *op. cit.*, pp. 110-111.

privileged class within the community. Such opposition was particularly in evidence in the more densely populated areas of eastern Massachusetts and the Connecticut River regions.³³

The demands made by the non-proprietors as they rebelled were usually either or both of the following: that the proprietors must allow them an equal or, at least, a more equitable distribution of land; that they must grant them admission to the propriety. The manner in which these demands were met showed great variation, but as Mr. Egleston says, there were two possible ways of satisfying the non-proprietors; namely, by voting them into membership as proprietors, or by granting lands to them even if they were not given rights to the common and undivided lands.³⁴

There must have been many cases where an agreement was reached with the non-proprietors without any well defined struggle between the opposing interests. If the proprietors in general had not made concessions of some sort the whole system might have crumbled. There were many cases, however, where agreements were reached only after a real struggle. If a decision could not be reached by the two interests themselves it was often necessary to arbitrate. This was done either by choosing representatives from both parties to form a committee to act on the matter, or by selecting certain townsmen to make the decision. Sometimes the town organization settled such disputes by means of its own legislation. If nothing was accomplished by such means the inhabitants would appeal to the General Court for aid.³⁵ Throughout this long series of struggles the proprietors were

³³ *Ibid.*, pp. 155-157.

³⁴ Egleston, *op. cit.*, pp. 41-42.

³⁵ *Massachusetts Acts and Resolves, op. cit.*, vol. viii, pp. 122, 148, 179, 199, 201; vol. ix, pp. 9, 66, 85-86, 565; vol. xi, pp. 636, 642; vol. xiv, pp. 292-293.

able to emerge without any serious impairment of their rights. Probably the most effective element in their defense was the legal basis upon which their rights rested.³⁶

The description of the colonial New England proprietary system here presented raises the question as to why such a system arose? An answer is most significant for the purpose of this study. It helps materially to understand both the development of the system in Vermont and its variations from the earlier form which indicate the decline of that system.

Many interpretations have heretofore been offered in answer to this question. They are not entirely satisfactory and many of them are of very doubtful validity. A review and criticism is, therefore, necessary before an acceptable interpretation can be presented. The existing interpretations are presented under three main divisions: those which trace the origin of the system to very remote times and influences; those which stress the significance of the English conditions to which the settlers were accustomed; and those which emphasize the part played in colonial New England by the group dominated by religious, or social and religious conditions.

Let us consider the point of view which is representative of the first category, namely, the Germanic origin of the colonial New England village community. The theory here is that the New England village community sprang from the village community of old England, which in turn had its origin in the ancient Germanic institution, the mark.³⁷ Such an interpretation is far-fetched and inadequate. It is far-

³⁶ Akagi, *op. cit.*, pp. 159-165.

³⁷ H. B. Adams, *The Germanic Origin of New England Towns* (Johns Hopkins University, *Studies in History and Political Science*, vol. 1, 1883), no. ii. Adams in his turn was influenced by German specialists in Institutional History, such as Von Maurer, Hansen, Meitzen, Nasse, and George Waitz. The valuable material "dug up" by them is, according to Adams "something marvellous to contemplate."

fetched because the degree of similarity between the New England village community and that of old England was probably less than the earlier writers thought it to be. It is inadequate because in tracing the origin to the German mark the now recognized fact that the village community was “. . . prevalent in Europe, regardless of race and clime” was overlooked.⁸⁸ Furthermore, even on the assumption that the village community did originate in Germany the question remains, for what purpose did it develop? Possibly it should be added, it has been said, that it originated in Germany under very primitive conditions calling for primitive social institutions, and, as the German mark was held together by the common bond of religion and the fear of neighboring enemies so also was the New England township.

The second group of historical treatments, those which stress the fundamental effects of English conditions and influence, calls for a certain amount of subdivision. One of these advances the primordial germ theory which claims that the idea of the New England town was planned and organized in England before definite settlement was started.⁸⁹

Another theory is usually referred to as the charter theory. It stresses the fact that the “. . . town and town-meeting government, as seen in New England, are sprung from a simple English germ, fructifying in New England soil. . . .” This “simple English germ” was the manner of organization of the English commercial companies of the seventeenth century as exemplified by the charter of the Massachusetts Bay Company. “The ‘planters’ representing the ownership of the ‘plantation’ meet and agree upon certain rules and the method of doing business; and in so doing they follow closely the system outlined in the charter of the

⁸⁸ V. G. Simkhovitch, *Toward the Understanding of Jesus* (New York, 1925), p. 140.

⁸⁹ A. Johnston, *Connecticut* (Boston, 1887), *passim*.

colony. The planters, being in this case the body of inhabitants, are the General Court of the plantation, or town; and they in this General Court, subsequently called a town meeting, choose certain of their number to act as a species of executive committee, exactly as the General Court of the Colony elected the Board of Assistants."⁴⁰

To the above theories should be added a third, the parish theory, which traces the New England town to the English parish.⁴¹ Before criticism is made of either the charter or the parish theory, fairness demands recognition of the fact that the historians advancing these theories are treating the rise of the town and town-meeting as a political organization and not the territorial jurisdiction exercised by the propriety. In addition although main emphasis is placed upon the influence of the English institutions, either the charter or the parish, attention was called to the importance of other factors such as the political, economic, religious and social. However, neither of these historians elaborates or stresses these other factors. The chief criticism of both of the theories is the same as that presented in connection with the Germanic origin theory. The significant point is missed for they do not emphasize the factors which favored the English custom in New England and not in the other regions of America.

The treatments under the third classification stress the group as being the key to understanding the New England land system, and further interpret the group as being dominated by religious influences, or by social and religious influences combined. In this connection the comment of one

⁴⁰ C. F. Adams, *op. cit.*, pp. 178-179.

⁴¹ E. Channing, *Town and County Government in the English Colonies of North America* (Johns Hopkins University, Studies in History and Political Science, vol. ii, 1884, second series, no. x). E. Channing, *The Genesis of the Massachusetts Town* (Reprinted from the Proceedings of the Massachusetts Historical Society, January, 1892).

authority may be briefly summarized as follows: The coexisting agrarian and ecclesiastical bonds were the two most characteristic elements in the town organization and the explanation of this is to be found in the fact that settlement in New England was made by groups.⁴³ These groups were in nature democratic and though they showed some aristocratic tendencies they were without monarchical form. There was no proprietor or king in the real sense to seek profit from the sale of lands or to carry out from a single centre an aggressive policy of encouraging migration. Migrations to New England were more spontaneous being urged in the main by religious disabilities. Ministers moved groups to New England and

The fact that a prospect was opened for escape from episcopal domination, for the establishment of their favorite ecclesiastical polity under the protection of a government of their own, was tacitly accepted as a sufficient guarantee of the rest. It was instinctively believed that comfort and prosperity would follow in the wake of this much desired liberty.⁴⁴

And, it is further claimed, this view of the problem resulted in something different in the way of a land system, namely, one of making grants to groups or communities of settlers without charge or profit.

One other point of view of this same type remains to be considered and that is the one presented by an authority who has given more careful study to the proprietary land system of colonial New England than any one else.⁴⁵ The consideration given the origin of this system is very brief indeed. The author at one point makes a statement which shows great promise:

⁴³ Osgood, *op. cit.*, vol. i, pp. 424-429.

⁴⁴ *Ibid.*, p. 427.

⁴⁵ Akagi, *op. cit.*, p. 291.

In the first place, there was no definitely conceived plan at first in the founding of towns; in fact it took over twenty years before any definite form of founding townships was systematically developed on the New England soil. In the second place, the 'town' was at first nothing but a simple land community for the sole purpose of settlement and from it the political community gradually developed as a result of the separation of powers.⁴⁶

Unfortunately the author does not follow the lead he sets in the above statement, for almost immediately he proceeds in another direction when he makes his final and concluding summary in regard to the origin by stating:

Whatever the customs with which they were acquainted, the Puritan settlers transplanted them to the new soil and developed them in harmony with the new spirit and the new environment. Men came together as neighbors and, being also necessitated by the importance of local church relations and the need of mutual protection, they settled together in groups. Herein is the key to the peculiar development of the New England land system. The group settlement resulted in group control over the land and it gradually developed into a system of proprietary land grants. The system at first existed only as a matter of course and it was not legally defined until the close of the seventeenth century. Then also, besides the system of common fields and common pasturage which practically died out by the opening of the eighteenth century, there was little in the New England system of proprietors which closely, or even roughly, resembled the kindred institutions of the Old World.⁴⁷

In this statement the custom with which the Puritan settlers were familiar in the old world is given recognition, modified however by conditions in the new world, namely, by the new spirit and the new environment. Of this new

⁴⁶ *Ibid.*, p. 291.

⁴⁷ *Ibid.*, p. 293.

environment one factor only is given emphasis and that is that the new comers settled in groups. The group settlement, the key to the peculiar New England land system, rested upon the fact that men came together as neighbors through local church relations and the need of mutual protection. In other words, using the author's terminology, they were "socio-religious" groups.⁴⁸

The opinions of the two authorities just reviewed agree on the significance of the group and the importance of the religious factor as creating a setting favorable to the emergence of the group, while the one goes further by adding the social factor and the need of protection.

Such a conclusion cannot escape criticism. It need not be denied that religion played its part, but the point is over-emphasized and results in the omission of other and very important factors. To establish certain religious conditions may have been one of the chief aims, but these aims never could have been realized if they had not been in keeping with the economic development and the conditions of the natural environment. Religious influences or aims were not characteristic of the New Englanders alone. Virginians were very desirous of establishing a certain protestant religious belief and made strenuous effort to do so, but in spite of their efforts no such land system emerged. Certainly they were socially inclined also and indeed had need to protect themselves from the Indians, but no village community resulted as a dominant institution of the south. It is also safe to say that the democratic spirit was a virtue over which the New Englanders had no monopoly. It was prevalent among the majority of settlers elsewhere in the colonies but conditions apparently did not favor the development of village communities except in New England.

⁴⁸ *Ibid.*, pp. 44, 176.

It is assumed that the English custom to which Akagi refers is the village community. It should be remembered that the same influence was at work throughout the colonies. Englishmen of the seventeenth century who were carrying on self-sufficient agriculture were accustomed to the village community with its peculiar distribution of land. Although enclosure had been going on from an early date, that type of agriculture was still dominated by the open field system with its scattered holdings and common rights. Englishmen migrating to America, south, north, east or west were accustomed to this system, yet it became accepted in modified form only in New England.

Thus the question remains, why did the New England system of proprietorship develop? The answer seems to be that the leaders of the new colonial enterprise thought it the most certain guarantee of economic success. Economic success in its turn was conditioned by the legal powers of the leaders, by the natural environment and by the economic possibilities in founding the new colony. Although this answer differs from the traditional interpretation, it should not appear surprising except to those who believe that the Massachusetts Bay colonists sought only political and religious freedom. These are only one part of the story. Men of John Winthrop's caliber were Puritans, possessed of much foresight and a cool and calculating temperament. They enjoyed economic standing at home. They doubtless were moved by religious and political fervor to come to America but they knew full well that economic success in the new colony assured them ". . . a place of cohabitation and Consortship under a due form of government both civil and ecclesiastical."⁴⁹ The proof of this recognition of the significance of the economic may be found in John Winthrop's

⁴⁹ J. Winthrop, *Model of Christian Charity* (Massachusetts Historical Society Collection, vol. vii of the third series, Boston, 1838), p. 45.

own words when he wrote his pamphlet using as a title, "Reasons to be considered for iustifieinge the undertakers of the intended Plantation in New England, & for incouraginge such whose hartes God shall move to ioynе with them in it."⁵⁰ The significance of the economic element is pertinently revealed in the following extracts:

. . . why then should we stand striving here for places of habitation, etc. (many men spending as much labour & coste to recover or keepe sometimes an acre or twoe of Land, as would procure them many & as good or better in another Countrie) & in the meane time suffer a whole Continent as fruitful & convenient for the use of man to lie waste without any improvement?"⁵¹

"Ob: I: We have noe warrant to enter upon that Land wch hath been soe longe possessed by others;"⁵²

"Ans: I: That wch lies comon, & hath never beene replenished or subdued, is free to any that possesse & improve it: ffor God hath given to the sonnes of men a double right to the earth; there is a naturall right, & a civil right. . . . As for the Natives in New England, they inclose noe Land, neither have any settled habytation, nor any tame Cattle to improve the Land by, & soe have noe other but a Naturall Right to those Countries. Soe as if we leave them sufficient for their use, we may lawfully take the rest, there being more than enough for them & us:"⁵³

"Ob: 8: The place affordeth not comfortable meanes to the first planters, & or breedinge here at home hath made us unfitte for the hardshippe we are like to endure there.

"Ans: I: Noe place of itself hath afforded sufficient to the first Inhabitants; such thinges as we stand in neede of are

⁵⁰ R. C. Winthrop, *Life and Letters of John Winthrop* (Boston, 1869), pp. 309-317.

⁵¹ *Ibid.*, p. 310.

⁵² *Ibid.*, p. 311.

⁵³ *Ibid.*, pp. 311-312.

usually supplied by Gods blessing upon the wisdome & industry of man, & whatsoever we stand in neede of is treasured up in the earth by the Creator, & to be feched thense by the sweate of or browes. . . .⁵⁴

Apparently it was evident to John Winthrop that through the possession of land and by hard labor there should result the necessities of life which would permit them to live in the New World and to build their civil and ecclesiastical government. His own statements definitely seem to detract seriously from the importance of Osgood's well known statement: "The fact that a prospect was opened for escape from episcopal polity under the protection of a government of their own, was tacitly accepted as a sufficient guaranty of the rest. It was instinctively believed that comfort and prosperity would follow in the wake of this much desired liberty."⁵⁵

The Massachusetts Bay colonists migrating to America did not tacitly accept the belief that the realization of their desire for religious and political freedom would guarantee economic success. Winthrop's statement indicates clearly the fact that they recognized the significance of the economic as being the basis of obtaining their political and religious aims. Just how economic success was to be attained was uncertain. Several important factors confronted them in their undertaking. Some of these were assets with unlimited possibilities, and one was an asset with distinct limitations. The particular assets with unlimited possibilities were a relatively free political government unhampered by feudal restrictions and the territorial jurisdiction of a vast quantity of land. Both of these were closely associated with the joint stock company which was formed in England to carry out

⁵⁴ *Ibid.*, p. 315.

⁵⁵ Osgood, *op. cit.*, vol. i, p. 427.

colonization and trade in the new country. This particular joint stock company was incorporated by royal charter in the month of March, 1628-9, under the title of the Governor and Company of the Massachusetts Bay in New England. As first organized it was the usual commercial company formed by a group of Englishmen to carry on trade with the colonists who settled within their territory. The charter granted them both extensive territorial rights and governmental jurisdiction as well as a monopoly of trade.⁶⁶

As to the governmental jurisdiction, it was placed in the hands of a general court to be composed of the freemen or shareholders of the company. The general court had the power to determine the general policy of the company, to establish the laws to govern the settlers and to elect officers. The officers in turn, the governor and his assistants, were to administer and execute the policies of the court.

It very soon became evident that success was not likely to come to the enterprise while carried on in this form and a reorganization was necessary. The reorganization was most significant. New life came through the admission of new members and local control was made more definite through the transfer of the government or general court from England to Massachusetts Bay. In the new country a representative form of government developed and it enjoyed over a long period of time almost absolute non-interference from the English Crown. It was free to elect its own officials and legislate for itself without interference from the mother country.

The second asset with unlimited possibilities which the Massachusetts Bay charter granted was the territorial jurisdiction over all the land between the two parallels, one situated three miles south of the Charles River and the other three miles north of the Merrimac River from the Atlantic

⁶⁶ *Massachusetts Colonial Records, op. cit.*, vol. i, pp. 3-19.

to the Pacific. The General Court carefully guarded this territorial jurisdiction and it undoubtedly proved to be one of the most vital factors which it possessed and used in developing a colony, economically, politically, socially and religiously to its liking.

The Massachusetts Company or Colony, as will now appear, came to exercise and make extensive use of two very important provisions of the charter, namely, the governmental and the territorial provisions. Nowhere save in New England do we find governmental and territorial control so fully and unrestrictedly placed in the hands of the colony itself. It was under this charter with the above provisions and the unusual conditions that the Company and Colony operated until 1691.⁵⁷

Turning now to the asset with distinct limitations which confronted the Massachusetts Bay colonists, the economic possibilities open to them must be considered. In any new region or country basic and permanent success must rest largely upon agriculture. Other forms of economic activity such as a well developed commerce and manufacture come later. The agricultural activity in this particular case was limited to a general type, self-sufficient and not commercial

⁵⁷ The above is a statement of fact. As a statement of law, however, the charter was annulled in 1635. This did not interfere with the factual process of development for the home government was unable to enforce the annulment and the colony continued to go its own way until 1684. Then another writ of *quo warranto* followed by a decree in chancery in England annulled the charter of the Company and Massachusetts Bay became an English colony governed by James II through a royal governor and council. However, during the time of the English Revolution of 1688 the Massachusetts colonists drove out of office the Royal Governor Andros and his Council, restored the old charter and continued thereunder until the charter of 1691 was issued by William and Mary. This charter was amended in 1726. The effects of these later charters may be passed over without much comment. The colony as developed by the Company continued the same governmental structure and territorial jurisdiction as was established in the first grant.

in character. Two important factors especially contributed to this limitation; one, the conditions of the natural environment, the other, the limited market for the type of agricultural product the New Englanders had to offer.

It is generally conceded that the conditions of the natural environment in many respects were less favorable to agricultural development in New England than in the other colonies. The location of New England on the North American continent was in a northerly latitude and in the path of the westerly winds. The latitude was responsible for a short growing season which made possible only short season crops such as wheat, rye, barley and corn. The westerly wind with its high and low pressure areas brought to the region a moderate precipitation fairly evenly distributed throughout the year with emphasis, however, during the growing season. Such precipitation conditions favored not only the cereal crops but also good grass and pasture for live-stock. The region was hilly and mountainous with the exception of the coastal plain. Such topographical conditions rendered a large portion of the land unfit for crops. The only use to which it could be put was pasturage or timber. Many rivers and streams existed in the region but for the most part they were short and rapid. Only two of any size penetrated the interior from the coast, the Connecticut and the Merrimac, and they extended into the interior in a northerly direction. The native vegetation was forest except on the natural meadows or on the occasional open spaces which probably had been cleared by the Indians. Within the general conditions set by the topographical features, a specific element appeared in the form of soil conditions. This presented its own definite problem. Along the coastal plain the soil was often excessively sandy and of inferior quality. Further inland large areas were unfit for cultivation due to the vast amount of rock and stone deposited

by glacial action. In the limited areas which remained suitable for agriculture, however, the soil was fertile. In fact it was the best of forest soils.

Such conditions of the natural environment rendered agriculture difficult and limited the colonists to a general or diversified agriculture with emphasis upon cereals and livestock. It operated with other factors, primarily a limited market, to make this general agriculture self-sufficient and not commercial in character.

The limited market was due in part to the fact that the conditions of the natural environment placed a decided limit upon transportation developments. The coastal regions had access to the sea but as far as the inland regions were concerned, the short and rapid rivers did not provide satisfactory means for shipping large quantities of goods. Roads were constructed but roads do not permit the profitable shipment of goods over long distances. The New Englanders were unable to get their products to the market.

The market was further restricted by the fact that only a small percentage of the population in New England was concentrated into commercial and manufacturing centers. Dr. Bidwell estimates that only about 15.4% of the total population of southern New England was dependent upon others to furnish their agricultural products.⁵⁸ Other possible American outlets for the New England produce were the commercial towns outside of New England, the southern colonies with their different type of agriculture and the West Indies. Of these the West Indian market was the most important. Yet the New Englanders could not develop this opportunity effectively because in these regions they met the competition of the middle colonies.

⁵⁸ P. W. Bidwell, *Rural Economy in New England at the Beginning of the Nineteenth Century* (Transactions of the Connecticut Academy of Arts and Sciences, vol. 20, April, 1916), p. 29a.

There was no market for their agricultural products in the mother country. Agriculture in England at that time was not only the dominant form of economic activity but was producing the same type of agricultural product. Thus, the colonial products found no ready market there. Any sale of such goods which might naturally have sprung up due to the fact that the colonists on the new and fertile soil might compete favorably with the English agriculturists in an older territory was thwarted by the English Corn Laws.

Thus, in summary, the conditions of the natural environment and the isolation from commercial relations with the world were the important factors affecting the development of the self-sufficient agriculture of colonial New England which was its dominant economic activity.⁵⁹ It was the basic and fundamental economic activity which the settlers were able to practice. This was so during the colonial period, and, indeed, afterward as late as 1810. This has been pointed out by Dr. Bidwell who estimates that ninety percent of the inhabitants of southern New England derived their living from an agriculture of this type.⁶⁰ The importance of this form of economic activity in the New England colonies is often overlooked by various writers, one of whom especially stresses the significance of "concentrated settlement for purposes of trading, fishing, and manufacturing, and not for an extended cultivation of the soil."⁶¹

The real significance of the dominance of a self-sufficient agriculture in New England is that it tended to maintain the colonists at or near a subsistence level. With no ready market for their agricultural products there was little stimulus to accumulate extensive, individual land holdings for present or future use. Such conditions are particularly

⁵⁹ *Ibid.*, p. 318.

⁶⁰ *Ibid.*, p. 319.

⁶¹ Channing, *Town and County Government*, *op. cit.*, p. 6.

significant when contrasted with commercial agriculture which became so important in Virginia. In that region the natural environment favored an agricultural system centering around tobacco as a staple crop, a ready market and a money economy. Economic opportunity was definitely associated with the possession of land favorable to the staple crop. As a result, individual settlers pushed on in search of suitable soil and the rich or fortunate accumulated large holdings. Consequently, the southern land system characterized by "indiscriminate location" emerged.

In New England, on the other hand, the natural environment made agriculture difficult. The lack of a ready market for agricultural products discouraged any particular rush for land. It is not surprising that under such conditions the Massachusetts Bay colonists were able to enforce legislation which embodied a strict control over the location of lands granted to groups of proprietors pledged to actual settlement.

It is significant for the purpose of this study to note the development of such legislation. On March 10, 1628, before the government was removed to New England a committee was appointed to consider the distribution of land.⁶² In May, 1629, just a few weeks later, the regulations were submitted and accepted by the Court of Assistants. Provisions were made for a modest amount of land to be granted to adventurers and to others settling in the colony. Also it was stipulated that after a town was set out and publicly known, no man should build his house anywhere else.⁶³ On September 7, 1630, it was ordered by the Court of Assistants that no person "shall plant" in any place without leave of the Governor and Assistants or a major part of them.⁶⁴ On

⁶² *Massachusetts Colonial Records, op. cit.*, vol. i, p. 34.

⁶³ *Ibid.*, vol. i, pp. 42-45.

⁶⁴ *Ibid.*, vol. i, p. 76.

March 4, 1633, it was necessary to forbid anyone whatsoever to buy any land of the Indians without leave from the Court.⁶⁵ The following year, April 1, 1634, a warning was issued to those having a great quantity of land and not building thereon within three years that the Court would dispose of it to others.⁶⁶ Shortly after this, in May, 1634, again the General Court declared that it alone had power to dispose of the land.⁶⁷ On March 3, 1635, the records show that the major part of the magistrates had power from time to time to dispose of the setting down of men in any new plantation and that none should go without leave from them.⁶⁸ In January, 1637, a committee was chosen to supply men that may want land and deserve it.⁶⁹ Then in September, 1638, the General Court, to avoid the trouble about granting lands, appointed a committee to take the names of all those desiring lands and to consider the reasons for such. The name of those thought fit to have lands were retained. Fitness in the matter of receiving lands rested upon the ownership of common stock in the Massachusetts Bay Company, abilities to improve the land and the amount already held.⁷⁰

As these regulations indicate, the members of the General Court evidently believed that economic success could be more certainly attained by instituting and maintaining a land policy which embodied a strict control over the location of settlement. Lands were granted to groups of proprietors who held the land in common but absolute ownership, unhampered by feudal restrictions, exercising exclusive control over the distribution and sale and being collectively respon-

⁶⁵ *Ibid.*, vol. i, p. 112.

⁶⁶ *Ibid.*, vol. i, p. 114.

⁶⁷ *Ibid.*, vol. i, p. 117.

⁶⁸ *Ibid.*, vol. i, p. 167.

⁶⁹ *Ibid.*, vol. i, p. 225.

⁷⁰ *Ibid.*, vol. i, p. 240.

sible for its development. The group of proprietors, in distributing the land to the individual proprietors or others in the community dependent upon self-sufficient agriculture in order to maintain themselves, made an equitable distribution. Each one was allotted meadow lots along the river, house lots on the first terrace and pasture and forest lots on the upper terraces. They granted lands for a town common, a burial ground, a church and a school. They encouraged settlement by encouraging the building of grist and saw mills, sometimes by providing a church, minister and a school. The propriety was enabled to do this by means of the quasi-corporate powers to tax, to sue and be sued, and to make by-laws. Legal recognition was at first not definitely given the propriety but by the end of the first quarter of the eighteenth century the General Court had succeeded in doing so.

In presenting this interpretation of the rise of the system of proprietorship emphasis has been placed throughout on its significance as the intended means of attaining economic success. This may seem to be inconsistent with the generally recognized economic disadvantages arising from the settlement obligation required of the proprietors, the existence of common fields and the scattered holdings of each proprietor. This element of inconsistency is overcome, however, if it is kept in mind that the economic disadvantages in the new world were not as great as in the mother country. In the new country the holdings of each proprietor were fewer in number and larger in size than were those of the individual farmer in the English village community. A single holding was usually many acres in size. A fewer number of larger holdings, although scattered, resulted in a minimum degree of economic inconvenience. This leads to the conclusion that the economic advantages of cooperation in founding a new community derived from communal settlement under the system of proprietorship seemed to the leaders in the General

Court to outweigh the disadvantages arising from the common fields and scattered holdings. Thus, the system of proprietorship was most instrumental in the attainment of economic success in the Massachusetts Bay colony and in its turn guaranteed to the settlers the "socio-religious" life they desired. A later John Winthrop writing at the end of the seventeenth century in Massachusetts might well have said: no place in itself affords sufficient to the first inhabitants; such things as they stand in need of are usually supplied by God's blessing upon the wisdom and industry of man; and what they stood in need of was treasured up in the earth by the Creator, and was fetched thence by the system of proprietorship and the sweat of their brows.

CHAPTER II

WINDSOR, VERMONT: A NEW HAMPSHIRE LAND GRANT

THE town of Windsor, Vermont, was granted on July 6, 1761, by Governor Benning Wentworth of the New Hampshire Province to a group of fifty-nine proprietors. It was one of no less than one hundred and twenty-nine township grants which were made by His Excellency in the territory then known as the New Hampshire Grants and now within the State of Vermont.¹ This large number of grants was made during the years 1749-1764 inclusive. They included in the main three tiers of townships laid out along the west side of the Connecticut River for a distance of some sixty miles; three tiers or rows of townships laid out from a line drawn approximately twenty miles east of the Hudson River and extending as far north as Poultney; and two tiers of townships from this point north along the eastern shore of Lake Champlain to the present town of Highgate inclusive. They were surveyed and laid out at the order of Governor Wentworth for the most part after the French and Indian Wars of 1754 and the conquest of Canada in 1760. The three tiers along the western bank of the Connecticut River were surveyed by Colonel Joseph Blanchard of Dunstable, New Hampshire, in 1760. He was employed by the governor to make the survey in connection with his plans to conduct a land-office business in township grants.² Governor Went-

¹ *New Hampshire State Papers: Documents and Papers relating to the Province and State of New Hampshire, 1623-1800* (Edited by N. Bouton and others, 31 vols., Concord, 1867-1907), vol. 26, Town Charters, pp. 566-569: p. vi.

² H. S. Wardner, *The Birthplace of Vermont. A History of Windsor to 1781* (New York, 1927), p. 25.

worth's actions in the next four years seem to bear out Colonel Blanchard's statement as to his land-office intentions, for in the year 1761 alone he granted no less than fifty-eight townships in the territory west of the Connecticut River.³

The Windsor grant was made by the New Hampshire governor with the consent of his council and not by the General Court as in the case of the other New England colonies. The power of the governor to grant lands within the Province was provided for in the Instructions which he received from His Majesty, The King, in 1741 especially in a clause which in part reads as follows: "And whereas by your Commission you are with the advice of His Majesty's Council there, empowered to agree with the Inhabitants of the said Province for such lands, Tenements & Hereditaments as now are and hereafter shall be in His Majesty's power to dispose of. . . ." ⁴ By the same set of Instructions Governor Wentworth was also instructed to create townships,

and whereas it has been found by long Experience that the settling Planters in Townships hath redounded very much to their Advantage. . . . His Majesty has therefore thought it for his Service that Townships should be settled on the Frontiers of your Province . . . and that no Town be set out or any such Lands or Lots granted until there be fifty or more Families ready to begin Settlement. . . . ⁵

The title to the lands which Governor Wentworth issued to the Windsor proprietors was not clear and led to years of confusion and struggle before they received a clear title by the issue of the New York Patent, March 28, 1772.⁶ The

³ *Ibid.*, p. 25.

⁴ *Laws of New Hampshire, including public and private acts and resolves and royal commissions and instructions, with historical and descriptive notes, and an appendix*, 10 vols. (Manchester, N. H., 1904-1905), vol. II, pp. 620-621.

⁵ *Ibid.*, vol. II, p. 620.

⁶ Original New York Charter, Town Clerk's Office, Windsor, Vermont.

story of their efforts will appear in later pages when these controversies are given consideration. In this connection only the lack of clearness to the title and the reasons therefor will be discussed. Governor Wentworth was moved by the spirit of speculation characteristic of the times. At the close of the French and Indian Wars and the fall of Canada into the hands of the English he saw vast possibilities in the creation of new townships west of the Connecticut River and proceeded to act. He knew very well that the titles to land which he granted in this region were questionable but he issued the charters just the same and trusted that in the long run New Hampshire would receive jurisdiction over this territory when the King and his Council rendered a decision in the case. The confusion over the title to the land was due to the fact that the governor did not know exactly what constituted his Province. This uncertainty arose from the indefinite way in which the boundaries were stated in the charters or in the decisions rendered by the King and his Council in cases of boundary dispute. Evidence of such indefiniteness appears in several cases.

When New Hampshire was created a Royal Province for the second time in 1692, no royal charter was granted. Thus no definite boundaries were set up and great confusion arose over the title to the lands. The Mason claims within that territory and the boundaries south and west were undetermined. The southern boundary between New Hampshire and Massachusetts was determined eventually on March 6, 1740, and was definitely stated in the Royal Commission to Governor Wentworth in 1741.⁷ The western boundary remained indefinite, or so Governor Wentworth determined to believe. There was some justification for this view.

The indefiniteness of the western boundary arose in the first place because of the obscure way in which King

⁷ *New Hampshire Laws, op. cit.*, vol. ii, p. 600.

Charles the Second defined the boundary of the territory in the grant to the Duke of York in 1664. The charter assigned certain territory "Together with the said River called Hudsons River and all the land from the west side of Connecticut River to the East side of De la Ware Bay. . . ."⁸ Boundaries expressed in such sweeping terms caused even the governor of New York himself to be a bit vague as to where the New York territory began and where it ended.

In the second place, by an order of the King in Council dated September 6, 1744, Fort Dummer, an outpost, situated on the west side of the Connecticut River in the region which became known later as the New Hampshire Grants, was referred to as having "lately fallen within the limits of said province of New Hampshire."⁹ Governor Wentworth interpreted this to mean that his jurisdiction extended beyond the Connecticut River.

In the third place, New York province itself lagged in making grants in this indefinitely bounded northeastern section. As more became known of this unsettled region, Connecticut and Massachusetts, hungry for land and enthused by speculation, made grants in that territory. When New York province questioned their right to do so, petitions were sent to the king to have the claims definitely settled. The result was that the New England colonies were allowed to include within their jurisdiction the townships they had granted and begun to settle. In the case of Massachusetts, the boundary between it and New York was drawn twenty miles east of the Hudson River. This boundary line became particularly significant when taken into consideration along with the decision rendered in the New Hampshire and Massachusetts line already referred to. The King and Council in that case

⁸ *New York State Senate Reports for 1873*, no. 108.

⁹ H. Hall, *Early History of Vermont* (Albany, N. Y., 1868), appendix 3, p. 477.

decreed the line to be one drawn from a point on the Merrimac River three miles north of Pawtucket Falls and running due west until it met with His Majesty's other governments.¹⁰ Just where it met with these other governments was not clear.

Governor Benning Wentworth was spurred on by the knowledge of the success of Massachusetts in having its boundaries extended by making grants in disputed territory. He promptly began to grant townships west of the Connecticut River as far as a line drawn twenty miles east of the Hudson River. Windsor was one of these grants.

When New York remonstrated against such action on the part of the governor of New Hampshire both governments appealed to the King. The outcome of the dispute was the decision of the King in Council rendered July 20, 1764, in favor of the New York government. It read in part as follows,

His Majesty . . . doth accordingly hereby Order and Declare the Western Banks of the River Connecticut, from where it enters the Province of the Massachusetts Bay, as far North as the forty-fifth Degree of Northern Latitude, to be the Boundary Line between the said two Provinces of New Hampshire and New York. Whereof the respective Governors and Commanders in Chief of his Majesty's said Provinces of New Hampshire and New York for the time being and all others whom it may concern are to take Notice of his Majesty's Pleasure hereby signified and Govern themselves accordingly.¹¹

Thus the controversy which raged between the two governments for a period of fifteen years ended in a statement of just where the New Hampshire government met with His Majesty's other governments to the West.

¹⁰ *New Hampshire Laws*, op. cit., vol. ii, p. 600.

¹¹ *Documentary History of New York* (Edited by E. B. O'Callaghan, 4 vols., Albany, N. Y., 1849-1851), vol. iv, p. 335.

The New Hampshire charter, issued by Governor Benning Wentworth to the town proprietors of Windsor, although it did not give clear title to the land, was the authoritative source upon which they carried out their various duties and activities during the whole period of their existence as a propriety.¹² The New York patent was not issued until approximately three and one-half months after the proprietors' organization had ceased to exist.

The charter of Windsor, as of practically all the New Hampshire grants west of the Connecticut, was a printed form with blank spaces occurring where it was necessary to fill in such information as the number of shares, the boundaries of each township, the dates on which the first town meeting should be held, the town officers elected and the name of the moderator of the first said meeting. The main provisions of the charter may be summarized as follows: the size of the tract of land, namely, something more than six miles square and containing 23,500 acres; a 1040-acre allowance for highways, rocks, ponds, and mountains; the boundaries of the town; the incorporation of the same; the right to hold two fairs annually and markets one or more days each week after the town population attained fifty families in number; the provisions for the first town meeting and the moderator to preside; the election of town officers; the day of the annual meeting, the second Tuesday of March. The conditions upon which they held title to the land were also stated and are summarized as follows: every grantee, his heirs and assigns, was to cultivate five acres for every fifty acres in his share or whole right within five years on penalty

¹² The original charter of Windsor at the present time has not been found. Certified copies may be found in the Windsor Land Deeds, vol. iv, pp. 18-23, Town Clerk's Office, Windsor, Vt.: *Land Papers*, vol. xx, p. 90, in the Office of the Secretary of State, Albany, N. Y. A copy may be found in *The New Hampshire State Papers*, vol. 26, pp. 566-569.

of forfeiture of his share, the same to be re-granted to others who would fulfill the condition; all white and other pine trees fit for mast for the royal navy were reserved and not to be cut except by special license upon forfeiture of the grantee's right; a tract of land was to be marked out and reserved for one-acre town lots, one to be allotted to each grantee before any other division of land be made; a quit-rent of one ear of Indian Corn was levied, to be paid annually for a period of ten years, the first payment to be made on December 25, 1762; after the expiration of ten years every proprietor, settler or inhabitant was to pay a quit-rent of one shilling for every one hundred acres he owned and in case of a smaller or greater acreage the possessor paid in proportion, the first payment being due December 25, 1772. After the proprietors' names were listed on the charter the following reservations of land were affixed; a tract of land five hundred acres in size and equal to two shares for Governor Benning Wentworth; one whole share for the Incorporated Society for the Propagation of the Gospel in foreign parts; one whole share for the first settled Minister of the Gospel; one whole share for a glebe for the Church of England, and one whole share for the benefit of a public school.

Practically all these provisions found in the charter of Windsor followed the Instructions issued to Governor Benning Wentworth by the King in the Royal Commission of June 4, 1741,¹³ or in the Instructions of July 21 and August 13, 1741, and June 30, 1761.¹⁴

¹³ *New Hampshire Laws, op. cit.*, vol. ii, pp. 600-608.

¹⁴ *Ibid.*, vol. ii, pp. 608-636. Provisions to grant land, see *ibid.*, vol. ii, p. 607; to create townships and to incorporate the same and to provide for town lots, see, *ibid.*, vol. ii, p. 620; markets and fairs, *ibid.*, vol. ii, pp. 6-7; to hold town meeting in March and elect officers, etc., see, *ibid.*, vol. ii, pp. 340-345, Act of May 2, 1719, 5 Geo. I; cultivation of five acres for every 100 acres, timber reservations and quit-rent, see, *ibid.*, vol. ii, pp. 620-621; the glebe for the Church of England, *ibid.*, vol. iii, p. 274 and according to instructions dated June 30, 1761.

The provisions which cannot be so explicitly accounted for are the land reservations for the Society for the Propagation of the Gospel, the first settled minister, the public school benefit and Governor Wentworth. In the first case Governor Wentworth probably just took it upon himself to make this grant and others like it throughout the New Hampshire Grants to do his part in aiding the Episcopal Church to gain a hold in the northern New England colonies.¹⁵ The Episcopal religion had been slow in making progress in New England and in order to encourage its adoption The Incorporated Society for the Propagation of the Gospel in foreign parts was organized as a corporation in 1701. Governor Wentworth being an Episcopalian was probably making his contribution to the establishment of the church by making land grants to the Society. The exact number of the S. P. G. grants made by him is not known but in 1927 when the S. P. G. conveyed its title to these lands to the Trustees of the Dioceses of Vermont to the support of the Episcopate of the Protestant Episcopal Church in the State of Vermont, deeds for the lands were sent to one hundred and thirty-seven towns within which lands were located.¹⁶

In the second case, Governor Wentworth probably acted upon the Instructions issued to him, June 30, 1761, which were as follows:

You shall be careful, that Churches already built there be well and orderly kept, and that more be built, as the Province shall by God's Blessing be improved, and that besides a competent Maintenance to be assigned to the Minister of each Orthodox Church, a convenient House be built at the common Charge for each minister . . . ¹⁸

¹⁵ L. D. Clarke, *Vermont Lands of the Society for the Propagation of the Gospel* (New England Quarterly, vol. iii, 1930), pp. 279-296.

¹⁶ *Ibid.*, pp. 281, 290.

¹⁸ *New Hampshire Laws, op. cit.*, vol. iii, p. 274.

It is quite likely that the whole share was a part of the "competent Maintenance."

In the third case, no specific instructions seem to exist as to the share for the Public School but only a general statement recommending the Assembly ". . . to enter upon proper Methods, for erecting and maintaining of Schools in order to the training up of Yoth to Reading and to a necessary Knowledge of the Principles of Religion;"¹⁹ To grant a share of land was a good beginning to carry out this general recommendation. It was also the accepted practice in the older New England colonies to make such grants.

In the last case Governor Wentworth most certainly had no instructions from the King but acted in his own interest. Herein appears further evidence of the speculative character of the eighteenth-century method of handling land grants in this frontier region.

The provision in the charter for the incorporation of the town in combination with the legal recognition of the proprietary organizations in the New Hampshire statutes as early as 1719 made a clear distinction between the town organization and that of the proprietors. In Windsor there is no record of controversy between the two organizations. Apparently the propriety was able to take care of all affairs affecting the new settlement until the year 1769 when on the second of March the new inhabitants of the town held their first meeting. This meeting and the three subsequent ones were held illegally. The illegality was due to the fact that the meetings were held according to New Hampshire law at a time when the town was under the jurisdiction of New York. The inhabitants did this as a part of their attempt to come once more under New Hampshire jurisdiction. They probably acted on the advice of Governor John Wentworth of New Hampshire who advised the settlers

¹⁹ *Ibid.*, vol. ii, p. 627.

of the region west of the Connecticut River in regard to their difficulties arising from New York's jurisdiction . . . "to regulate themselves according to their grants from New Hampshire."²⁰ The first legal town meeting was not held in Windsor until May 19, 1772, just a few weeks after the inhabitants of the town had been successful in obtaining the New York patent. Legally no town meeting was held in Windsor until after the proprietors' organization had ceased to exist.

The Windsor charter was obtained through the efforts of Colonel Josiah Willard, a famous land speculator of the time. It is estimated that he was a proprietor in at least eighteen townships in New Hampshire and Vermont.²¹ Thus he was probably well versed in the ways of securing charters. Proof of his service in this case is found in the proprietors' records of the first meeting when it was "7^{ly} Voted to Pay Colo; Josiah Willard three Dollars on each to Defray the Charges of the Charter and plan of the Town."²²

There is little doubt that Colonel Willard secured the charter with great ease and with no great degree of formality. No specific information in the case of Windsor seems to exist but statements as to the ease of obtaining other grants in this frontier region do exist. One of real interest is that made by Oliver Willard, Esquire, a brother of Colonel Josiah Willard. He was Assistant Judge of the Inferior Court of Common Pleas for the County of Cumberland in the Province of New York and an inhabitant of the town of Hartford, a neighboring town of Windsor. In a sworn statement made in the city of New York, March 6, 1771,

²⁰ *Documentary History of New York*, vol. iv, p. 424; Wardner, *op. cit.*, ch. xiv, Organizing a Town Government and ch. xxvi, Lawful Town Government.

²¹ Akagi, *op. cit.*, p. 212.

²² Town Proprietors' Records of Windsor, Vermont.

he makes the following comment on how he obtained two of the five township charters which he secured from Governor Wentworth a few years earlier. The statement in part was,

That this Deponent was well acquainted with the late Governor Wentworth, and knows his manner of granting the Crown Lands, the said Governor told his Deponent when he sued out the first of the five grants above mentioned, that there was no need of calling the Council for their advice therein, as he had obtained about the Close of the last War their general advice for granting the Lands on Connecticut River, on the West side of which these five Townships lay. That with respect to two of these Tracts this Deponent made only a verbal application to him, who thereupon gave him a note to the Secretary, who accordingly issued the Letters Patent, all of which passed without any Survey, except of the River by Joseph Blanchard, Esquire, and without any other advice of Council but the General Advice above mentioned.²³

The above statement leads one to give very little weight to a statement of Governor John Wentworth in regard to the formality followed by his uncle, Governor Benning Wentworth, in granting charters in the new area to those desirous of making settlement. The former said in this connection that "Upon the petition of sixty or eighty men for a township . . . which they are desirous to cultivate, the quantity is regularly surveyed and granted to the petitioners and their heirs forever."²⁴ There is little evidence that the original proprietors of Windsor had any desire to cultivate the lands. There is much to show, however, on the other hand, that they were merely interested in holding and selling the lands for a profit and acted in the capacity of absentee proprietors.

²³ *Documentary History of New York*, vol. iv, p. 428.

²⁴ *New Hampshire State Papers*, vol. xviii, pp. 560-577.

Before turning to the story of the organization of the town proprietors of Windsor it is well to note the fact that although the Windsor charter carried provision for a quit-rent it never materialized. Windsor was not directly under the New Hampshire government after the boundary dispute between New York and New Hampshire was settled in 1764. The shilling a hundred acres was never collected. If the region had remained under the jurisdiction of New Hampshire, it probably would have made no difference for the New Hampshire reaction against quit-rents had been rather clearly demonstrated in the preceding decades. New Hampshire province followed Massachusetts and the other New England colonies in upholding a land system free from feudal dues.²⁵

²⁵ Bond, *op. cit.*, pp. 51-61.

CHAPTER III

THE TOWN PROPRIETORS OF WINDSOR

THE organization of the town proprietors in Windsor was a quasi-corporation possessing definite legal identity and authorized by law to deal exclusively with the control, regulation and disposal of the common and undivided lands of the township. The earliest law to that effect was passed by the New Hampshire Province in 1718.¹ It dealt specifically with the order and procedure of the proprietary meetings. In the following year another act was passed which gave definite legal recognition to the proprietors and set forth their jurisdiction over the common and undivided lands of the town.² Their policies in regard to the same were to be worked out and agreed upon by "the major part of the interested." However, the act of 1761 established the general procedure for conducting the Windsor proprietors' meetings. It outlined the form used in calling the first legal meeting held at the house of Mr. Hilckiah Grout in Winchester, New Hampshire, on Tuesday, the fifteenth day of December, 1761. That portion of the Act of 1761 which has to do with calling the proprietors' meetings is as follows:

Be it Enacted By the Governor Council & Assembly That where no Particular Method has been Settled & Agreed upon by any Such Proprietors for Calling their Meetings (which they may do at any Legal Meeting) any Justice of the Peace is hereby Authorized, upon the Application of so many of

¹ *New Hampshire Laws, op. cit.*, vol. ii, pp. 264-265. Passed May 14, 1718, 4 Geo. I.

² *Ibid.*, vol. ii, p. 340. Passed May 2, 1719, 5 Geo. I.

Said Proprietors as own a Sixteenth part of the Shares rights or Interests of the whole made in writing Expressing their Desire that he would Notify & call a Meeting of the Proprietors and the end & Design of it. He shall Issue a Warrant or Notification to the Proprietors who are to Meet Setting forth that such Application has been made the time & place of holding and the Business to be transacted at the Meeting, and shall Deliver the Same to One of the Proprietors who made Such Application who shall cause the Same to be Printed in Some Public News Paper which shall be most likely to Notify the major part of the Proprietors three weeks Successively & Shall also cause the Same to be Posted up in Some Public Place within the Town or Parish where such Estate lyes (if within any Settled Town) the same time before the Day of holding such Meeting. And such Proprietors may at Such or any other legal Meeting Chuse any Officers they shall judge necessary to do any business of the Proprietors who Shall be Sworn to a Faithful Discharge of the duty & Office to which they shall be Respectively Chosen & Shall Continue therein & be hereby Authorized to Discharge the Same until others shall be Chosen to Succeed them.*

Sufficient proof that the Windsor proprietors followed the prescribed form is found in the advertisement printed in a newspaper, the *New Hampshire Gazette*, under date of November 13, 1761, published in Portsmouth, New Hampshire,

PROVINCE OF NEW-HAMPSHIRE

WHEREAS Application has this Day been made to me the Subscriber, one of His Majesty's Justices of the Peace for said Province, by the Owners of more than one sixteenth part of the Rights of shares in the Township of Windsor, in said Province, desiring me to Notify or Warn the proprietors of said Windsor, to meet at the Dwelling House of Mr. Hilckiah Grout in Winchester in said Province, on the third Tuesday

* *Ibid.*, vol. iii, pp. 231-233. Passed March 6, 1761, 1 Geo. III.

in December next, at Twelve o'Clock, to act and vote on the following Articles, viz. 1. To chuse a Moderator. 2. To chuse a proprietor's Clerk. 3. To chuse a proprietor's Treasurer. 4. To chuse Assessors. 5. To chuse a proprietor's Collector. 6. To see if the Proprietors will agree to lay said Township into Lots, and raise Money for that End or any other for the Advantage of Said Township, and forwarding the Settlement thereof. 7. To agree on a Method for calling proprietors Meetings for the future. 8. To see if the proprietors will accept of a plan that may then be exhibited, to proceed to draw their Lots accordingly. And the said proprietors are hereby Notified to meet at the above mention'd Time and place accordingly.

Nov. 6 1761

D. PEIRCE.⁴

It is especially important to note the places where the earlier meetings of the Windsor propriety were held because it is indicative of the speculative and absentee character of the original proprietors. The first three meetings called in the years 1761, 1762 and 1763 were all held in Winchester, New Hampshire.⁵ The fourth meeting was held in 1764 at the house of Samuel Stevens, Charleston, New Hampshire.⁶ After this date there is an unfortunate gap in the proprietors' records. The next recorded meeting was in 1767 and met in Windsor at the house of Thomas Cooper, the proprietors' clerk.⁷ Thus for the first four years at least after the proprietors began to hold legal meetings they met elsewhere than in Windsor. This goes to show that those actively interested in the organization were non-resident and found other towns much more convenient for holding their meetings. When

⁴ This advertisement is quoted by Wardner, *op. cit.*, p. 35.

⁵ Town Proprietors' Records, Windsor, Vermont. First meeting December 15, 1761; second meeting, April 12, 1762; third meeting, August 24, 1763.

⁶ *Ibid.*, Fourth meeting, July 25, 1764.

⁷ *Ibid.*, Meeting, November 3, 1767.

the records begin again late in the year 1767 apparently a sufficient number of the proprietors were actually residing in Windsor to make it the most convenient place for meeting and carrying on their affairs.

The officers of the organization were elected in the legal meetings. Chief among them were the moderator, who presided at the meetings, the clerk, the treasurer and the surveyors. At various times special agents and attorneys as well as special committees were appointed to transact the business of the propriety. The central figure was the clerk who had many duties to perform. The most important were to issue notice of the meetings; to record the business of the proprietors' meeting, particularly to keep a record of all divisions or sale of land; to transact all the business of the propriety which was decided upon in the meetings; and to represent the propriety unless others were especially assigned to do so.

The existing records show that only two men served as proprietors' clerk. From 1761 to 1764 Dr. Thomas Frink, a physician of Keene, New Hampshire, and an original proprietor, served in that capacity.⁸ In November, 1761, the name of Mr. Thomas Cooper appears as clerk and he continued to hold the office until the organization went out of existence. Thomas Cooper was not an original proprietor and the available proprietors' records do not give any evidence of his being voted into membership. It is quite likely he became a proprietor through purchase of one or more propriety rights or shares, although the land deeds of the town do not record any such purchase until after he had been elected to office. The earliest record of a purchase by him is a land deed dated July 8, 1768.⁹ Few proprietors or

⁸ *Ibid.*, The Records of the first four meetings.

⁹ Windsor, Vermont, Land Deeds, Town Clerk's Office, Windsor, Vermont, vol. i, p. 531.

inhabitants of the town ever took such an active interest in Windsor's welfare either in the capacity of a proprietor or as a freeman participating in town affairs as Thomas Cooper.¹⁰ During his life he very actively and earnestly served the interests of the town and later the interests of the State of Vermont.

Membership in the Windsor propriety in the first instance was limited to the original proprietors listed in the charter. Upon what basis Governor Benning Wentworth admitted them into membership is not recorded. The provisions of the charter requiring every grantee, his heirs and assigns, to cultivate five acres of every fifty in his share within five years on penalty of forfeiture would seem to indicate that settlement was the qualification for membership. Governor John Wentworth's statement quoted earlier in these pages also would indicate that membership in a propriety came to those who were interested in cultivation and settlement. A careful study of the Windsor records shows conclusively that settlement was not the basis upon which this original membership rested. The records indicate no particular qualification but do show that speculation dominated the situation. To be more specific in regard to the original proprietors, the records show that only seven of the fifty-nine ever took active part in the organization. Four of these seven discontinued their activity after 1764. The remaining three maintained their active interest throughout its existence. These three were Zedekiah Stone, David Stone, Jr. and Samuel Stone. Furthermore they were the only original proprietors who settled in Windsor.

Non-original membership in the propriety rested on propriety vote or the purchase of a propriety share or right. As far as existing records show no members were admitted by the former method. It is extremely difficult, in fact im-

¹⁰ Wardner, *op. cit.*, *passim*.

possible, to determine the number of men who became proprietors through purchase of rights. There are two sources from which information may be gained but neither one yields very satisfactory results. The first is the proprietary records. They do not bear the names of those who purchased shares. As the records of the drawings of land were made in the names of the original proprietors, again nothing is gained. Also the records are missing from 1764 to 1767. The records do show the names of twenty men who were non-original proprietors and who were active members of the organization. The second source is the land deeds of the town which carry the record of transfer of the proprietary shares. This source is also incomplete due to the carelessness of making such records at that time and to the fact that the shares of the original proprietors of the New Hampshire land in many cases were sold by itinerant vendors who traveled through New England, New York and New Jersey. In such instances legal records of transfer were not likely to be made.

A careful survey of the land deeds of Windsor shows that several men became non-original proprietors through purchase of proprietary shares who never resided in Windsor and who were apparently purely speculators and absentee holders. For example, Jonathan Blanchard of Dunstable, New Hampshire, purchased four whole shares at five shillings a share within five days after the charter was issued. Dudley Chase, Samuel Chase and Moses Chase, all of Cornish, New Hampshire, each held proprietors' shares and either the purchase or sale of the same is recorded in the Windsor land deeds. Since none of these men ever took any active interest in the propriety, it is unnecessary to consider them further.

Of more importance is the question, what do the Windsor land deeds show in regard to the twenty men who were

active non-original members of the propriety? They show that only eight of the twenty became members through purchase of proprietary rights or shares. Two of the eight were members of the Willard family and soon withdrew by selling their shares to others. Twelve men of the twenty are unaccounted for in the land deeds. There seems to be no record of how they became proprietors.

Membership in the case of either original or non-original proprietors might be inherited. The charter definitely stated that the shares were granted to the grantees, their heirs, assigns and successors. In the seventeenth century when it took several generations to make a complete distribution of all the common and undivided land, this was of real significance. In Massachusetts an act was passed in 1723 which gave legal recognition of the charter provision and definitely assigned the right of any deceased proprietor only to his heirs even if there was no will.¹¹ In the case of New Hampshire no such legal recognition was provided. This was without doubt due to the fact that the proprietors' organizations of the eighteenth century were of short life and highly speculative. The main purpose of the eighteenth century organizations seemed to be to make a complete division of the common and undivided lands as soon as possible and thereby secure full control and freedom to dispose of them as they wished.

Membership by inheritance played no particular part in the Windsor propriety in spite of the charter provision. The charter was granted in 1761, the distribution of common and undivided land was completed late in 1771. In this short period of time heirs, assigns and successors had little chance to enter the picture.

The members of the Windsor group of proprietors numbered at least twenty-three in the year 1767 when the propriety had shaken down and settled into its final form.

¹¹ *Massachusetts Acts and Resolves, op. cit.*, vol. ii, pp. 284-285.

Three of these were original proprietors. Eight show in the land deeds definite proof of membership by purchase. The remaining twelve are unaccounted for, as there is nothing to show how they acquired their membership in the organization.

These twenty-three proprietors made up the propriety. They actually settled in Windsor and became responsible for the distribution of the lands and the settlement of the town. The original number was fifty-nine. This seems to indicate that there was a considerable concentration of shares in the hands of a few members of this propriety and that they as well as the original proprietors engaged in land speculation on a considerable scale. This is borne out by a study of the land deeds. One non-original proprietor, Israel Curtis, purchased at least sixteen whole shares in the year 1767 alone.¹² Further comment on speculation by the non-original proprietors residing in Windsor will be presented in connection with the activities of the Windsor proprietors.

From this survey of membership in the Windsor proprietors' organization it seems justifiable to conclude that the careful control of membership characteristic of the seventeenth century as described by Dr. Akagi was not exercised in similar organizations in the eighteenth century.¹³

To enable the proprietors to carry out the division, improvement and management of the land it was necessary for the propriety to possess certain corporate powers, such as to levy taxes, to sue and to be sued, to levy penalties and to make by-laws. Such powers were legally provided for at one time or another by the New Hampshire General Court.

¹² Windsor Land Deeds, vol. iii, p. 39, October 3, 1767, a deed of fourteen shares purchased from Josiah Willard, Jr., vol. iii, p. 57, September 3, 1767, deeds of the whole right of Joseph Ashley and the whole right of Simeon Cooley, both of Sunderland, Mass.

¹³ Akagi, *op. cit.*, p. 67.

In the year 1718 an act was passed by that body to enable the towns, villages and proprietors of common and undivided lands to sue and be sued. The act first stated that the propriety could

Sue, Commence, and Prosecute any suits or actions, in any Courts proper to try the same, either by themselves, or their Agents, or Attornies, to be appointed by such as have in them the major part of the Interests: And in like manner to defend all such Suits, and Actions as shall be Commenced against them, or any of them.¹⁴

Secondly, provision was made for the proprietors to “. . . chose Agents or Attornies to prosecute for, or defend them, such choice being certified by the Clerk of such. . . Proprietors, or by such other Person as they shall appoint.”¹⁵ Finally, the Act provided that if the proprietors shall be sued, sufficient notice to appear and answer was a Writ of summons briefly declaring the case presented to their clerk or other principal inhabitant or proprietor fourteen days before the sitting of the court where the case was to be heard.

The Act of 1761 gave legal recognition to the proprietors' right to tax by stating that “. . . the Interest & Estate of Every such Proprietor so lying in Common Shall be Liable to pay & Stand Charged with his part & proportion of any Sum of Money which at any Legal meeting shall be Agreed upon & Voted to be Raised.”¹⁶ It further provided that when the tax list was drawn up by the assessors a warrant was to be issued to the collector setting forth his duty and indicating the time and place where the assessments should be paid. It also carried the provision that in cases of fail-

¹⁴ *New Hampshire Laws, op. cit.*, vol. ii, pp. 302-303. Passed May 14, 1718, 4 Geo. I.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, vol. iii, pp. 231-233. Passed March 6, 1761, 1 Geo. III.

ure on the part of proprietors to pay the assessment within fourteen days after the time designated, the amount was to be raised by the sale of so much of the interest and property of the proprietor, and a notice of the intended sale was to be posted. If the proprietor paid the tax before the sale was actually made his property remained in his possession but if not so it was sold and a deed of conveyance issued to the purchaser. The proprietors were authorized by the act at any legal meeting " . . . to Confirm, Ratify & Establish any Grants Conveyances Votes and Transactions by them Designed and Intended to be made done performed & Transacted Agreeable to Such Design Intention & Aim, notwithstanding any want of form Legal & proper Terms, or Defects, & Defaults of Process Relative to the Premises."¹⁷ These same provisions were re-enacted in 1766 and were to be in force five years.¹⁸

It is important to note that it was " the Interest and Estate of Every such Proprietor So lying in Common " which was liable to be taxed under this law. In the seventeenth and early eighteenth centuries such a provision was sufficient for the proprietors to secure the necessary funds to carry out their activities as proprietors and actually get settlement under way. The chief reasons for this were two-fold. First, the proprietors, in the main, at that time actually settled in the town, assumed the responsibility for developing the community and played the role of proprietor seriously and effectively. Secondly, the division of the common land was accomplished over a long period of time and in addition to the undivided common land there existed the common fields. Thus a considerable proportion of the township lands could be taxed under the above provision. Being seriously

¹⁷ *Ibid.*

¹⁸ *Ibid.*, vol. iii, p. 385. Passed January 10, 1766.

interested in the development of the town, the proprietors were quite conscientious in meeting their assessments.

By the middle of the eighteenth century, however, many proprietors were absentee and had only a speculative interest in land. They were interested in dividing the lands as quickly as possible. In so far as they were successful in doing so it left only a limited amount of taxable land under the above tax provision. This was most significant for it meant that the resident proprietors were short of funds to carry on the work of settling the town. Thus by 1768 it was necessary to revise the tax law to meet this condition.

Because the act starts out with a definite statement of the prevalence and seriousness of this state of affairs it is worth while before setting forth the provision of the act itself to quote the opening paragraph which sums up the situation. The conditions are described as follows:

Whereas the Speedy payment of the Sums of money, agreed to be raised by any Proprietors of New Townships, & Tracts of Land proposed to be Settled, is absolutely necessary to the carrying on the same, which payments cannot be Secur'd, but by Charging the Land with the same, as by frequent Transfers the Owners are uncertain, and often not to be found.—And Whereas by an Act past in the first Year of his Majesty's Reign, the Common & undivided Interest of any Proprietor, is made liable to pay, & stands Charged with, his part & proportion of any Assessment, made on the Proprietors of such Common Land, as in Said Act is Declared, which Act has been found to be very Serviceable, & tends much to Expedite the Settlement of New Townships.—But Since by the Practice of Dividing a Township, into Several Separate lots at Once, & Drawing for such Lots, the whole is Severd & Divided, presently after it is granted, and no part of the Township remains in Common & undivided, whereby no Tax can be Legally Imposed on the Separate lots, altho' the Land be Waste & uncultivated, And the Promoting the Settlement thereof as

Generally useful, as if the same was Common & undivided. Yet none but the free & Voluntary Proprietors, pay the necessary Charges, which is very unequal & Greatly retards the settlement, and Renders a further Provision necessary.¹⁹

The necessary provisions which the act set forth were first

. . . That any Sever'd and Separate lot of Land of any Proprietor, of any Township or Tract of Land, in said Province, granted & holden on Certain Terms of Settlement within a limited time, tho' holden by such Proprietor in Severalty, being part of the Township or Tract so Granted, shall be liable to, & stand Charged with, its part & Proportion of any Assessment, or Tax that has been or shall be Legally made, on & by Such Proprietors . . . & to be Seized, taken & Sold, in the Same manner & under all the Same Regulations, as in & by the said Act is provided & directed, to be done in the Case of Disposing of a Common right or any part thereof for the payment of any such Tax.²⁰

The act further stated that if the proprietors' right or lot held in severalty had been exempted from Duty of Settlement the above provision was not to be extended. Also, it was not to be extended to any proprietor who had fully complied with the terms and duties declared in the grant toward satisfying and discharging the terms and duties of another proprietor. To prevent unfairness to purchasers the tax on such lots was to be in the proportion of such lots to the original right and the particular lot was to be liable for such proportional sum and no more.

The Windsor proprietors were faced with the problem of delinquent members and proceeded to act. Evidence of

¹⁹ *Ibid.*, vol. iii, pp. 510-511. Passed October 28, 1768, 9 Geo. III. For an earlier expression of the same problem see, *ibid.*, pp. 231-233. Passed March 6, 1761, 1 Geo. III.

²⁰ *Ibid.*, vol. iii, pp. 510-511.

such action is found in the proprietors' records of a meeting held Oct. 3, 1768, which carries the following statement:

Voted to come into a method of selling of the lands of the delinquent proprietors to defray the charges as is mentioned in the third article in the warrant, and choose Joab Hoisington, Solomon Emmons, Benjamin Wait and Steel Smith a committee to Sell Said lands according to the Laws of the Province together with the proprietors' Clerk.²¹

Unfortunately the names of the delinquent proprietors are not given nor does there exist a record of the sales. The proprietors carried out the sale under provisions of these various acts passed by the New Hampshire legislature.

The power to pass by-laws and issue orders does not seem to be specifically stated in the proprietary laws of New Hampshire but were probably assumed to be included in the provisions of the Act of 1719 which gave the proprietors the right to order, improve or divide the common and undivided land "in any such way and manner, as shall be concluded and agreed upon by the major part of the interested, the Voices to be collected and accounted according to the Interests."²² One penalty which the moderator or presiding officer could enforce was a fine of five shillings if persons were not silent at his desire. If the person persisted in speaking without leave from the moderator such person could be ordered to withdraw from the meeting. If he refused to do so the offender forfeited and paid the sum of twenty shillings.²³ Such was the way in which a better regulated proprietary meeting was secured.

²¹ Windsor Proprietors' Records, October 3, 1768.

²² *New Hampshire Laws*, vol. ii, pp. 340-345. Passed May 2, 1719, 5 Geo. I.

²³ *Ibid.*, vol. ii, pp. 264-265. Passed May 14, 1718, 4 Geo. I.

The proprietors of Windsor as well as the proprietors in general during the eighteenth century enjoyed the right to alienate their rights in land without question. This is in contrast to the regulations of the seventeenth century when the towns in Massachusetts during the early years claimed the right of passing judgment upon such action by the proprietors and insisted that such could be done only upon its sanctions.²⁴

In conclusion, there appears a contrast of corporate powers of proprietors that is significant. According to Akagi the right of inheriting all propriety rights played an important part in perpetuating the propriety interest and "lay at the basis of all corporate powers and . . . solidified the propriety right against the non-proprietors."²⁵ The present analysis of the facts shows that in reality it played no such important part in the Windsor propriety. The original proprietors were speculators and sold their rights to others who divided the common and undivided land over a short period of time. A complete and final division was made and the propriety ceased to exist before the non-proprietors became numerous enough to launch an attack against the proprietors or commoners as they were often called.

Records were kept of the meetings and transactions of the Windsor proprietors and they contained the minutes of the meetings as well as the record of the division and drawing of the lots or lands. The former were sketchily done. It is probable that they were regularly kept although there is a gap between the meeting held August 29, 1764, and the meeting on November 3, 1767. This unfortunate gap is probably not due to any irregularity in keeping the records but is more likely due, as Wardner points out, to the fact that the missing records cover the early years of the controversy

²⁴ Egleston, *op. cit.*, pp. 40-41.

²⁵ Akagi, *op. cit.*, p. 77.

arising from the New York claims and they were probably handed over to Colonel Nathan Stone who represented the Windsor proprietors in New York City.²⁶ They were presumably among the missing records which the town in 1782 tried to get from Colonel Stone when a committee was appointed to request him to return certain public papers in his possession relating to town affairs. The missing records may be supposed to contain valuable information regarding the proprietors' attempt to secure a New York patent, the appointment of Colonel Stone as their representative and the instructions which he was to follow.

The records of the division and the drawing of the lots of land are complete. Each time a division and drawing occurred, however, the same was recorded in the name of the original proprietors. This method of procedure may have facilitated the organization and avoided confusion but it presents certain difficulties for one who is studying the organization. For instance, such records are of no assistance whatever in aiding to build up any information as to the non-original proprietors nor do they aid in making an estimate of the amount and extent of speculation in land which was carried on by individual members of the organization. The records were of great importance, because the titles to land run directly from the proprietors' records and not from the registry. In cases of dispute these were the titles referred to. The superior court of New Hampshire held such an opinion in regard to the value of the proprietors' land records.²⁷ In the case of Windsor it is doubtful if such disputes arose, but if any such had arisen this opinion of the New Hampshire superior court would have guided their actions, for the proprietors continued to carry on under New

²⁶ Wardner, *op. cit.*, p. 42.

²⁷ See Colburn *vs.* Ellenwood (4 New Hampshire 99); Atkinson *vs.* Bemis (11 New Hampshire 44).

Hampshire procedure even after 1764 when the King proclaimed them under New York's jurisdiction.

The activities of the Windsor proprietors were varied. Many of them already have been suggested. But for separate and more detailed discussion they may be divided into three main groups: first, the activities of the proprietors aiding the settlement of the town of Windsor; secondly, the activities involved in the division of land; and thirdly, the activities of the proprietors as speculators in land.

The activities aiding the settlement of Windsor were carried on almost entirely by the non-original and non-absentee proprietors or by that relatively small group of proprietors who came to reside in the town and probably became proprietors through purchase of proprietary rights. The outstanding exceptions to this statement cannot be overlooked. The first is that three original proprietors, Zedekiah Stone, David Stone, Jr. and Samuel Stone, took an active part in the settlement. The second is that Zedekiah Stone and Samuel Stone were members of the first committee "to view and lay out the town".²⁸ The six other members of the committee, however, were absentee proprietors.

This committee made up almost entirely of absentee proprietors apparently made little headway in the task assigned them except to lay out the house lots and meadow lots; for the warrant issued June 10, 1764, states that one item of business was "To see whether the committee formerly chosen by the proprietors of Windsor to lay out roads and the blank lots will do anything concerning laying them out, if not to choose a new committee that will lay them out."²⁹ When the proprietors considered this item in the warrant on August 29, 1764, they "then voted and chose Samuel Hunt, Steel Smith and Enos Stevens a committee to join the other

²⁸ Windsor Proprietors' Records, Dec. 15, 1761.

²⁹ *Ibid.*, June 10, 1764.

Committee to Lay out the Blank house lots and Roads in Said Town of Windsor and that any three of the Committee shall be allowed to act in the affair." By this arrangement it was possible to make progress in planning and laying out the town. The three members added to the committee would be in Windsor as settlers and resident proprietors and they could carry on the work in the interests of the settlement in cooperation with Zedekiah and Samuel Stone of the first committee who were also resident proprietors.

To lay out a plan of the town was one of the first and most necessary things to be done in settling the township. It involved provision for the town common and burying ground, the streets and main highways and a rough division of the land into house lots, meadow lots and hundred-acre lots. It has already appeared that the first committee made up almost entirely of absentee proprietors made only slight progress in their task. They drew up the house lots and meadow lots and such a plan must have carried provision for the main highway. The revised committee for planning the town apparently accomplished much more, for on November 9, 1767, the proprietors

Voted to Except a new Parchment Plan and the house lots and meadow lots as they now Stand numbered on Said plan and also putting each house lot and meadow lot to the original proprietors names as they now Stand Drawn on a list given into the Clerk's Office this day to be recorded.⁸⁰

Also at the same meeting the next item recorded was "Voted to Lay out the Town on the Plan and draw for it";⁸¹ and the final business transacted that day was "Voted and chose Lieutenant David Stone and Sergeant Joab Hoisington and Ensign Benjamin Wait, Solomon Emmons and Ensign Steel

⁸⁰ *Ibid.*, November 9, 1767.

⁸¹ *Ibid.*, November 9, 1767.

Smith, a committee to Lay out this Town.”³² At a meeting held a short time later the propriety issued the following instructions to the above committee.

Voted that the committee Shall Lay out the Town as follows Viz., that they Shall Lay out ten acres of land for a public yard in the town where they shall think most advantageous for the publick and likewise that the Said Committee Shall Lay out one fifty acre lot to each Right as near Said publick yard as they Shall think proper and likewise the Rest of the Town Shall be laid in hundred acre lots excepting the bad lands which is to be adjudged by the Discretion of the Said Committee.³³

In the following summer the propriety accepted the plan of the fifty acre lots.³⁴ It was not until March 12, 1771, that anything more was done concerning the town plan. At that time a new committee was chosen to lay out the town. The committee was composed of Ebenezer Hoisington, Benjamin Wait and Ebenezer Curtis and they were instructed to follow the directions given to the former committee in December, 1767. They submitted their plan which was a plan for the hundred-acre lots. It was accepted at the last meeting held by the Windsor propriety.³⁵

To encourage settlement it was necessary for the proprietors to establish a saw mill and a grist mill in the town to meet the needs of the members of the self-sufficient community. The committee appointed at the first meeting³⁶ “to view and lay out the town” did nothing in this respect, in fact no specific mention concerning mills was made in the instructions to the committee but at the second meeting³⁷

³² *Ibid.*, November 9, 1767.

³³ *Ibid.*, December 17, 1767.

³⁴ *Ibid.*, July 18, 1768.

³⁵ *Ibid.*, November 14, 1771.

³⁶ *Ibid.*, December 15, 1761.

³⁷ *Ibid.*, April 12, 1762.

the committee for building mills and laying out roads was revised and two resident proprietors were added to the group. This committee apparently was active for at the third meeting held the following year it was

Voted and granted Israel Curtis fifty acres of land adjoining to the mill brook so called in the Township of Windsor in what form he thinks best, leaving the common land in good form, and leaving ten acres between said brook and house lot No. 41 for a meeting house place training field and burying yard. Reserving Suitable Roads in Said land for the use of the Town Six rods wide Said ten acres to be left adjoining the South side of the house lot No. forty one this done in case the above named Israel Curtis Shall give bond (to the committee appointed to see that mills are built) of one hundred pounds Sterling money of Great Britain to build a Saw mill in Said Town of Windsor by the first day of August one thousand Seven hundred and Sixty four, and to build a grist mill as soon as there shall be twenty inhabitants that shall raise one acre of grain apiece in Said Town, and that the Said Curtis shall have the privilege of the said mill stream so called.³⁸

It was not until the year 1767 that the proprietors voted to release the above bond to Israel Curtis at the fulfilment of mill construction.³⁹ At the same meeting Israel Curtis was allowed to take

meadow lot thirty-six and all the lands Lying between the meadow lots on the River and the meadow lots on the mill Stream . . . in Lieu of the fifty acre mill pitch so called Excepting three acres of land for a publick yard, and likewise accepting ten acres of land that is already pitcht . . . and also Excepting a Suitable Highway through the same for the Use of the Town . . .⁴⁰

³⁸ *Ibid.*, August 24, 1763.

³⁹ *Ibid.*, November 9, 1767.

⁴⁰ *Ibid.*

Thus in return for the water rights and approximately fifty acres of land Israel Curtis provided the settlers of Windsor with both saw and grist mill facilities.

Equally important for the development of the town were adequate transportation and communication facilities. To provide the community with roads, highways and bridges was a task not so easily accomplished as the construction of mills. First, the attempts at road construction will be presented and that will be followed by their efforts to secure bridges.

The committee reorganized in 1762 had instructions to lay out roads.⁴¹ Apparently it accomplished nothing for the warrant of the meeting issued in 1763 carried notice that road construction and financing were to be considered.⁴² These items however were dismissed and received no consideration when the propriety met. The following year the warrant⁴³ again featured the road problem and this time the proprietors voted new members to the committee responsible for roads and also "Voted to assess the Sum of twenty Shillings Lawful Money on each original Right for to defray the necessary charges of the proprietors for clearing roads and anything they shall think proper."⁴⁴ Assessors were also appointed at this meeting. The accomplishments of the next three years are unknown for the records are missing. Late in 1767 when the records again become available it appears that the road problem was given further attention for at this meeting the propriety voted a committee "to accept of what Roads hath been Laid out, and also to Lay out Roads for the benefit of the Town."⁴⁵ It was also "Voted to work

⁴¹ *Ibid.*, April 12, 1762.

⁴² *Ibid.*, warrant of meeting held August 24, 1763.

⁴³ *Ibid.*, June 10, 1764.

⁴⁴ *Ibid.*, August 29, 1764.

⁴⁵ *Ibid.*, November 9, 1767.

three days at Highways to each Right at three shillings and Six pence pr day." At this same meeting they dismissed the item of the warrant which called for the appointment of surveyors to see that the highways were laid out according to the law of the country.

In 1768 it was necessary to raise more funds and it was voted to levy six dollars on each right to defray the charges of highways. It was designated that of this amount three dollars and a half be appropriated for the highways and the remaining two dollars and a half for the necessary charges of surveying.⁴⁶ Difficulty arose in collecting the tax apparently, for a few weeks later the proprietors voted on the manner of distributing the above tax and on a method of selling the lands of the proprietors delinquent in tax payments. The procedure they followed was that set forth in the New Hampshire law of 1761; for they voted that the tax should be laid as follows,

that Seven Shillings Shall be laid on each meadow lot and 2^{ly} that three Shillings and Six pence Shall be laid on each original house lot. 3^{ly} that three Shillings and Six pence Shall be laid on each of the house lots of the Second division of fifty acre house lots and 4^{ly} that Seven Shillings Shall be laid on the present undivided lands of each Right.⁴⁷

To insure against evasion of this tax the proprietors on the same day

Voted to come into a Method of Selling of the lands of the Delinquent proprietors to defray the charges as is mentioned in the third article in the warrant and choose Joab Hoisington, Solomon Emmons, Benjamin Wait and Steel Smith a committee to Sell Said lands according to the Laws of the Province together with the proprietors clerk.⁴⁸

⁴⁶ *Ibid.*, July 18, 1768.

⁴⁷ *Ibid.*, October 3, 1768.

⁴⁸ *Ibid.*

It was about this time that Israel Curtis the mill builder became involved in the construction of roads for the propriety. In 1768 the propriety voted to sell a piece of meadow land to the highest bidder.⁴⁹ Israel Curtis bid in the piece of land for three pounds ten shillings an acre. Apparently he did not pay cash because the following year the proprietors voted that payment for the land sold him "at Vandue" could be made in part by a book in which the proprietors' records could be kept and the remainder could be worked out.⁵⁰ It was not until a year later that Israel Curtis was informed of the nature of the work to be given. At that time the proprietors choose a committee to deal with him and assign him a piece of work on the town roads.⁵¹ It was further voted that the committee

should settle with Israel Curtis by the fifteenth of September next and that half the work at Said Roads. . . . Shall be done by the twentieth of November Next and the other half by August next A. D. 1771 or the land to return back to the proprietors if the work is not done.⁵²

Apparently Curtis did not accomplish the first half of the work by November, 1770, because in the spring of the following year the proprietors voted that he was to receive the land if he did one half the work by the fifteenth day of May and the other half by August first, 1771.⁵³ Whether Curtis actually fulfilled these requirements the records of the next and last meeting of the proprietors do not show.⁵⁴

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, April 6, 1769.

⁵¹ *Ibid.*, August 27, 1770.

⁵² *Ibid.*

⁵³ *Ibid.*, March 12, 1771.

⁵⁴ *Ibid.*, November 14, 1771.

These attempts on the part of the propriety to construct roads, either through special committees or through Israel Curtis in payment for land, are left so to speak hanging in the air as far as any information which may be gained from the records is concerned. In neither case do they say what was accomplished. The inference is that it was very little.

The same condition held in the case of the proprietors' efforts to get bridges constructed. Twice attempts were made to get a bridge built over the mill brook. In the first case, Joseph King, a carpenter, was selected to do the work but nothing ever came of it.⁵⁵ The following year a committee was appointed to build a bridge over the same stream.⁵⁶ In this case also the records do not say whether the committee succeeded or not. Later the propriety voted a narrow strip of land to Joab Hoisington provided he would build a bridge and maintain it for public use. The location for the bridge is not mentioned. Again the records do not show whether it was built or not.

This brief description of the proprietors' activities for transportation and communication facilities seems to indicate, first, that such activities were not the major concern of the proprietors; secondly, that only a minimum amount of communication facilities was actually provided; and thirdly, that the proprietors' organizations, as evidenced by the Windsor propriety, were not carrying on the activities in the interest of the settlement and development of the communities as earnestly and wholeheartedly as the similar organizations of the seventeenth century. This state of affairs was due to the fact that the leading activities of the Windsor propriety and other similar proprieties of the period were dominated by one leading interest and that was to bring about the division of the lands as quickly as possible. The reason for this

⁵⁵ *Ibid.*, December, 1767.

⁵⁶ *Ibid.*, October 3, 1768.

haste emphasizes again the dominance of the speculative spirit, a motive that continually appears especially in the case of the twenty-three or more non-original members who constitute the propriety.

The activities of the Windsor proprietors in providing religious and educational facilities were limited to the requirements set up by the charter. The charter required that one share each should be set aside for the public school, the glebe for the Church of England, the Society for the Propagation of the Gospel in foreign parts and the first settled minister. Early in the year 1762 the proprietors voted that the committee "be defined to lay out the School and the Glebe and Church of England Rights where they shall think proper the rights each by themselves."⁸⁷ The record of the division of lands shows that in each of these three cases the shares were made up entirely of hundred-acre lots and were drawn along with the other drawings of such lots on November 14, 1771. To these public interests no house lots or meadow lots were granted. Thomas Cooper, the clerk, notes at the end of his record of the division of hundred acre lots, "I cannot tell anything concerning the Church of England lots."⁸⁸

The ministers' drawings were distributed just the same as the proprietors' drawings and were made up of a house lot, meadow lots and two one-hundred-acre lots. Provision was made for a site for a school and a church by the granting of ten acres for a public yard.⁸⁹ The proprietors' organization took no part in providing the actual immediate facilities for public worship.

The matter of defense seems to have been a problem for which the Windsor proprietors were not responsible. De-

⁸⁷ *Ibid.*, April 12, 1762.

⁸⁸ *Ibid.*, November 14, 1771.

⁸⁹ *Ibid.*, December 17, 1767.

fense was the problem of the colonial government. A great many of the Windsor proprietors enlisted in its services, but the propriety as an organization was not responsible.

The main function of the Windsor proprietors was to divide the common and undivided land and to distribute the same to individuals who held it finally in severalty. This process took a short period of time relative to the longer period required in the seventeenth century.

To comprehend the division of land which the Windsor proprietors made involves first of all a description of the general plan of the community as it was finally drawn. It was accomplished in a piece-meal fashion and it was not until the close of the year 1767 that the committee presented its final plan to the propriety and they in turn voted their acceptance.⁶⁰ The plan as finally adopted provided for a town plot of ten acres in size in the centre of the town which was to serve as a "public yard" where a meeting house and school were to be built and a training field and a burying ground were to be laid out; a whole share each to the school, the minister, the Church of England and the Society for the Propagation of the Gospel in foreign parts; five hundred acres for Governor Benning Wentworth in the southern part of the town; and the remainder of the land to be divided into house lots, meadow lots and one hundred acre lots to be divided and distributed among the various proprietors. This division was accomplished in four separate drawings and in each case the lots were drawn to the names of the original proprietors.

The first drawing occurred on April 12, 1762, and consisted of a house lot and meadow lot for each proprietor. The size and location of these lots are not indicated in the record of the land divisions. In regard to the house lots the charter required

⁶⁰ *Ibid.*, December 17, 1767.

That before any division of Land be made to and among the Grantees, a Tract of Land as near the Centre of the said Township as the Land will admit of, shall be reserved and marked out for Town Lots, one of which shall be allotted to each Grantee of the Contents of one Acre.

The house lots of this first division were larger than one acre, however, for the record of one of the meetings shows that some of them were thirty acres in size.⁶¹ A record of adjustments after the drawing indicates that the meadow lots were ten acres in size.

The second division of lands occurred on November 9, 1767, and, as in the first case, consisted of a house lot and a meadow lot for each proprietor. Again it is necessary to rely upon chance comment in the records of the meetings for suggestion as to the size of the lots. The house lots were probably fifty acres in size and the meadow lots ten acres.⁶²

The third division of lands occurred on July 18, 1768, and consisted of a fifty-acre house lot. The size and the location were stated in the records of the meeting at which the proprietors voted to lay out "one fifty acre lot to Each Right as Near Said publick yard as they Shall think proper. . . ." ⁶³

The fourth and final division was accomplished on November 14, 1771, and consisted of two one hundred acre lots to each right. These lots were in accordance with the plan drawn up and accepted by the propriety on December 17, 1767. They were laid out in the western part of the township and were in twelve "rangs" (ranges). The division was made at the last meeting of the organization, for the propriety ceased to exist after the common and undivided land was disposed of to individuals.

⁶¹ *Ibid.*, April 12, 1762.

⁶² *Ibid.*, November 9, 1767.

⁶³ *Ibid.*, December 17, 1767.

The total acreage which finally was drawn to each right was at least three hundred and fifty acres, and it may have been as high as three hundred and seventy. This uncertainty is due to the lack of specific information in the case of the house lots of the first two drawings. This total acreage of each right was probably somewhat larger than the average proprietor's right of the seventeenth century. But much more significant than the larger acreage was the number and size of the house lots. Each proprietor drew three house lots which totaled approximately one hundred and thirty acres. This acreage was well located as near the centre of the town as possible. Herein was a chance for each proprietor to make speculative gains as the population of the town grew and the lands rose in value. The population of the town was very small during the period when the land was being divided, thus there was no pressure placed upon the propriety to distribute house lots to a large number of settlers. When the number of Windsor inhabitants increased during the following years after the disappearance of the propriety, the proprietors held in severalty centrally located lands which could be disposed of at a profit.

This procedure on the part of the Windsor proprietors of granting three house lots of relatively large size to each proprietor tended to break down the well defined community settlement so characteristic of the older New England towns. It substituted in its place a community with the inhabitants settled on scattered homesteads and thereby destroyed one of the distinctive features of the early village communities in New England. This fact is born out by Wardner's description of the township of Windsor in the year 1777.⁶⁴

⁶⁴ Wardner, *op. cit.*, p. 349. "Let us here pause to review the township. Nothing, in all probability, that would now be called a village then existed. True, there were the grist-mill and the saw-mill just north of Mill Brook, on opposite sides of the main highway. Two hundred

In making the distributions to each right the aim of the propriety was to carry out an equitable distribution of land in regard to quality and quantity. If after a drawing occurred, any proprietor felt that his drawing was not of the quality and quantity of the others he had the right to appeal to the propriety for adjustment. The adjustment was brought about by the process of pitching or granting equivalent or equalizing lots.

Such cases arose from time to time in Windsor. Some of the most interesting adjustments were in connection with the lands of Israel Curtis. Apparently he was dissatisfied with the mill pitch which was granted to him in return for his service in constructing the saw and grist mills, for at a later time the proprietors

voted that Israel Curtis shall take the Meadow lot thirty-six and all the lands Lying between the meadow lots on the River and the meadow lots on the Mill Stream South of Joab Hoisington Farm as it now Lies and Extending to the South Side of the Said mill Stream in Lieu of the fifty acre mill pitch . . . ⁶⁵

The following year another adjustment was made in favor of Curtis when he received one hundred acres of land lying between the fifty-first and fifty-sixth house lots in the second division of house lots in lieu of the first one hundred acre

yards further north and on the west side of the main highway were the graveyard and the meeting-house. Probably just north of the meeting-house was the schoolhouse. On the east side of the highway between the grist-mill and the meeting-house yard was Reuben Dean's little dwelling and shop. With these exceptions, there was hardly anything but a succession of farms from south to north, along the main Connecticut River road. There were a few farms on the hills to the immediate west, up what is now State Street and along what we now call the County Road, a few more on the hills around that center later known as Sheddsville and two or three others near the present site of Brownsville."

⁶⁵ *Ibid.*, November 9, 1767.

lot that would be drawn to the right of George Field.⁶⁶ On still another occasion Israel Curtis was permitted to have two hundred acres of land in place of the two hundred-acre lots which were to be drawn later to the right of Simeon Alexander upon condition that Curtis "secure to the proprietors all the boot money that the committee . . . shall think proper in case any at all. . . ." ⁶⁷ At the last meeting of the propriety when the one hundred acre lots were drawn although the committee reported that the land pitched by Curtis was better than the proprietors drew in general, the propriety voted that he should have "Six pounds of boot money given in to him." ⁶⁸

A discussion of the activities of the Windsor propriety would be incomplete without some mention of the speculation in the buying and selling of proprietors' shares in which the members of the organization indulged. A few selected cases will serve to illustrate this activity which was carried on not only by the proprietors of Windsor but also by members of similar organizations during the eighteenth century.

In the list of Windsor's original proprietors appear the names of two famous New England speculators in land. They were Colonel Josiah Willard of Winchester, N. H., and James Nevin of Portsmouth, N. H. James Nevin, as far as the records show, never carried on speculative enterprise in Windsor. He gave his whole share to his son, John Nevin of London, England.⁶⁹

The same cannot be said of Josiah Willard. A study of the land deeds of Windsor shows that he had gained possession of thirteen whole shares by 1767. Add to this his own original share and it makes fourteen. How much he paid

⁶⁶ *Ibid.*, October 3, 1768.

⁶⁷ *Ibid.*, April 6, 1769.

⁶⁸ *Ibid.*, November 14, 1771.

⁶⁹ Windsor Land Deeds, vol. 6: 251, January 30, 1769.

for these shares is difficult to estimate for it is impossible to find the deed of purchase for all the shares. His original share may be estimated at three dollars, for that was the charge per share which the propriety voted to pay him to cover the expense of obtaining the charter.⁷⁰ Six shares were purchased from his son, Josiah Willard, Jr., for the sum of ten pounds.⁷¹ The prices were recorded in three other cases. In one case ⁷² he paid one pound; in another,⁷³ four pounds; in still another,⁷⁴ fifteen pounds. The remaining three purchases are not recorded but it is doubtful if he paid more than a pound or two. There is just as good reason to conclude that they were given to him instead of paying the tax levied for his services in securing the charter. The total sum paid was probably not in excess of forty pounds. The taxes which he paid were negligible for he sold his entire holdings in 1767 before the proprietors had levied many taxes. Willard sold the entire fourteen shares to Israel Curtis for the sum of two hundred pounds sterling.⁷⁵ His profit in Windsor land speculation was probably at least one hundred and fifty pounds.

Among the non-original proprietors the outstanding speculators were Israel Curtis and Nathan Stone. Israel Curtis purchased sixteen whole shares in the year 1767.⁷⁶ He purchased fourteen of these from Josiah Willard for the sum of two hundred pounds. Nathan Stone owned at least ten whole shares. Both men also purchased many hundred additional acres besides the whole shares just mentioned. Several other non-original proprietors speculated on a small

⁷⁰ Windsor Proprietors' Records, December 15, 1761.

⁷¹ Windsor Land Deeds, vol. 3: 48, 1764.

⁷² *Ibid.*, vol. 3: 47, 1762.

⁷³ *Ibid.*, vol. 3: 33, 1762.

⁷⁴ *Ibid.*, vol. 3: 18, 1763.

⁷⁵ *Ibid.*, vol. 3: 39, 1767.

⁷⁶ *Ibid.*

scale. Some held as many as five whole shares, others held only two. A survey of the land records definitely indicates that speculation in land was carried on extensively by both original and non-original proprietors. Membership in the propriety served to aid them in this pursuit.

Special emphasis needs to be given to the fact that from June, 1764, until November, 1771, when the Windsor propriety automatically ceased to exist, it carried on its activities without any legal basis or sanction. This unusual condition arose from the fact that at the former date the New Hampshire Grants were placed under New York's jurisdiction. This decision rendered the charter of the Windsor proprietors null and void. As there was difficulty and delay in securing a re-grant from the New York government the organization proceeded to continue and finally complete its business before the new charter was finally obtained. In the long run the great disadvantage arising from such a state of affairs was the fact that the title to real estate granted by the propriety and held by individuals was invalid.

The first effort to secure a New York patent was made by the Windsor propriety in the year 1765.⁷⁷ Unfortunately the existing records of the organization make absolutely no reference to this attempt. Such information doubtless was recorded in the records of the meetings held between August 29, 1764, and November 3, 1767, but they are missing. Probably they were turned over to the members of the organization who acted as agents to carry out the negotiations and were never returned.

In connection with this attempt to secure the re-grant, two petitions are on record at Albany.⁷⁸ The first apparently

⁷⁷ Wardner, *op. cit.*, chs. ix, x, give an elaborate account of the early attempt to secure the re-grant.

⁷⁸ Land Papers, Office of the Secretary of State of New York, Albany, vol. xix, p. 132. Petition dated August 17, 1765. *Ibid.*, vol. xix, p. 155. Petition dated September 11, 1765.

did not comply with the formal procedure and a second was submitted. The petitions show that the Stones (Zedekiah, Nathan and David, the Second) were the agents representing the organization. The Provincial Council of New York granted the petition but for some reason or other the actual patent was not obtained by the petitioners.⁷⁹

The move by the Windsor inhabitants and not the proprietors was made early in the year 1772.⁸⁰ The accepted procedure which was necessary to procure the new charter when the petitioners could not advance the charter fee requires some comment. First, the landholders of the township granted power of attorney to an agent. He in turn made contacts with an individual in New York who knew the technique of securing patents. This person usually drew up the petition in his own and the agent's behalf and listed a number of names as associates in the undertaking. Then contact was made with New Yorkers who would be interested in putting up the sum of money required as the charter fee. The one or two individuals who furnished the funds did so with the understanding that a certain section of land granted in the charter would be made over to them in payment of their services. Before the petition was presented, however, the dummies in the charter deeded their interest to the agent and he in turn deeded a tract of land in the township to the individual or individuals paying the fee. The petition, the deeds and the fee were presented to the proper officials and the patent was obtained.

The Windsor inhabitants made Colonel Nathan Stone their agent by granting him power of attorney.⁸¹ He pro-

⁷⁹ Petition granted October 27, 1765. The reasons why it was not obtained are wholly a matter of conjecture. A long discussion of reasons may be found in Wardner, *op. cit.*, pp. 64-80.

⁸⁰ Wardner, *op. cit.*, chs. xxiv, xxv give a lengthy account of the final and successful attempt to secure the re-grant.

⁸¹ Windsor Lands Deeds, vol. i, p. 303, December 30, 1771.

ceeded to New York and secured the assistance of William Swan, a New York schoolmaster who apparently carried on the activities of procuring patents as a side line to his regular occupation of training the youth of New York City. The petition was made out in behalf of William Swan, Nathan Stone and their associates.⁸² Twenty-four names were listed in the petition. Nathan Stone's name alone represented an actual property holder of Windsor. The other twenty-three persons mentioned including William Swan served as dummies. The necessary funds to procure the charter were secured from Mr. Henry Cruger of New York and Mr. Goldsbrow Banyar of Albany.

The petition was submitted to the Provincial Council of New York. It did not contain a satisfactory survey of the township and the petitioners were ordered to present the appropriate information. This was obtained from Surveyor General Colden of New York a few weeks later.⁸³ It was accepted and the official patent was issued on March 28, 1772.⁸⁴ After the charter was issued the dummy associates executed a deed of the township lands to Colonel Nathan Stone.⁸⁵ He in his turn deeded to Henry Cruger and Goldsbrow Banyar lands sufficient in value to cover the expenses of procuring the charter.⁸⁶

Legal title to the lands in Windsor was thus finally obtained. The means employed, however, resulted in certain changes and adjustments in the individual and public rights

⁸² Land Deeds, Secretary of State of New York, *op. cit.*, vol. xxx, p. 100. Petition was dated January 29, 1772.

⁸³ *Ibid.*, vol. xxxi, p. 17.

⁸⁴ The original New York charter is now in the office of the Town Clerk of Windsor. Wardner, *op. cit.*, pp. 202-216 quotes it in full.

⁸⁵ March 31, 1772.

⁸⁶ Deed to Cruger bears date, April 8, 1771. Deed to Banyar bears date, April 18, 1771.

as they were originally drawn in the proprietors' meetings. Henry Cruger, for instance, in payment for his services was deeded three thousand acres or approximately one-eighth of the entire township. This acreage was located in the northeastern section of the town and comprised some of the most desirable land in the community. Goldsbrow Banyar was deeded eleven hundred acres just west of that transferred to Cruger.

Still another modification came in the location of the public rights. The surveyor-general of New York located them as one writer expresses it "on the most barren and inaccessible part of Ascutney Mountain. . . ." Whether this discrimination against the churches, minister and school was carried out at the suggestion of Colonel Stone to release better lands to soothe the individuals whose former holdings had been deeded to Cruger and Banyar is not definitely known but it doubtless aided him immensely in the task which lay before him.

After Colonel Stone's return to Windsor, he advertised that the individual claims would be settled.⁸⁷ In the distribution of lands which followed he was able for the most part to make satisfactory adjustment with the property holders. Serious objection to the settlement of claims arose in only one case and then not until about sixteen years after the re-grant had been obtained. William Smead was one of the proprietors whose original drawings included acreage in the lands deeded to Henry Cruger. Colonel Stone had granted Smead equivalent lands in another part of the town. When Cruger's estate was being settled the executor of the will found Joel Smead, son and heir of William, residing on the Cruger property. He refused to recognize the Cruger claim

⁸⁷ *New York Gazette and Weekly Mercury*, April 13, 20, 27, and May 4, 1772. Also see Wardner, *op. cit.*, pp. 217-218.

and the case finally came before the supreme court of the State of Vermont.⁸⁸ The decisions of the court upheld the Cruger claims as good and valid with the result that Smead was ejected. Thus, the legality of the New York titles was definitely established throughout the state of Vermont.

⁸⁸ *Paine and Morris vs. Smead* (N. Chipman's Reports, p. 99).

CHAPTER IV

VERMONT, THE FOURTEENTH STATE

THE settlers in most of the townships in the New Hampshire Grants were subjected to uncertainty and inconvenience in connection with the legality of their land titles similar to that experienced by the Windsor proprietors. In a few cases adjustments were readily and easily made but in most instances the hardships inflicted upon property holders by the change in governmental jurisdiction were more severe. The settlers feared not only the danger to their property rights but in addition resented the change in jurisdiction because they were certain that all their democratic New England institutions were endangered by the New York government which was semi-feudal in character. Opposition to New York authority grew steadily and spread throughout the Grants until open rebellion became rampant and resulted in a declaration of independence and the formation of a new state.

A brief summary of the struggle for independence on the part of the Vermonters will contribute to this study in several ways. First, it will serve to show more clearly and adequately the grievances which the Windsor and other proprietors of the New Hampshire Grants had against the New York Government. Secondly, it will show how the Windsor inhabitants aroused by these grievances played an active part in the struggle for independence and the creation of the new state. Thirdly, it will give a clearer understanding of the land system which Vermont adopted and the Hyde Park propriety which it created.

The most satisfactory statement of the reasons for the rebelliousness of the settlers in the New Hampshire Grants is found in a list of "Complaints" which they themselves compiled and ordered published at a general convention held in Windsor from June 4 to 7, 1777.¹ Although the complaints were numerous they may be reduced to two main groups: those which protested against the infringement of their property rights; and those which objected to the political and legal reorganization which resulted from the change in jurisdiction.

In connection with the first group, the settlers resented the fact that the New York supreme court had declared the charters granted by New Hampshire null and void. They charged that writs of possession had been issued and that the sheriff of the County of Albany had sent hundreds of armed men to enforce them. They insisted that if a person refused to attend the sheriff in executing the writs he was liable to suffer a penalty of thirty pounds and six months imprisonment. They claimed that the New York government offered large sums of money for the purpose of apprehending those who openly dared to defend their rights. If apprehended the justices of the peace were empowered to punish such offenders by a death sentence without trial.

They further contended that when application for re-grants were made the New York government charged the exorbitant fee of \$2,300 for each township. When the new charters were issued, they objected to the provision for quit-rent; not only that they were high but also that payments in arrears which were formerly due to the King must be made up. This grievance of quit-rents was without doubt over-emphasized by the settlers. Recent studies of the whole quit-rent system

¹ *Vermont Historical Society, Collections*, vols. i-ii (Montpelier, Vermont, 1871), vol. i, pp. 51-53. The "Complaints" were published in the *Connecticut Courant*, June 30, 1777.

in America indicate that even during the colonial period the system showed meager results due to the failure of the royal authorities to establish a rigorous policy of enforcement.² Later, when the commonwealth of New York succeeded the crown in authority, there was little evidence of the enforcements of quit-rents. When some of the settlers on the Grants, loyal to New York, complained bitterly against the system the New York government responded by offering a permanent commutation of these dues and a cancellation of overdue rents. Such conciliatory action, however, came too late. In 1786 the New York Assembly extended the offer of commutation to all landholders in New York as well as the remission of all arrears to September 29, 1783. This was the beginning of a series of acts which finally led to the abolishment of the quit-rent system in New York in the Constitution of 1846.

The settlers also complained that the New York authorities often refused to re-grant their lands because they had already granted them to certain land jobbers connected with the New York government. They resented this action because it was directly in violation to His Majesty's orders of 1767. Such grants were extensively made. It was estimated by Mr. Hiland Hall that they totaled 2,418,710 acres.³ Of this total 303,100 acres were granted as military patents while regular land grants made up the remainder.⁴ In both cases the acreage went entirely to New York City speculators.

The second group of complaints dealing with the consequences of the political and legal reorganization was aimed primarily at the county courts. New York organized the eastern portion of the New Hampshire Grants into two

² Bond, *op. cit.*, pp. 284-285.

³ *Vermont Historical Society Collections, op. cit.*, H. Hall, New York Land Grants in Vermont, vol. i, p. 158.

⁴ *Ibid.*, vol. i, p. 158.

counties, Cumberland and Gloucester, and established a court in each county. The settlers in Cumberland County early manifested their dislike for having their legal cases handled by the new court because they felt they suffered undue discrimination at the hands of the new justices appointed by New York. Many of the settlers were debtors and the court was very painstaking in the enforcement of the payment of debt. A contemporary describes this condition as follows:

At this time there were tory parties forming, although under disguise; and had a plan to bring the lower sort of people into a state of bondage and slavery. They saw that there was no cash stirring, and they took that opportunity to collect debts, knowing that men had no other way to pay them than by having their estates taken by execution and sold at vendue. There were but very few men among us that were able to buy; and those men were so disposed that they would take all the world into their own hands, without paying anything for it, if they could, by law; which would soon bring the whole country into a state of slavery.⁵

It is significant to note that this list of complaints did not include still another important grievance very fresh in the minds of the members of the convention. This grievance was the adoption of a state constitution by the New York government on April 22, 1777. The constitution was immediately published and printed copies very shortly appeared in the New Hampshire Grants. The result was an intensified and persistent demand on the part of the people for secession and independence. The New York state constitution declared the validity of the New York provincial land

⁵ *Records of the Council of Safety and Governor and Council of the State of Vermont*, ed. by E. P. Walton (Montpelier, Vermont, 1873, vols. i-viii), vol. i, p. 333.

grants, and established a system of quit-rents, the property qualification for voters and for some of the office-holders; the appointment of all judicial officers and the three-year term for the governor. It also provided for the division of New York state into assembly and senate districts. The significance of such an arrangement was great for it meant that the whole of Cumberland County would have only three representatives in the assembly, Gloucester County would have only two. The two counties were grouped as one senate district and were allotted a representation of three senators. It is easy to imagine the uproar which such a representation would cause in a region where the inhabitants were thorough believers in the New England custom of town representation.

It is well to remember in connection with the long struggle between the New Hampshire Grants and the New York government that during part of the time, particularly during the period of the American Revolution, neither New York state nor the Continental Congress had much time to devote to the problem of this northern territory. Their best efforts were being spent elsewhere. Further it must be kept in mind that the inhabitants of the Grants were anything but an easy people to negotiate with. They were extremely individualistic and democratic as in the case of any frontier people. There are few instances to show that even in a common cause they worked well together. Ethan Allen's unauthorized attack on Montreal is a case in point. This venture Allen carried out with the aid of two hundred and fifty recruits. Defeat was inevitable. General Richard Montgomery in an unofficial letter to a member of his family about a month after the Montreal episode writes that

The New Englanders, I am now convinced, are the worst stuff imaginable for soldiers. You would be astonished how their regiments are melted away and yet not a man died of any dis-

temper that I have heard of. There is such an equality among them that the officers have no authority . . . ^{5a}

Enough has been cited to show that the individualistic and democratic spirit of the settlers on the Grants rendered them an unwieldy group to deal with in many respects.

Open resistance to the New York government was not at first carried on in any unified way throughout the New Hampshire Grants. The story is more satisfactorily told if the activities of the settlers on the eastern portion of the territory are presented first, followed by a description of the rebellion in the west.

East of the Green Mountains the center of opposition was in Cumberland County, although in the extreme southeastern portion of that county the inhabitants were more generally loyal to New York. In Gloucester County, the extreme northeastern political division created by New York, there is little record of opposition; in fact the inhabitants of that area did not definitely enter the fray until after the Vermonters had adopted their declaration of independence.

Opposition to New York authority in Cumberland County began early though not at first as a concerted movement for secession. It took more the form of spasmodic outbreaks of the settlers who seemed generally to resent being under New York jurisdiction. Probably the earliest insurrection to receive fairly wide attention from the New York authorities was one led by Colonel Nathan Stone of Windsor in the spring of 1770.⁶ He and his followers were inhabitants of the same town. Their immediate purpose was to prevent a sheriff authorized by the New York government from serving writs upon Windsor inhabitants. They were prompted in this action by a general feeling of unrest due to the fact

^{5a} Wardner, *op. cit.*, p. 269.

⁶ Wardner, *op. cit.*, see ch. xix for detailed account.

that their land titles had not yet been confirmed by a new patent and also because of the outcome of the trial of two Windsor men who had been tried in a New York court. When, in the spring of 1770, a sheriff approached Windsor to serve writs upon four of its inhabitants, Colonel Stone and his followers interposed and sent the sheriff on his way.

The opposition, however, did not end here. In June of the same year, when the Cumberland court was due to hold its sessions at Chester, Colonel Stone and his Windsor supporters proceeded to that place and invaded the court.⁷ To cope with the situation the judges ordered an adjournment until next day. This caused consternation among the invaders but Colonel Stone saved the situation by his suggestion that the court could not proceed without a member of the bar. One man alone, John Grout, constituted the bar. As he was heartily disliked on account of old grievances on the part of the rioters, he was seized later in the day and taken as a prisoner to their town of Windsor. Such behavior in thwarting the regular legal procedure was just one of the devices employed by the settlers to show their distaste of New York jurisdiction.

During the following year minor local protests were made. In Putney in 1772 a mob seized the cattle and other personal property that had been levied upon by a sheriff under a writ of execution. But the next real stir was created in the year 1774 when the Westminster Massacre took place.⁸ The courts had been pressing many civil cases concerned with debts. Agitation against the Cumberland County court in pressing such cases was increasing. When the time for the session drew near the protests led to a postponement of certain cases but not of the court session itself. The result was the seizure of the Westminster court house by a mob

⁷ *Ibid.*, see chs. xx, xxi.

⁸ *Ibid.*, pp. 242-248.

of about one hundred settlers. While the court was thus held by the rioters, a sheriff with a posse of sixty men surrounded the building and a riot ensued which caused the death of two men and the injury of eight more. This escapade brought settlers from all the nearby towns as well as one of Ethan Allen's lieutenants and a few followers from the west side of the Green Mountains. No penalties were imposed by the New York officials who soon after became involved with the revolutionary cause against Great Britain. In fact the outbreak of the American Revolution ended the sessions of courts of law under the New York government.

During the time these various spasmodic riots were being carried on the county supervisors of Cumberland and Gloucester counties were holding their regular business meetings on county affairs. Early in 1774 the New York City Committee of Correspondence requested the supervisors of the counties to report their attitude concerning the rights of the American colonies. They responded by asking the towns to send delegates to a convention at Westminster the following October to ascertain the local opinion.⁹ The representatives drew up a pledge of loyalty to His Majesty George III but resolved to assist the people of Boston and aid the New York Committee of Correspondence. Very amusing in the light of their own recent behavior was their pledge to "bear testimony against and discourage all riotous, tumultuous and unnecessary mobs which tend to injure the persons and property of harmless individuals."

This opportunity which the New York government gave to the inhabitants of Cumberland County to participate in public affairs proved to be the beginning of the downfall of New York's authority in that region. The frontiersmen continued to hold these conventions during the next two

⁹ *Governor and Council, op. cit.*, vol. i, pp. 317-319.

years and thereby set up what proved to be an effective means of opposing the New York government.

The earliest evidence of strained relations between this provisional government and the New York authority was the decision to resist until it could acquaint His Majesty with the injustices inflicted by the New York government and could petition to be associated with some other government or be incorporated into a new state.¹⁰ This was the first public declaration of the settlers on the Grants to contain the idea of a separate state.¹¹

Shortly after this decision was made war was declared between England and the thirteen colonies. This temporarily delayed further agitation against New York for the inhabitants of the Hampshire Grants were dependent upon New York for assistance to protect them from the British. But in June the following year when the members of the Cumberland County Convention elected delegates to attend the New York Provincial Congress to participate in the formation of a government independent of the crown, they took action which revived the agitation against New York.¹² The members of the convention drafted a set of "Instructions" for their delegates to take with them. These "Instructions" set forth the type of governmental institution which the settlers desired. The outstanding requirements, to state them briefly, were as follows: all civil power should originate in the people; the code of laws should place on a firm basis liberty and property as well as other things dear to the people; schools and ministers should be supported; there should be a court of justice to try criminal cases, and the

¹⁰ *Governor and Council*, vol. i, pp. 338-339. Cumberland County Convention, April 11, 1775.

¹¹ *Vermont State Papers*, compiled and published by William Slade (Middlebury, Vermont, 1823), p. 60.

¹² *Governor and Council*, *op. cit.*, vol. i, p. 346. June 20-22, 1776.

judges should be men of character and integrity as well as residents of the county; the jurors should be chosen annually; all fees should be lowered; and a frequent change of magistrates should be made to prevent corruption and to maintain equality.¹³

Before these "Instructions" were dispatched to the New York convention, a letter was prepared by Charles Phelps and included with them. The letter contained the statement that if New York did not set up its new government to conform to the "Instructions" issued by the Cumberland County Convention, the people of the county would feel free to secede. This letter was signed by the convention chairman.

Both the "Instructions" and the Phelps letter were read at the New York convention. At about the same time an officer of the New York militia recruited and stationed in the New Hampshire Grants presented a petition for funds and supplies. A protest naturally arose over sending aid to people threatening secession. Both cases were turned over to a special committee to consider the state of affairs in the Grants.

James Duane, a member of the committee, made a report to the New York government, reviewing the behavior of the inhabitants of Cumberland County and deciding that the Phelps letter did not represent the attitude of the majority in the county. He then recommended that arms, munitions and funds be sent for the regiment and that the Phelps letter be withdrawn.¹⁴

This request of the New York committee was the chief matter of business at the Cumberland County Convention which began its session on November 5, 1776.¹⁵ It was

¹³ *Ibid.*, vol. i, pp. 348-350.

¹⁴ *American Archives*, Fifth Series, vol. iii, columns 222-226.

voted to withdraw the Phelps letter. Seven members of the convention expressed their opposition by bolting the meeting. These seven men under the leadership of Ebenezer Hoisington of Windsor wrote a protest based upon the resolves of the "Honor^{bl} Continental Congress," recommending to all conventions and assemblies of the United Colonies that, "where no government sufficient to the exigencies of their affairs had been hitherto established, to adopt such government as shall in the opinion of the Representatives of the people best conduce to the happiness and safety of their constituents in particular and America in general."¹⁶

This protest led to a compromise in the reply that was made to the New York government. The people of Cumberland County declared they still meant to pay deference to the state of New York and to assume their portion of the charges but they definitely upheld their right to petition the Continental Congress to redress their grievances.

The New York congress now became thoroughly convinced that Cumberland County was definitely ready for secession. No longer did it feel that the protests were merely idle threats. It was convinced that the Cumberland County Convention had come to handle the executive, legislative and judicial affairs of the county, and that the Committee of Safety in each town regulated and decided its own local problems. The New York government was impressed with the formidable nature of the opposition because it was being conducted by a well defined leadership and organization.

Turning to the account of the developments on the western side of the Green Mountains, the account may be more briefly stated, as they have already received much attention at the hands of historians. The agitation in this region for many years was local and sectional in character. Unlike the east-

¹⁶ *Governor and Council, op. cit.*, vol. i, pp. 357-361.

¹⁶ Resolves of May 15, 1776.

ern territory it had no distinct county organization in contact with similiar organizations in the Province of New York and no regular reports were made to that government.

It was this lack of organization on the part of the westerners which led the New York government as late as the beginning of the year 1777 to feel that the great spirit of rebellion was concentrated in the east and that conditions in the west were not serious. The New York government, however, misjudged the case. In spite of the lack of organization and affiliation, the people of the west had been more persistently active in stirring up rebellion and were more generally in favor of secession.

New York did not recognize the New Hampshire charters west of the Green Mountains but re-granted the lands to New York City speculators. When New York officials appeared to issue writs or carry on other official business they were lashed and beaten with "twigs of the wilderness", as one of the contemporaries expressed it. Riots in defense of land titles occurred in several towns. At Bennington rioters put to flight the commissioners who were establishing partition lines for those claiming lands under the Wallumshaak Grant. This, without doubt, was the outstanding single incident of resistance toward New York west of the Green Mountains.

Unified and organized opposition against New York in the west was expressed through a series of conventions to which the Committees of Safety of the various towns sent representatives. The members of the conventions were principally engaged in the momentous problem of defending their land titles by more dignified procedure than that described in the preceding paragraph. They began their attack by drawing up a detailed account of their grievances against New York.¹⁷ Later, under pressure of the American Revolution, the people were asked to swear allegiance to New

¹⁷ *Ibid.*, vol. ii, pp. 489-497. January 31, 1775.

York. This was a real problem for if they swore allegiance to that government it might be interpreted that they recognized the validity of the New York land grants in their territory.

The outcome was a petition to the Continental Congress asking permission to serve in the war as continental soldiers or as soldiers of the New Hampshire Grants.¹⁸ Heman Allen was sent as their delegate to Philadelphia. He was advised by the Continental Congress that the settlers of the Grants should consent to carry on their military duties under New York. While this was disappointing he did receive the valuable suggestion from certain gentlemen in Philadelphia to the effect that there was something to be gained by uniting the whole of the New Hampshire Grants into an association which was not affiliated with New York.

When the convention met at Dorset to receive Heman Allen's report, the members decided to refuse to swear allegiance to New York and thereby run no risk of jeopardizing their land titles.¹⁹ In addition they chose a committee to confer with the inhabitants in the east and to urge their association with them to resist New York authority. No doubt they were stimulated and encouraged to adopt such opposition by the appearance at the convention of two delegates from the east who brought news of the "Instructions" and the Phelps letter threatening secession which had been forwarded to the New York government by the Cumberland County Convention.

About two weeks later the committee from the western part of the Grants crossed the Green Mountains to confer with the members of a joint session of Cumberland County and Gloucester County conventions to discuss the boundaries

¹⁸ *Ibid.*, vol. i, pp. 11-13. Dorset Convention, January 16, 1776.

¹⁹ *Ibid.*, vol. i, pp. 14-26. July 24, 1776.

for the proposed "New State."²⁰ They urged the members of the convention to ascertain the reaction in their counties to that idea and to send delegates to the next convention at Dorset.

The Dorset Convention which was held a few weeks later may safely be called a general convention for there were convened forty-four delegates from the west and eleven from the east side of the mountains.²¹ The formation of a separate district was the issue before them. The members decided to support the revolt against England by obtaining the signatures of all males sixteen years of age and over throughout the Grants; to prepare a covenant which stated, among other things, their intention of uniting all the inhabitants to support the idea of a new state; and to maintain temporary resistance against New York. The convention adjourned to meet at Dorset at a later date.

At the adjourned meeting at Dorset in the fall very few were in attendance and almost two-thirds were from the east.²² The attention of the westerners, for the moment, was diverted from their grievances against New York because the British were attacking along Lake Champlain. The members, due to such interruption, were unable to carry out any definite policy. They were forced to content themselves with a review of the action of the Cumberland County Convention in issuing the "Instructions" and the Phelps letter to their delegates attending the New York Convention and a consideration of Duane's report and recommendations. However, they appointed a committee to publish and circulate a pamphlet agitating the formation of a new state.

It was at the convention at Westminster beginning January 15, 1777, that the members officially declared their inde-

²⁰ *Documentary History of New York*, op. cit., vol. iv, p. 556.

²¹ *Governor and Council*, vol. i, pp. 26-36, Sept. 25, 1776.

²² *Ibid.*, vol. i, pp. 36-38.

pendence.²³ The first declaration was strikingly brief. It resolved “. . . that the district of land commonly called and known by the name of New Hampshire Grants, be a new and separate state; and for the future conduct themselves as such.”²⁴ Elaborations and revisions followed later.

It is not possible to turn from this declaration of independence without a few comments on the representation and the methods by which the declaration was accomplished. It did not arise from a unanimous demand on the part of the settlers. The representation at the convention illustrates this very pointedly. The group was very small; only twenty-four members attended. Fifteen representatives were from the east with Cumberland County sending the largest delegation. Yet many towns in that county were not represented. Only two towns in the southeastern section sent representatives. Gloucester County in the northeast sent no delegate at all. Only seven representatives came from the west which was really the region of more unanimous agitation against New York.

Those not joining in the opposition to New York were more generally the men who were the political, business, and personal followers of the New York government; the larger property holders, such as General Jacob Bayley of Gloucester County or Colonel Nathan Stone of Windsor, who was not active in the opposition to New York after the Windsor patent had been issued; a large number of smaller property holders whose land titles had been secured by similar patents; many others in the Grants who were able to make a comfortable living with conditions as they were; and those who from inertia were satisfied to continue under New York jurisdiction.

²³ *Ibid.*, vol. i, pp. 38-51.

²⁴ *Ibid.*, vol. i, p. 39.

Those in opposition were very often the less fortunate who felt the insecurity of their land titles, the pressure of the courts in the collection of debts and the dangers to their liberty under New York jurisdiction.

This declaration of independence on the part of the settlers of the New Hampshire Grants was really a part of the great struggle that was being waged in all the colonies on the part of a frontier and agrarian people against semi-feudal conditions and a rising capitalism. The frontiersmen in the Grants were led on and stirred to action by their Patrick Henrys and Samuel Adamses in the persons of such figures as Ethan Allen, Ira Allen and Ebenezer Hoisington.

Turning for a moment to the methods employed in securing this first declaration of independence, evidence is found to bear out the point of view just presented. The members of the Westminster Convention at the beginning of the session appointed a committee "to examine into the numbers" that favored the formation of a separate state. The chairman, Ebenezer Hoisington, reported very shortly that "We find by examination that more than three-fourths of the people in Cumberland and Gloucester counties, that have acted, are for a new state; the rest are neutrals."²⁵ After this most astounding statement, signed by the chairman, who has been characterized as a staunch churchman and a Windsor townsman of upright character, the convention adjourned for one hour, and upon reconvening immediately voted the first declaration of independence.

During the next few months the development of events greatly unified the cause and led to the formation of a state constitution. Shortly after the publication of the declaration of independence, Dr. Thomas Young of Philadelphia became sufficiently interested in conditions in the Grants to communicate with the "INHABITANTS OF VERMONT, A Free and In-

²⁵ *Governor and Council, op. cit.*, vol. i, p. 39.

dependent State, bounding on the River CONNECTICUT and LAKE CHAMPLAIN." He advised them to send attested copies of their recommendations for a separate government to every township in the Grants and to invite all freeholders and inhabitants to choose delegates to a general convention which should form a committee of safety, adopt a constitution and choose delegates to the General Congress.²⁶ Only in this way did he feel they would have any chance whatever of securing support for their cause from the Continental Congress. It is generally conceded that this letter did a great deal to instil fresh vigor into the hearts of the rebellious settlers.

The Vermonters were further encouraged to form their own constitution when word was received that the New York state convention had completed the state constitution, which, as has already been noted, renewed all those phases of New York authority so hateful to them. It was no wonder, then, that Ira Allen's "Miscellaneous Remarks" published and circulated at this time and dwelling upon local grievances was received so warmly and stirred up so much enthusiasm.²⁷

When the General Convention met in Windsor from June fourth to seventh, 1777, arrangements were made for the Resolutions of the Continental Congress to be sent to each town with the request that delegates should be elected to attend a later convention to choose delegates to the General Congress, to appoint a committee of safety and adopt a constitution.²⁸ At this time the name "Vermont" was formally adopted for the new state.

This General Convention which assembled at Windsor on July 2, 1777, adopted a state constitution.²⁹ The Pennsylvania constitution, submitted by Dr. Thomas Young to the Vermonters, served as a model.

²⁶ *Ibid.*, vol. i, pp. 394-395.

²⁷ *Ibid.*, vol. i, pp. 376-389.

²⁸ *Ibid.*, vol. i, pp. 52-61.

²⁹ *Ibid.*, vol. i, pp. 62-103.

Evidence exists which leads us to question how unanimous were the inhabitants of Vermont for a separate government. None of the original minutes or journals of this convention have been found. Whether records were not kept or purposely or accidentally lost or destroyed remains a matter of conjecture.

Further suspicion is aroused by the fact that the state constitution was never submitted to the people for ratification and still further that on at least four different occasions the legislature passed laws to establish the constitution.⁸⁰ This curious procedure has been variously interpreted from time to time by different writers.⁸¹ It is more than likely that the exigencies of the time did not permit the leaders of the movement to put the constitution up for ratification. War hazards were very real as the territory constituted the great natural highway between the American Colonies and Canada. It would have taken a great deal of time to circulate the document throughout the state. The people even at that date were not unanimous in their desire for a separate state. Probably many of them did not know the meaning and significance of such a document and certainly there was danger to the cause in attempting to take the time necessary to instruct them. Also the leaders of the movement must certainly have felt that if the people themselves began to study the document, friction would develop over the various clauses and ratification would not have been obtained. Thus they proceeded to move on in a high-handed fashion to or-

⁸⁰ *State Papers of Vermont*, published by Aaron H. Grout, Secretary of State, 3 vols. (Bellows Falls, Vermont, 1924), vol. iii, vol. i, p. 55, February 15, 1779; *Governor and Council, op. cit.*, vol. ii, p. 160, June 21, 1782; *ibid.*, vol. iii, p. 133, March 2, 1787; *Ibid.*, vol. iv, p. 118, November 2, 1796.

⁸¹ *Wardner, op. cit.*, pp. 390-395 contain a summary of the various points of view.

ganize the first legislature. With such ingenuity and determination they very probably saved the new state.

The formation of the new state was completed with the session of the first Vermont legislature in Windsor, March 12-26, 1778. Admission into the Union as a new state did not occur until March 4, 1791. Repeated efforts had been made to be admitted to the Continental Congress. That body turned a deaf ear to its pleas and during the remainder of the revolutionary period Vermont was forced to work out her own problems. This it was able to do and it emerged at the close of the war intact; thanks to a shrewdness and cunning displayed only when self-preservation is at stake. One of the chief points of its policy was to keep Congress guessing as to whether it was remaining loyal to the American cause or negotiating with the British authorities.³²

After the close of the war the struggle for recognition continued. It was difficult for Congress to act. New York still claimed the territory and New Hampshire as well had designs. Congress, also, was involved in the whole problem of the disposal of the western territory. James Madison in 1782 stated that "The two great objects which predominate in the policies of Congress at this juncture, are Vermont and the Western territory."³³ A hasty decision in regard to Vermont might lead to trouble elsewhere in connection with land titles and governmental jurisdiction. Eventually it was realized that recognition of the state was the way out. In 1789, a commission was appointed by Vermont and New York which arrived at terms of settlement. Vermont paid to New York the sum of \$30,000 in Spanish silver and New York relinquished all rights under New York titles. Then Congress was in a position to admit Vermont into the Union.

³² *Vermont Historical Society, Proceedings*, New Series, 1930-1932, 3 vols; H. S. Wardner, *Haldemands Negotiations*, vol. ii, no. 1; *Governor and Council, op. cit.*, vol. ii, pp. 396-485.

³³ *Vermont Historical Society, Collections, op. cit.*, vol. ii, pp. 268-269.

CHAPTER V

HYDE PARK, VERMONT: A VERMONT LAND GRANT

VERMONT assumed the authority of a sovereign state and began to formulate various state policies as soon as its constitution was adopted. The land policy which it evolved grew out of and was affected by its need of revenue to support the struggle for recognition of its independence from Congress and to protect itself against British attack along the frontier. Furthermore the general assembly hoped by the sale of land to be able to avoid levying any taxes on the people. Such procedure, it thought, would win many warm friends and supporters in its struggle for recognition and would encourage migration into the state.¹

Very early in its career Vermont began to make plans for recognition of the charters which had been granted in its territory by Massachusetts Bay, New Hampshire and New York.² In the last instance the New York patents confirming the New Hampshire charters were given recognition but not always the grants which were made by the New York government itself.³ Recognition could be secured by submitting the old charters at the expense of the state.

Revenue from the sale of lands was secured chiefly from two sources. One was the confiscation and sale of the property of "inimical persons" or Tories. The other was the issuance at a price of grants of vacant or unappropriated

¹ *Vermont Historical Society, Collections, op. cit.*, Ira Allen, *History of Vermont*, vol. i, p. 393.

² *State Papers of Vermont, op. cit.*, vol. iii, vol. i, pp. 88, 150-151.

³ *Ibid.*, vol. iii, vol. i, p. 143.

lands within its territory to groups of proprietors. In both cases the proceeds of the sales were turned over to the treasury of the state.

The Council of Safety instituted the former policy. This Council was the temporary substitute for the state government during the interim between the adoption of the constitution in June, 1777, and the formation of a legislature or general assembly in March, 1778. It was confronted with the problem of defending the frontier. Ira Allen, a member of the Council, insisted upon raising and maintaining militia for defense purposes. According to his own account his insistence on this point led to his being selected to find ways and means and to report at sunrise the next day.⁴ Apparently he was undaunted by such a task for, as he reports the result, at sunrise the following day he recommended "that the Council should appoint Commissioners of Sequestration, with authority to seize the goods and chattels of all persons who had or should join the common enemy; and that all property so seized be sold at public vendue, and the proceeds paid to the Treasurer of the Council of Safety, for the purpose of paying the bounties and wages of a regiment. . . ."

The Council accepted Ira Allen's recommendation. This action instituted a means of raising revenue which not only was continued by the General Assembly of Vermont but also was adopted by other states upon the recommendation of Congress.⁵ As far as Vermont was concerned from March, 1777, to October, 1786, it yielded more revenue than all the other sources combined. Approximately £190,433

⁴ *Vermont Historical Society, Collections, op. cit.*, vol. i, pp. 384-385.

⁵ Ira Allen claims the credit for the idea of confiscating the property of enemies to the cause of American independence. The recommendation of Congress, November 27, 1777 was issued after action on the part of the Vermont Council of Safety.

were received from the sale of the confiscated property in comparison with £66,815 received from the sale of lands granted by the land committee of the General Assembly.⁶

The policy of granting the vacant lands to groups of proprietors was adopted by the General Assembly. At the October session, 1778, a committee of six was appointed to choose 596 proprietors to share in a large tract of land specified in a petition from Colonel Ethan Allan, Colonel Samuel Herrick and Jonas Fry. Due to the pressure of other business the committee report was not made at the same session.

Meantime the Assembly was urging Congress to recognize the state's independence by admittance into the Union. New Hampshire, New York and Massachusetts were remonstrating to the same body against the authority exercised by Vermont. Congress in September, 1779, responded by asking the former states to authorize it to hear and determine all disputes involving the New Hampshire Grants.⁷ It also asked Vermont to abstain from exercising jurisdiction over the inhabitants of the district and stated that no unappropriated estates or lands should be sold or granted until it had rendered a final decision.

The General Assembly retaliated by the acceptance of the Board of War's recommendations, that the state should support its right to independence and should make ". . . Grants of all, or any part of the unappropriated lands within their jurisdiction, that does not interfere with any former Grants, as their wisdom may direct."⁸ This action was followed by a "resolve" that in granting land the Assembly "will have reference to the convenience, quality, and situation of the

⁶ *Governor and Council, op. cit.*, vol. ii, p. 64.

⁷ *Ibid.*, vol. ii, pp. 183-185.

⁸ *State Papers of Vermont, op. cit.*, vol. iii, vol. i, p. 83, October 21, 1779.

lands" and no petition for lands should be considered unless approved by the surveyor general.⁹

The next step was taken a few days later when a committee of four was appointed to join a committee for the Council to consider the petitions for land and the price to be charged.¹⁰ The result of the committee's activity was that the Assembly granted several townships to respective groups of proprietors with the resolution

. . . that his Excellency the Governor and Council be desired to carry the above Resolves into execution under such restrictions and regulations as they in their wisdom shall judge will most conduce to the best good of this State, and to make out Charters of incorporation of the aforesaid tracts of land agreeable to the Resolution of the General Assembly.¹¹

Meanwhile the Assembly had devised a very effective method of advertising the lands which it had for sale. Petition forms were printed and circulated throughout the New England and Middle States and the continental army. The distribution was made by such loyal supporters of the Vermont cause as Ethan and Ira Allen.

Ethan Allen had been appointed as an agent to negotiate the public business of the state with Massachusetts Bay. Ira Allen was chosen to represent Vermont at the General Assemblies of New Jersey, Pennsylvania and the lower counties of Maryland and Delaware. The latter was authorized " . . . to transmit to them the pamphlets entitled 'a vindication of the inhabitants of Vermont to the Government of New York &c.' and to transact any other business with either

⁹ *Ibid.*

¹⁰ *Ibid.*, vol. iii, vol. i, p. 88, October 23, 1779.

¹¹ *Ibid.*, vol. iii, vol. i, pp. 94-95. The grants were Bethel, Two Heroes, Isle of Mott, Royalton, Benson, and Fair Haven. The petition in connection with Bethel gave some trouble for a separate committee was created to consider its case. See *ibid.*, vol. iii, vol. i, pp. 88, 90, 93.

of the said Assemblies as may be found necessary. . . .”¹² Thus while on official missions the brothers had an excellent opportunity to distribute the blank land petitions. The widespread circulation of these forms proved to be an effective appeal, powerful and direct. Land companies were formed in all the New England states. Each company was made up of about sixty-five members who under the leadership of one of their number petitioned the Vermont legislature for a grant of land, usually a township. Included in the membership of these companies were a great many officers of the Continental army as well as members of the Continental Congress.¹³

When the Vermont legislature convened in March, 1780, petitions were beginning to pour in. At that session eleven new townships were granted.¹⁴ News of Vermont's land program reached Congress and again that body remonstrated against such action as being “highly unwarrantable, and subversive of the peace and welfare of the United States” and requested Vermont to forbear and abstain from all acts of authority, civil and military, until a decision could be reached by Congress.¹⁵

¹² *Ibid.*, vol. iii, vol. i, p. 84.

¹³ George Washington alludes to the land companies as follows: “Two things I am sure of, namely, that they (the Vermonters) have a powerful interest in those States (New England), and pursued very politic measures to strengthen and increase it, long before I had any knowledge of the matter, and before the tendency of it was seen into or suspected, by granting upon very advantageous terms large tracts of land; in which, I am sorry to find, the army in some degree have participated.” *Vermont Historical Society, Collections, op. cit.*, vol. ii, p. 325.

¹⁴ *Ibid.*, vol. iii, vol. i, pp. 108-109, March 13, 1780. The towns of Berkshire, Enosburgh, Richford, Montgomery, Wyllis, Westfield. *Ibid.*, vol. iii, vol. i, pp. 112, 114, March 14, 1780. The towns of Philadelphia, Chittenden, Hambleton's Gore. *Ibid.*, vol. iii, vol. i, pp. 120-121, March 16, 1780. The towns of Royalton and Kent.

¹⁵ *Governor and Council, op. cit.*, vol. ii, pp. 246-247, June 2, 1780.

This action of Congress was ignored as the October-November session of the Vermont legislature was swamped with petitions. A committee was appointed to meet jointly with one from the Council to consider the petitions filed in the secretary's office. This time it was authorized to consider which lands "can be settled" and "what persons will most conduce to the welfare of this State."¹⁶ A few days later the committee was enlarged and the settlement qualification was withdrawn.¹⁷ On its recommendation the Assembly voted over fifty township grants.¹⁸ Among these was the Hyde Park propriety with which this study is concerned.

The Vermont legislature set up elaborate rules and regulations to govern the proprietors' organizations throughout the state and the Hyde Park proprietors were governed in their activities accordingly. The act of 1787 provided that proprietors' meetings could be held if at least one-sixteenth part of the propriety made application to any justice of the peace within the state.¹⁹ The latter was authorized to issue to the organization a warrant to hold the meeting which should state the time and place, the business to be transacted and the reasons for calling the same. The warrant was required to be issued three successive weeks in all the newspapers, the last one appearing at least twenty days before the

¹⁶ *State Papers of Vermont, op. cit.*, vol. iii, vol. i, p. 131.

¹⁷ *Ibid.*, vol. iii, vol. i, p. 132.

¹⁸ *Ibid.*, vol. iii, vol. i, pp. 140-141, 149, 153-163, 173-178.

¹⁹ *Laws of Vermont*, March 9, 1787. An Act regulating Proprietors' Meetings. A "temporary" act regulating proprietors' meetings was probably passed in 1778. No record exists of these temporary acts of Vermont's first legislature. The earliest act on record was passed in 1779. Another act was passed October 27, 1782. On March 3, 1784, June 17, 1785, October 31, 1786, "acts in addition to" 1782 were passed. This legislation was repealed March 10, 1787, following the passage of the act of March 10, 1787, which brought the legislation governing the procedure of proprietors into permanent form. This act is the source used in the description of proprietary procedure, unless otherwise stated.

time of the meeting. When the proprietors convened according to this procedure they were legally authorized to choose the officers by ballot and to transact any business whatsoever which might concern the propriety with each proprietor voting in proportion to his interest in the organization. It was further required that all proprietors' meetings should be held within the state. This provision was changed at a later date when meetings were required to be held within the township itself if there were ten families within the town. If not then such meetings must be held within the county.²⁰ When such regulations were not complied with, the acts or "doings" of the proprietors were not valid.

The meetings were to be carried on in an orderly manner and if any proprietor "by tumultuous Noise, Quarrelling, or by any unlawful Act disturb the meeting", he was liable for a fine of twenty shillings for each offence.²¹

The officers to be elected by the propriety were the moderator, clerk and treasurer. The clerk was the most important of the three. State legislation required him to be an inhabitant of the town in which the lands were situated.²² His duty was to make "fair and true" entries of all votes and proceedings of the meetings and if requested he should give attested copies to the members upon payment of four pence for each one hundred words contained therein. If the clerk neglected these duties, upon conviction before any justice of the peace he was fined five pounds for every such offence and held responsible for the damages involved. One half the fine was to be paid to the complainant and the remainder to the treasurer for the use of the propriety.

²⁰ *Ibid.*, November 1, 1791.

²¹ *Ibid.*, 1779, Act to preserve order. 1787, Act to regulate behavior.

²² *Ibid.*, October 23, 1788.

Apparently the proprietors' clerks throughout the state were careless about delivering the records, files and papers to their successors in office for the legislature enacted a law which stated that a clerk neglecting or refusing to do the same within a month after being requested to do so was liable for a fine of fifty pounds, one half to be paid to the propriety and the remainder to the prosecutor.²³ This fine must have been ineffective, for three years later further legislation stated that if the clerk owned no personal property on which to levy execution, his body might be taken and committed to gaol and there remain until the records were delivered.²⁴

Many proprietries did not hold meetings except at long intervals. To meet such cases the law provided that proprietors' records should be placed in the custody of the town clerk if no meetings had been held over a ten-year period, and he should become forever thereafter the proprietors' clerk.²⁵ This was repealed but later provisions required that after five years had passed with no meeting of the propriety the proprietors were to deposit all records with the county clerk.²⁶ Furthermore it was provided that the proprietors' clerk in any township where no town clerk had been chosen was elected and qualified to receive and record deeds of land lying in such town and to maintain an office in the same manner as the town clerks are authorized to do.²⁷ Also if the proprietors neglected to appoint their own clerk then the town clerk was to officiate in such a capacity.²⁸

When the lands in any town in the state were finally divided into severalty and the propriety thereby ceased to

²³ *Ibid.*, October 27, 1789.

²⁴ *Ibid.*, November 7, 1792.

²⁵ *Ibid.*, November 3, 1810.

²⁶ *Ibid.*, November 4, 1822.

²⁷ *Ibid.*, February 26, 1783.

²⁸ *Ibid.*, October 23, 1788.

exist, the clerk was required to deposit the records, maps and other papers with the town clerk.²⁹ The penalty for negligence in this case was ten dollars.

The proprietries in Vermont were vested with the usual quasi-corporate powers such as to sue, be sued and to levy taxes to secure funds to carry out their activities. The privilege to sue and be sued was granted by the first session of the Vermont legislature and re-enacted later.³⁰ In case a propriety was sued, the writ was to be presented to the clerk thirty days before the sitting of the court. The execution of the court's decision was not to be carried out until sixty days after the judgment had been rendered and taxes were to be raised by the organization to satisfy the judgment.³¹

The Vermont proprietors derived their right of taxation from an act regulating proprietors' meetings.³² Thereby it was lawful for them to levy a rate to cover the expenses involved in carrying out measures for the benefit of the propriety, provided the actual cost had been submitted and recorded. The collector appointed was required to be an inhabitant of the state. He must publish the rate and the reasons in all the newspapers of the state for three successive weeks. If a complete collection had not materialized thirty days after the last publication, he was required to advertise a list of the defaulting proprietors and give notice that a "necessary proportion" of their lands would be sold at

²⁹ *Ibid.*, November 7, 1797.

³⁰ *Ibid.*, 1779, Act authorizing to sue and be sued. *Ibid.*, 1787, Act authorizing to sue and be sued. *Ibid.*, March 2, 1797, Act authorizing to sue and be sued.

³¹ *Ibid.*, 1787, Act authorizing to sue and be sued.

³² *Ibid.*, March 9, 1787. Act Regulating Proprietors' Meetings. Earlier legislation dealing with the proprietors' right of taxation was passed February, 1779, October 27, 1782. "Acts in addition to" the above legislation were passed from time to time but the Act of March 9, 1787, embodied these additions and brought the legislation into permanent form.

“ public vendue ” to pay the rate plus the cost of advertising and sale. The time and place of the sale within the county must be included in the notice. If the tax remained unpaid at least twenty and not more than fifty days after the last publication the land was to be sold. Only the lands involved in the particular division in question could be disposed of at public vendue and not those held in severalty due to previous divisions. The delinquent proprietors were given one year in which to redeem their lands. This could be done by payment of the tax, the costs of sale and advertising plus twelve percent interest on the amount to the purchaser. Special redemption privileges were provided for those proprietors who were “ beyond sea ” or in captivity. They were given a period of one year after the “ impediments ” were removed and were charged six percent interest. If improvements had been made on the land a payment set by “ indifferent ” persons to cover the same must be made. When redemptions were not made in any case, the collector was required to make and execute a deed or deeds with covenant of warranty to the purchaser or purchasers. Within twelve months after any vendue the collector must make an accounting to the proprietors’ clerk. If the former was negligent in performing his duties he was liable to be fined five pounds and to be held for any damages which might have been involved. In connection with the sale of lands at public vendue it was the propriety and not the collector which was responsible for damages occasioned by illegal procedure.

The most significant activity of the Vermont proprietors was the division of the lands which they held in common. The law of the state provided the “ mode ” for such division.⁸⁸ At any legal meeting if a division of land was under

⁸⁸ *Ibid.*, February, 1779, Act Regulating Proprietors’ Meetings. *Ibid.*, October 27, 1782. Act Regulating Proprietors’ Meetings. *Ibid.*, March 9, 1787. Act Regulating Proprietors’ Meetings. The above description is based upon this Act.

consideration the first step was to decide and agree on the number of acres to be allotted. Then a committee was to be appointed consisting of one or more persons under oath to faithfully discharge the duty of surveying, laying out and numbering one lot to each right. When the survey was completed a plan thereof was to be returned to the proprietors' meeting. If it was accepted the proprietors' clerk was to cut as many small pieces of paper as there were proprietors and public rights and number them. They were to be put in a box and shaken and some disinterested person was to draw them out while the clerk called the proprietor's names according to the order listed in the charter. The clerk also was required to affix each number drawn to the appropriate proprietor. Two exceptions were allowed from the above procedure. The first was that if legal warning had been given the proprietors could vote to any settler the lot he lived on in lieu of his draft. The second was that the proprietors could grant to a member the liberty to pitch a quantity of land, not exceeding two hundred acres, for the encouragement to build a grist or saw mill within a designated time.

Such was the regular procedure. However, further legislation was enacted from time to time to meet special cases. Proprietors sometimes did not agree upon a division. In such instance they could be compelled to do so by means of a Writ of Partition.⁸⁴ Later legislation set forth the procedure in detail.⁸⁵ The act of 1797 was passed because the partition of lands was often rendered difficult by absence of certain persons from the state or by reason of "infants being interested." Then a division was possible by order of the supreme court upon receipt of a petition, and no petition could be "quashed" because of the death of an owner or

⁸⁴ *Ibid.*, 1779.

⁸⁵ *Ibid.*, October 22, 1783, 1787, October 20, 1797. The description presented is based on the Act of October 20, 1797.

because all owners were not named in the petition. The division was to be accomplished by a commission of three or five freeholders. When minors or incapacitated persons were involved guardians were to be appointed to act in their behalf. If proprietors interested were out of the state, discreet and disinterested persons were to act in their absence. Furthermore, if a division of land could be brought about only to the great inconvenience of the parties involved, the land was to be assigned to one of the number and he was to make satisfactory settlement. If no one was willing to accept the assignment, the court was to order the commissioners to sell the lands at public vendue and return the sum obtained, minus the costs, to the owners. A partition was not to be considered void because a former owner had sold and the real owner had not received notice.

Sometimes a division of land was obstructed because a majority of rights in a propriety was held by one or a few individuals and thereby the minor part of the proprietors was injured. In such cases the judge of the superior court was vested with the power to appoint commissioners to make a division and the same court had the power to ratify the partition.³⁶ If there was evidence that a division had been made legally in whole or in part by the propriety, it was to be ratified and confirmed.

In the settlement of estates the disposal of common and undivided lands was encountered. Such cases were handled by the probate court. It was given the power to appoint a committee to sever the estate from that with which it lies in common.³⁷

Speculation in land often resulted in individuals taking possession under false titles. When the holder of the valid title appeared, he was privileged to evict the former pro-

³⁶ *Ibid.*, October 29, 1794.

³⁷ *Ibid.*, 1797, November 15, 1821.

vided a settlement was made to cover any improvements which had been made upon the land.³⁸

The township of Hyde Park was granted by the General Assembly "unto Captain Jedidiah Hyde, William Dennison Esquire and Company."³⁹ The execution of the grant was carried out by Governor Thomas Chittenden in the form of a charter issued the following year.⁴⁰ It was obtained through the efforts of Captain Jedidiah Hyde of Norwich, Connecticut. He was able to procure it without difficulty. The most important requirement necessary for him to fulfill was to secure the funds to meet the price set by the Governor and Council. The sum was moderate. Each proprietor was to pay by January 1, 1781, £8, 10s lawful money, one half in silver and the remainder in other equivalent current money.⁴¹ It was Captain Hyde's duty to collect the fees. In case any proprietor proved deficient in this respect the agent was empowered to add proprietors to make up the deficiencies.⁴² From this and other sales from March, 1777, to October, 1786, the state received £66,815.

The land company or propriety which was thereby created held title to its lands through its charter. Just how authoritative this source was remained a question for sometime. We have already seen that the General Assembly was most audacious in continuing its policy of granting lands after Congress had requested it to refrain from such action. It was not until Vermont was admitted to the Union that the title became clear. Therefore the proprietors of Hyde Park

³⁸ Such Acts appear very frequently. *Ibid.*, March 1, 1784, June 17, 1785, October 27, 1785, November 5, 1800, November 4, 1807, November 13, 1813.

³⁹ *State Papers of Vermont, op. cit.*, vol. iii, vol. i, pp. 154, 160, November 4, 1780.

⁴⁰ *Ibid.*, vol. ii, pp. 99-101, August 27, 1781.

⁴¹ *Governor and Council, op. cit.*, vol. ii, p. 52.

⁴² *State Papers of Vermont, op. cit.*, vol. iii, vol. i, pp. 170-171.

during the first ten years of the existence of the propriety really held a none too authoritative title to their lands. The doubt was finally cleared up and no further difficulty over land titles arose to bother them.

The General Assembly had requested the Governor and Council to issue the Hyde Park Charter "under such restrictions reservations and for such conditions as they shall judge best." In accordance with these instructions the main provisions may be summarized as follows: the size of the tract of land was six miles square; the names of the sixty-five proprietors were given; the reservation of five public rights or shares was stated. These shares consisted of one for the use of a seminary or college; the second for the county grammar schools in the state; a third for the purpose of settling a minister of the gospel; a fourth for the support "of the social Worship of God"; and finally a right for the support of an "English School". The first two public rights, it further provided, were to remain under the control of the General Assembly and were to be located by the proprietors "justly and equitably, or Quantity for Quality, in such Parts of the said Township as they or their Committee shall judge will least incommode the general Settlement of said Tract or Township."⁴⁸ The other three public rights were to be so located as "to accommodate the Inhabitants" when the town should be fully settled and were to be under the control of the selectmen of the township.

The charter also described the boundaries of the township. It provided for the incorporation of the region into a township by the name of Hyde's Park and declared the inhabitants to be enfranchised and entitled to all "the Priviledges and Immunities that the Inhabitants of other Towns within this

⁴⁸ *Ibid.*, vol. ii, p. 100.

State do, and ought by the Laws and Constitution of this State, to exercise and enjoy." ⁴⁴

The conditions upon which the proprietors held title to the land were also stated. They were to plant and cultivate five acres of land and to build a house, at least eighteen feet square on the floor, or have a family settled on each respective right " . . . within the Term of Four Years, next after the Circumstances of the War will admit of a Settlement with Safety." The penalty for not fulfilling such condition was the forfeiture of the right by the respective delinquent proprietor which was to be re-granted to any one who would settle and cultivate the land. The final condition was that all pine timber suitable for a navy should be reserved for the use and benefit of the freemen of the state.

The provisions and the conditions of the Hyde Park charter, as we have already noted, were voted by the General Assembly to be worked out by the Governor and Council. The latter in connection with the Hyde Park charter as well as with others followed in some cases provisions previously resolved by the former body, in others, those set up in the constitution. In all cases, however, the real or basic source of the provisions was the New England experiences and background to which the members were accustomed combined with the immediate exigencies of the time, most important of which was the struggle to gain a free and independent government of their own. The organizers of the government were particularly familiar with the charter forms used by New Hampshire and Connecticut. When they were confronted with the task of making out such forms for themselves they doubtless included the provisions and conditions used by the other New England governments which met their needs and purposes. Other provisions, which were not satisfactory, were modified to meet the prescribed qualifications.

⁴⁴ *Ibid.*

The provisions which were accepted without modification were the names of the proprietors, the size of the township, the boundaries, the incorporation clause and the pine timber reservation.

The Vermonters modified their charters in several cases as is shown by that of Hyde Park. They omitted altogether the customary two whole rights which had been reserved in the New Hampshire charters for the governor. Another very important omission was the customary New Hampshire provision for a quit-rent. The conditions of settlement also showed some variation. The Hyde Park charter called for the planting of five acres and a house, or a family to be settled on the right. The time limit was four years ". . . next after the Circumstances of the War will admit. . . ." The New Hampshire charters, in contrast, required five acres for every fifty to be cultivated within a period of five years. The penalty was the forfeiture of the share or right in both cases.

Another modification concerned the privileges granted to the inhabitants of the town. Although they were not listed either in the Hyde Park charter or in the New Hampshire charters, in the former cases more democratic privileges were enjoyed. There are several good illustrations which might be cited. One was that the franchise was granted by the Constitution of Vermont to every male upon reaching the age of twenty-one years without the restriction of a property qualification.⁴⁵ Another illustration was the guarantee against slavery which the same document provided for in its declaration of rights.⁴⁶

The fourth modification to be noted is in connection with the public rights. The Hyde Park charter contained the

⁴⁵ *Governor and Council, op. cit.*, vol. i, p. 96, ch. ii, sec. vi.

⁴⁶ *Ibid.*, vol. i, p. 92. To gain a full appreciation of the privileges granted to the inhabitants of the towns chartered by the Vermont Legislature, the Vermont Constitution should be read.

provision for five public rights rather than the usual four included in the New Hampshire charters. In the latter case three of the four public rights were devoted to religious purposes, namely, one to the minister, one for the Church of England and one for the Incorporated Society for the Propagation of the Gospel in foreign parts. In the former case only two of the public rights were set aside for religious purposes, namely, one to the support of a minister of the gospel and one to further the "social Worship of God". The Church of England and the Society for the Propagation of the Gospel were not included in its support.

The provision for three public rights to be devoted to educational purposes was a still further variation from the procedure of New Hampshire in such cases. That government set aside only one right for the support of schools. The Hyde Park charter as we have seen devoted two rights for the support of schools in the township. In addition it made a unique departure and set aside a third grant to aid in the maintenance of a university. The educational support derived from the Vermont legislature as compared with the New Hampshire government was distinctly more liberal and advanced.

The above modifications were definitely in keeping with the desire and determination of a frontier people to provide for a democratic state. In the older and more densely settled New England areas, despite their democratic intentions, social distinctions and definite social classes were apparent. Political privileges were dependent upon ownership of property. Religious preferences were encountered. Most important of all, economic opportunity was no longer possible for the people generally. With economic opportunity denied, it became impossible for them to share many of the cultural advantages which the older regions had to offer. For this reason many people began to migrate to the frontier where

wider opportunity would be theirs. The Vermonters, as a frontier people, fought for independence from New York and for recognition by Congress to secure economic, political, religious and social opportunity. The constitution which these people adopted reflected this determination throughout by providing various safeguards for democracy. The preamble of this document stated their grievances against New York. This was followed by a declaration of rights which stated "That all men are born equally free and independent, and have certain natural, inherent and unalienable rights. . . ." In order to safeguard these rights no less than nineteen provisions were included in the declaration. The prohibition of slavery and the franchise privileges have been mentioned previously. Religious tolerance, freedom of speech, exclusive and sole right of the people to govern were other important provisions. The constitution further provided for a plan or frame of government. The supreme legislative power was vested in a House of Representatives. Executive power was vested in the Governor and Council. Membership in the House was placed upon a township basis. Courts were provided for. Provisions for taxation were included. Important for our purposes was the provision which required that "A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town, making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly."⁴⁷

With the preceding outline of the general legal provisions set up by the Vermont law and the charter, the propriety of Hyde Park can now be examined in detail.

⁴⁷ *Ibid.*, vol. i, p. 102, ch. ii, sec. xl.

CHAPTER VI

THE TOWN PROPRIETORS OF HYDE PARK

ON the surface the elaborate provisions to govern the procedure of proprietors' organizations outlined in the preceding pages would seem to indicate that the system in Vermont had attained a degree of development rivaling that of colonial New England in the period of 1650 to 1750. The records of the Hyde Park propriety seem definitely to indicate that such was not the case. They show clearly that that particular organization devoted itself, with one minor exception, entirely to the distribution of its common lands. The promotion of settlement and the development of economic activities were never its concern. Other evidences of its departure from the earlier form will appear in the following description of the way the organization actually functioned. Although the Hyde Park propriety clearly shows the departure from the older accepted idea of the colonial New England propriety, evidence can be found in a perusal of the legislation of the state to show it had not broken down quite so completely as in many of the other Vermont town proprieties. At least it was able to carry out the division of its own lands. It was never forced to apply to the state legislature to ratify its divisions. Such procedure was necessary on the part of many town proprieties because an agreement could not be reached among the members themselves, because widespread pitching had taken place or because records had been lost due to negligence, willful or otherwise, on the part of the clerk or the organization.

The original membership of the Hyde Park propriety never rested upon any clear or definite terms of settlement.

It has been noted in preceding pages that the legislature had withdrawn the settlement qualification from the advice it gave to the Committee considering the petitions to the assembly for grants of land.¹ In addition the settlement provision in the charter requiring five acres to each right to be settled and a house to be built or a family to be settled thereon was without a definite time limit due to the unsettled conditions of war. Finally May 1, 1784, was set by the legislature as the lawful time to begin settlement.² Later it declared that there were to be no forfeitures until three years after the "outline" of the town had been run.³ This was later changed to four years.⁴

The sixty-five original Hyde Park proprietors were probably selected by Captain Jedidiah Hyde. In making up the membership in his "land company" or propriety he relied in the main upon his personal friends and acquaintances in Norwich, Connecticut, or neighboring towns and in the continental army. Only two of the original members are definitely known to have settled and lived in Hyde Park. One was Captain Jedidiah Hyde and the other was Jabez Fitch. There may have been others but it is doubtful.

One of the absentee proprietors was Governor Thomas Chittenden. The state did not make any provision for a liberal land allowance in each town charter for its governor, as Benning Wentworth of New Hampshire did for himself. Nevertheless, the Vermont governor was not averse to becoming a member of the various land companies which were being formed. When one checks the charters issued by the state, Governor Chittenden's name is found to be listed as a proprietor in at least forty-two townships.

¹ *State Papers of Vermont, op. cit.*, vol. iii, vol. i, pp. 130, 132.

² *Laws of Vermont*, October 23, 1783.

³ *Ibid.*, October 23, 1786.

⁴ *Ibid.*, March 9, 1787.

The non-original proprietors became so either by means of purchase of a right or share, by proprietary vote, by inheritance or by a proprietor giving his share to another, usually a member of his family. Only the proprietors through purchase were numerous enough to warrant comment. Unfortunately there is no complete record of the number. Whole rights or portions of rights were regularly being bought or sold. However, the records of the meetings divulge the names of ten non-original members, mentioned because they either held office or served on committees.⁵ The available land deeds show the names of at least twenty-eight others.⁶ This total of thirty-eight non-original members is, therefore, a minimum and not a maximum number. Only ten of them became permanent residents in Hyde Park. Two of the ten were successful speculators in land. As individuals rather than as a propriety they contributed to the development of the town. The remaining twenty-eight were absentee and speculative. In the main they resided out of the state. Five of these were New York City speculators and had considerable holdings in the propriety.⁷ Ephriam Morgan, Esquire, of Troy, New York, was another and at one time owned seven whole rights and the equivalent of two others. Several of the absentee proprietors resided in Connecticut.⁸ The non-original proprietors, therefore, played no great part in settling the community and many of them engaged in speculation. Such a condition is further evidence of the departure of the spirit of the Vermont proprietors from that of the early colonial New England settlers.

The Hyde Park propriety was legally in existence from the time the charter was issued on August 27, 1781, until the

⁵ Hyde Park Proprietors' Records.

⁶ Hyde Park Records, Office of the Town Clerk, vols. i and ii, *passim*.

⁷ John Atkinson, Samuel Franklin, Abraham Franklin, Matthew Franklin, William Robinson.

⁸ Several resided in Norwich, Connecticut.

final distribution of land was made at its last meeting on January 6, 1813. Due to the unsettled conditions in the region, however, the propriety did not hold its first meeting until August 1, 1787. Two other meetings were held during that year. Three were held in 1788; two in 1789; and one in 1790. From that year until 1812 there was no meeting of the organization. In 1812 two meetings were held and one in 1813. At the three meetings held during 1789 and 1790 the proprietors found no business to transact. Thus from September 2, 1788, to March 18, 1812, no business was handled by the propriety. This long period of inactivity was due in part to the fact that the sole business of the propriety was the distribution of the land. Most of it was drawn in the six meetings held in 1787 and 1788. It was further due to the fact that the town was organized and held its first town meeting according to the laws of the state in March, 1791. It was this organization of freeholders having the political jurisdiction of the town which assumed the responsibility of developing the community affairs and not the propriety exercising the territorial jurisdiction. The propriety ceased to function until it was moved to make the final distribution of land. The proprietors' clerk evidently turned over his records to the town clerk as soon as the town was organized. They were copied into the first volume of the Hyde Park town records as were the records of the last three meetings.

All the Hyde Park proprietors' meetings were held, according to the Vermont law, within the state. The first five meetings at which most of the land was distributed were outside the town; the first four at Poultney and the fifth at Cambridge. The remainder of the meetings were held in Hyde Park.

Not only were the meetings few in number and the most important ones held outside the town, but the attendance was

ridiculously small. At the meeting in Cambridge when the third division of land was accomplished the proprietors' records show only five members present, four of them being original proprietors and one a non-original proprietor. At the first meeting held in Hyde Park Jabez Fitch records in his diary that "In the Afternoon went down to McDaniels and attended our adjourned proprietors meeting, Master Garven, Master Norton and Cap't Hyde were there." * Again five members were present; John McDaniel, Jabez Fitch and the three members mentioned above. Hyde and Fitch were original proprietors and the others non-original. Apparently the business of the propriety was carried out by a few proprietors in a relatively small number of meetings sparsely attended; all of which is further evidence that the nature of the proprieties in Vermont had changed decidedly from those of earlier colonial times.

The law of Vermont gave the Hyde Park proprietors the right to carry on any business which might concern the propriety. Their records show that practically their only activity as an organization was the division of land. At the first meeting of the propriety, it was voted "To lay one hundred acres to Each Right As First Division with an Addition of Five acres to each Hundred acres for the Use of Highways Said Division to be laid Parallel with the Lines of Said Town one hundred and Sixty Rods in length, and Hundred and five Rods in Breadth to be Laid Adjoining in

* Jabez Fitch Diary, entry for September 2, 1788. Jabez Fitch kept a diary of his daily experiences for over forty years. It has not been preserved intact. The diary is now in the possession of the Massachusetts Society of Mayflower Descendants, 9 Walnut Street, Boston. It covers the following periods; August 6, 1788, to January 22, 1789; February 6, 1790, to January 3, 1810; March 6, 1810, to January 13, 1812. The *Vermont Historical Gasetteer*, edited by Abby Marie Hemenway, vols. i-v (Burlington, Vermont), vol. ii, pp. 640-652. Extracts from the same diary for September 2-15, 1787; May 22-July 6, 1788. Entry for September 2, 1788.

Such part of the Township as Shall Best Commode the Propriety."¹⁰ At the same meeting the proprietors also voted the second division lots. They were "to contain One Acre, to be laid in the best of the Pine Timber, in said Township, in a Square form said Lots to be adjoining". The committee to make the plan consisted of Captain Jedidiah Hyde and his son, Jedidiah Hyde, Jr., who were instructed that the lines of each lot were ". . . to be Run and well Marked on every side and properly marked at Each Corner and a Plan or Chart thereof returned to the proprietors at their Next Adjourned Meeting".

These first and second division lots were drawn at the second meeting of the Hyde Park proprietors.¹¹ Plans for the third division were begun in February, 1788.¹² At that time the propriety voted

to lay out a third Division in said Township consisting of Two hundred Acres to each Propriators Right with an addition of ten Acres to each Lot as an allowance for Highways which Lots are to be laid in lines Parallel to the Lotts already laid half a Mile one way and 210 Rods the other if the Land will admit if not to be Laid in the Best form our Committee Shall se fit who are to consist of Jedidiah Hyde & Jedidiah Hyde Juner who are hereby allowed & ordered to Lott out said Town . . .

At this same meeting the propriety also instructed the aforesaid committee to leave ten acres in the most convenient part of the township for a "public Parade".

The third division lots were drawn at the following meeting.¹³ John McDaniel, a non-original proprietor, was voted "Lott No Two in the Third division on the original Rite

¹⁰ Hyde Park Proprietors' Records, August 1, 1787.

¹¹ *Ibid.*, October 25, 1787.

¹² *Ibid.*, February 12, 1788.

¹³ *Ibid.*, July 1, 1788.

of Elijah Bill in Lue of his draft in said 3rd Division. Said Lott is the Lott he now lives on". The proprietors also "Voted the Lott N One . . . to the Rite of Andrew Billings to Quiet the Settlers Now on Said Lott who have settled under the Title of his original Rite Being Peter Martin and Ephraim Garvin. . . ." Such procedure was permitted by the Vermont law governing the division of lands by the propriety.

The undivided land which remained continued to be held in common for nearly twenty-five years. In May, 1812, the proprietors met and voted that a division be made.¹⁴ A Committee of three, John McDaniel, Nathaniel P. Sawyer and John Hastings, were ordered to procure a surveyor to plan the allotment of the fourth and fifth division lots. As the proprietors were uncertain as to the amount of the undivided land they ordered the committee to divide it equally among all the proprietors. Apparently over the twenty-five year period a number of people had settled in the community on lands which they had pitched. This may have been the reason why the proprietors decided to bring about the final division. To cope with the above problem the propriety "Voted to Quiet the settlers in their pitches by exempting the lots from Draught".

The committee presented their plan at the next meeting.¹⁵ The propriety voted to accept it and the drawing followed. Eighteen lots were exempted from the drawing presumably "to quiet the settlers in their pitches" although the records do not say so. Four other lots were given to the town for such use as the town should determine. Also four lots in the southeastern corner of the town were set aside for four of the public rights in the town. Evidently the public rights in the fifth division were drawn in the usual manner. At

¹⁴ *Ibid.*, May 6, 1812.

¹⁵ *Ibid.*, January 6, 1813.

this meeting the proprietors voted to adjourn to the first Wednesday of September next. This according to the provisions of the Vermont law was superfluous as the propriety ceased to exist with the completion of the division of the common land. Evidently it did not meet again as no record exists of the adjourned September meeting.

When the complete division had been made each proprietor's right totalled three hundred and forty acres.¹⁶ One hundred acres was allotted in the first division, one acre in the second, two hundred acres in the third, three in the fourth and thirty-six in the fifth. The five lots of varying size which each proprietor held were scattered throughout the township. In this division among the Hyde Park proprietors it should be noted that there was no provision for small house lots in the center of the town where the proprietors could build their houses. In its place evidently they substituted the one-acre "pine lots" as they were called. The compensation resulting from the sale of pine timber presumably was greater than that derived from compact settlement. Thus the village community of the older New England towns did not exist here. Instead, scattered homesteads came to characterize the settlement. Still another departure from the old New England idea was the absence of any provision on the part of the propriety for a common field system or common pasture.

The only other activity in which the Hyde Park propriety engaged was to start the construction of a road through the township from Johnson to "Wolcott".¹⁷ This was to be

¹⁶ This total acreage is that given in the tax collector's report of a public vendue held in connection with the collection of the state tax of 1822. It has been accepted here as the accurate amount. Before the final division was accomplished however, the total acreage was estimated at various figures. In the Hyde Park town records, vol. i, pp. 202-210 it was estimated as three hundred and twenty-nine acres. *Ibid.*, vol. ii, p. 203, it was estimated at three hundred and sixty-four.

¹⁷ The Hyde Park Proprietors' Records, February 12, 1788.

built "in the most convenient direction they (the proprietors) can conceive". A tax of twenty shillings on each original proprietor's right was to be levied for this purpose and a committee of two was appointed to take charge of the matter. Later in the same year two other members were added to this committee to assist in cutting the proposed road.¹⁸ How much it ever accomplished is not recorded but there is good reason to believe it was very little. About three years later the town organization began to function and it assumed the responsibility of building and maintaining highways and bridges. To do this it was possible under the state laws for the town to petition the state legislature "praying" that body to levy a land tax for the construction of highways.

The Hyde Park propriety did nothing to encourage the building of grist or saw mills. Until 1792 the nearest grist-mill was at Cambridge, eighteen miles away.¹⁹ In that year a saw and grist mill was built at Wolcott, at least ten miles from Hyde Park in the opposite direction from Cambridge. As a propriety they did little to further the advancement of the town except to grant the ten acres for a "public Parade" and four lots for the benefit of the town in addition to setting aside the five public rights which it was required to do under the terms of the charter. A careful study of the records seems to indicate that the business of the propriety was carried on for the most part by a very few proprietors, either original or non-original, who in the main settled in the community.

During the first series of Hyde Park proprietors' meetings, 1787-1790 Captain Jedidiah Hyde, the organizer of the land company, shaped and dominated the activities of the propriety, ably assisted by his son, Jedidiah Hyde, Jr. Captain Hyde was clerk of the organization during this period and

¹⁸ *Ibid.*, September 2, 1788.

¹⁹ *The Vermont Historical Gazetteer*, op. cit., vol. ii, p. 654.

at one time he was the treasurer of the propriety. In addition he served as one of the two members of the committee to plan the most important divisions of land and also served on the road committee. Jedidiah Jr., although he eventually made permanent settlement elsewhere, was with his father during these three important years and was appointed the second member of the committee to survey and plan the first, second and third divisions. He also served in the capacity of collector of the proprietors' tax to cover the first and second divisions of land and probably in the third division. From an expense account of young Jedidiah entered in the records, it appears that he made the journeys to Bennington to insert the advertisement of the meetings in the newspapers.

Two other proprietors also played a part in the early proceedings of the propriety but their influence was less than that of the Hydes. Jabez Fitch twice served as moderator at these early meetings and was a member of the road committee. John McDaniel also served on the highway committee. He was the first settler in Hyde Park and a non-original proprietor. Although in connection with the propriety he seems to have been overshadowed in influence by the Hydes during the early years, he played an important part later.

During the second series of the proprietors' meetings held during 1812 and 1813, the Hyde influence appears to have given away to others. Captain Hyde at that time was about seventy-five years of age and probably no longer was able to take such an active part in the affairs of the propriety. Jedidiah Hyde, Jr. had long since settled in Grand Isle. The only representative of the Hyde family recorded as actively serving the propriety at this later date was another son of the Captain, Major Russell B. Hyde, who was in Hyde Park for a short time. He served as proprietors' clerk *pro tem*.²⁰

²⁰ The Hyde Park Proprietors' Records, March 18, 1812.

Jabez Fitch died in February of the year the proprietors reconvened.

The business of the propriety was now guided in particular by two men, Nathaniel P. Sawyer and John McDaniel. They meanwhile had become considerable property holders in the town and both served on the committee to make the fourth and fifth divisions. Truman Sawyer, John Hastings and Gamaliel Taylor were active members of the organization at this time. The first served twice as proprietors' clerk.²¹ The second served on the committee to make the division²² and the third was appointed as the collector of the proprietors' tax.²³ All five men were non-original proprietors who settled permanently in Hyde Park.

In the preceding chapter it was indicated that the Vermont proprietries had the power to levy taxes in order to secure the necessary funds to carry on their activities. The Hyde Park propriety exercised this privilege for two purposes. One was to build a main highway and the other was to make the division of land. The highway tax was a small one, twenty shillings to each original proprietor's right, but as such a tax was levied only once it need not be given further consideration.²⁴

The only important taxes levied were those to cover the cost of land division. The first of these was a tax of thirty-two shillings, nine pence, halfpenny on each proprietor's right to survey the first and second division lots and the costs involved in advertising the meetings. The second tax was two pounds, one shilling and six pence on each right.²⁵ This sum as in the previous case covered the cost of advertising

²¹ *Ibid.*, May 6, 1812, January 6, 1813.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*, February 12, 1788.

²⁵ *Ibid.*, July 1, 1788.

as well as the surveying of the third division lots. The third and last tax covered the fourth and fifth divisions and amounted to two dollars on each right.

The proprietors in Hyde Park were not only responsible for taxes levied by their own organization but for certain rates levied by the state, county and town. As it was the individual proprietors and not the propriety who were held responsible for these special taxes, it may seem needless to consider them further. However as delinquency in payment of these taxes as well as of those levied by the propriety was quite generally characteristic, it led to a great deal of land being sold at public vendue, which in its turn served as a very effective means for speculation in lands and for a considerable concentration of land ownership. Therefore brief comment concerning the special taxes is necessary.

The Hyde Park town records show that the proprietors of the town were particularly concerned with the special land taxes levied by the state from time to time and also with those levied by the town with the permission of the state legislature for the construction of roads and bridges. Any proprietors of legal age who resided in the town were also responsible for the payment of the state poll and general property tax. In the latter case they were taxes only on land which had been settled for two years. As the records do not show any case of delinquency we are concerned therefore only with the special land taxes and the town taxes for highways and bridges.

The state began to levy special land taxes as early as 1781 but as settlement in Hyde Park was delayed by the war, the proprietors first encounter such tax in 1791, again in 1797, 1807 and 1812. The tax of 1791 at the rate of a penny an acre was levied to raise the \$30,000 which Vermont was required to pay New York state when the former was admitted to the Union as a separate state. The three other

special land taxes were at the rate of one cent an acre and were designed to meet special expenditures.

Because the provisions of the laws were much alike, it is unnecessary to treat each one in detail. The tax of 1812 may be used as a sample case for by that time all the early additions and corrections found necessary in connection with the earlier laws were embodied.²⁶ The rate of one cent an acre was levied on the land within the state and was to be paid into the treasury in hard money, orders issued by the supreme court, treasury notes, orders drawn on the treasury or in bills of the Vermont state bank. The state treasurer issued his warrants to the first constable of each town which gave him the authority to collect the taxes. The constable, as collector, applied to the selectmen of the town for a rate bill containing a list of all the lands held in severalty in the town, according to the actual limits of the charter. The lot numbers were included as well as the number of acres in each lot and the tax to be paid. The selectmen were to include the undivided lands in the list. The provisions set forth in the act to govern delinquency were in the main the same as in the case described in connection with the proprietors' tax, namely, sale of a portion of the land at public vendue to pay the tax. The redemption provisions were also the same, that is, they extended one year from the day of the sale.

There was a large number of proprietors delinquent in payment of the taxes levied by the propriety as well as those levied by the state. The collector's advertisement of public vendue relating to the collection of the first proprietors' tax listed thirty-one proprietors as delinquent. Three of this number paid the tax before the vendue. The lands of the others were disposed of at public sale.²⁷ It is difficult to

²⁶ *Laws of Vermont*, Act of November 9, 1812.

²⁷ *Ibid.*, July 1, 1788.

tell from the records how much land belonging to each of these twenty-seven proprietors was sold. Although the copy of vendue states "By whom Bought and how much," the amount is indicated only after the first name on the list and states "the whole right." A more accurate account is rendered of the purchasers in each case. Captain Jedidiah Hyde purchased the lands of eleven proprietors and his son, Jedidiah Hyde, those of the other sixteen. This action brought a very considerable acreage within the township under the control of the Hyde family. Jabez Fitch a proprietor who attended the sale makes a significant comment in this connection. Upon arrival at the sale, he records, "I found the Hydes very busy in their vendue, which they appeared very anxious to keep within their own control."²⁸

In connection with the second proprietors' tax the collector's advertisement showed that thirty-five proprietors had failed to pay the tax and that a portion of their lands was to be sold.²⁹ Fifteen of this number redeemed the same within the year. A portion of the rights of twenty-one proprietors, however, was disposed of at public sale. In each case the third division lot and all the undivided land of each delinquent proprietor was sold. Once again the Hyde family bought a large proportion of the lands. Captain Hyde bid in the third division lot and all the undivided land of nine proprietors. Two of these proprietors redeemed their lands. William Hyde, a son, bought the third division and all the undivided lands of nineteen proprietors. Ten of these proprietors redeemed their lands. The result was that the Hydes gained possession of the lands of sixteen of the twenty-one proprietors who were unable to redeem their holdings. The large number of redemptions in this case seems to indicate that the absentee proprietors managed to

²⁸ Diary of Jabez Fitch, *op. cit.*, Entry for July 1, 1788.

²⁹ *Ibid.*, Public Vendue, March 3, 1789.

reimburse the Hydes within the period allowed for redemption.

The third and last proprietors' tax was collected after the Hyde Park propriety was legally out of existence, so the records of the organization give no account of the public vendue. The collector's advertisement, however, is recorded and it served warning on thirty-five members that their lands would be sold.

Delinquency in payment of the state taxes kept pace with that in payment of the proprietors' taxes. The collector's reports of such delinquency were not always entered in the town records and when they were not it has been necessary to rely upon the land deeds. The collector's report of the state tax of 1791 was not entered in the town records but the land deeds of the town show at least twenty proprietors as delinquent. Fifteen of these lost their whole right while five lost a portion of their right. Of the fifteen whole rights which were sold, thirteen were bid in by Aranah Hyde, another of Captain Hyde's many sons.

The collector's report for the state tax of 1797 indicates that the lands of sixty-one proprietors were disposed of at public vendue.⁸⁰ This same report indicates that John McDaniel bid in forty-nine whole rights and parts of eight others. This high percentage of delinquency may have been due to the fact that the resident proprietors for some reason neglected to pay the tax until the end of the redemption period.

The collector's report for the state tax of 1799 levied for road construction includes the names of thirty-eight proprietors whose lands were sold.⁸¹ Twenty-seven of these lost their whole right. At the public sale the number of purchasers had increased over that of former occasions. John

⁸⁰ Hyde Park Town Records, vol. i, pp. 132-139.

⁸¹ *Ibid.*, vol. i, p. 66.

McDaniel bid in nine whole rights; Nathaniel P. Sawyer, five; Jacob Hadley, four; Timothy Hastings, three; and Peter Martin, three. These men were all non-original proprietors living in Hyde Park and availed themselves of their opportunity to buy these lands for the amount of the tax and small costs involved.

In connection with the state tax of 1804, thirty-one proprietors lost a part of their right while twenty-four lost their whole right.⁸² The largest purchasers of the whole rights were the New York City speculators, Samuel and Abraham Franklin and William Robinson, who in partnership bid in eight whole rights. Nathaniel P. Sawyer was probably their agent. Sawyer bid in for himself five whole rights and still another for John Atkinson of New York City. Jacob Hadley bought three rights and Aaron Keeler four. John McDaniel according to the records made no purchases.

The collector's report of the state prison tax of 1807 was not entered in the town records. The land deeds indicate that at least thirty proprietors were delinquent. John McDaniel purchased the lands of twelve of these proprietors; Nathaniel P. Sawyer, eight; and Joseph Hadley, three.

The last of these state taxes levied while the propriety was still in existence was the tax of 1812. The land deeds indicate that at least twenty-three proprietors were delinquent and that Nathaniel P. Sawyer purchased the lands of twenty of these men.

In summary of the delinquency in payment of taxes, either those levied by the propriety or by the state, it may be said that each one of the sixty-five proprietor's rights was sold in whole or in part at least once in payment of a tax. The constant sale and purchase of these lands and the part played by absentee ownership were undoubtedly the most

⁸² *Ibid.*, vol. i, pp. 202-210.

important factors responsible for delinquency on such a large scale.

The discussion of the Hyde Park propriety would be incomplete without some mention of the speculation in the buying and selling of proprietor's shares in which the members of the organization indulged. Earlier in this chapter and in the preceding one it has been clearly indicated that all but two of the original proprietors were absentee and speculative in character. In addition, several of them were original proprietors in other Vermont properties. Captain Jedidiah Hyde's name appears as a proprietor in the charters of six other Vermont towns. Five original Hyde Park proprietors' names are included in the charters of at least two other towns of the state. Captain Jedidiah Hyde and Jabez Fitch, the two original proprietors, who became permanent settlers in the town, carried on speculative enterprises. The extensive purchases of the former at the public sales have already been indicated. However, over a period of time his place as the chief speculator in lands gave way to others. Jabez Fitch as far as the records show never engaged in any very extensive speculation.

Many of the non-original proprietors engaged in land speculation but the outstanding cases were John McDaniel and Nathaniel P. Sawyer. Both of these men were aided and abetted in this enterprise by the sale of the lands of proprietors delinquent in payment of taxes. John McDaniel was the immediate successor of Captain Jedidiah Hyde as a purchaser at public vendue. At one sale it has already been noted that he bid in forty-nine whole rights; at another, nine; and at still another, one whole right and a part of eleven others. However, he had the deeds recorded of only a portion of these particular purchases, and they involved three thousand two hundred and fifty acres. Besides the purchases mentioned above, he frequently purchased in part-

nership with Nathaniel Sawyer. There is no doubt that he became one of the largest land holders in the town. This opinion of him is further borne out by the following quotation appearing in Hemenway's *Gazetteer*, "He accumulated a respectable property, and was esteemed wealthy for the time, notwithstanding his lack of that closeness and calculating thrift, which rank as cordial virtues with the genuine Yankee."⁸⁸

Over the entire period of the life of the propriety, Nathaniel P. Sawyer came to hold first place as a speculator among the original or non-original proprietors, resident or absentee. It is impossible to estimate the total acreage which he owned in the town, but a few illustrations can be given to show that his transactions were numerous and on a large scale. He took particular advantage of the public land sales and secured extensive acreage for the mere payment of the tax and cost of sale. Mention here will be made only of the land purchases for which he had the deeds recorded. At the public vendue in connection with the state tax of 1799 he secured two hundred and forty acres for the sum of four dollars and seventy-eight cents. The state tax of 1804 gave him occasion to secure eight hundred and twenty acres for twenty-five dollars and sixty-one cents. In connection with the state tax of 1807 he bid in seven hundred and two acres for thirteen dollars and sixteen cents. The acreage obtained from proprietors delinquent in payment of the state tax of 1812 was three thousand two hundred and eighty-eight. This he was able to obtain for the sum of thirteen dollars and twenty-one cents. He also purchased at the same time nine hundred and sixty acres in co-partnership with John McDaniel. The state tax of 1822 levied after the propriety had ceased to exist gave Sawyer further opportunities for

⁸⁸ Hemenway, *Vermont Historical Gazetteer*, *op. cit.*, vol. ii, pp. 653-654.

speculation. In this connection he actually had deeds recorded which gave him title to at least four thousand seven hundred and fifty acres in addition to the eleven hundred and thirty-five acres he purchased in partnership with John McDaniel.

This brief and limited treatment does not do justice to Nathaniel P. Sawyer either as a land owner or a land speculator. However, the impression of the extensiveness of his accomplishments and methods practised along these lines of endeavor can be effectively augmented by quoting a portion of a biographical sketch which his brother, Joshua, prepared concerning him. He writes,

Nathanael Sawyer was among the early pioneers of Northern Vermont—endowed by nature with a sagacious mind, prudent in habits, extensive in business calculations, and much inclined to hold a respectable share of territory in Vermont. In the course of his life, few individuals in Vermont held a larger share than himself. He was not usurious, and was extremely indulgent to settlers. After 15 years patiently waiting upon a purchaser—who then claimed to gain it by possession—he would sue. “Joshua,” he would say, “Sir, I reckon it is high time for a body to be looking after such kind of folks as that man.” My answer, of course, would be in the affirmative. “Well sir, take a description of the deed and send him a writ of ejectment, as soon as you please.” The suit was generally compromised, and the writings extended, if the Judge believed him a weak-minded man, or put up to it by advisers.—Otherwise, a vicious, evil-minded man, was not likely to trouble him long, on land he did not own. Few men in Vermont had passed a larger number of deeds. Perhaps few men in Vermont were better able to manage a land-suit, so far as preparation was concerned, than himself. In fact, he was a good land-lawyer in all essentials. He was liberal in his expenses at home and abroad, though never extravagant. . . . In the public donations, he was open-handed. As a sample, I will notice that he gave the land

for the public buildings—what is called the square—in the heart of the village, and subscribed \$500 towards their erection—also, the land for the meeting-house, and for the village cemetery. This was subsequent to 1836, and at a time when lands had become comparatively valuable, in the village of Hyde Park, at least. He was an exemplary temperance man, before that great change in the sumptuary management of life was regulated by statutory enactments, and after that, I believe, he strictly conformed to the requisitions of the law. His manners were unassuming, and his tongue free from evil speaking against friend or enemy.³⁴

This comment of Joshua Sawyer is most significant. It not only adds to our picture of Nathaniel but more important it embodies the change characteristic of the town proprietors of the frontier. It indicates very clearly the opportunities for land speculation which were open to individuals under the system of proprietorship as it existed in Vermont. In addition it indicates that the provisions for the general community welfare, such as lands for the various public buildings and the cemetery as well as funds for the construction of public buildings, were made through the generosity of certain wealthy inhabitants of the town and not by the proprietors as a group. In other words, the cooperative spirit of the earlier New England proprietors in providing measures to promote and encourage settlement had ceased to exist.

³⁴ *Ibid.*, vol. ii, p. 663.

CHAPTER VII

THE DECLINE OF TOWN PROPRIETORSHIP

IN the preceding chapters it has been indicated that a group of individuals constituting the Massachusetts Bay Company migrated to New England for the purpose of developing a colony. Their great concern was to attain economic success in order that they might provide for themselves a life which would lend itself to the realization of their religious and social ideals. Their equipment for attaining economic success consisted of a vast amount of land and a free government unhampered by feudal restrictions or interference from the English government. Both of these advantages were granted in the charter of the company. The land, however, was located in a rough and mountainous section of the continent which limited the amount available for crops. The soil of the coastal plains was of poor quality. The climate made possible only short-season crops such as cereals and grass. These conditions combined with a restricted market hindered the growth of commercial agriculture and provided little stimulus for extensive land speculation. Thus a self-sufficient agriculture remained the chief economic foundation.

To insure economic success under such conditions the General Court exercised its political and territorial powers in the establishment of a highly controlled land system, granting lands to groups of town proprietors who were definitely pledged to promote the settlement of the town or forfeit their grant. The proprietors held the lands in common and over a period of time distributed them to individuals in severalty.

As the proprietors and others in the town were dependent upon their own labor to maintain themselves the land was divided equitably. A portion of each kind of land was drawn in the form of house, meadow, arable, pasture, and forest lots. This resulted in the holdings of individuals being scattered throughout the community. Besides the individual allotments the proprietors made provision for lands to be reserved for public purposes. The general result of this land system was the development of a series of compact village communities economically successful, thereby making possible the religious and social facilities desired by the settlers and by the General Court. Full legal recognition of the rights of the proprietors was provided by statute as the need for such arose.

Such was the system of proprietorship until about the middle of the eighteenth century. About that time the character of the New England proprietries began to change. The changes were characteristic not only of the new town proprietries created by the older New England governments but also of those created by New Hampshire and later by Vermont in the region west of the Connecticut River. The story of the changes has been dealt with at length in the description of the two town proprietries in that region, Windsor and Hyde Park. The changes indicate for the most part not only the decline of the system of proprietorship from that which was set up by the General Court of Massachusetts but in addition the end of the system in America.

By the middle of the eighteenth century the original proprietors of the frontier towns were speculative and absentee in character rather than resident proprietors actually responsible for the settlement and development of the community. Very few of the original proprietors of the frontier townships actually lived in the town or played an active part in building it up. They resided elsewhere and held or sold

their rights or shares to others for profit. The few original proprietors and the non-original proprietors who actually did settle in the town were also moved by the speculative spirit.

The spirit of speculation along with absentee proprietorship wrought changes in the way in which the proprieties functioned. Excellent examples of the changes were indicated in the description of the proprieties of Windsor and Hyde Park. Speculation and absentee proprietorship made the division of the land the only real activity in these two proprieties. They also affected the way in which the proprietors distributed the lands. No provision was made in either propriety for a common field. In the Hyde Park organization no provision was made for house lots. In Windsor, although such provision was made, the house lots were large and several were assigned to each proprietor. The entire distribution of land was accomplished as quickly as possible. This tended to reduce the amount of common undivided land in the community as well as to reduce the task of management to a minimum. Speculation and absentee proprietorship also made it difficult to raise funds by taxation to carry out the business of the propriety because members were delinquent in making tax payments. Delinquency was so common that the state law made provision for the sale of portions of the delinquent proprietors' holdings sufficient to cover the taxes levied. The same factors rendered the activities of the organizations to encourage settlement almost *nil*. A feeble and ineffective effort to construct main highways was the only activity along this line that was attempted. In fact the propriety system in Vermont with its elaborate legal set-up compared with that of the preceding century in older New England was nothing more than a shell with its content removed.

Economic factors were largely responsible for the decline of the system of proprietorship in Vermont as well as in

other parts of New England in the eighteenth century. Therefore, they will be given chief consideration in the following pages. First to be noted is the fact that the various colonies by the opening of this period had succeeded in establishing themselves upon a sound economic basis. Throughout the New England colonies a great number of self-sufficient agricultural communities were definitely and permanently established. No longer was it necessary for those considering settlement in New England to fear for a livelihood as many did at the time when John Winthrop and others came to New England. Those in authority in the colonies were no longer worried by the problem of building up an economic structure upon which the success of the colony depended. A careful land policy such as granting lands within a town to a group of proprietors pledged to actual settlement was no longer vital to the success of the colony and it is not surprising that by the eighteenth century "the prudent and cautious" land policy of the New England colonies began to take different form.

The rise and expansion of economic activities in New England other than agriculture contributed to the change in the character of the proprietries. This was especially true in the coastal regions and in the interior wherever transportation facilities were available. The fishing industry during this time assumed considerable proportions and yielded very satisfactory returns. The forest industries also were being developed and among the various forest resources lumber was of great importance. Of particular value was the white pine timber, well suited for the construction of ships. Ship building became one of the outstanding industries along the coast. Ships were constructed to accomodate the fishing interests and as time went on more and more attention was given to the construction of merchant ships. These activities in their turn gave rise to an important carrying trade.

Legislation passed in the mother country aided the development of these colonial activities. Both at home and in the colonies England was glad to encourage the fishing trade for it trained a large number of her subjects in the maritime arts. Fishing vessels were of great significance in time of war for they could easily be converted into war ships and thus enlarge and strengthen the English navy. Ship building and the carrying trade at home and abroad were encouraged for the same reasons and under the Navigation Acts colonial ships and sailors were counted as English and goods to and from England and the English colonies, as well as to foreign countries, could be carried only in English ships manned by English sailors. This stimulated to a great extent the natural tendency for the development along these lines in the colonies.

However, the real significance for our purposes of the development of these various economic activities along with that of self-sufficient agriculture is that they, rather than agriculture, gave rise to the creation of a surplus capital. For a time the surplus so obtained could be re-invested or re-absorbed along the same lines. But as more and more surplus capital was being accumulated it was natural that the owners should begin to seek other ways of investing. Manufacturing enterprises did not offer at this time a particularly satisfactory avenue for investment. With this avenue more or less closed, it is no wonder that the opportunity for investment of their surplus capital in land came to play such an important part in the colonies as an outlet for the accumulation of wealth. At this point is found the main economic instrumentality at work in bringing about the change in the colonies from a "prudent and cautious" land policy to one which was particularly speculative in character and which played its part in changing the proprietors' organization. The economic development which was making such headway

in the colonies was even more pronounced in England during the seventeenth and eighteenth centuries. All lines of economic activity were developing there at this time and the progress which was being made in commerce and manufacturing was phenomenal. English merchants and domestic manufacturers were building up surplus capital and they also became interested in new means of investment both sound and unsound. Great numbers of Englishmen, moved by the economic development of the times, were seized with all kinds of ideas and get-rich-quick schemes, many of which involved business projects to be carried on at home and in the colonies. The year 1720 saw the bursting of the famous South Sea Bubble and the passage of the Bubble Act by Parliament which aimed to put a curb on the wild speculation of the times by prohibiting the formation of joint stock companies without authorization by law. The general economic expansion in Europe and America was without doubt the outstanding force at work in creating the speculative spirit of the time.

The development in economic activities other than agriculture brought into particular relief the whole problem of the inadequacy of the financial structure of the New England colonies. Throughout the colonial period both the governments and the inhabitants were handicapped by lack of currency and banking facilities to meet the needs arising from expanding economic activities and increasing governmental expenses. The colonial legislators and the colonists themselves tried various schemes to remedy the situation. Among these, and of particular importance in connection with land speculation, were the attempts made by private interests in some of the colonies to establish loan banks which issued loan bills with land or mortgage security.¹ The controversy which arose in connection with this development was un-

¹ Massachusetts, Connecticut, Pennsylvania.

doubtedly another factor which contributed to a change in the land policy and thereby the proprietors' organization.

Another phase of finance which affected changes in the land policy of New England was the increasing need of funds on the part of the colonial governments. The Connecticut Colony was the first to adopt the policy of selling its unappropriated lands to secure income. Its General Court in 1715 appointed a committee to sell at public auction the 105,793 acres of land received by it in the same year at the termination of the Massachusetts-Connecticut boundary dispute. The public auction of this tract of land was held in Hartford, April, 1716, and was bid in by William Pitkins, a member of the committee, for the sum of £683. The successful bidder acted in behalf of several persons mostly from Massachusetts.² In 1720 Connecticut Colony again sold land at public auction. This time a tract containing 16,000 acres was sold to a group of eight men for £510. One of this number was Roger Wolcott, one of the most famous land jobbers of the time.³ In 1737 the same colony again authorized the sale of seven townships in the territory known as the Western Lands, the proceeds to be used for public education.⁴ The auction was held, the lands of all but one township were sold and in 1738 the General Court passed an act authorizing the proprietors to meet and divide their holdings.⁵

Massachusetts Province did not sell land at public auction until 1762 when the General Court authorized the sale of nine townships six miles square each.⁶ The public auction

² Akagi, *op. cit.*, pp. 181-182. *Conn. Col. Rec., op. cit.*, vol. v, pp. 528-529.

³ *Ibid.*, p. 182. *Conn. Col. Rec., op. cit.*, vol. vi, p. 194.

⁴ *Ibid.*, p. 198. *Conn. Col. Rec., op. cit.*, vol. viii, pp. 134-137.

⁵ *Ibid.*, p. 198. *Conn. Col. Rec., op. cit.*, vol. viii, pp. 169-171.

⁶ *Ibid.*, p. 199. *Mass. Acts and Resolves, op. cit.*, vol. xvii, pp. 148, 242-244.

was held in Boston on June 2 of the same year. Massachusetts Province did not follow the same procedure as Connecticut Colony, which divided each township into shares and sold each share separately, but sold the whole township to a single individual, the highest bidder in each case.⁷

In Vermont, the need of the new state for funds to maintain its independence as well as its government worked in conjunction with the speculative spirit to break down the old established system of proprietorship. The state legislature early chartered all the ungranted lands in its territory to land companies at a price. The members of these companies were recruited from all parts of New England and as far south as Maryland. Many of them were members of the continental army. In all probability few of the entire number holding membership in the companies ever had any idea of settling in that frontier region. Their main purpose was to sell their holdings at a profit.

Still another factor which threw into relief the economic resources in land and played its part in introducing a speculative element into the land policy was the French and Indian Wars and their final cessation in the year 1763. War from time to time between France and England usually brought conflict to America either between the French in Canada and the English in the new colonies or between the latter and the Indian allies of the French. The French and Indian Wars, fought for the most part in the frontier and unsettled districts of western and northern New England, were especially important in their relation to the land policy in several ways.⁸ First, the war experiences in this unsettled territory brought to the attention of the colonists the existence of vast tracts of unoccupied lands the character of which had been

⁷ *Ibid.*, p. 200. A list of the townships with each purchaser and price is given on p. 199.

⁸ *Ibid.*, p. 184.

unknown to them before. Both the pioneer and the speculator were attracted. When the soldiers returned and spread the news the various New England colonial governments were besieged with petitions for grants in this unoccupied territory. Secondly, war conditions raised the question of defense and as the problem became more acute the New England colonies began a policy of laying out a series of frontier townships as a defense measure. Massachusetts and Connecticut were most energetic in this connection, both beginning such action in 1736.⁹ Thirdly, at the conclusion of the wars the soldiers must be pensioned. The easiest if not, indeed, the only way open to the New England colonial government was to adopt a policy of pensioning in the form of land grants in the unoccupied territory. The Massachusetts Province began its land-pension scheme in earnest in the year 1728 by granting two townships and in 1734 five more.¹⁰ These grants were known as the Narragansett Townships and were granted to the officers and soldiers, their heirs and assigns, who had rendered service in King Philip's War or the Narragansett War of 1675. These townships were six miles square and the lands in each were distributed among one hundred and twenty proprietors. Much the same thing was done by the Massachusetts General Court for those and their heirs serving in King William's War. These grants were known as the Canada Townships and were made over a period of time beginning in 1735 when nine were granted, followed by three in 1736, one in 1738 and three more between 1768 and 1771.¹¹ Like the Narragansett Townships,

⁹ *Ibid.*, p. 194. For a list of the more noteworthy series of townships so created, see *ibid.*, pp. 195-196.

¹⁰ *Ibid.*, pp. 190-192. *Massachusetts Acts and Resolves, op. cit.*, vol. xi, pp. 325-326, 673-674, *passim*. *New Hampshire State Papers, op. cit.*, vol. xxiv, Appendix, pp. 793-820.

¹¹ *Ibid.*, pp. 192-193. *Massachusetts Acts and Resolves*, vol. xii, pp. 105-106, 140-147, 181-182, 289, 341-342, 348, 457, *passim*; vol. xviii, pp.

each one was divided among a large number of proprietors. Such a pension scheme then played its part also in breaking down the outstanding features of the proprietors' organizations in the seventeenth century and giving rise to the new in the following century.

Another economic factor, although it is very much involved with the political, was the boundary disputes between the colonies and particularly the controversy between New Hampshire and New York over the unoccupied region west of the Connecticut River. Governor Wentworth granted no less than one hundred and twenty-nine townships to groups of proprietors in this disputed territory between the years 1749 and 1764 inclusive. His action in this connection was dominated without doubt by his desire to gain possession of this territory for New Hampshire and by the speculative spirit. He not only reserved a considerable acreage in each township for himself but very often included in the list of proprietors to whom the townships were granted members of his family and of the New Hampshire Council as well as many of his personal friends. Although settlement requirements were to be found in each of the charters granted, the Governor must have been well aware of the fact that in most cases they never could be met.

Along with the various phases of economic expansion went certain other developments which affected change in the land policy. The growth of population which had taken place in the colonies both by natural increase and by immigration was quite marked. A great portion of this number was beginning to feel that the older settlements were overcrowded. As sons and daughters grew up it became increasingly difficult for them to secure land. As newcomers arrived from Europe they felt the lack of opportunity in the

settled areas. Also in each town there were many who felt they had been discriminated against and wished to try their fortune in new territory. Each group joined the others in urging the governments to open new regions. Their requests increased in number and became more urgent as news of the unoccupied lands came to their attention. They began to speculate as to the opportunities which awaited them there. The various colonial governments sooner or later responded by the creation of a large number of new townships and the authorities probably welcomed the opportunities for speculation which would result.

The economic changes brought interesting changes in the political conditions of the times and in the policies which were adopted. By the eighteenth century the older colonies boasted of many inhabitants who were men of wealth and standing. It was this group or class of men of landed property and other forms of wealth who dominated the colonial governments. They were particularly aware of all the opportunities which a liberal and easy land policy would allow. One specific case is Governor Benning Wentworth who was born in the colonies to parents already of importance in colonial affairs. He was educated at Harvard, traveled abroad and became active in business affairs in Portsmouth, New Hampshire. By the time he was appointed royal governor he was a man of great wealth. His mansion, his coaches and horses, as well as his habitually luxurious way of living were well known throughout the colonies. While few, if any, of the men in political authority were the equals of Benning Wentworth in wealth and influence yet they represented the propertied class in their respective townships and appreciated the economic opportunities which the times seemed to afford. It is no wonder then that their minds were ripe for a change in colonial policies.

In the New Hampshire Grants chartered by Benning Wentworth the outstanding land speculators were Ira and Ethan Allen. They were two of the most active leaders in the struggle for Vermont independence. Without doubt they were spurred on by their determination not to pay New York the necessary fees to obtain re-grants of their extensive land holdings on the west side of the Green Mountains. Ira Allen became one of the most influential members of the Vermont government and helped to formulate the plan of selling the unchartered lands to anyone who could buy in order to secure funds to maintain the new state venture. Thomas Chittenden, Vermont's first governor, also speculated heavily in real estate. It should be recalled in this connection that he was a proprietor in at least forty-two town proprieties created by the Vermont legislature.

The foregoing analysis has shown several practical developments that definitely shaped the New England land policy of the eighteenth century. These may be recapitulated briefly: the increasing accumulation of wealth; the pressure of both private and public financial problems; the French and Indian Wars; the policies of defense; and the numerous boundary and jurisdictional disputes. These factors were primarily responsible for the adoption of a land policy which favored the quick disposal of the unoccupied lands through speculative activity with little relationship to actual settlement. Such a policy reacted upon the character of the town proprieties and fostered the changes emphasized in this study which indicate the decline of the system of proprietorship.

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