

OCTOBER 1953

LONG ISLAND FORUM

No Man's Land, Southampton

Editor's Note

Mr. Manley is an assistant attorney general of the State of New York. In appearing for the Shinnecocks on behalf of the Attorney General in King vs. Warner, he and David Gilmartin, Southampton attorney who represented the King family, dug up considerable data on local history never before printed.

DURING the first half of the nineteenth century many Shinnecock Indians moved eastward a few miles to their present reservation near Southampton village. There is surprisingly little record of this migration. The residence of substantial numbers of Shinnecocks in the vicinity of Ponquogue and Good Ground (now Hampton Bays, a mile west from Canoe Place) until the early or middle eighteen hundreds is attested by maps and local histories and other authentic sources. Their residence there was unexplained by title documents, in fact it was inconsistent with them. But nowhere is to be found an explanation of how or by what right so many of the Shinnecock Indians had remained there so long, or what caused them to leave there and join their brethren on the present Shinnecock Reservation.

These mysteries of local history, and some which involve more directly a strip of land a mile long and ninety-nine feet wide running from Canoe Place to Hampton Bays, have been explored within the past two years in a Suffolk County title litigation. The suit was brought by Douglas King against Daniel Warner and others to remove cloud on title to the long narrow strip of land. King lives with his family on part of the strip and claims all of it. Most conspicuous among the "others" who were defendants were the Trustees of the Shinnecock Tribe and the "cloud" about which King most complained

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was a tradition, supported by ancient deeds and maps, that the Shinnecocks were the true owners of the strip.

The late Supreme Court Justice Thos. J. Cuff decided on June 12, 1953, that there is no statutory authority for the suit against the Trustees so the litigation is stalemated. No regret need be felt about the "technical" nature of this decision. Much research was devoted to the rights of the respective parties but so much remains unexplained that no decision on the merits is appropriate at the present time. This paper merely will state the questions and their historical background. Perhaps a reader can solve some of the mystery.

The Town of Southampton starts with patents or royal grants of 1676 and 1686 which conferred upon fifteen persons a combination of property and governmental rights. The title to the land became vested in those persons by the patents plus purchase from the Indians. By a release of 1640 fol-

lowed by a deed in 1703 the Shinnecock Indians surrendered claim to all lands except they reserved to themselves a "lease" for a thousand years of about 3600 acres. This "reservation" was immediately east of the narrow isthmus called Canoe Place. It included the Shinnecock Hills and the present Shinnecock Reservation south of the Hills.

On the face of these title documents it would seem that the Shinnecocks should not have been living west of Canoe Place after 1703 but the fact was that many of them, perhaps most of them, were living there until the middle of the nineteenth century.

The "Proprietors", as the fifteen patentees and their successors in interest were called, occasionally allotted tracts among themselves and thus made the land individual private property. The Proprietors managed the undivided lands as they saw fit, with all the powers of ownership and local government, their possessiveness mitigated only by their interest in encouraging

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Chapel, on west side of Canoe Place Road, Hampton Bays, a little north of the "strip".

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growth of the population and thus increasing the value of their lands. Until 1818, when their governing powers were cut down by statute as a result of a population which had become numerous and rebellious, the Trustees for the Proprietors, elected by them alone and responsible to nobody else, were also the governing body of the Town.

The land which is in the strip previously mentioned can be identified as part of Amendment 38 in the Lower Division of the Quogue Purchase. This was allotted in 1738 to three Proprietors named Jagger and one named Howell. It was a strip of land running east from Ponquogue Road to Shinnecock Bay and it contained 49 acres. North of it, between it and the "Country Road", which now is known as the Montauk Highway, was Lot 39 containing 118 acres.

The allotment of Amendment 38 should be the beginning of individual title to the strip but, as often happens with the ancient titles of Long Island, there is no recorded deed from the allottees and nobody can trace title from them. It does not appear whether they ever took possession of Amendment 38 and hence the strip. Perhaps the Shinnecocks never moved from the strip until 1860 or thereabouts.

Certainly many of them resided in this vicinity until 1840 or even later. It is well authenticated that many Shinnecock families, perhaps the greater part of the tribe, remained at Good Ground and thereabouts for over a century after Shinnecock title to that land had been conveyed. Maps as late as 1836 (Colton & Co. map of Long Island) and 1839 (plate 5 in Burr Atlas of N. Y. State) showed triangles, apparently a symbol for wigwams or hogans, identified by the words "Shinnecock Indians", immediately

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south from Good Ground and Canoe Place. The later map also showed them on Shinnecock Neck, so if we could put complete trust in these maps we would know the approximate date of the emigration. William S. Pelletreau, an authority on the history of Southampton, wrote in 1882 and in another history published in 1902 that the only house in Good Ground in 1800 was that of the widow Goodale, but that there were wigwams until 1830 or 1850.

A Congregational church, where the Reverend Paul Cuffee preached to his Shinnecock brethren, was built in 1791-1792 midway between Good Ground and Canoe Place, near the place still marked for his grave. The Trustees for the Town, who represented the Proprietors as previously mentioned, contributed twenty pounds towards the costs of the Indian church on condition that the Proprietors "shall have the grazing of Shinnecock Neck during the whole of the year 1792 without molestation". (See the printed Trustees' Records, Vol. I pages 500, 514, 522, 523, 535.) The Reverend Cuffee died in 1812, the church which he founded fell into disrepair before 1830, and by 1845 its site was grown up to bushes and trees. But the Reverend William Benjamin was Congregational minister to the Shinnecocks at some church at Canoe Place from 1827 until his death in 1860. (See Prime's History of Long Island, pages 117, 118, 217, 411. See also a mss. by Rev. James Y. Downs possessed by the Pennypacker Long Island Collection, East Hampton.)

What became of the "Cuffee" church building, and what building Reverend Benjamin used when he preached to the Shinnecocks at Canoe Place until 1860, are matters of surmise. Abigail Fithian Halsey, in an article in the Long Island Forum for July 1945, said that the church

organized on the present reservation in 1847 and still active there used part of the old "Cuffee" church building, moved across the Bay on the ice. She had good authority for that statement and she seems to have been equally right in saying that the little chapel which still stands on Canoe Place Road was the other part of the "Cuffee" church. Upon the latter point Pelletreau can be cited against her, because he said in 1882 that the chapel was built under the auspices of the Long Island Presbytery in 1819. Prime, on the other hand, said in 1845 that a Presbyterian church was organized in 1819 but had no house of worship and soon became extinct. Certainly the records of the Presbyterian Historical Society at Philadelphia are silent about any church built at Canoe Place in 1819 or thereabouts with Presbyterian funds.

Tentatively, it is concluded that the little chapel now on Canoe Place Road once was part of the "Cuffee" church, and also that it stood, about 1830-1860, on the strip previously mentioned. In fact, the histories of the strip and the little chapel were oddly interrelated for a number of years.

The earliest mention thus far found that the Shinnecocks were the reputed owners of the strip of land is a deed in 1810 from Elias Culver to Samuel Bishop. The land conveyed was the western part of Lot 39, at the southeast corner of Montauk Highway and Ponquogue Road. The southerly boundary of that land was described as "south by Indian Amendment". Pelletreau, writing in a 1902 history of Long Island, took notice of this description and said: "This shows that Amendment No. 38 must have been purchased by the Shinnecock tribe or members of it before 1810." Certainly there are a dozen deeds of various dates from 1810 to 1900 conveying various parcels north or south from the strip, some at its east end and some at the west, and each describes the appropriate boundary by referring to the strip as "Indian land" or some similar form of words. Most specific is a deed of 1838 from Hervey Danes to James Warner which says "north by the Indian land which is six rods wide". As previously mentioned, the disputed strip is ninety-nine feet or six rods from north to south.

In 1848 a map was made by Jonathan Fithian, who seems to have been concerned primarily with surveying and map-

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View easterly across east end of "strip" and Shinnecock Bay to the Shinnecock Reservation. Canoe Place Road and Warner house are shown. June 4, 1950.

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ping an easterly part of Lot 39. He identified the property south of it by the words "Indian land", and on it he drew a building described with the words "Indian Meeting House". The place indicated is on the strip and is about four hundred feet west from Canoe Place Road. There has been no building there for many years but the vestiges of an old graveyard can still be seen. The tombstones are fallen and most of them are so damaged that their inscriptions cannot be read. Two that can be pieced together and read marked the graves of Mary Cuffee (1783-1855), who was the wife and widow of Noah Cuffee (1778-1852), and of their son Absolom (1826-1858). Noah Cuffee is believed to have been a son of Reverend Paul Cuffee and was a leader of the Shinnecocks for many years.

Among the witnesses who testified before Mr. Justice Cuff in the King litigation was Charles Bunn. He was 86 years old when he testified and he had less than a year to live. He was a grand old man, feeble in body but strong in mind and integrity. He had lived on the Reservation all his life. His father was drowned in the Circassian disaster in 1876. He and his father and grandfather had served as trustees of the tribe and he had known very well its most notable members in the last eighty years. He testified about the traditions he had from members of the tribe previously deceased, and said the tribe had a church on the strip which was used for public religious services before 1859, and it was moved off one night by the owner of the land north of it.

Another witness in the litigation, Mrs. Leonice Hawkins of East Hampton, who was born in 1862 and lived as a girl in the locality involved, agreed that the little chapel now on Canoe Place Road is

the same building as the "meeting house" which stood when she was a girl on the strip or immediately north of it. However she testified that in the period she remembered the church was attended by white people rather than Indians. That may well be, because it is probable that about 1870 the church did not stand on the strip, and neither did it stand close by the highway as at present. Beers' Atlas of Suffolk County, published in 1873, shows a church which must be this one but is in neither of those locations. It is as far west from Canoe Place Road as is indicated by the old graveyard and Fithian's map, but it is slightly north from the strip.

In 1859 a long history of differences between the Shinnecock Tribe and the Proprietors was settled. The Shinnecocks were authorized by the Legislature to surrender their leasehold interests in Shinnecock Hills and the Proprietors conveyed to them in fee their present reservation of about 400 acres on Shinnecock Neck. It is fairly clear that it was not the imminence of the year 2703, when their lease would end, but a long series of intrusions by their white neighbors, supposedly justified by unilateral interpretation of their leasehold rights, that caused the Shinnecocks to surrender the greater part of their lands. Incidentally the Long Island Railroad, built through the Hills a dozen years later, was already being planned and appeared as a "projected" line on at least one map published in 1858.

Jonathan Fithian (1796-1865) took an active part on behalf of the Proprietors in procuring Shinnecock agreement to the 1859 transaction. He was one of the foremost citizens of Southampton, who long held the offices of town clerk, supervisor, justice of the peace and school superintendent. He was particularly well informed on titles and Shinnecock matters. Because of those

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facts it is significant that he took the acknowledgment of the Shinnecock Trustees when they executed a deed of December 15, 1860, to Samuel H. Mulford. The deed conveyed the west six acres of the strip, west of the present Gravel Hill Road which was then called "Danes Path". It was a full covenant deed, including a covenant that the grantors as Trustees were the lawful owners of the premises granted.

Three years later Mulford, having recently disposed of his other lands which adjoined these on the south, reconveyed this part of the strip to a Trustee for \$60, which was the same consideration recited in the earlier deed. These two deeds were never recorded and they were discovered in the course of the King litigation under circumstances to be stated hereafter.

For purposes of telling the known facts about the strip we now come to what may be regarded as a third period. The first period is 1703 to 1810 and we know nothing about the strip then except the allotment of 1738, set against the background of two divergent facts — the Shinnecocks had deeded the entire area in 1703 but had remained in this vicinity. The facts dimly to be seen in the period 1810-1863 all favor the Shinnecock tradition that they owned and possessed the strip and had a church and graveyard on the east part of it. We now come to the period 1865-1919, when Margaret Brooker King resided on the strip in a house which stood on the west side of Canoe Place Road, a few hundred feet east from the graveyard.

She was born in the neighborhood in 1842, so she was 23 years old in 1865, when she was living in the house with Abraham Cuffee. Presumably they were married. He was a Shinnecock, first mate on a whaling vessel, and he died in

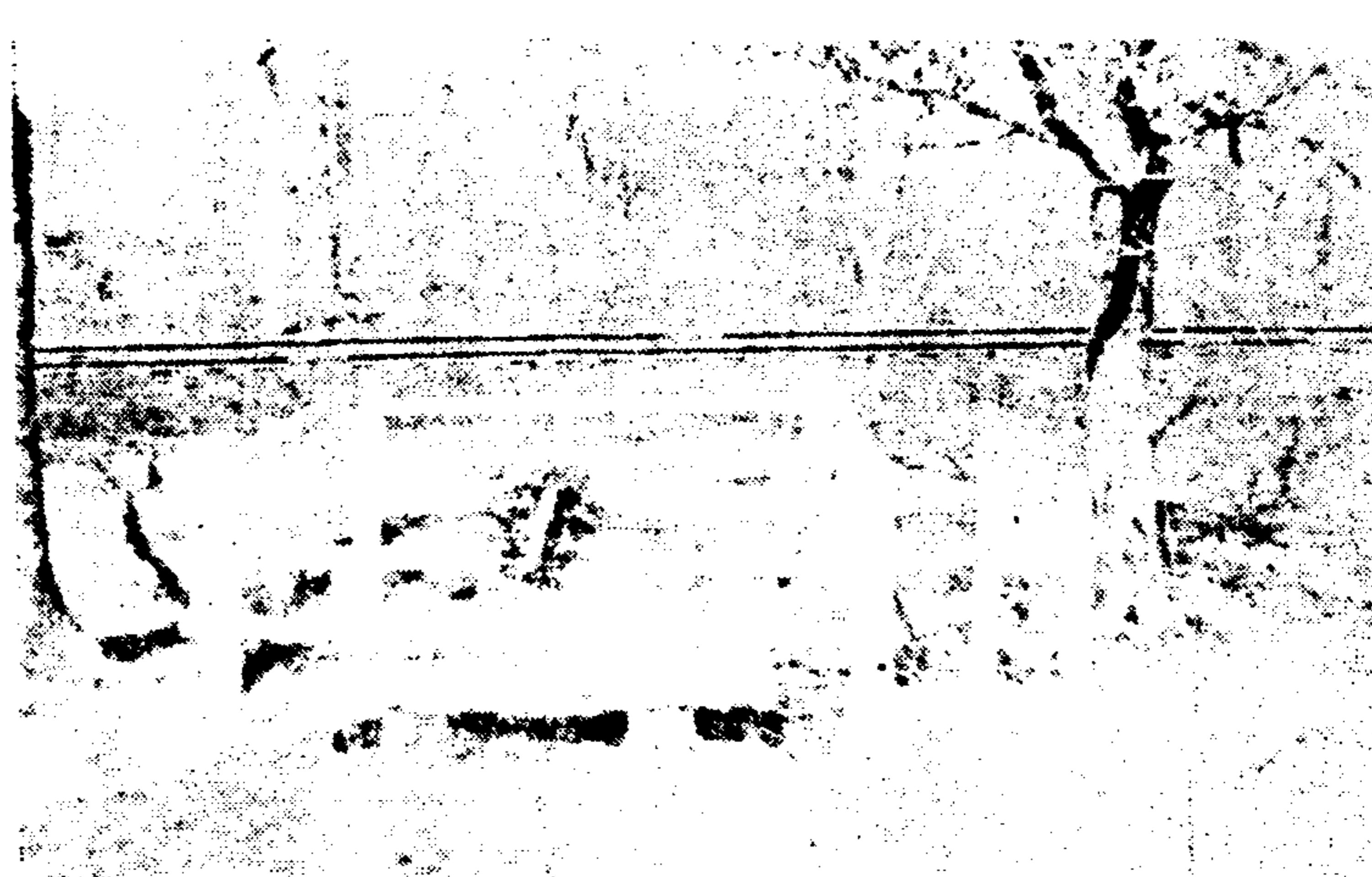
1866 in the Pacific. The King family preserves a letter Abraham wrote Margaret before he embarked on his last cruise, mostly about household expenses and his money in the bank and messages for her relatives. After Abraham's death Margaret continued to live in the house on the strip with their daughter, named Abaret from a combination of their first names. Abaret died when she was seven or eight years old.

Margaret Brooker appears to have added King to her name about 1870. She and Daniel King had three sons. Charles, the intermediate one of these, was born in 1873. He became the father of Douglas King. Since 1870, and perhaps earlier, the name of Margaret Brooker King has signified some peculiar interest in the strip, but the origin or nature

of the interest is unknown except for the few facts already stated.

When the house was built and who built it we do not know from any evidence that is legally acceptable. A descendant of the Cuffee family, now a teacher in a Brooklyn school, had it as a tradition from her grandmother, born in 1830, that when the grandmother was a girl her family lived on the strip in a wigwam, which burned, and then they lived nearby while the house was built on the strip. According to that tradition the house was built by the Cuffee-Adair family about 1840. There are numerous indications, some of them documentary, that the Cuffee family was recognized as having special rights to the east part of the strip, probably as Shinnecock allottees.

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Grave of Indian Paul Cuffee at Canoe Place

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In 1873 and 1875 the strip was conveyed by deeds. These, unlike the deeds of 1860 and 1863, were recorded. The first was a warranty deed from the Shinnecock Trustees to Elisha King. He was a well known local businessman who lived on adjoining property and he seems to have been no relative of Daniel King or Margaret Brooker King. Two years after he acquired title to the strip he quit-claimed to Ursula Adair of Westport, Connecticut. She was a descendant of the Cuffee family.

These original deeds, also the 1860 and 1863 unrecorded deeds, a letter of 1876 referring to an unsuccessful attempt to have Mrs. King removed from the house, and a fire insurance policy on it in 1899 for \$500 to Mrs. Adair, were among papers preserved by Mrs. Adair and her descendants. The unrecorded deeds were uncovered in the course of the recent litigation in the files of a Riverhead attorney with whom Mrs. Adair's descendants had left them about 1920. A letter of 1923 from one descendant to another at least casts some light on what they believed about Mrs. King's interest in the strip:

"The tribe sold it to Elisha King, then Grandmother Adair bought it of Elisha King. The King or Booker woman claimed to have married Abr. Cuffee, and thence had a life right in the property. Inclosed is a letter from David Bunn [a Shinne-

cock Trustee, father of Charles Bunn] proving that she paid rent to him."

That is about all, except that the 1873 deed was not authorized by statute, so if the Shinnecocks really owned the strip, as the deed warranted, they still own it. The official maps of the Town identify the strip by the words "Heirs of M. King or Indian land". Hyde's Atlas of 1902 and 1916 flatly said "Shinnecock Indians."

Mrs. King died in 1919. Whether she paid any taxes is uncertain but commencing in 1896 the easterly six acres of the strip was assessed against her for about \$500. Her sons never saw fit to build anything on the strip and there were several tax sales. The five acres west of Gravel Hill Road first appeared on the assessment roll in 1940, six years after Douglas King built a house there. His uncle, James Selah King, lived in the old house further east until his death in 1942, and after that Douglas King tore down the old house.

Can any reader add to our knowledge of why the Shinnecock Indians remained in the vicinity of this strip until the middle of the nineteenth century, and by what right they occupied the strip and claimed to own it?

Samuel Dayton's Descendants

In the July Forum P.G.T. asks for the descendants of Samuel Dayton, son of Ralph Dayton of England. Is it any help that Vol. 1 of the Southampton Town Records has several notes on Samuel and Ralph?

"May 16th, 1648 Samuel Dayton was accepted as an inhabitant and given a fifty pound lot provided he was of good approbation as at Flushing where he formerly lived." Vol. 1, page 50.

Samuel had wife Medlin who with his consent sold to John Howell four acres of land Dec. 12, 1656. Vol. 1, page 135.

Ralph Dayton was dead by Sept. 22, 1658 when his will was brought into Court. Vol. 1, page 123.

They lived at North Sea (Southampton town) for years before this. Hedges' History of East Hampton has an account of the Dayton family.

"May 6th, 1648. Thomas Robinson was accepted as an inhabitant and given a fifty pound lot." Southampton Town Records, Vol. 1, page 49.

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