

CHAPTER VI.

THE OBTAINING OF THE FIRST CHARTER, 1639-47.

We have witnessed the small beginnings of the earliest Rhode Island towns. We have seen how the forces of internal dissension and external aggression gradually forced upon them the necessity of having a more powerful source of authority than their own self-appointed assemblies. Scorned and threatened by the adjacent colonies, they came to realize that if they wished to become the political equals of their neighbors, they must seek for some evidences of favor from the Government of England—the well-spring of authority throughout all New England. More than the desire to secure the enjoyment of religious liberty, more than the hope of obtaining a unification of the different communities—for some at Newport hoped for the exclusion of Providence, and the admission of Warwick was not even dreamed of—more than either of these two causes, the necessity of gaining royal recognition to ward off the attacks of their enemies was the weightiest reason in inducing the Rhode Islanders to take active steps in the question of a patent. They knew that their government was little better than a “squatter’s sovereignty”; they could not deny the contemptuous remarks of Lechford, Winthrop and Gorton as to their lack of a legally constituted magistracy. It was now time to act.

The first official action in this matter of a patent was taken at Newport. On November 25, 1639, the Newport Court commissioned Easton and Clarke to “inform Mr. Vane by writing of the state of things here, and desired him to treat about the obtaining a patent of the Island from his Majestie”. Since this order apparently availed nothing, on September 19, 1642, a new committee of the ten principal men of the Island was appointed. They were to “consult about the procurement of a patent for this Island and Islands, and the land adjacent; and to draw up petitions; and to send letters for the same end to Sir Henry Vane”.¹ This second committee accomplished but little, and the law makers must have come to the conclusion that letters and

¹*R. I. Col. Rec.* 1, 94, 125.

petitions should be abandoned for a personal application at the English Court. An event was soon to transpire that was to hasten their judgment in the matter.

In 1640 the Aquedneck colony had united with those at Hartford and New Haven in a letter to the Bay urging a mutual consideration of all Indian affairs. The Massachusetts Court ordered that favorable answers should be sent to all but those at Aquedneck, who were "men not to be capitulated withal by us as their case standeth".¹ After this "exalted triumph of bigotry"—as the learned editor of Winthrop has termed it—the matter was allowed to remain in abeyance for a few months. At last the pressing danger from the Indians brought the matter into consideration again and on May 19, 1643, the colonies of Massachusetts, Plymouth, Connecticut and New Haven entered into a confederation known as the United Colonies of New England. Rhode Island, as might be expected, was excluded from the league. One has only to read the previous order of 1640 and also notice the stated reason for the alliance, "that as in nation and religion, as in other respects we may be and continue one", to find an explanation of the true reason for her exclusion.² Aroused to action by this scornful insult, the Rhode Island settlements took immediate steps about obtaining a patent from the King. To this end, Roger Williams, without a doubt the ablest man in the colony for the purpose, embarked from New York in the spring of 1643 for England.³ He arrived to find the mother country in the throes of civil war. The King, though still surrounded by a considerable body of followers, was a fugitive, and the government of the kingdom was administered by Parliament, standing for civil liberty and the displacement of prelacy. Most opportune it was for Rhode Island that the party in power favored the very principles of toleration that Williams himself held. He soon applied to the recently constituted committee on Foreign Plantations, and on March 14, 1644, received a "Free Charter of Civil Incorporation and Government for the Providence Plantations, in the Narragansett Bay, in New England".⁴

¹See *R. I. Col. Rec.* 1, 110; Winthrop, II, 21; and *Mass. Col. Rec.* 1, 305.

²The articles of confederation are in Hazard, *State Papers*, II, 1, Winthrop II, 101 and elsewhere. Judge Stiness enters quite fully into the subject of R. I.'s exclusion in his *Prov. Co. Court House address*, p. 19.

³See Winthrop II, 97, *Narr. Club. Publ.* 1, 10, 23, 218; VI, 272.

⁴The Charter is in *R. I. Col. Rec.* 1, 143. For discussion as to its date, see Arnold, I, 114. It is signed by Warwick, the head of the Commission, and by ten others, among them Sir Henry Vane.

That Roger Williams was able to obtain the free and absolute charter he did was due chiefly to the influence which he had in the most powerful quarters of the kingdom. It was not a mere land patent, nor a trading charter like that of Massachusetts. It was a real, effective governmental charter, bestowing upon the grantees the power to rule within the assigned limits by whatever form of government they saw fit, and the right to make whatever laws they desired. The only proviso, that the said laws should be "conformable to the laws of England", was practically annulled by the clause "so far as the nature and constitution of the place will admit". A distinguishing feature of the charter was the limiting of its operation to civil things only. There was no express provision concerning liberty of conscience, for that, as Williams claimed, was a natural, and not a grantable right.¹ The mere limitation to political concerns was the first example of the kind in the New World and was then considered the chief principle of the Charter.

Another distinguishing characteristic of this Charter was the smallness of the territory granted. In most of the early American patents, the land stretched indefinitely out into the west. Roger Williams, however, was too conscientious to take more than he thought belonged to him, as the following quotation from one of his letters will show :

"The bounds of this our first charter, I (having ocular knowledge of persons, places and transactions) did honestly and conscientiously, as in the holy presence of God, draw up from Pawcatuck river, which I then believed, and still do, is free from all English claims and conquests; for although there were some Pequods on this side the river, who, by reason of some Sachems' marriages with some on this side, lived in a kind of neutrality with both sides, yet, upon the breaking out of war, they relinquished their land to the possession of their enemies, the Narragansetts and Niantics, and their land never came into the condition of the lands on the other side, which the English, by conquest, challenged; so that I must still affirm, as in God's holy presence, I tenderly waived to touch a foot of land in which I knew the Pequot wars were maintained and were properly Pequod, being a gallant country; and from the Pawcatuck river hitherward, being but a patch of ground, full of troublesome inhabitants, I did, as I judged, draw our poor and inconsiderable line".²

¹Judge Staples says "to accept a grant of religious liberty from any human power, would be a virtual recognition of the right to grant, which, of course, implies a right to refuse". (*Code of 1647*, p. 10.) In 1658, the General Assembly asserted that "freedom of different consciences to be protected from inforcements, was the principal ground of our Charter both with respect to our humble suit for it, as also to the true intent of Parliament in granting the same." (*R. I. Col. Rec.* 1, 378.)

²*Narr. Club. Pub.* vi, 340.

Although the chief purpose of Williams in coming to England was to obtain a civil charter, he found time to take considerable part in the controversies of the period, and to do much creditable literary work for his own satisfaction. His *Key to the Indian Language*, composed during his passage across the Atlantic, was soon followed by *Mr. Cotton's Letter, Lately Printed, Examined and Answered*, in which for the first time he brought out in the public print his ideas upon religious liberty. He next attacked the designs of the Presbyterian divines, who were seeking to establish an intolerant national church, in his *Bloudy Tenent of Persecution for Cause of Conscience discussed in a Conference between Truth and Peace*. This controversial treatise, which passed through two editions, was the last published during his stay in England. But he continued to make the influence of his pen felt even after his departure, by leaving behind him two manuscripts which were printed in 1645. In one of these, *Christenings make not Christians*, he shows the difficulty of converting the Indians, and in the other, *Queries of Highest Consideration*, he disclaims against the union of church and state and demonstrates the impracticability of enforcing a national religion.¹ These various treatises of Roger Williams, while they must have had some influence in shaping public opinion on these questions, were too far in advance of the age to have any lasting effect. The narrow spirit of the time shuddered at the thought of even partial toleration, and as for the complete sufferance of all religions, that was considered rather as a heresy and a dream.

Soon after he had accomplished the object of his mission, Williams set sail for Boston, where he arrived September 17, 1644. He brought with him a letter, signed by several of the highest personages in England and addressed to the Colony of Massachusetts Bay. The signers expressed their regret that, among such good men as the Bay settlers and Roger Williams, "who mutually give good testimony each of the other, there should be such a distance"; and professed their desire that there should be a more "ready expressing of those good affections, which we perceive you bear each to the other, in the actual performance of all friendly offices".² Although the Bay rulers had no intention of relaxing in their policy toward Williams and his followers, they

¹The best accounts of these different treatises may be found in the various introductions in the *Narr. Club. Publications* and in the preface of *R. I. Hist. Tracts*, vol. 14.

²Winthrop II, 193, and Hubbard (*2 Mass. Hist. Coll.* vi, 349.) This protecting letter includes among its signers Sir William Masham, whose chaplain Williams had previously been in England, and Sir Thomas Barrington, the first cousin of the lady to whom Williams had formerly plighted his troth.

allowed him to pass through their domain unmolested. He immediately made his way to the Seekonk, where he was met by his friends in fourteen canoes, and carried in triumph to Providence.¹ In a little more than a year he had made a long ocean voyage, procured the much longed for charter of incorporation, and inserted in the same his own ideas about the separation of the church and state. In the language of the instrument itself, it was truly a hopeful beginning, "which may in time, by the blessing of God upon their endeavors, lay a surer foundation of happiness to all America".

While Williams was absent in England, events were taking place in the colonies tending to weaken what little unification the settlements around Narragansett Bay possessed. In July, 1643, a war broke out between Uncas, sachem of the Mohegans, and Sequasson, another Connecticut sachem, who was a relative and ally of Miantonomo. The Narragansett sachem immediately complained of Uncas to the governors of Connecticut and Massachusetts, desiring to know whether they would be offended if he took part in the feud himself. Governor Haynes replied that "the English had no hand in it", and Governor Winthrop that "if Uncas had done him or his friends wrong and would not give satisfaction, we should leave him to take his own course". Having ascertained the feelings of the English, Miantonomo marched upon Uncas, but was defeated, and through the treachery of his captains, captured. When the news of this came to Providence, Gorton wrote a letter to Uncas interceding in the captive's behalf, upon the receipt of which Uncas placed the prisoner in charge of the English at Hartford. The case now came before the commissioners of the United Colonies, met at Boston in September. This body, after they had upon serious consideration come to the conclusion that they had "no sufficient ground to put him to death", called in "five of the most judicious elders" for advice. These five ministers of the gospel, who should have represented all that was Christian and charitable in the colony, unanimously advised that Miantonomo's life should be taken away. Unwilling to execute the sentence, the commissioners decreed that Uncas should be his captive's executioner. The deed was carried out in the same heartless spirit that the sentence was passed. A party of Indians and English led forth the prisoner from Hartford, and on the road the brother of Uncas suddenly approached Miantonomo from behind and split open his head with a hatchet.

The attitude of the Puritan magistrates in this atrocious murder is

¹Richard Scott's letter in Fox and Burnyeat, *N. E. Firebrand Quenched*, II, 247.

almost too painful to discuss. It was all a matter of policy. Although they had previously asserted their neutrality in the feud, they could not let pass such an excellent opportunity of putting out of the way a savage who might possibly become a strong opponent to their claims for territory. The remarks upon the subject made by Governor Hopkins, written nearly a century and a half ago, are so heartfelt and so truly significant that they are here quoted: "This was the end of Miantonomo, the most potent Indian prince the people of New England had ever had any concern with; and this was the reward he received for assisting them seven years before, in their war with the Pequots. Surely a Rhode Island man may be permitted to mourn his unhappy fate, and drop a tear upon the ashes of Miantonomo, who, with his uncle Conanicus, were the best friends and greatest benefactors the colony ever had. They kindly received, fed, and protected the first settlers of it, when they were in distress, and were strangers and exiles, and all mankind else were their enemies; and by this kindness to them, drew upon themselves the resentment of the neighboring colonies, and hastened the untimely end of the young king".¹

While these forces outside of Rhode Island were thus striving during Williams's absence to prevent the maintenance of her territory, there was a more subtle influence within the colony working towards its dismemberment. At Newport we can perceive thus early the machinations of a certain faction which desired alliance with Massachusetts or Plymouth, rather than colonial independence in conjunction with their more liberal but less prosperous neighbors at the head of the bay. It was William Coddington who was the instigator and prime mover of these schemes, and as early as August 5, 1644, we find him writing to Governor Winthrop: "Now the truth is, I desire to have such alliance with yourselves or Plymouth, one or both, as might be safe for us all, I having these in trust in the Island, it being bought to me and my friends; and how convenient it might be if it were possessed by an enemy, lying in the heart of the plantations and convenient for shipping, I cannot but see; but I want both counsel and strength to effect what I desire. I desire to hear from you, and that you would bury what I write in deep silence, for what I write I never hinted to any, nor would I to you, had I the least doubt of your faithfulness that it should be uttered to my prejudice".²

¹*R. I. H. S. Coll.* vii, 64. The chief authorities for the proceedings against Miantonomo are Winthrop, ii, 131; Winslow, *Hypoc. Unmasked*, p. 72; Trumbull *Hist. of Conn.* i, 130; Records of the Commissioners in *Plymouth Rec.* ix, 10; and *3 Mass. H. S. Coll.* iii, 161.

²*Newport Hist. Mag.* iii, 3, and copy in *Extracts from Mass. MSS.* i, 31, in R. I. H. S. Library.

At this early date this covert scheme intended perhaps nothing more than a friendly alliance with Massachusetts and Plymouth, but it was the germ of a project which later sought the entire exclusion of Providence from such a league. Had it succeeded, the northern town, thus isolated, would have soon been swallowed up by her watchful neighbors.

Upon Williams's return with the Charter in September, 1644, affairs did not assume a much brighter appearance. The knowledge that such an instrument had actually been obtained only inspired the neighboring colonies to make fresh attempts in exercising their jurisdiction in those parts. In November, 1644, Plymouth sent a commissioner to Aquedneck to warn them that "a great part of their supposed government is within the line of the government of Plymouth". He was instructed to forbid them "to exercise any authority, or power of government within the limits of our letters patent", which territory was said to include also Coweset.¹ It is needless to say that this somewhat presumptuous message, so contrary to the express admission of non-jurisdiction nearly seven years before, received but little attention.

The efforts of the Massachusetts colony met with but little better success. In August, 1645, the Rhode Island colonists assembled at Newport to take action upon a letter recently received from the Bay desiring them to "forbear the exercise of Government". They formulated and returned a dignified and forceful reply, which, since it has historical importance and has been hitherto usually unnoticed, is here printed entire:

"Our much honored friends and countrymen,
Our due respects and love promised.

"Having lately received a writing from the right worshipful your counsell deeply concerning yourselves and us, we pray your favorable attention to our answer.

"First a civil government we honor, and earnestly desire to live in, for all those good ends which are attainable thereby, both of public and private nature.

"This desire caused us humbly to sue for a Charter from our mother state. Not that formerly or now we approve and honor not your civil state and government, but as we believe your consciences are persuaded to govern our souls as well as our bodies, yourselves will say

¹Winslow, *Hypoc. Unmasked*, p. 83, where the full instructions are given. Gorton says that John Browne, the Plymouth commissioner, "went from house to house, both in Portsmouth and Newport, discouraging the people for yielding any obedience unto the authority of the Charter." (*R. I. H. S. Coll.* ii, 168.)

we have cause to endeavor to preserve our souls and liberties, which your consciences must necessarily deprive us of, and either cause great distractions and molestations to yourselves and us at home, or cause our further removals and miseries.

“Thirdly, we cannot but wonder that being now found in the posture of government from the same authority, unto which you and we equally subject, you should desire us to forbear the exercise of such a government without an expression from that authority directed to us.

“And we the rather wonder because our Charter, as it was first granted, and first established, so was it also expressly signified unto you all, in a letter from divers lords and commons (at the coming over of our charter) out of a loving respect both to yourselves and us.

“Besides you may please to be informed that his Excellency the Lord Admiral hath lately divers times been pleased to own us under the notion of Providence Plantations. And that he hath signified unto us (which we can show you in writing) the desires of Plymouth to infringe our Charter, but his own favorable resolution not only to maintain our Charter to his utmost power, but also to gratify us with any other favor, etc.

“In all which respects we see not how we may yield ourselves delinquents and liable to answer in your country, as your writing to us seems to import, why we cast not away such noble favor and grace unto us.

“It is true that divers amongst us express their desires of composing this controversy between yourselves and us, but considering that we have not only received a challenge from yourselves but also from Mr. Fenwick, and also from Plymouth, and also from some in the name of the Lord Marcus Hamilton (of all such claims we never heard until the arrival of our Charter) we judge it necessary to employ our messengers and agents unto the head and fountain of all these streams and there humbly to prostrate ourselves and cause for a small sentence and determination.

“And this we are immediately preparing to do without any secret reservations or delays, not doubting but yourselves will rest satisfied with this our course, and in the interim although you have not been pleased to admit us into considerations of what concern the whole country, as you have done others of our countrymen, yet we cannot but humbly profess our readiness to attend all such friendly and neighborly courses, and ever rest

“Yours assured in all services of love,

“The Colony of Providence Plantations, assembled at Newport 9th :6 Mo. 1645.

“Henry Walton, Sec't.”¹

¹Mass MS. Archives, 11, 6, and copied in *Extracts from Mass. MSS.* 1. 38, in R. I. H. S. Library. It has been printed, however, as a footnote to *Aspinwall's Narragansett Patent*, p. 20.

The Bay magistrates now tried a new tack. They wrote to Williams, as chief officer of the colony, that they had "received lately out of England a charter from the authority of the High Court of Parliament, bearing date 10th December, 1643, whereby the Narragansett Bay, and a certain tract of land wherein Providence and the Island of Quidny are included"; and warning those in the said territory to "forbear to exercise any jurisdiction therein".¹ Williams perceiving that the order was founded upon no legal sanction, returned what he termed "a righteous and weighty" answer,² to which he never received the least reply. Massachusetts continued to send out occasional warrants to those in her claimed jurisdiction at Shawomet, but apparently abandoned the idea of interfering with the provisions of the Charter of 1644.

There are certain passages in the letter to Massachusetts which seem to show that an early attempt was made by the colonists to form a federated government in conformity with the terms of the Charter. They express themselves as being "in the posture of Government", allude to the Charter as having been granted and "established", and sign themselves in true governmental form. There was surely some semblance of organization, especially as Williams in his letter to Mason speaks of himself as the "chief officer in this colony". The true state of affairs was perhaps best described by Gorton, writing in 1646: "Which Charter being joyfully embraced, and with all expedition, an orderly and joint course was held, for the investing of the people into the power and liberties thereof unanimously, for the exercise of the

¹*Mass. Col. Rec.* iii, 49, the letter being dated Aug. 27, 1645. The Charter referred to as having been granted Dec. 10, 1643, is the so-called "Narragansett Patent". This patent, supposed to have been obtained by the unauthorized efforts of Welde, the Bay agent in England, was never recognized at home or abroad. Whether a forgery or not, its inherent worthlessness has been clearly shown by Thomas Aspinwall in his *Remarks on the Narr. Patent*. (See also *Mass. H. S. Proc.* for May, 1860, p. 39; Feb., 1862, p. 400; June, 1862, p. 41; and *Book Notes*, viii, 196.) In 1673 the Town of Warwick made the following statement concerning the patent: "Mr. Wells procured a patent for our colony and got the same honorable persons [his Majesty's commissioners] hands to it as was to our first patent procured by Mr. Roger Williams; but when it came to be pleaded to, the Earl of Warwick protested it never passed that board, and therefore condemned it, notwithstanding his own hand was to it, to Mr. Wells his shame". (Copies of Warwick Records, in R. I. H. S. Library, p. 29.) It was also positively stated both by Williams and Brenton to have been not legally executed (*Narr. Club Pub.* vi, 341; and *R. I. Col. Rec.* ii, 162.) In 1664 the Town of Warwick claimed that this patent had been defeated through the exertions of their agents (*R. I. C. R.* ii, 80). The patent itself is printed in the *N. E. Hist. and Gen. Reg.* xi, 41.

²Williams's reference to this reply is in his letter to Mason in *Narr. Club. Pub.* vi, 341.

authority, in the execution of laws, for the good and quiet of the people, which thing gave great encouragement unto the planters, to go on in their employments, hoping to enjoy their lawful rights and privileges without disturbance, which the Massachusetts, together with Plymouth, understanding, they go about by all means to discourage the people, by their endeavouring to weaken and invalid the authority of the Charter in the eyes of the country".¹

Undoubtedly there was some attempt to organize immediately a government under the Charter; but its operation and effectiveness must have been defeated by the aggression of Massachusetts and Plymouth, as Gorton infers, and also by the lack of co-operation within the colony. There was a certain faction at Aquedneck that was continually seeking to defeat the purposes of the Charter for nearly a decade after its acquirement. To this faction a separate Island charter, or even alliance with Massachusetts, was preferable to union with a contentious settlement under a patent which did not even recognize the Island in its title of incorporation. The feeling of distrust must have changed to one of fear, when this faction realized that the Gortonists had been admitted to equal parliamentary privileges in the new ship of state. On November 11, 1646, we find Coddington writing to Winthrop: "The Commissioners have joined them [Gorton and his company], in the same Charter, tho we maintain the Government as before".²

Thus, on account of local animosities, no effective establishment of the Charter of 1644 was brought about until the spring of 1647. In May of that year, arrangements for a general assembly of the people at Portsmouth were made, if we may judge by the subsequent trend of events, chiefly at the instigation of the anti-Coddington faction at Aquedneck. On May 16, the inhabitants of Providence appointed ten commissioners to represent the town in the approaching assembly, and to take action upon the governmental "model, that hath been lately shewed unto us by our worthy friends of the Island". They gave the commissioners full power to act for the town, and instructed them to procure a copy of the Charter, to secure for the town the complete ordering of its own internal affairs, to make provision for appeal unto General Courts, and in case town charters were granted, to obtain one for Providence suited to promote the general peace and union of the colony. They closed by committing the

¹*Simp. Defence (R. I. H. S. Coll. II, 166).*

²*Deane's Gorton, p. 41.*

delegates to the direction of the Almighty, wishing them "a comfortable voyage, a happy success, and a safe return".¹

On May 19, this general assembly, constituting the "major part of the Colony", gathered at Portsmouth to accept the Charter, to elect officers, and to draw up a code of laws. After having chosen John Coggeshall moderator, they all agreed to "set their hands to an engagement to the Charter". They made provision for a quorum and for representation of the towns at future General Courts, admitted Warwick to the same privileges as Providence, and then proceeded to the election of officers. John Coggeshall of Newport was chosen by ballot to be President of the Colony, and an Assistant was chosen for each town—Roger Williams for Providence, John Sanford for Portsmouth, William Coddington for Newport, and Randall Holden for Warwick. William Dyer was elected General Recorder, and Jeremy Clarke Treasurer.

The method of originating legislation was then prescribed. A law was first to be discussed and voted upon in the town, which was to subject the result of the decision to the approval of the three other towns. Each of the four towns was to commend its decision to a committee of six to be discussed in "General Court" or committee meeting. If it was then found that the major part of the colony concurred in the case, it was to stand as a law until its final confirmation by the general assembly of all the people. It was further agreed that this General Court could discuss and determine new cases brought before them and carry the result of their decision to their respective towns. The townsmen were to vote upon the matter, when it could stand as a law until the next general assembly of all the people, to be finally approved or repealed. Thus it will be seen that the people, being extremely jealous of delegated authority, insisted upon reserving to themselves the final voice in legislation. They enjoyed both the "initiative" and the "referendum"; in fact, they possessed the sovereign political power, not in their collective capacity as inhabitants of the town, as has been often supposed, but as individuals belonging to the Colony. This law was probably framed by those on Aquedneck. If the political unit was to be the town, then Newport's greater numbers, wealth and culture would all go for naught. Having the largest population, the Islanders naturally desired a majority rule. It is doubtful, however, whether laws originated elsewhere than in the General Courts, or whether the people ever exercised their right of

¹*Prov. Rec.* xv, 9.

repeal. The method of legislation was too cumbersome and soon yielded to a representative system more worthy of the name.¹

After ordering a colony seal, adopting a complete military system, and making several minor provisions, the assembly proceeded to the adoption of their bill of rights and code of laws. In the preamble they assert that "the form of government established in Providence Plantations is Democratical, that is to say, a government held by the free and voluntary consent of all, or the greater part of the free inhabitants". This characteristic doctrine is followed by a bill of rights, embracing under four distinct heads the foundation of all subsequent legislation. The first of these sections re-enacts the clause in the Magna Charter that no man shall be molested except by the lawful judgment of his peers. The second guards the right of the individual against the government by enacting that no officer shall do either more, or less, than what he is authorized to do. As far as principle was concerned, there was to be no sanction of a "loose construction" by these early legislators. The third section secures the rights of the minority by requiring that all laws must be "founded on the Charter and rightly derived from the General Assembly". The fourth enacts that those who serve the public shall be duly compensated and also establishes a fine for refusal to serve.

The code of laws, which follows the bill of rights, is truly a most remarkable instrument. It may not define crimes with the fullness and legal precision employed in a disquisition on criminal law, but its meaning is never in doubt. Through it all there breathes a spirit of frankness and freedom strongly in contrast to the spirit of the age. These legislators well knew that the source of their power resided in their dependence upon England, but they had no intention of allowing any of their chosen principles of religious and political toleration to be frustrated by any ancient provisions of English law. Their enactments concerning the formation of a military force, the regulations with reference to the payment of import duties by foreigners, the limitation of punishable crimes to those expressly listed in the code, and the provision which allowed all men "to walk as their conscience persuade them", all show their disregard for English laws relating to the same subjects. The provision that laws should be conformable to the laws of England only in "so far as the nature and constitution of the place will admit", was not inserted in the Charter without reason.

¹See the Act of Oct. 26, 1650 (*R. I. Col. Rec.* 1, 228) in which the law of 1647 was repealed.

Although there is not space here to allude in detail to the provisions of this code, the remarks of Judge Staples on the subject, written over fifty years ago, should certainly be quoted. These early legislators, he says, "began at the foundation, and adopted a bill of rights which secured all that their ancestors had wrested from their kings, and which their countrymen had subsequently lost, and were then endeavoring to regain. They clothe them in language too plain not to be understood. They were a simple people, and the language of their laws was such as a people would naturally use. They regarded themselves, within the scope of their charter, as the only source of power among them, and they in practice declared 'that their government derived all its just powers from the consent of the governed'. They expressly declared their government to be a democracy, or 'government held by the consent of all the free inhabitants'. This declaration was as heterodox in the political systems of that day, as were their notions of soul-liberty. . . . This code, and the acts and orders passed at its adoption, constituted the fundamental laws of the colony while the charter remained in force. The alterations made in them during that period were rather formal than substantial. Their spirit remained unchanged, and has been infused into all the subsequent legislation of the colony and state"¹

CHAPTER VII.

THE PERIOD OF THE FIRST CHARTER, 1648-63.

The people of Rhode Island had started the machinery of their new framework of government, but they were poorly qualified to keep the machine running smoothly and easily. When to the controversies within the separate towns were added the disputes arising from a general union, the burden seemed more than they could bear. The absence of a state protected church, while of incalculable benefit from many points of view, was in that day somewhat of a bar to political order. The blind subordination of the people and the calm ascendancy of the rulers—both the fruits of a theocracy—gave place in Rhode Island to rampant individuality. Eccentrics, enthusiasts, men

¹*Code of 1647*, p. 63.