

## Hidden Conquest – 1924 to present

**H**ello. Welcome to this the fourth lecture in a five-week series intended to educate the people and judiciary of Long Island and the State of New York about the very special genesis and nature of our liberties at law. These lectures are being videotaped and published on [www.montauk.com](http://www.montauk.com) both in streaming video and text. I also expect that they will be broadcast soon on the local public access TV station (LTV).

My name is Bob Ficalora. For the past eleven years my wife and I have run the Breakers Motel on the Old Montauk Highway. As a result of my legal efforts to preserve the “Benson Reservation” property across the street (and our access to the beach!), I have come to assume the controversial and burdensome title of acting supervisor of the Incorporated Township of Montauk. I have no ego in this title; it began simply as a responsibility and has now evolved into duty. I will go into this more fully a little later in this lecture.

I will begin today with a short summary of the prior three lectures and then move into the current lecture entitled “Hidden Conquest – 1924 to present”. The final part of this lecture will be a summary argument that I intend to deliver to the Appellate Term now reviewing the matter of Stewart Bennett Vorpahl, and also the Appellate Division and Court of Appeals, all of the State of New York. We depend upon our magistrates for the protection of our liberties at law, and ours is a matter that can be settled.

Anyway, the first lecture was entitled “Genesis of Liberty – 1492 to 1691”. It covered the dialectical co-genesis of private property and civil jurisdictions according to our system of English law out of the feudal establishment of private property. In that context I discussed the social contention by which our liberties at law were first established, and the rebellious circumstances of the granting of the royal patent and charter to the town of Easthampton (the “Dongan patent”) according to accepted form

under the laws of England. The lecture ended with a short introduction to the contentious first convening of the Assembly of the Royal Province of New York in 1691 and Chapter 2 of the laws of the laws of that assembly establishing that the royal charters previously granted in New York are enforceable against royal authorities, their heirs and successors forever.

The second lecture was entitled “Defense of liberty 1691 to 1791”. In it I covered the circumstances and nature of the first Assembly in 1691 with a focus on Lieutenant Governor Jacob Leisler and the republican rebellion of the 1680s. Most poignant was the March 10<sup>th</sup>, 1690 letter to him by Easthampton lamenting subjection to royal authority. It was shown in greater depth that the first laws of the legislature were a negotiated surrender by New York to royal authorities. I went on to review the colonists’ protests at parliament’s impositions and usurpations in violation of the charters in the period leading up to the Revolutionary war and later as explicitly protested in the Declaration of Independence and protected in the 1777 Constitution of the State of New York. Finally, the federalist Constitution and the enacting of the amendments comprising the Bill of Rights was discussed as they pertained to the protection of colonial charters from state or federal impositions or usurpations.

Finally, last week I presented a lecture entitled “Montauk’s Proprietors – 1600 to 1924”. In that lecture I went over the way that lands were purchased or otherwise acquired from the Montaukett Indians, the Indian deeds, and the manner in which the proprietors organized themselves separate from the Easthampton town meeting or government. I talked about the three huge lawsuits pertaining to Montauk that were brought to trial in 1851, 1878 and 1910. The 1851 matter caused the corporate separation of Montauk from Easthampton by deed of release and the establishing of the Montauk Trustee Corporation in 1852. The 1878 case caused Montauk to be sold at auction in 1879 to Arthur W. Benson. And, the 1910 matter declared the Montauk tribe of Indians to be extinct while leaving the issue of the proprietors’ claims over the Indian lands unsettled. Finally, I ended with an introduction to the events of 1924 that saw the efforts of the proprietors of Montauk to defend their lands and liberties defeated.

This week's lecture continues with the events of 1924 and is called "Hidden Conquest – 1924 to present".

Webster's New Collegiate Dictionary defines "**Conquest**" as "*The act or process of conquering*". "**Conquer**" is defined as "*to gain or acquire by force of arms; to subjugate*". And, finally, "**subjugate**" is defined as "*to bring under the yoke of power or dominion; subdue*".

The circumstances and events of 1924 must be understood with knowledge of the galvanizing effect upon the proprietors of Montauk of the 1910 trial in the matter of Pharaoh, et. al. v. Benson, et. al., particularly upon Henry R. Hoyt and his brother John Sherman Hoyt. In that matter the Hoyt family owned properties both within the lands claimed by the Indians (50 acres at "North Neck" a.k.a. Culloden Point) and outside of them (the 97 acre "Shadmoor" property). The landed interest of the Hoyt family in Montauk, therefore, requires some review.

As I stated last week, the interlocutory judgment of the court-appointed referee in the 1878 matter of Grinnell v. Baker, the partition action among the proprietors that led to the sale of Montauk to Arthur W. Benson, read pertinent part it that:

"The nature of said rights of the Montauk Tribe of Indians is such that it would be impossible to enjoy any portion of the land which is subject to such rights if set off in severalty. The whole of the tracts affected by said rights or liens is however, of great value while undivided and owned in connection with adjacent parcels, and the existence of Indian rights now diminishes but very little the annual yield or profits of the land. If the whole land of Montauk were sold as a unit, the existence of Indian rights would but slightly affect the value over the portions over which the rights extend. Small parcels within the said portions, if owned in severalty would by reason of the existence of said rights be rendered nearly valueless.

"In case any division of the premises in question [Montauk] was made whether among the present owners or for the purpose of offering for sale

in parcels, it would be necessary to fence each of said parcels in such a manner as to keep them in stock.” Interlocutory judgment of Everett A. Carpenter, Esq., as referee in Grinnell v. Baker, N.Y. Supreme (Riverhead), 1879. Found in the record on appeal of Pharoah, et. al. v. Benson, et al., p. 309-310 69 Misc. Rep 241, Supreme Court, Suffolk County, 1910, affd. 164 App. Div. 51 affd. 222 N.Y. 665,

The importance of Mr. Carpenter’s judgment to us today cannot be understated.

In 1889 Alfred M. Hoyt was the first individual purchaser of land in Montauk from Arthur W. Benson when he bought the 97-acre parcel today called “Shadmoor” (Suffolk: Liber 322 of deeds p. 592, 9/25/1889). Mr. Benson, in turn, had purchased the entirety of Montauk (except the lighthouse) and the corporation of the Trustees of Montauk from the proprietors of Montauk in 1879 subject to the rights of the Montauk tribe of Indians. It is clear from the many appurtenance clauses contained in the 1889 deed to Mr. Hoyt that it was understood that rights to valuable commonage came with his purchase.

Around 1905 or six the Legislature began an intensive review of the activities of the Long Island Historical Society of which Frank Sherman Benson was a member of the board of directors. In 1906, it passed an act enabling the Montaukett Indians to bring an action at law to recover their rights over lands in Montauk. In 1907 Frank Sherman Benson died and the Indians commenced their action against his estate and other claimant owners of land within their reservations. I have not yet discovered how Frank Sherman Benson died.

Among the defendants in Pharaoh was the estate of Alfred W. Hoyt, one of Alfred M. Hoyt’s children, who had died while owning a 50 acre parcel within the North Neck Indian reservation. Among the proprietor owners of land not defendants in Pharaoh but who were clearly legally interested in the Indian reservations was the estate of Alfred M. Hoyt, the owner of the 97 acre “Shadmoor” parcel. Amazingly the executor of both estates, and of the estate of Frank Sherman Benson, was one man: Henry R. Hoyt.

As the matter proceeded to trial, therefore, Henry R. Hoyt was focused intently on the discovery in the proceeding and learned the full nature of the proprietors' rights not only under the Indian deeds, but also through the Dongan patent.

The judgment of the Hon. Abel S. Blackmar in the matter of Pharaoh v. Benson avoided the issue of proprietors' rights by simply declaring the Indians to be extinct as a tribe and therefore not able to make claim under the prior agreements pertaining to their lands. He did also adjudge, however:

“that the title to the fee of the premises described in the complaint are vested in defendants according to their respective interests.” Pharaoh v. Benson, N.Y. Supreme, Suffolk 1910.

The Notice of Claim that I issued on behalf of the Montauk Trustee Corporation on September 3<sup>rd</sup>, 1996, stated in pertinent part that:

“Whereas, Henry R. Hoyt and John Sherman Hoyt, as executors of the estate of Alfred W. Hoyt, issued a deed to themselves out of the estate of Alfred W. Hoyt to the above mentioned fifty acre parcel at North Neck [Culloden Point] as *tenants in common in equal shares*" (liber 1036 of deeds, p. 55, 4/18/1913) effectively both affirming this land as, and returning it to, commonage and, therefore, the custodianship of the corporation of the Trustees of the Proprietors of Montauk “

and that

“It is hereby and herewith proclaimed that the corporation of the Trustees of the Proprietors of Montauk retains, claims, and asserts all rights over the lands formerly of the estate of Alfred W. Hoyt and other undivided lands at North Neck, and that the current subdivision and proposed sale of those lands is unlawful and without right.”

This notice was signed as a sworn document under a notary seal and served upon the developer (511 equities), the title insurance companies, and the town of East Hampton. I had it approved for filing with the deeds in the Suffolk County Clerk's office but was misled to believe that I required the further approval of one John M. Kennedy, Jr., who then prevented me from filing.

The nature of the 1913 deed out of the estate of Alfred W. Hoyt is that it would include other claimant proprietors as “tenants in common.” As trustee of the estate of Frank Sherman Benson, Henry R. Hoyt also conveyed many deeds upon the filed plans of Hither Hills and Wompenanit that contained the covenants granting “common use” of the properties marked as “Reservation” upon them to the purchaser together with all other proprietors of Montauk

In any event, the actions of Montauk’s proprietors in the defense of their rights was described in the 1924 book entitled “Montauk” published by the town of “East Hampton”:

“About 1910 the then owners of Montauk lands forbid East Hampton men, descendants of the Proprietors of Montauk, and freeholders of the town of East Hampton going on their private lands to hunt and fish. The decision of the Supreme Court, made sixty years before taking away all of the rights of the town in Montauk lands, appears to have been forgotten. There was dissension between private owners of Montauk and townsmen. That continued about fourteen years. MONTAUK, 1924, p. 9.

While the proprietors were excited about their newly discovered rights, however, the stage was being set for conquest by jealous authorities. The legislature passed the unconstitutional “Town Law” of the State of New York in 1909, the record of its recognition of the rights of Long Island towns was destroyed in 1911 by a suspicious fire at their library in Albany, and the appeals courts upheld Justice Blackmar’s 1910 decision without modification.

In 1918 Mary Benson, the daughter and heiress to the estate of Arthur W. Benson died in 1918 while still having in her possession all of Montauk’s trust lands. Henry R. Hoyt and John J. Pierrepont were named as trustees of Montauk lands under Articles 28 and 29 of her last will and testament, but the trust in the will for the management of Montauk lands was established only to distribute any revenue derived from them to her niece (Frank Sherman Benson’s daughter) or to otherwise sell them off.

A summary on file at the Surrogates Court in Brooklyn states that on March 20, 1819 Henry R. Hoyt immediately renounced trusteeship by an instrument filed with that court. The instrument, as with many other court documents, is no longer in the file and presumed destroyed. Shortly thereafter, John J. Pierrepont also resigned and the trust was assigned to the Brooklyn Trust Company and Thyrza's husband, Montague Flagg.

It is clear that Hoyt and Pierrepont could not accept the terms of the trust established in the last will and testament of Mary Benson because it didn't provide for the protection of any of the proprietors' common lands in Montauk – even the Benson reservations.

The fact that the proprietors continued to hold their position protecting Montauk for another five years is significant. They must not have been able to come to terms with Thyrza, however, she apparently wanted money and was not amused at being told that the vast majority of her Montauk lands was proprietors' commonage of limited or no value.

The *Easthampton Star*, never really a friend of Montauk's proprietors, would report in the early 1920s that the proposed sale to Carl Fisher might not occur because of "Indian rights" while never mentioning the defending proprietors. Again, it is the nature of the agreements with the Indians that "Indian Rights" are proprietors' rights, and Montauk's proprietors' rights are the rights of the Township of Montauk.

My review of the contemporaneous reactionary political circumstances of the 1924 political conquest of Montauk finds the reactionary aftermath of the Bolshevik revolution, the emergence of fascism in Italy under Benito Mussolini, and the "Town Law" now available for state imposition, is that the proprietor's probability of success in any civil action would have been poor. Albany was not ready to accept that under its own Constitution it did not have jurisdiction over the towns of Long Island and New York city, and took action to unconstitutionally impose its claim of jurisdiction over them.

That being as it may – and I will return to it in a minute - there is really no question that Thyrza and the Brooklyn Trust Company found one of the lousiest Florida mobsters to buy Montauk with a large mortgage. His name was Carl Fisher.

Carl Fisher brought a government of the town of East Hampton back into Montauk in violation of the 1851 court order. Pursuant to that court order Easthampton had released all corporate claim to Montauk and had no right to be here. Backed by these acts of unlawful government, Mr. Fisher immediately began to subdivide and sell the proprietors' commonage, the lands of the township of Montauk.

In addition to introducing unlawful government, in the five short years that he owned much of Montauk before dying from alcoholism, Carl Fisher broke the proprietors' hearts. The facts on the ground show how he removed the proprietors from the Montauk lands that they had been defending for fourteen years, and the incredible damage to did to the proprietors' continuing interests here.

He cut a channel to the sea that divided the Indian/Proprietor lands at North Neck and Indian Field and turned the largest body of fresh water on Long Island into salt water. The effect on available groundwater and fish and fish and game habitat were disastrous.

He burned the common kitchen of the Montauk Association to the ground. The Hoyts were members of the Association and owned a number of its lots.

He built massive structural obscenities within Montauk's pristine landscape including a huge observation tower upon vacant land overlooking the properties of Hither Hills, including the Benson Reservations. Its presence in the landscape must have totally destroyed the proprietors' pleasure and enjoyment of their lands.

He subdivided the proprietors' most prized properties including what appears to have been the proprietors' spectacular meeting site shown within the map of Hither Hills uphill from the schoolhouse by the beach.

He filed a subdivision map of the reservation lot across from Second House that, although he took no action upon it, was later used as the basis for the construction of the Oceanside Motel.

There is no question, therefore, that Carl Fisher ran Montauk's defending proprietors out of Montauk and broke their will to return.

Before throwing in the towel, however, the Hoyt family and others took action to monkey-wrench the deeds to their properties to ensure that they would be left without heirs (owners).

Understanding the law, and the well-educated nature of these men, it is clear that they hoped that their lands would someday be claimed by the town of Montauk by escheat as lord of the fee. I note here that I stopped the federal purchase of Shadmoor on these grounds, and later provided state, county and town officials a certified title examination of the chain of title to Shadmoor BEFORE they rushed ahead and spent seventeen million taxpayer dollars to acquire a valueless claim to it.

Fortunately for Montauk, at the same time, in 1924, Robert Moses acted under the new 1924 "Conservation Act" and took proprietors' land at the 1661 deed commonage at the Hither End of Montauk and a Benson Reservation at the point. The "Certificate of Appropriation" entered by the State of New York dated August 25<sup>th</sup>, 1924 and found at deed Liber 1108 p. 424 took these proprietors' lands

Subject also in all three parcels above described to any and all rights, rights of way or uses by way of reservation or otherwise and in whomsoever vested in any of the lands or property above described."

The court has now held in the matter of Breakers Motel v. Sunbeach Montauk II that all Montauk property owners have rights over the Benson Reservations. The proprietors of Montauk are clearly vested in not only the Reservations, however, but in most of the other lands taken by the State at that time.

I am hopeful that the National Park Service and other park organizations are pulling for our success, because if we prevail I have no doubt that Montauk township will have one of the most beautiful and professionally managed park systems in the world.

In any event, in 1924 a new government was established in Easthampton under the legislature's 1909 "Town Law". This was done secretly and in violation of the state and federal Constitutions and New York State law (Chapter 2 of the Laws of 1691). It was assisted in this conquest of Montauk's sovereign jurisdictions by the first introduction of political parties into East End governance. This is notable because political parties are disallowed in the 1686 charter of the Town of Easthampton and in this analysis were introduced as important accessories to the criminal usurpation of our franchise to tax and to govern.

In the matter of MFOP, inc. v. The Brooklyn Historical Society I pointed out to the court the interesting features of this new "East Hampton" government as it awaited clarification of the new "Town Law" by the Albany legislature.

At first some of the elements of constitutional government under the 1686 town charter were retained. For example, in 1934 the members of the town board were referred to as "Justice". Under the town charter (Dongan patent), the trustees in town meeting assembled formed the "general court" for the administering of law. They were in fact and in law "justices", something that (thankfully!) cannot be said of the town board today. The state has moved in and taken control of our courts.

After Carl Fisher died, his corporation defaulted on the mortgage to the estate of Mary Benson and most of the properties were returned to it. The twenty-eighth and twenty-ninth articles of the will of Mary Benson established that the Montauk trust lands would be administered for the benefit of Thyrsa Benson Flagg. Mr. Flagg had died, however, and R. Stuyvesant Pierrepont and the Brooklyn Trust Co. (later Manufacturers Trust Co.) were its trustees.

During the period after Carl Fisher's death until the death of Mr. Pierrepont in 1950, not much happened with Montauk's trust lands. After his death, however, the Surrogate's Court appointed Thyrza's new husband Harold Fowler as trustee in January of 1953.

By the early 1950 Henry R. Hoyt had passed away. In 1948 John Sherman Hoyt was successful in throwing yet another monkey wrench into the chain of title to Shadmoor by entering into an unsupportable contract of sale with the Sea Cliffs Corporation (Liber 2804 p.435). John Sherman Hoyt was shortly thereafter declared mentally incompetent and his interest in the 50-acre North Neck parcel taken from him.

In 1951, Carl Fisher's reorganized Montauk Beach Corporation (today 511 Equities) snapped up the title to the North Neck parcel and had the deeds to them out of the estates of Henry R. Hoyt and John Sherman Hoyt conveyed to them "all the undivided one-half part of and interest in". (Two deeds at Liber 3309 pp. 139(1) and pp. 143(2).

The problem with the above deeds to Montauk Beach is that the *Hoyts did not hold the land in "undivided interest" but as "tenants in common in equal shares"*. It is fundamental that one cannot convey that which he doesn't hold, and a partition action was never commenced to determine the other interested parties in the proprietors' commonage at North Neck. I have reviewed this with title examiners and we are in agreement on this.

Other deeds were similarly monkey-wrenched by the proprietors.

The final kicker in the story of the Estate of Mary Benson is that on or about July 10<sup>th</sup>, 1956, it sold off its still extensive holdings of Montauk land to "MONTAUK PROPERTIES INVESTING CORP" by deed recorded at Liber 4147 pp. 76-90. This deed conveyed thousands of acres of lands and many of the Benson Reservations.

The obtaining of Montauk's trust lands by a development firm set off a flurry of activity. Almost immediately the poseur government of Easthampton established zoning for Montauk to map out how it said the lands could be used. Most of the Benson reservations were shown on their maps, but the proprietor's rights through the Indian deeds were not recognized and not-for-profit organizations such as the "Montauk Village Association" and the "Montauk Historical Society" were set up to sit on them.

An effort was commenced in the Albany legislature to remove the constitutional impediments to the development and sale of Montauk trust lands. Amazingly contrived studies were performed that determined that three sections of Article I of the Constitution of the State of New York – its Bill of Rights! – were no longer necessary. Each of the sections had some specific application to Montauk.

By 1960 the illegal and unconstitutional governments of Long Island had been in operation for over three decades. The legislature must have been aware of this at this time and of the desire of certain parties to develop Montauk lands received from the estate of Mary Benson. They approved the repeal of the sections subject to a vote of the people. Perry B. Duryea of Montauk and the Hon. Guy Mangano, formerly presiding justice of the Appellate Division 2<sup>nd</sup> Dept. while our cases touching these matters were pending there, voted for the repeal in 1961 as members of the Assembly.

The attempt to gut the New York Constitution by ballot was a real botch job, and I won't waste your time going over it. It is simple to understand *a priori* – before all argument - that a vote of the people of the state cannot release the State from contractual obligations with persons or parties. If I have a contract with you, I can't get out of it by having a vote of everyone in the room – especially if you are unaware of our contract and I am keeping it a secret from you. Also, given that the unconstitutional impositions and usurpations of the legislature existed and were continuing, this act of the New York legislature must be considered an unconstitutional *ex post facto* law.

Anyway, the legislature claims to have repealed sections 10, 13 and 15 of Article I (Bill of Rights) of the Constitution of the State of New York. This was clearly done to hide the embarrassment of their conquest of Long Island towns, especially Montauk, and won't withstand legal scrutiny if properly brought to court today.

I note at this point that there is no statute of limitations upon bringing constitutional complaints before our courts. The town board of the town of Easthampton is and always has been an illegal and unconstitutional entity. We have every right to remove them from Montauk and re-establish our historic right to good government by town meeting.

### **Summary Argument**

I address this final argument for presentation to the magistrates of the State of New York.

To the Honorable Magistrates of the Court,

In these past several years I, Bob Ficalora, have with full humility, dignity and honorable purposes presented the court with the issues regarding the sufferings of unlawful government by the people of Montauk.

I have shown that Montauk, Easthampton and the other towns of Long Island have been illegally and unconstitutionally conquered by the Legislature of the State of New York. It has imposed its laws, usurped our franchises and in Montauk's case actually (but thankfully) taken some of our lands.

Regardless of any unfortunate errors by Assemblies at Albany now passed, it is acknowledged that New York has a very proud history of republican constitutional

government under our system of English law. Our complaint is a matter that can and should be equitably settled before this court.

I beg the court to understand that we have lost no war, and we haven't done anything wrong that I know of, but the very special liberties and privileges at law of our towns – fundamental rights of sovereignty - have been suppressed and a new and despotic form of government imposed upon us.

In consideration of this situation, and with an attentive eye to the needs of this court, in December of 2000, at the very birth of the new millennium, our board of acting trustees adopted a document entitled “The Articulated Rights and Constitution of the Township of Montauk”. We felt this necessary for our townsmen's' use in effectively recovering these liberties for ourselves and for our posterity.

Montauk is a town and has the right under the Dongan patent to govern by town meeting in the same manner as the other towns of New England. What is set forth in the Articulated Rights is the process of a “Representative Town Meeting (RTM)” such as that enjoyed today by forty two Massachusetts towns, seven Connecticut towns, one Maine town and one Vermont town. There is, therefore, nothing radical about the form of government or its purposes.

The law and the equities weigh heavily in favor of Montauk's proprietors. We honor this court and do pray that politics will have no counterpoising weight upon the scales of justice. The matter in re: Montauk can and should be settled and I humbly present myself at the service of the court in helping it to do so.

In God we trust,

Bob Ficalora