

**OPINION OF THE JUSTICES OF THE  
SUPREME COURT, RELATIVE TO CHAPTER  
800 OF THE PUBLIC  
LAWS, (THE NARRAGENSSET INDIANS)  
GIVEN TO THE SENATE, AT THE JANUARY  
SESSION, 1898**

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Opinion of the justices of the supreme court, relative to chapter 800 of the public laws, (the narragensset Indians) given to the senate, at the January session, 1898 by Mr. Justice Rogers

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# **MR. JUSTICE ROGERS**

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*Rhode Island. Supreme court*

State of Rhode Island and Providence Plantations.

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# OPINION

*Ct*

OF THE

## JUSTICES OF THE SUPREME COURT

RELATIVE TO

CHAPTER 800 OF THE PUBLIC LAWS,

(THE NARRAGANSETT INDIANS)

GIVEN TO

THE SENATE, AT THE JANUARY SESSION, 1898.

PREPARED BY MR. JUSTICE ROGERS.

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Rec. May 31, 1898.

*To the Honorable the Senate of the State of Rhode Island  
and Providence Plantations :*

I have the honor to enclose the opinion of the Justices of the Supreme Court upon the questions put to us by your honorable body as to Chapter 800 of the Public Laws of Rhode Island, its constitutionality, etc.

The last two paragraphs contain the conclusions.

Very respectfully,

CHARLES MATTESON,

*Chief Justice of the Supreme Court.*

February 24, 1898.

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## THE NARRAGANSETT INDIANS.

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*To the Honorable the Senate of the State of Rhode Island  
and Providence Plantations :*

We have received from your honorable body a resolution requesting our opinion on the following questions, to wit :

1. Are the provisions of Chapter 800 of the Public Laws of Rhode Island, passed March 31st, 1880, constitutional?

2. Do the quitclaim deeds, executed and delivered by the Council of the Narragansett tribe of Indians, or by a majority of them, of their common tribal lands, and of their tribal rights and claims, to commissioners, under and in accordance with the provisions of Section 2 of Chapter 800 of the Public Laws of Rhode Island, passed March 31st, 1880, vest in the State of Rhode Island the right, title, interest and property of said tribe in and to the premises so quitclaimed and deeded as aforesaid?

3. Has the State of Rhode Island acquired, or can said State acquire, any valid title or interest in the tribal lands of the Narragansett tribe of Indians by any proceedings under the provisions of Chapter 800 of the Public Laws of Rhode Island, passed March 31st, 1880?

4. Are the tribal relations, and tribal authority of the Narragansett tribe of Indians, abolished by the provisions of Chapter 800 of the Public Laws of Rhode Island, passed March 31st, 1880?

5. Have persons who have taken conveyances from the State under Act of 1880, Chapter 800, acquired a valid title to lands conveyed ?

To answer these questions adequately, with the reasons upon which our opinion is based, requires an examination of the relations existing between this State, including the Royal Colony preceding it, and the Narragansett tribe of Indians, from the earliest settlement of the colony down to the passage of the Act in question.

It will be necessary to consider what the tenure of Indian land was, not only according to the law of England, which we inherited, but also as between the Indians themselves, as we find constant reference even down to 1880, as well by the Narragansetts as by our own General Assembly, to the Narragansett tenure of land according to ancient usage and tradition ; hence it will be needful to inquire into the early manners and customs of the Narragansetts to ascertain how they themselves dealt with their land. In tracing the title of the Narragansett lands during the two hundred and forty-four years extending from 1636, the date of the settlement of the colony, to 1880, the date of the passage of the Act, two considerations must receive especial attention, the first being the effect of a deed containing an exception, or reservation, of certain territory embracing the land referred to in said cap. 800 as tribal lands, dated March 28th, 1709, and made by Ninigret, the sachem of the Narragansetts, to the colony of Rhode Island. A glance at some of the events preceding the making of that deed will be necessary to a proper understanding of the circumstances under which it was made. The second consideration is—what effect, if any, did Rhode Island's adoption of the federal constitution in 1790, have upon the relations of the State with the Narragansett tribe ?

The first reference to the Narragansetts that we glean from history is early in July, 1621, the year after the Pilgrims landed on Plymouth Rock, when a returning scouting party reported to the Plymouth Colony the existence of the Narragansetts, a people strong, and many in numbers, living compactly together, that had not at all been touched by the wasting pestilence which had devastated the Indians of New England a few years before the arrival of the English, and located on the other side of the great bay from Massasoit and his tribe of Wampanoags. Roger Williams says in his Key that the Narragansetts were the chief people in the land. Gov. Hutchinson states that they were the most numerous of all the tribes between Boston and the Hudson river. Brinley's assertion is that they formerly numbered thirty thousand ; while Callender declares that at the beginning of King Philip's war, in the spring of 1675, they were reputed to have four thousand fighting men. This latter writer, in his Century Discourse delivered at Newport in 1738, after describing the Great Swamp Fight between the troops of the United Colonies and the Narragansetts in December, 1675, which he designates as " the greatest action ever performed by the New English Colonies against the Indians, if we regard either the numbers of men on each side, or the consequences of the action," says : " The Indians were soon pursued with famine and sickness, so that after they submitted the next year, they were never formidable again." Then he proceeds as follows : " These Narragansetts do now, in a manner, cease to be a people, the few, if any, remaining in the Colony, being either scattered about where the English will employ them, or sheltered under the successors of Ninigret, a sachem that refused to join in the war, and so has preserved his lands to his posterity ; and there are a few Indians