

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1842.

AUGUSTA:

SMITH & Co., PRINTERS TO THE STATE.

1842.

TWENTY-SECOND LEGISLATURE.

NO. 22.]

[HOUSE.

REPORT

OF THE

COMMITTEE ON STATE LANDS.

[WM. R. SMITH & Co....Printers to the State.]

STATE OF MAINE.

THE Committee upon State Lands, to whom was referred the petition of John H. Pillsbury and Eben'r Webster, have had the same under consideration, and ask leave to

REPORT:

These petitioners filed before your committee a statement or claim of which the following is a copy:

“ State of Maine

1839.

To Webster & Pillsbury, Dr.

To detention of our timber in State's boom, on the river Aroostook, which obliged us to pay our men for 30 extra days' labor (45 men,) at two dollars and a quarter per day,	\$3,037 50
“ loss on our timber, in consequence of not getting it down to market, the same being 5,100 tons at 60 cents per ton loss,	3,060 00
“ one hundred tons of timber, which we were unable to get out of said boom, and has been wholly lost to us, at \$6 per ton,	600 00
“ damage for seizing and detaining one boat-load of goods,	100 00
“ injury done said timber by being bruised on the Aroostook river, in consequence of the fall of water during the time of detention, and the expense of re-hewing the same,	2,187 50

To extra expense of picking up the lumber, as scattered all along the St. Johns river, which was occasioned by the detention aforesaid,	2,000 00
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\$10,985 00”

Webster, one of these petitioners, made oath to the truth of this account before a magistrate in the county of Penobscot; and Pillsbury, the other petitioner, made oath to the truth of the same before your committee. To establish the facts set forth in the petition, the petitioners introduce the depositions of Dudley F. Leavitt, who was a commissary at Fort Fairfield, acting under the authority of the State of Maine; John Mason, the physician of that post; William B. Carr, who was employed by the Land Agent to aid Captain Parrott; Thomas Bartlett jr., who was deputy Land Agent, in the spring of 1839, acting at Fort Fairfield; Thomas Bartlett, Esq., who was employed by the Land Agent as pay-master of the posse in February, 1839, and acted as such, and as under Land Agent, having the supervision of the business of the State upon what is termed the “disputed territory,” until October of the same year. The deposition of the latter officer, coming as it did from a gentleman holding a high place in the confidence of his fellow citizens, a man of unquestionable veracity, and having the best means of information of any one in the employment of the State, your committee regarded it due to you, and to themselves, to annex it to, and make it a part of this report. The journal, kept by Captain Parrott, was also introduced, and letters written by him to Mr. McIntire, under dates of April 29, May 3d, June 18th, August —, September 9th, September 12th, September 18th, October 20th, and No-

vember 12th, 1839—now in the Land Office. Also, the report of Mr. Parrott, which will be found published in the documents of 1840, page 84th. A letter from Charles Jarvis, Esq., of Ellsworth, dated February 4, 1842, who had been written to for a statement of facts in this case, was also introduced. The petitioners also read the depositions of James Adams, Francis Hathorn, W. N. Buffum, Robert Kilburn, and Isaac Kilburn ; but these deponents being men who had been in their employment, your committee supposed they might have testified under some bias in favor of the party introducing them, and in making up their report of facts, excluded their testimony. Thomas E. Perley, of Woodstock, was also called by the petitioners, and having been sworn, testified touching the matter under consideration. By the direction of the committee, Mr. McIntire, the late Land Agent, also appeared before them and testified.

Your committee would here remark, that the conclusions they have arrived at, are the deductions drawn from the testimony of officers of the government. These officers were known to many of your committee, and although, from the necessity of the case, the depositions were in their character *ex parte*, yet appearing, in each case, to be in the hand writing of the respective deponents who subscribed and made oath to them, and knowing those officers to be men of character and respectability, your committee gave full credit to the facts they severally state.

On the 5th of September, 1838, the Land Agent of the commonwealth of Massachusetts granted a permit to Ebenezer Webster, of Orono, and John H. Pillsbury, of Bangor, in the county of Penobscot, to cut and take away pine timber, from township No. 8, Range 8, upon the Aroostook river, and on the 22d of November of the same year, the

Land Agents of Maine and Massachusetts, granted the same individuals a permit to cut upon township No. 8, Range 9, upon the same waters. These permits, in due form, were produced, and the petitioners proved that they cut under them about five thousand, four hundred tons of pine timber, and drove the same down the Aroostook river to Fort Fairfield, where it arrived about the third day of May, 1839, and was stopped by the American boom. The petitioners had in their employment about forty men, twenty of whom came down with the logs to the boom, and remained there, during their detention by the State, a period of about three weeks. The petitioners did not deem it safe to discharge them, because at that season of the year the Aroostook is subject to sudden freshets, which would have swept down the timber into the St. Johns, a distance of five miles below the Fort, and, unless there "picked up" and rafted, would scatter it along the shores of that river, for a distance of more than two hundred miles. Between the American boom and the St. Johns there was, at that time, the British boom erected by Sir John Harvey, in the winter and spring of 1839. The petitioners did not, however, regard that boom as sufficiently strong to stand against a freshet which would bring down upon it the immense mass of timber, and drift wood, then laying in the Aroostook river. If, however, it should stop their timber, they then would require all these men to take it from the boom, make it into rafts, and run them down to the city of St. Johns, the place of market.

There were two freshets in the Aroostook in the spring and summer of 1839. The first commenced in April, and subsided about the 10th or 15th of May. Upon this freshet the timber of the petitioners came into the boom; and your committee believe, had it not there been detained, it would

have proceeded with but *little injury* to its destination. Coming gradually into the British boom, it might have been rafted out almost as fast as it came in, and the boom thus eased of the pressure upon its timbers, would have aided the petitioners in collecting and rafting their timber, and enabled them to have floated it to the market with but little expense, and no loss from the plunderers and log thieves, who infest the shores of that river, from the Aroostook to the ocean.

Whether Captain Parrott, the commander at Fort Fairfield, used the utmost diligence in his power, to separate this from the trespass timber and run it through the boom, your committee do not decide. It was, however, in evidence before them, from several witnesses, that the petitioners proffered him the assistance of their whole crew to aid his men in passing it out, which he peremptorily refused. Fearing there might not be another freshet during the summer, and aware that the price of timber was declining at the market as the season advanced, to obviate the difficulty under which they then labored, it was proved to your committee that they offered to pay Captain Parrott ten dollars per ton for all trespass timber then in the boom, if he would open it and suffer theirs to pass without further delay. This offer was also refused, although timber was at that time, worth there, but about five or six dollars the ton, and the petitioners with their large crew of men, under an average pay of \$2 each per day, were compelled to remain twenty two days during the best part of the driving season, the idle spectators of the movements of Captain Parrott and his men.

All of this timber was of a superior quality, and as is the custom, in preparing it for the British market, hewed square. From the 7th to the 25th of May it was being turned out of

the American boom. Between this and the British boom, about three miles below, is a very sharp and ragged ledge, called the Aroostook Falls. The river here passes through a deep ravine, and pitches over several acute projections of the ledge, which lay one below the other for a distance of about a half a mile. When the water is very high, timber will pass through this place without much injury; but when so low as to strike the rocks, it is bruised, the corners are beat off, and the stick requires re-hewing before it is shipped.

Upon these rocks, the timber of the petitioners stopped, as it came down from the boom, and jambed in one vast mass.

About the 30th of May the Aroostook again began to rise. All the timber of the petitioners, except about one hundred tons, had been run out of the American boom, and they with their crews of men, moved down to the mouth of the river to await the moving of their lumber. When the river had attained its highest point, this jamb was moved down *en masse* by the current, sweeping away the British boom, and scattering the timber along the shores of the St. Johns, from the mouth of the Aroostook to the bay of Fundy, a distance of more than two hundred miles.

It was in evidence before your committee, that the expense of picking up timber in the St. Johns was equal to one dollar per ton. But that charge being incident to all timber, and the petitioners being under the necessity of collecting theirs at some point upon the river, your committee did not regard the State under obligation to pay them the full cost of stopping and securing it. Yet, believing, that had it not been detained by the State, it might have been collected and rafted at the mouth of the Aroostook at a far less expense than it was, they considered them entitled to some compensation for

the damage they suffered. It was also in evidence that timber fell in value, at the city of St. Johns, in the month of June 1839. The amount of the depreciation your committee could not ascertain. The petitioners arrived there, with their rafts, in the former part of July. Before any timber is shipped, at that market, it must be hewed perfectly square, be free of bruises, and the ends which may have been battered by running against the rocks, cut off. Before this timber was fit to ship about two thirds of it required re-hewing, which was done at an expense of fifty cents per ton.

And your committee are compelled to believe, from all the evidence adduced, that had it passed out of the Aroostook upon the first freshet, in May, but a very small part of it would have been so far injured as to have required re-hewing.

The standard of timber in that market, is twenty inches square, and as it sinks or rises in the scale below or above that size, the same quantity becomes less or more valuable, at the rate of forty cents per inch. Timber, therefore, which is re-hewed not only shrinks in quantity, but depreciates in value. The petitioners thence, in consequence of the detention of their timber, and its injury from that cause upon the rocks and ledges in the Aroostook, were at the same time subject to the expense of re-hewing, the loss in quantity, and the depreciation in value by sinking the average of the scale or survey. Your committee could not, from the evidence as detailed at length before them, come to any definite conclusion, as to the number of tons re-hewed, the loss in quantity, or the depreciation in value; but in estimating the damages, they were cautious not to recommend the payment of a sum which could possibly have exceeded the loss sustained by these petitioners.

The American boom, near Fort Fairfield, was erected in the spring of 1839, after this timber was cut, for the purpose of stopping that cut by trespassers upon the Aroostook and its tributaries. Parrott, in detaining that of the petitioners, seemed to have acted under the conviction that the trespassers were making use of the marks of Messrs. Webster and Pillsbury, by their knowledge and consent, to enable them to pass through the boom without detection. But from the evidence adduced, your committee believed that there was no just ground to warrant that conclusion; and they would here remark, that there is not the slightest evidence that Messrs. Webster and Pillsbury aided any trespasser, in violating or evading, the laws of the State.

In the fall of 1839, the petitioners sent up the Aroostook river a boat loaded with provisions, for the purpose of getting down some timber laying above the boom and upon their landings, which had been cut the previous winter. This boat and its load was seized by Parrott, and the petitioners were under the necessity of proceeding to Houlton, about fifty miles, to procure a precept and an officer to re-take them. This, after several days' delay, was done; and the property redelivered upon replevin.

In view of the facts above stated, your committee report, that the petitioners have leave to bring in the accompanying Resolve.

GEO. P. SEWALL, per order

DEPOSITION.

I, Thomas Bartlett, of lawful age, depose and say—that I was in the service of the State of Maine, under the Hon. Rufus McIntire, Land Agent, in the Aroostook expedition, in the year 1839, from the first of February, of that year, until sometime in October or November following; acting in various capacities, as directed by said Agent—that while assisting in settling with the volunteer force, at Bangor, sometime in the month of May (I think), several communications had then been and were then received by Mr. McIntire from Captain W. P. Parrott, then deputy Land Agent, and in command of the volunteer force for the protection of the public property on the disputed territory, at Fort Fairfield; having also the direction of the State's boom, erected to prevent the passage of all timber supposed to be trespassed from the public lands—informing said Agent among other matters that Messrs. Webster and Pillsbury, then lumbering on the Aroostook waters, under permission of Maine and Massachusetts—had driven their timber into the boom, and that they were anxious to have it passed through while the freshet was up, sufficient to pass the falls below—but that from the circumstance of being mixed up with a considerable quantity of trespass timber which would unavoidably pass out with it owing to the strength of water at that place—difficulty in managing the boom, &c., &c.—from those and various other causes—among which was the suspicious appearance of said Webster and Pillsbury's timber, indicated by the number of marks on the several sticks, as well as variety of marks on the whole lot—he had refused it a passage, and that he should so continue to do, until the subject should be investigated, or that he should be further advised by Mr. McIntire. A consultation was had in relation to these communications,

at the Land Office, forthwith, the result was, that I was directed to repair to that post to consult with Mr. Parrott, and that every facility should be offered Messrs. Webster and Pillsbury, and others, having permitted timber to pass the boom.

I accordingly proceeded without delay by the way of Woodstock to the mouth of the Aroostook, at the St. John, I there met Colonel Webster and Captain Pillsbury with a large crew of men stationed at the Province boom, and by them I was informed that the water in the Aroostook had become too low to float their timber down, having with much perplexity, finally prevailed on Mr. Parrott to pass it through, but too late to pass the falls, which were then choked up. I passed from thence to the State's boom, by the way of the falls, on which there was a heavy jam; and a large quantity above scattered the whole distance, on which I recognized W. and P.'s marks.

In conversation with Captain Parrott on the subject, between whom and Messrs. Webster and Pillsbury, it was apparent there had been much controversy and bitterness of feeling—the former acting with extreme caution in relation to them in the case of trespass—the latter indignant to be implicated in what they deemed unfounded suspicion, and goaded by detention of their property—Captain Parrott remarked (as named above) the course he had taken, and the reasons (before stated) which induced him to refuse their timber a passage—but observed, after making some inquiry of me of the method of surveying, and the propriety of the many *marks*, &c., &c., that he was convinced that the timber passed by him of their marks, would fall something short of their amount certified to be scaled in the woods, by the State's Surveyor, and seemed to justify the course he had taken from a belief which he then expressed—that they, P. and W,

were friends to the trespassers, and that he had reason to believe they would readily pass timber for the trespassers, under their own marks, as a disguise, &c., &c., &c. A few days after my arrival at Fort Fairfield, Captain Parrott left that post for Bangor—by direction of Mr. McIntire I took charge until his return—Webster and Pillsbury still continuing with their crews of men, or some of them, with all but a hopeless prospect of further operation on their timber, on and above the falls, for the season. A few weeks after Mr. Parrott left, however, a heavy fall of rain swelled the Aroostook to an uncommon height, floated their timber over the falls, which, together with an unusual quantity of drift wood, swept away the British boom, and passed into the St. Johns.

These are the principal facts, that I now recollect, that came to my knowledge in the premises.

But whatever may have been the true cause for the detention of their timber at the boom, during the whole of the early and favorable freshet, it is apparent that they did suffer severe and heavy damage thereby, and narrowly escaped a more serious damage—i. e. the detention of their lumber in the Aroostook, exposed to the ice freshet, the coming autumn. And I now avail myself of this opportunity to testify, as an act of strict justice to those gentlemen, Colonel Webster and Captain Pillsbury, that in relation to the trespass operations, so extensively practised by the inhabitants resident on the Aroostook waters, and their *Province neighbors*, in the years 1838–9—there does not appear to me, having had the most ample opportunity of ascertaining, and taking much pains to ascertain if there were any justifiable foundation for the imputations cast on them as being accessory—that I have not been able to trace one single act of theirs, in the premises, derogatory to high minded and honorable men—that

through the whole process of this business they ever seemed willing to suffer all necessary privations for the public good ; and although sometimes exasperated by illiberal annoyances—as a general case, contemplated their misfortunes more in sorrow than in anger.

THOMAS BARTLETT.

PENOBSCOT, ss.—*January 25, A. D. 1842.* Then personally appeared before me, Thomas Bartlett, and made oath that the foregoing statement subscribed by him, is true according to his best recollection and belief.

Before me,

FOSTER WOOD,
Justice of the Peace.

STATE OF MAINE.

RESOLVE in favor of John H. Pillsbury and Ebenezer Webster.

Resolved, That there be paid to John H. Pillsbury and Ebenezer Webster out of the treasury the sum of two thousand five hundred dollars, on account of damage suffered by them from detention of their timber, in the boom on the Aroostook river in the spring of 1839.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 18, 1842. }

The foregoing Report and accompanying Resolve were laid
on the table and 500 copies ordered to be printed.

Attest,

WM. T. JOHNSON, *Clerk.*