

MAINE STATE LEGISLATURE

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1843.

AUGUSTA:

WM. R. SMITH & Co., PRINTERS TO THE STATE.



1843.

TWENTY-THIRD LEGISLATURE.

No. 22.]

[SENATE.

REPORT

OF THE

PETITION OF JOHN DOGGETT.

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

STATE OF MAINE.

IN SENATE, February 2, 1843.

THE Joint Standing Committee on the Judiciary, to whom was referred the petition of John Doggett, have had the same under consideration and ask leave to

REPORT

a Resolve, which is herewith submitted.

Your committee further report that the allegations contained in the Petition of the said John Doggett, were not denied, but were admitted to be true, by the party opposed to the prayer of the said petition, and were fully proved. And in order to present the facts upon which the Resolve, reported by your committee, was predicated, they ask leave to submit as a statement of the facts in the case, the petition of said Doggett; the petition or memorial of William Emerson before the board of commissioners, appointed under a Resolve of March, 1841; together with the award of the commissioners upon the said memorial of William Emerson; and also the report of Drummond Farnsworth and Atwood Levensaler, a committee appointed by Resolve, approved March 17, 1842, in relation to sale of township number three, in range thirteen.

VIRGIL D. PARRIS, *Chairman.*

P E T I T I O N .

*To the Honorable the Legislature of the State of Maine,
at the January session thereof, A. D. 1842.*

THE petition of John Doggett, of Boston, in the State of Massachusetts, respectfully represents :

That in February, 1835, William Emerson of Bangor, in company with certain other persons, became the purchaser, from the State, of township No. 3, range 13, of the townships west from the east line of the State, containing 19,825 acres, at \$3,25 an acre ;

That the said purchasers, through the instrumentality of John Williams, sold your petitioner one eighth part of the said township, at the rate of more than double by them given therefor. They also sold, through the instrumentality of the said Williams, four tenths of the said township to Ichabod Bartlett and others, for more than double the price by them given therefor, and the said Bartlett and others conveyed their four tenths to your petitioner, and he assumed their obligations therefor to the said Emerson and others ;

That your petitioner has paid the said Emerson and others about \$47,000 on account of his said purchases, and has also reconveyed three tenths of the said land to the said Emerson ;

That the whole amount paid by the said Emerson and others to the State for the whole township is about \$21,500, so that your petitioner has paid the said Emer-

son and others about \$25,500 more than they have paid for the whole township ;

That in April last, the said Emerson, then having become solely interested in twenty six fortieth parts of the township, and being indebted to the State for the residue of the purchase money of the whole then remaining unpaid, viz: \$42,953 16, presented a memorial to the commissioners appointed "to settle the claims between certain individuals and the State," under the resolutions of March 31, 1841, praying that the notes held by the State against him, for the sum above mentioned, might be cancelled, on the ground that the said township was worth much less than the said sum of three dollars and twenty five cents per acre, and, indeed, much less than the sum previously paid therefor to the State ;

That upon a hearing of the memorialist the commissioners were of opinion that it would "be just, equitable and expedient, that the grantees and their assigns should have the full benefit of all that remained due from the said Emerson to the State" for the said township, and they accordingly ordered and decreed that a sum corresponding to the said Emerson's interest in the said town, namely, twenty six fortieths of the said sum of \$42,953 16 due the State from the said Emerson, should be deducted from his notes, and that on payment of the residue, the same should be delivered up to be cancelled ;

And, that, on the report of the said commissioners and in compliance with their decree the said sum of twenty six fortieths of \$42,953 16 was endorsed by the Land Agent on the said Emerson's notes :

Inasmuch, therefore, as the decree of the said commissioners was predicated upon the opinion formed by them, that the State had already previously received the

full value of the said township, and, in pursuance of such opinion the notes remaining due therefor by the said Emerson have been cancelled by the State in proportion to the amount of his present interest in the same ;—and inasmuch, as your petitioner can in no other manner, that he knows of, have the benefit of the judgment and decree of the said commissioners, to which he conceives himself to be fully entitled as one of the assigns of the original grantees ;

Your petitioner accordingly prays, that he as the assignee of the said Emerson and others, may have the benefit of the said decree extended to him, and, inasmuch as he has already paid the said Emerson a much larger sum than the said Emerson has paid for the whole township, that the said notes now held by the State against the said Emerson, and the sums due thereon may be transferred and assigned to him for his benefit.

And as in duty bound will ever pray.

JOHN DOGGETT.

January 8, 1842.

MEMORIAL OF WILLIAM EMERSON.

To the Honorable Board of Commissioners, appointed by the Resolves of March 31st, 1841, to settle claims between certain individuals and the State.

THE memorial of William Emerson, of Bangor, in the county of Penobscot, Esquire, respectfully showed: That on the twenty first day of February, A. D. 1835, your memorialist together with Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, by the style and name of Norcross and Mason, all of said Bangor, merchants, purchased of the State township No. 3, range 13, of townships west from the east line of the State, containing nineteen thousand eight hundred and twenty five acres at three dollars and twenty five cents per acre. That they paid in cash at the time of the purchase twenty one thousand four hundred and seventy seven dollars and eight cents, and gave their notes for the balance, being two thirds the amount of the purchase, on which the sum of four thousand two hundred and thirty nine dollars and thirty nine cents has been since paid, making a sum total of twenty five thousand seven hundred and sixteen dollars and forty seven cents received by the State on account of said town. The purchase was made without the purchasers having seen said town and without any other knowledge of its quality than the representations of the State's agent, who assured the purchasers that by the report of Joseph L. Kelsey, made by the direction of Hon. Daniel Rose, land agent, in 1831, the town contained eighteen million feet of mer-

chantable pine timber of the first quality, that he had no doubt the estimates would rather overrun than fall short, as the State's surveyors were expected to be very cautious in their estimates. Relying upon these statements and at the same time informing the agent that they had no knowledge of the town other than his representations they made the purchase. There has been no timber cut and the town remains in the same condition as when purchased. The State has sold the best timber lands in this section the last two years at prices varying from one dollar to one dollar and twenty five cents per acre, and picked lots in No. 4, in the 13th range, a town lying directly north of No. 3, and said selected lots being greatly superior to No. 3, were sold by the agent in 1839, at one dollar and twenty five cents per acre. Upon examining the town for the purpose of operating, they found the timber so defective as to be nearly worthless. Large groves of pine which had a fair appearance and would be likely to deceive a person not well acquainted with lumbering, were found upon inspection to be so rotten as to be unfit to cut, and after a thorough examination they could not find a chance to put in more than one team for a winter's logging upon merchantable timber. Instead of eighteen million the town does not contain three million, probably not one million of merchantable lumber of the first quality.

Your memorialist would further represent, that the town was purchased exclusively for timber, and that the soil at such a distance from settlements and roads is comparatively worthless. This town was estimated by Milford P. Norton, Esq., land agent, in 1830, to be worth twenty five cents per acre. This communication was made to the governor and council, and filed away in the

vaults attached to the secretary's office and its existence was unknown at the land office until the present year.

This price probably bears as large a ratio to the actual amount of timber of the first quality as three dollars and twenty five cents does to the amount certified to by Mr. Kelsey, then in the employ of the State, and your memorialist would be equitably entitled upon this principle to have a large portion of the payment already made to the State, refunded. But he has no expectation, nor does he ask the State to pay back any part of the money already received. The State, however, still holds notes of your memorialist to a large amount, given for said town in exchange for the original notes, and secured by mortgage; he having assumed the whole debt to the State, and said Roberts, Farrar, and Norcross and Mason having released to him all claims against the State for deduction or otherwise, in consideration of said transaction. Your memorialist, therefore, as the representative of the original purchasers, believing himself entitled upon every principle of equity, justice, and expediency to have the notes held by the State against him for said town cancelled, and his mortgages to the State on account of said notes discharged, makes this request of your honorable body, and files this brief statement of his case, agreeably to the provisions of the "Resolves for the appointment of a board of commissioners to settle claims between certain individuals and the State," approved March thirty first, 1841, and a resolve additional to said resolve.

(Signed) WILLIAM EMERSON.

Bangor, April 29, 1841.

And the said Commissioners afterwards on the twentieth day of July, 1841, made their Report touching the said matters, as follows:

REPORT OF THE COMMISSIONERS.

To ELIJAH L. HAMLIN, Esq.,

Land Agent of the State of Maine :

The undersigned Commissioners appointed by certain Resolves of the Legislature of the State of Maine, approved the thirty first day of March, A. D. 1841, "To settle the claims between certain individuals and the State" having given notice, as in and by said Resolves is required, and in pursuance thereof, having assembled at the court house, in the city of Bangor, on the twelfth day of July, A. D. 1841, and continued by adjournment, from day to day, to the time of signing these presents.

On the memorial of William Emerson, duly filed in the Land Office of said State, after having heard the evidence on the part of the memorialists, and the arguments of his counsel, and of the attorney general thereon. We find that the said Emerson, together with Amos M. Roberts, Isaac Farrar, and Messrs. Norcross and Mason, on the twenty first of February, 1835, contracted with the then land agent of the State, for the purchase of township No. 3, in range 13, agreeing to pay therefor sixty four thousand four hundred thirty one dollars and twenty four cents, one third of which, viz: twenty one thousand four hundred seventy seven dollars and eight cents, was at that time paid by the contractors in equal quarters, and the residue secured by their joint notes. That Norcross and Mason, were to be interested in one quarter, and the others in a quarter each. No deed was at that time taken, and Emerson was employed by his

associates, to make sale of their rights, to wit, of their three quarters, which he effected through the instrumentality of John Williams, at the rate of about thirty thousand dollars for each quarter. And thereupon procured conveyance to be made by the then land agent for the State, viz: to John Doggett, of five fortieth parts, to Cyrus Goss, of four fortieth parts, to John Williams, of five fortieth parts, and to Bartlett and others, of sixteen fortieth parts, making three fourths of said township, the said Emerson retaining his right to the other quarter part, which was not conveyed to him till some time in 1837. Farrar and Roberts received of Emerson their shares of what was realized for the three fourths of the township, sold as aforesaid. But the said Norcross and Mason received the amount due for their share in said Emerson's securities, and then or subsequently, paid said Emerson the amount of the money due to the State from them for their part of the land which Emerson thereupon assumed to pay.

We find that subsequently and before the negotiation hereafter stated, the said Emerson had received of the said Roberts, the full amount of his proportion of the notes due to the State, viz: eleven thousand two hundred thirty eight dollars and twenty nine cents, with such interest as was due thereon at the time of receiving the same, and also of said Farrar what was due to the State from him towards his share of said notes, viz: seven thousand one hundred dollars, he having paid to the State towards the same, all but that sum. We find that in 1837, Emerson then being under obligation to pay the whole amount due on said notes, gave his individual security therefor, securing the same by mortgage, and received in exchange therefor, the joint notes of the orig-

inal contractors. We further find that said township, at the time of said contract and sale, did not contain pine timber of a sound and valuable quality to the amount of more than one fourth part of what was estimated in the survey and field notes of the surveyor, Kelsey, so that the township was much less valuable than either the land agent who sold the same, or the contractors for the purchase had reason to suppose, and that therefore the bargain was made under mutual mistake between the parties, inasmuch that we feel satisfied more money has been paid to the State, than the land was reasonably worth. And we believe it to be just, equitable and expedient, that the grantees and their assigns should have the full benefit of all that now remains due from the said Emerson to the State therefor.

We further find that the said Emerson has never parted with his quarter part of said township otherwise than by mortgaging it to the State as part of the collateral security for the payment of his said notes, and that said Emerson is the legal assignee of one other eighth part of said township, except that it is mortgaged to the State, as further collateral security for the payment of his said notes. We further find that said Isaac Farrar is, at this time, the legal owner of eleven fortieth parts of said township, whereby he would become entitled to eleven fortieth parts of the benefits of whatever may be deducted from the amount due from said Emerson to the State, but he having assigned all his claim to the benefit of any such deduction to said Emerson, we consider the said Emerson to be the equitable assignee thereof, whereupon we deem it just, equitable and expedient, that a deduction from the amount due from the said Emerson on his said notes, should be made equal in

amount to twenty six fortieth parts of forty two thousand nine hundred and fifty three dollars and sixteen cents, being the amount for which notes were originally given by the contractors, as aforesaid, with interest thereon from the time when the same notes were originally given. And we accordingly order and desire that the deduction be made accordingly, and that on payment of the residue of the said Emerson's notes, the same be delivered up to him to be cancelled.

Done at Bangor, this twentieth day of July, 1841.

(Signed)

EZEKIEL WHITMAN,
FREDERIC H. ALLEN,
ANSON G. CHANDLER.

REPORT OF COMMITTEE.

To the Hon. Governor and Council, State of Maine.

The committee appointed to ascertain the present condition and valuation of township No. 3, range 13, and investigate certain proceedings at the Land Office, have attended to that duty and

R E P O R T .

We employed Edwin Rose, Esquire, of Thomaston, Charles N. Meservey, of Greenville, and two other men, to assist in exploring the township. We left Norridgewock the 29th of August, and arrived at the township the 4th September. This township was surveyed into lots of one mile square by Joseph L. Kelsey, Esq., in 1831, and the amount of lumber found on each square put down separately, amounting in the whole, as estimated by Mr. Kelsey, to eighteen million feet merchantable pine timber. We explored each lot by itself, traveling across the same at such distance from each other as to see all the timber, noting the contents of each tree as we passed it.

We finished the exploration the fifth of October, and estimated the whole amount of merchantable pine timber on the township, at four million two hundred seventeen thousand six hundred and fifty feet. We found that seventy nine thousand feet of pine lumber had been cut off the township since the sale to William Emerson and others in 1835, and we estimated the stumpage at four hundred dollars. A plan of the township is hereto annexed,

on which may be seen at one view the amount of timber each lot was estimated to contain by Mr. Kelsey in 1831, and the amount found by your committee in this exploration. This township is generally level or moderately canting towards the lakes and pine stream, with but little to obstruct the hauling of timber with facility and ease.

Some expense must be laid out on pine stream before mill logs can be floated over the falls and rapids which are to be found in several places, before it reaches the west branch of the Penobscot river. We consider eighteen thousand nine hundred and eighty nine dollars a fair value for the township at this time. This township was sold by John Hodgdon, Esq., to William Emerson and others in 1835, for sixty four thousand four hundred thirty one dollars and twenty six cents, of which twenty one thousand four hundred seventy seven dollars and eight cents was paid down in cash, and the balance being forty two thousand nine hundred fifty four dollars and eighteen cents, was settled by three notes bearing date February 21, 1835, and payable in one, two, and three years, with interest annually, and signed by William Emerson, Isaac Farrar, Amos M. Roberts, and Mason and Norcross. A further payment was made on the 17th of March, 1836, of four thousand two hundred thirty nine dollars and twenty seven cents, making the amount received by the State, twenty five thousand seven hundred sixteen dollars and thirty five cents.

An obligation was given by Mr. Hodgdon for an unconditional conveyance of the land. Matters stood thus until the fall of 1837, when the change of times, and frequent failure of business men, admonished Mr. Hodgdon to call for payment or security. William Emerson, to

whom it belonged to pay the whole amount due the State, offered Mr. Hodgdon, if he would give up the notes signed by him and his associates in the purchase, to substitute his own notes, of the same tenor and date of the original notes, and mortgage three eighths of the township purchased of the State, with certain lots in the city of Bangor, and ten shares in the Bangor Pier corporation. Mr. Emerson promised if the aforesaid security was not satisfactory to the governor and council, he would make it so. Mr. Hodgdon accepted the security thus offered, and communicated the facts to Mr. Hamlin, his successor in the land office, with a request that he would make the same known to the governor and council, and take further security if deemed necessary. Mr. Hamlin says that he did communicate the facts to the governor and council, and they were of opinion that the security accepted by Mr. Hodgdon, was as good if not better than the security surrendered, and gave no direction in relation to it. The law of 1831, under which this township was sold, authorized the land agent to sell on a credit of four years, taking personal security, or a lien on the land.

Mr. Hodgdon contends that the authority to surrender securities is incidental to the duty imposed, and mentions a case in which he saved the State five thousand dollars by an exchange of securities. I would refer to the accompanying statement of Mr. Hodgdon, for his views more at large, in explanation of this transaction.

Mr. Emerson made application for a deduction on his notes given for this township, before the commissioners appointed to settle claims between certain individuals and the State, and got a decree in his favor, ordering the land agent to deduct twenty six fortieths of forty two thousand

nine hundred fifty four dollars and sixteen cents, being the amount for which notes were given in this purchase, with interest on the same from the date. The deduction thus ordered amounted to thirty eight thousand seven hundred sixteen dollars and three cents, leaving a balance due the State for this township of sixteen thousand five hundred seventy six dollars and twelve cents, including interest to November 21, 1842.

The State has the note of William Emerson for the sum last mentioned, secured by the lots in Bangor, and ten shares in the Banger Pier corporation, which were estimated in 1837, when mortgaged to the State, at forty five thousand dollars, and might now be considered good for ten thousand dollars.

The mortgage on the township before mentioned, secured the payment of the two first notes, both of which were given up to Mr. Emerson in making the deduction ordered by the commissioners. Mr. Hamlin says that he supposed the mortgage on the township secured the payment of all the notes, and that in giving up the two first, he acted in conformity to usage, and well settled legal principles. The accompanying letters of Mr. Hamlin, of the second and thirteenth of December, will explain this transaction, and the reason of making allowance for stumpage to Clay Dinsmore and company, and James Rogers, in 1841.

Under another branch of the instructions, we examined into the sale of township No. 4, range 12. This township was sold in 1839, by Rufus McIntire, land agent of Maine, and George W. Coffin, land agent of Massachusetts, to George K. Jewett, of Bangor.

Mr. Jewett purchased 11,377 acres, at one dollar five and a quarter cents per acre, amounting to twelve thou-

sand dollars. It was ascertained soon after the sale that there was not so much timber on the township as they had represented, and they gave Mr. Jewett a permit to cut timber on other lands to make up the deficiency.

They gave Mr. Jewett an agreement of which the following is a copy :

“Bangor, 26 September, 1840.—It is understood and agreed, that the timber to be cut by Mr. George K. Jewett on No. 5 and No. 6, in the 12th range, and No. 6, in the 13th range, not exceeding two millions of feet, at three dollars and fifty cents per thousand feet, is to be deducted, or rather applied to the payment of the notes now payable to the two States, for the purchase made of No. 4, range 12.

(Signed)

GEO. W. COFFIN,
Land Agent of Massachusetts.

RUFUS MCINTIRE,
Land Agent of Maine.”

It is understood that Mr. Coffin did allow Mr. Jewett three thousand five hundred dollars, being the avails of half the stumpage of the timber cut under the agreement aforesaid, and that he has deposited in the land office of Maine, three thousand five hundred dollars, which Mr. Jewett claims to have endorsed on his notes given for No. 4, in pursuance of said agreement.

Certain improvements which were considered important to the State, on the west branch of the Penobscot river, at the outlet of Chesuncook lake, and it was desirable that individuals should become interested in lumbering operations in that section of the State, to effect them.

The sale of No. 4, and the permit afterwards given, had reference to the improvements before mentioned.

The reason of making an allowance to Mr. Jewett, in deviation from the original contract was, in the language of McIntire, to comply with the spirit of that contract, for, says he, we acted under a mistake in representing the amount of timber on the township.

Mr. McIntire's letter under date of the 3d December, 1842, which is herewith transmitted, will explain more fully the reasons and inducements which led him to make the aforesaid deductions.

If authority has been conferred on the land agent to change original securities, (which is quite doubtful,) its exercise is calculated to excite jealousy, especially on contracts that have arisen from sales by auction, all the facts being equally known to the contracting parties.

The expenses of this exploration has amounted to the sum of seven hundred seventy four dollars and eighty six cents. All which is respectfully submitted.

D. FARNSWORTH, per order.

STATE OF MAINE.

RESOLVE for the relief of John Doggett.

RESOLVED, upon the memorial of John Doggett,
2 and for the reasons therein set forth, that there be
3 and hereby is transferred to him, for his own use, the
4 balance of the debt, now remaining due to the State,
5 which arose from the sale, in the year 1835, to Wil-
6 liam Emerson and others, of township No. three in
7 the thirteenth range west from the east line of the
8 State, together with all the remedies at law or equity
9 for collecting the same; and that the Treasurer be
10 directed to assign and deliver over to him, the note
11 dated 21st February, 1835, given by the said Emer-
12 son in part payment for the said township, together
13 with the mortgage, by which the same is secured.

STATE OF MAINE.

IN SENATE, February 2, 1843.

ORDERED, That 300 copies of the foregoing Report and Resolve, be printed for the use of the Legislature.

Attest :

JERE HASKELL, *Secretary.*