

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-FIFTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1856.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840,  
and March 16, 1842.  
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1856.

RESOLVES

OF THE

STATE OF MAINE.

1856.

eighteen thousand four hundred ninety-eight dollars and twenty-four cents, in full discharge of the claims and demands to which they severally refer.

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[Approved April 9, 1856.]

Chapter 383.

Resolve in aid of roads and bridges in the counties of Franklin and Somerset.

Resolved, That the land agent be authorized to expend the sums hereafter named, for the purpose of opening and repairing the roads hereafter named, in said counties of Franklin and Somerset:

Certain roads in Franklin and Somerset counties, in aid of.

For opening and repairing the road leading from the forks of the Kennebec river to the Canada line, the sum of six hundred dollars.

Forks of Kennebec river to Canada line, \$600.

For opening and repairing the road leading from Lexington to Flag Staff, the sum of four hundred dollars.

Lexington to Flag Staff, \$400.

For opening and repairing the road leading from Kingfield to Dead river, the sum of five hundred dollars.

Kingfield to Dead river, \$500.

[Approved April 9, 1856.]

STATE OF MAINE.

The joint special committee to whom was referred the proceedings of the late governor and council in relation to the claim of Samuel F. Hersey and Dudley C. Hall to certain townships of land purchased by Maine from Massachusetts, have had that subject under consideration, and after an examination of the matter thus referred, ask leave to

REPORT, AS FOLLOWS:

By a resolve of the legislature, February 22, 1853, the land agent of this state was directed to proceed to Massachusetts to procure from Massachusetts an offer to sell her lands in Maine. In March, 1853, the land agent returned with an offer from Massachusetts to sell to Maine her lands in this state. Thereupon, Hon. Reuel Williams, Elijah L. Hamlin, and Wm. P. Fessenden, were appointed commissioners to make a purchase of the lands belonging to Massachusetts in this state, which purchase was consummated by contract, in July, 1853, of all the interest of Massachusetts to lands in Maine, reserving only "the legal rights, claims; and interest of all parties, claiming under sales and permits," "*but all upon the terms and conditions mentioned and agreed upon in the several instruments and writings given to the respective parties at the time when such sales and permits were made and given.*"

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By the terms of the deed of conveyance from Massachusetts to Maine, all tracts and townships on which sales or permits had been given, were expressly designated in said deed, and townships L and M, 2d range; 17, 10th range, and 5, 13th range, west from east line of the state, were conveyed free from all incumbrance.

While the negotiations for the purchase of these lands were pending between the commissioners of the two states, Mr. Dudley C. Hall, of Medford, Mass., and Mr. Samuel F. Hersey, of Bangor, were frequently present, and "wished the commissioners in some way to recognize a claim of said Hall and Hersey" to the above mentioned townships, by virtue of an agreement which they alleged they had made on *the 24th day of March, 1853*, with the land agent of Massachusetts.

This, the commissioners declined to do. The above facts appear from the written statement of Mr. Hamlin, put into the case before the late governor and council, and also from the testimony of Mr. Williams before your committee. It farther appears to your committee by the above statement of Mr. Hamlin, that when the deed of conveyance of the Massachusetts lands was preparing, although the attention of the Maine commissioners was called to this agreement, *they declined to have it reserved in the deed, and thought "the proper mode of completing said contract was by application to the legislature, who could authorize the land agent of Maine to give a deed."* By the statement of Mr. Hamlin, the *contract*, (so called by him) "was to sell the *lands* to said Hall and Hersey," and by the certificate of the secretary of state, treasurer and auditor, of Massachusetts, also put into the case before the late governor and council, "the within mentioned *agreement*" was "for the sale of the timber and of the land also, *IF authority was given by the legislature* (of Massachusetts) *to convey the soil belonging to Massachusetts upon the tracts within mentioned and described,*" and the *agreement* with the land agent of Massachusetts, by him certified to have been in writing, and *his copy* of it to be lost or mislaid, was "for the sale of timber belonging to Massachusetts upon said townships, and also the interest of Massachusetts in *the soil, IF authority to convey said soil should be granted by the legislature then in session*, subject to the condition that the action of the legislature did not require the conveyance of the *entire interests* of Massachusetts in the lands in Maine, to Messrs. Clark and McCrillis, according to a contract made with them on the 12th day of said March." The above mentioned townships were not included in the said contract to Clark and McCrillis.

The *agreement* with Messrs. Hall and Hersey was made by the land agent of Massachusetts when he was not legally authorized to make it, and subject to a conditional act by the legislature of Massachusetts, which was never complied with, that legislature, by act of May 25, 1853, having given authority to the land agent, with the concurrence of their commissioners, to convey the same townships free and unincumbered to Maine, and by the terms of the act giving that authority,

requiring that the first right to purchase should be offered to Maine, and expressly forbidding "the sale of more than two townships to any one purchaser *or party*, until after February 1st, 1854," except to the state of Maine, or to such parties as had already become purchasers of the timber, to whom the fee was to be offered.

It is further expressly stated in the testimony of Mr. Williams, before your committee, that he refused to purchase these lands if they were under any bargain or contract by Massachusetts, and that they were bought without any incumbrance upon them. Mr. Williams further stated that he never saw or heard of any written contract, or agreement with Messrs. Hall and Hersey,—that it was very doubtful if the land agent of Massachusetts ever had authority to make any agreement of the kind,—that he understood there had been some talk between Messrs. Hall and Hersey and the land agent, informally, and the land agent wished to carry it out, but he (the land agent) said "he never had had the power to do so." It also appears from the testimony of Mr. Williams, that during the pendency of negotiations for the purchase, Mr. Hall informed him that if Maine purchased the lands, the other commissioners of Maine were willing, if he (Mr. W.) was also willing, to make a statement in writing to the land agent of Maine in relation to the *understanding* they (Hall and Hersey,) had with the land agent of Massachusetts, so that he (Mr. Hall) might shew it to the land agent of Maine.

Mr. Williams replied that if the other commissioners would draw up a paper he would look at it. A day or two after, Mr. Hall brought to him a paper evidently drawn up by a lawyer, and requested Mr. Williams to sign it. Mr. Williams says, "I read a part of the paper and was vexed with him for presenting such a paper to me and told him I did not thank him for attempting to put language into my mouth." The purport of the paper was that there had been a bargain or agreement with the land agent of Massachusetts in relation to these townships, and that for some reason or another it had not been executed. "I was satisfied there was no bargain, and for that reason refused to sign the paper; the other commissioners of Maine were also satisfied there was none, and never signed the paper presented, to my knowledge."

From the above statement of facts, your committee are of the opinion that the said Hall and Hersey had no legal or equitable claim against the state of Maine for the timber on the above mentioned townships.

We come now to consider the proceedings which have been had in this state in relation to the subject matter referred to us. In 1855, Messrs. Hall and Hersey petitioned the legislature, in relation to their claim for the abovenamed townships, by virtue of an agreement by them alleged to have been made with the land agent of Massachusetts in 1853. This petition was referred to the joint standing committee on state lands and state roads. What were the precise terms of that petition, whether it alleged a written or *verbal* agree-

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ment, whether it claimed the right to the land, or only to the timber, by virtue of said agreement, cannot be determined from an inspection of said petition, *as it has been abstracted, lost or mislaid, and cannot be found among the papers of the last legislature.* In regard to this point, your committee have had the testimony of John B. Hill, Esq., who was chairman on the part of the house of the committee on state lands and state roads in 1855. Mr. Hill stated that a petition was presented and referred to said committee, setting forth a claim of Messrs. Hall and Hersey to the abovenamed townships, by virtue of an agreement by them made with the land agent of Massachusetts prior to the purchase of Maine from Massachusetts—that he does not recollect whether the petition stated that said agreement was *verbal*, but that it did *not set forth any written* contract or agreement, and that he never saw any written original agreement—that said committee met, and after examination of testimony and a hearing on the matter, the committee were nearly, if not quite, unanimous in the opinion that Messrs. Hall and Hersey had no claim against the state of Maine—that afterwards, at a meeting of the committee at the Stanley House, near the close of the session, he found that some members of the committee had become somewhat more favorably disposed, and Mr. Hersey wished the committee to report the resolve which was passed at the last session, and which is as follows :

“ *Resolved*, That the claim of Samuel F. Hersey and Dudley C. Hall to have the timber on townships number five, range thirteen, number seventeen, range ten, letters L and M, purchased by Maine from Massachusetts, Oct. 5, 1853, conveyed to them by Maine, as set forth in their petition, dated Feb. 7, 1855, be referred to the governor and council.

Approved March 12, 1855.”

That a majority of the committee, then present, assented to reporting said resolve—that he (Mr. Hill) was, and still is, of the opinion that Messrs. Hall and Hersey had no legal claim against the state of Maine. “The resolve, as I understood it,” said Mr. Hill, “was merely to refer the matter to the governor and council, and giving them no authority except to recommend action by the legislature.”

No other legislative action has been had since the passage of the above resolve.

The action of the late governor and council appears by the papers hereto annexed, which were referred to your committee. The report of the committee of the whole council was made *January 1st, 1856*, in which, as will be seen, they “*recommend that the land agent be authorized to convey to said Hall and Hersey the right to cut and carry away the timber on the parts of said townships which were conveyed to Maine by Massachusetts, for the term of one hundred years, from March 24, 1853,*” at certain specified prices per acre, the highest price being *sixty cents*, and the lowest *forty-two and one-half cents* per acre. And “that the said land agent *be further authorized to pay to said Hall and Hersey the amount already received, or which*

may hereafter be collected by the state, for timber cut on such parts of said townships since March 24, 1853," on condition of certain cash payments and "approved notes" as therein specified.

By the testimony of Isaac R. Clark, late land agent, it appears that the amount of timber cut on such parts of said townships, as returned to the land office, is as follows:

On number five, range thirteen, cut in winter of 1853-54, 600 M, for which there is in the office a good note for \$1200, and \$600 still due, besides the note.

On letter M, cut in 1853-54, 52 M, for which there is in the office a note for \$150, worthless; also, cut in 1854-55, 270 M, returned, *partly verbal, not collected.*

On letter L, cut in 1853-54, estimated 112 tuns timber, for which \$1.50 per tun is a fair price; also, 9470 feet logs, at \$3.00 per M; also, an amount for which a note for \$325 was given to the office, and is worthless.

On number seventeen, range ten, none returned. Information has been given the committee that quite a large amount of operations have been had on said townships besides those an account of which have been returned to the land office. It further appears, that on the 19th of January, 1856, he (Clark) made a deed to said Hall and Hersey, of the right to cut the timber on such parts of said townships *for the term of one hundred years from the 24th March, 1853*, and received as follows: By deposit in a bank at Bangor, by Mr. Stockwell of Bangor, the sum of \$2,326.51 cash, being the amount of first cash payment, *after deducting therefrom one-half of the notes above described, for stumpage, in the land office, not collected*; and six notes for \$2,102.64 each, payable in 1, 2, 3, 4, 5 and 6 years, with interest, signed by one Samuel S. Thompson of Bangor; that said Thompson is a man of no visible property, and works at lumbering at Bangor; that said notes were approved by him, the said Clark. Your committee are also informed that said deed has not been delivered.

As to the value of the timber on said townships, your committee have been unable to arrive at any definite estimate. The information received is mostly in regard to the value of the half townships, on which the lowest price (forty-two and one-half cents) per acre, is placed in the report of governor and council, and in our opinion said township is more than double that value per acre, if not in the aggregate, with the stumpage of timber already cut on the four parts of townships, worth as much as the full amount agreed to be paid for the whole.

From these considerations, as also from the great diligence manifested by the parties interested in prosecuting this pretended claim, your committee are of the opinion that the timber upon said parts of townships is of much greater value than the price fixed in the report of the late governor and council.

No authority could be given by the governor and council to the land agent, to make conveyance of the timber on said townships, except

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by act of the legislature; and no such authority was given by the resolve of March 12, 1855; that it was not the intention of the legislature to give any such authority, may be gathered from the fact that the same legislature, when intending to give such authority, expressly stated in other resolves, "the land agent is hereby authorized to make certain conveyances, when thereto directed by the governor and council."

Your committee are therefore of the opinion that the conveyance executed by the late land agent to Messrs. Hall and Hersey, of the right to cut and carry away the timber on said townships, for the term of one hundred years, was not only an evasion of the resolves now in force prohibiting the sales of lands of this state, but wholly without authority, and void; and would respectfully recommend, that the late land agent be directed to deliver the abovenamed deed of conveyance by him executed on the 19th January last, to the land agent, to be canceled; and that upon the delivery of said deed, the amount of money paid by Messrs. Hall and Hersey towards said conveyance, be refunded to them, with interest and the notes of Samuel S. Thompson, now in the land office, be given up; that if the deed shall be delivered to the land agent as above, a resolve be passed by which the State of Maine shall indemnify the late land agent from all liability by him incurred in the above transaction. And if said deed shall not be so delivered, that the attorney general be directed to commence such process, and against such persons, as he may deem proper, to procure a cancellation of said deed; and be further directed to commence a suit upon the bond of the late land agent. And would also recommend that the land agent be directed to ascertain the full amount of timber cut upon said townships since the 24th day of March, 1853, and to collect the stumage due on the same.

All which is respectfully submitted, with the accompanying resolves.

J. C. TALBOT, JR., *Chairman.*

Chapter 384.

Resolve in relation to deed of conveyance made to Samuel F. Hersey and Dudley C. Hall.

Resolved, That Isaac R. Clark, late land agent, be directed to deliver to the land agent to be canceled, a deed of conveyance by the said Clark, executed on the nineteenth day of January, eighteen hundred and fifty-six, conveying to Dudley C. Hall and Samuel F. Hersey the right to cut and carry away the timber on parts of townships L and M, second range, number seventeen, tenth range, and number five, thirteenth range, west from the east line of the state, for one hundred years, from the twenty-fourth day of March, one thousand eight hundred and fifty-three. And that upon the delivery of said deed

Isaac R. Clark,
late land agent,
directed to
deliver to the
land agent a
deed of
conveyance to
Dudley C. Hall
and Samuel F.
Hersey.

as above mentioned, the said Clark be fully indemnified by the State of Maine, from all liability he may incur or to which he may be subjected by reason of the delivery of said deed as above.

Resolved, That upon the delivery of the said deed as mentioned in the foregoing resolve, the land agent is hereby required to cancel said deed, and also to deliver to Samuel S. Thompson, of Bangor, six notes by him given to the treasurer of the State of Maine, each for twenty-one hundred two dollars sixty-four cents and interest, and dated March twenty-four, eighteen hundred and fifty-five, which notes are now in the land office.

Resolved, That upon delivery of said deed as aforesaid, to the land agent, there be paid to Dudley C. Hall and Samuel F. Hersey, from any money not otherwise appropriated, the sum of twenty-three hundred and twenty-six and fifty one hundredths dollars, the same being the amount which came into the hands of Isaac R. Clark, late land agent, from the said Hall and Hersey, and credited by the said Clark to the state as on account of the assumed conveyance aforesaid, of January nineteenth, eighteen hundred fifty-six.

Resolved, That if the said Clark shall refuse to deliver said deed as mentioned in the first resolve, the attorney general be directed forthwith to commence and prosecute such legal proceedings as he may deem proper to prevent the delivery of the same to Messrs. Hall and Hersey, and to restrain them or any other person from setting up any title against the state under such assumed conveyance.

[Approved April 9, 1856.]

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Upon the delivery of said deed said Clark to be indemnified, &c.

Land agent required to cancel said deed.

—to deliver to Samuel S. Thompson certain notes.

Certain amount to be paid to Hersey & Hall, upon delivery of said deed.

Instructions to attorney general, if said Clark refuse to deliver said deed.

Chapter 385.

Resolve in aid of roads and bridges in the county of Aroostook.

Resolved, That the land agent be authorized to expend the sums hereinafter named, for repairing roads and bridges in the county of Aroostook.

For repairing road leading from number eleven, range five, to Fort Fairfield, the sum of seven hundred dollars.

For repairing road leading from letter H, range two, to the St. John river, the sum of seven hundred dollars.

For repairing bridge over the Mattawamkeag river in number six, range five, the sum of five hundred dollars.

Certain roads and bridges in Aroostook county, in aid of.

No. 11, R. 5, to Fort Fairfield, \$700.

Letter H, R. 2, to St. John river, \$700.

Bridge over Mattawamkeag river, in No. 6, R. 5, \$500.