

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY LORING, SHORT & HARMON
AND
WILLIAM M. MARKS, PRINTER.
1884.

FARMINGTON STATE TEACHERS COLLEGE
LIBRARY

NOTE BY THE COMMISSIONER ON THE SOURCES OF LAND TITLES IN MAINE.

[*Inserted by direction of the Legislative Commission.*]

The development of that political jurisdiction and sovereignty, which at the end of more than two centuries ripened into State Independence in 1820, is so peculiar and interesting, and the sources of land titles in Maine are so obscure, as to justify a reference to some of the more important links in the intricate historical chain.

In 1493, Alexander VI, Pope of Rome, issued a bull, granting the New World which Columbus had discovered during the preceding year, to the sovereigns of Spain and Portugal. Under this title, Spain laid claim to the entire North American Coast from Cape Florida to Cape Breton, as part of its territory of Bacalaos. It has even been claimed that between 1566 and 1588, Spain took fortified possession of Maine, as a part of its grant at Pemaquid, but such possession, if effected, was abandoned before the end of the sixteenth century.

Although in that age a papal bull was usually regarded by Christian nations as a sufficient title to heathen lands, both France and England protested against the exclusion of so many Christian princes from this wholesale grant.

England, becoming Protestant, did not hesitate to plead against the bull its legal maxim "Prescriptio sine possessione haud valebat," and in 1588, Drake decided the issue by his victory over the Spanish Armada in the British channel.

In 1495-6, three years after the discovery of the Western Hemisphere, Henry VII, King of England, issued a commission to John Cabot and his sons, "to seek out, discover and find whatsoever Isles, Countries, Regions or Provinces of the heathens and infidels" hitherto unknown to all Christians; and, as vassals of the King, to hold the same by his authority. (1) Under this commission, those enterprising Venetians discovered the Western continent more than a year before Columbus saw it, and explored the American coast at least as far as from Nova Scotia to Labrador. (2) (3)

In 1502, the same King commissioned Hugh Eliot and Thomas Ashurst to discover and take possession of the Islands and Continent in America; "and in his name and for his use, as his vassals, to enter upon, possess, conquer, govern and hold any Mainland or Islands by them discovered." (2)

In 1524, Francis I, King of France, saying that he should like to see the clause in Adam's will which made the American continent the exclusive possession of his brothers of Spain and Portugal, is said to have sent out Verrazzano, a Florentine corsair,

(1) Frederick Kidder's pamphlet on "The Discovery of North America by John Cabot" published in the New England Genealogical Register for October, 1878.—Charlevoix, Vol. I, p. 20.—Hume's New England and other countries, Vol. III, p. 76.—Rymer's Foedera, Vol. XII, p. 295.

(2) Sullivan's History of Land Titles in Massachusetts, p. 32.

(3) Ex-governor Chamberlain's Centennial Address, published by order of the Legislature in the Acts and Resolves of 1877, p. 282.

who, as has generally been believed, explored the entire coast from 30° to 50° North Latitude, and named the whole region *New France*. (1)

In 1534, King Francis commissioned Jacques Quartier [or Cartier] to discover and take possession of Canada; "his successive voyages, within the six years following, opened the whole region of the St. Lawrence and laid the foundation of French dominion on this continent." (1) (2)

In 1574, a petition had been presented to Elizabeth, Queen of England, to *allow of the discovery* of lands in America "fatally reserved to England and for the honor of Her Majesty," and, in 1578, she gave a roving commission to Sir Humphrey Gilbert, "for planting our people in America," authorizing himself, his heirs and assigns, to discover, occupy and possess such remote "heathen lands not actually possessed of any Christian prince or people, as should seem good to him, or them," and in 1584, after Gilbert's death, she renewed the grant to Sir Walter Raleigh, his half-brother.

Under this commission, Raleigh made an unsuccessful attempt to plant an English colony in Virginia, a name afterwards extended to the whole North coast of America in honor of the "Virgin" Queen. (3)

November 8, 1603, Henry IV, King of France, granted to Sieur de Monts, a Protestant gentleman of the King's Bed-Chamber, a royal patent conferring the possession and sovereignty of the country between Latitudes 40° and 46° (from Philadelphia as far north as Katahdin and Montreal). Samuel Champlain, geographer to the King, accompanied De Monts on his voyage, landing at the site of Liverpool, N. S., a region already known as "Acadia," May 6, 1604, but establishing their first colony of gentlemen, priests, ministers, vagabonds and ruffians, "the best and the meanest of France," at Neutral Island, in the St. Croix River, where they passed the winter of 1604-5. After carefully exploring the entire coast of Maine and giving names to Mt. Desert and the Isle au Haut, they abandoned its shores in 1606. (4)

"But the noble efforts of Raleigh had not passed out of thought." (5)

On the last day of March, 1605, (O. S.), Captain George Waymouth sailed from the Downs in the Archangel, a ship which had been fitted out by Sir Ferdinando Gorges, Governor of Plymouth, in England, (to whom Waymouth on his return gave the three Maine Indians whom he kidnapped,) and the Earls of Southampton and Arundel, and anchored off the coast of Maine, May 17, probably under Monhegan Island, whence he visited the mainland and from his anchorage in "Pentecost Harbor," (probably George's Island Harbor, possibly Boothbay) explored "that most excellent and beneficial River of Sagadahoc," and afterwards, as some have supposed, the Penobscot, returning the same season to England. (6) (7)

Early the next spring, an association of English gentlemen, prominent among whom was Gorges, obtained from James I, King of Great Britain, a grant of all that part of North America between Latitudes 34° and 45° (from South Carolina to New Brunswick) "extending from the sea on the East between those parallels of latitude West, one hundred English miles inland, and the Islands within one hundred miles of the shore,

(1) Chamberlain's address, p. 282.—"Verrazzano, the Navigator," by J. C. Brevoort, member of the American Geographical Society of New York, 1874. But, *per contra*, see Buckingham Smith's "Inquiry into the Authenticity of Documents concerning a Discovery in North America claimed to have been made by Verrazzano," 1864, and "The Voyage of Verrazzano," by Henry E. Murphy, 1875,—also a Review of the foregoing pamphlets by Rev. Edmund F. Slafter, in the New York Historical and Genealogical Register for January, 1876.

(2) Sullivan, p. 32.

(3) Chamberlain's address, page 284.—Encyclopædia Britannica, article "Sir H. Gilbert."

(4) Chamberlain's address, page 285,—"Champlain's explorations of the coast of Maine," by General John M. Brown, in the Maine Historical Society's collections, Vol. VII, p. 245.

(5) Chamberlain's address, p. 288.

(6) *Ibid.*, p. 287.

(7) Although any further contribution toward a solution of the long-vexed question of the identity of Waymouth's explorations may seem superfluous, the commissioner, after a personal examination of those waters in a sail-boat in August, 1882, ventures to express his concurrence in the opinion of Captain George Prince, of Bath, first published in 1858, that Pentecost Harbor was probably George's Island Harbor, and not Boothbay, that the very high mountains which might be discovered a great way up in the main, could not possibly have been the White Mountains or any other than the Camden Hills, and that the great river trending along into the main towards the great mountains, which Strachey (not Waymouth, or Rosier, Waymouth's companion and historian) calls "that most excellent and beneficial river of Sagadahoc," but which Sir Ferdinando Gorges calls the "Pemaquid," must have been the Georges and not the Kennebec or the Penobscot.

to be holden by them as a Corporation, and to their successors in the same, and to their assigns, in free and common socage, not *in capite*, nor by knights' service; but after the form of the royal manor of East Greenwich, in the County of Kent, for the advancement of the Christian religion and the glory of God; and to replenish the deserts with people, who would be governed by laws and magistrates." (1)

By the Royal Patent which passed the seals April 10, 1606, the grantees were, at their own desire, incorporated into two Companies under one Council of Government, wherein Richard Hakluyt, Somers and their associates, of London, formed the London Company, or First Colony of Virginia; and Lord John Popham, Chief Justice of England, Raleigh Gilbert, George Popham, Sir Ferdinando Gorges and others of Plymouth, in the County of Devon, and their associates, formed the Plymouth Colony, or the Second Colony of Virginia. The First Colony was permitted to begin a Plantation anywhere South of Latitude 41°, and the Second Colony anywhere North of 38°, provided that the Colony last planted should not settle within one hundred miles of the other. The government ordained was a general "Council of Virginia," consisting of thirteen men appointed by the crown, residing in England, with paramount jurisdiction, to be exercised according to such ordinances as should be given them under the royal sign manual; and two Subordinate Councils, each of thirteen members, living in America, named in the same way. The first settlement was effected by the London Company of South Virginia at Jamestown, in Virginia, April 26, 1607. (2)

On the last day of the next month, two ships, "The Gift of God," commanded by George Popham, brother of the Lord Chief Justice, and "The Mary and John," commanded by Raleigh Gilbert, son of Sir Humphrey and nephew of Sir Walter Raleigh, sailed from Plymouth with the Plymouth Company of North Virginia, arriving at Monhegan Island August 8, at Stage Island August 11, and landing at the site of Fort Popham, at the mouth of the Kennebec, August 18, 1607, where, with Popham for their President, and Gilbert for their Admiral, the Colony built a thirty ton vessel, "The Virginia of Sagadahoc," and passed the winter. But they experienced so many misfortunes and discouragements in the death of their President, the loss of their fort, store-house and magazine, and the hostility of the natives, that the settlement was abandoned in the spring, some of the company returning to England, while some, as there is reason to believe, may have gone to Virginia, and others probably to Monhegan and Pemaquid. (3) (4)

During the next twelve years, settlements were made or attempted at various points on the coast of Maine:—at Mt. Desert, in 1613, by Suassaye, agent of Madame de Guercheville, a French Roman Catholic lady who had procured of De Monts a surrender of his patent, and had obtained a Charter from the French King,—at Monhegan, in 1614, by Captain John Smith, ex-president of the Colonial Council of Virginia, who gave to New England the name which was confirmed by Charles I, when Prince of Wales,—by Sir Richard Hawkins, President of the Plymouth Colony in October, 1615,—at Saco, by Richard Vines and his companions, whom Gorges hired to remain during the winter of 1617,—and others. (5)

The General Court of Massachusetts, by a Resolve of July 6, 1787, granted to "Monsieur and Madame de Gregoire all such parts and parcels of the Island of Mount Desert, and other Islands, and tracts of land particularly described in the grant or patent of his late most christian majesty, Lewis XIV, in April, 1691, to Monsieur de la Motte Cadillac, grandfather of said Madame de Gregoire, which now remain the property of this commonwealth," not so much on account of any legal claim, "the legal title to the lands having been by long lapse of possession lost to said heir at law," but as an "act of the most liberal justice," and "through the liberality and generosity of this Court, which are not hereafter to be drawn into precedent." (6) Perhaps the inlet between Mt. Desert and Gouldsborough may thus have derived the name "Frenchman's Bay."

In September, 1619, the Leyden Pilgrims who had been in Holland since 1608, obtained a patent from the London or South Virginia Company under which they founded the first permanent Colony, in New England, at Plymouth, Massachusetts, Dec. 11, 1620. (O. S.)

(1) Sullivan, p. 33.

(2) Williamson's History of Maine, Vol. I, pp. 196, 197.

(3) Chamberlain's address, p. 289. Williamson, Vol. I, p. 198.

(4) See note 3 on the next page.

(5) Williamson, Vol. I, pp. 208-218.

(6) May not this ancient land title in Maine have come down from the patent granted to De Monts by Henry IV in 1603, through Madame de Guercheville's purchase?

While the Pilgrims were on their passage under their South Virginia patent, King James, on petition of Sir Ferdinando Gorges, granted to the North Virginia Company a new separate patent dated Nov. 3, 1620, and known as the great Charter of New England, conferring in fee simple all the North American continent and islands between the parallels of 40° and 48°, "throughout the mainland from sea to sea," (from the Bay of Chaleur as far South as Philadelphia). The patentees were forty noblemen, knights, and gentlemen of England, chief of whom were the Duke of Lenox, Sir Ferdinando Gorges, Francis Popham, son of the late Chief Justice, and Raleigh Gilbert; they were styled, "The council established at Plymouth in the County of Devon, for planting, ruling and governing New England in America." (1)

Whatever may have been the original design of the Pilgrims when they embarked in the Mayflower at Plymouth, their captain landed them nearly a degree North of the extreme limit of the South Virginia patent under which they had sailed, so that the Colony found itself from the start within the jurisdiction of the Great Charter of New England.

But Gorges, Chief Manager of the Council, courteously obtained for the new Colony a Charter issued June 1, 1621, and enlarged in 1630, on which all the legal titles of the "Old Colony" are based. (2)

Feb. 2, 1619, John Pierce, a London clothier, and his associates, obtained a grant "in the Northerly part of what was called New England."

Feb. 12, 1620, Thomas Weston was sent to the Pilgrims at Leyden, in Holland, to inform them of the fact and to induce them to go there, which, it is stated, they were inclined to do for "the hope of present profit to be made by the fishing that was found in that countrie."

It is recorded in the transactions of the Directors of the Virginia Company that prior to June 1, 1621, John Pierce had a grant indorsed by Sir T. Gorges and had seated thereupon a company within the limits of the Northern Plantations. This colony settled in and about Muscongus, North of New Harbor of Pemaquid. This grant of 1619, located prior to February, 1620, and settled before 1621, was the root of the Muscongus grant and ended in the Waldo Patent. (3)

But the authority of the Council for the affairs of New England was too remote to be referred to by the Pilgrims. Therefore they came into a voluntary and solemn compact, dated Nov. 11, 1621, to obey the laws, which should be made by their own common consent; and for this purpose they assumed the title of a body politic, and proceeded to a division of the land. Under this compact, or at least without other authority, John Billington, one of the original company of the Mayflower, was executed at Plymouth, in 1630, for the murder of one Newcomin. (4) (5)

August 10, 1622, the Council granted to Gorges and Mason a patent conveying all the country between the Merrimac and Kennebec to the farthest head of said rivers, and sixty miles inland, with all the islands and islets within five leagues of the shore which "they intend to call the PROVINCE OF MAINE."

March 19, 1627-8, the Plymouth Council through the friendly instrumentality of Gorges and the Earl of Warwick, granted to Sir Henry Roswell, John Endicott and others the territory, afterwards called the Colony of Massachusetts Bay, in New England, "between the great River Merimeck and Charles River, in the bottom of a certain bay, called Massachusetts Bay; and within three English miles to the Northward of the River Merimeck or to the Northward of any and every part thereof from the Atlantic and Western Sea and Ocean on the East part, to the South Sea, on the West part." (6)

To give full effect to this patent, a Royal Charter was obtained March 4, 1628-9, by which it was erected into a COLONY, under the name of Massachusetts Bay, and Endicott and his associates were incorporated into a government, with power to choose a governor, deputy governor and assistants, annually forever. (7)

Endicott's colony of Puritans arrived at Salem in 1628, but the authority of the Cor-

(1) Williamson, Vol. I, p. 220. Chamberlain's address, p. 304.

(2) Chamberlain's address, p. 303.

(3) It has been claimed that this was the Pierce who is said to have belonged to the Popham colony, and never returned to England, but went to Pemaquid on the abandonment of the Sagadahoc settlement.

(4) Sullivan, p. 41.

(5) Palfrey's History of New England, Vol. 1, p. 334. Bradford's History of Plymouth Plantation, p. 276.

(6) Sullivan, p. 48.—Chamberlain's address, p. 305.

(7) Williamson, Vol. I, p. 234.

poration was exercised under a form of government agreed upon in London, April 30, 1629, whereby the sole power was delegated from time to time to thirteen of such residents on the plantation "as should be reputed the most wise, honest, expert and discreet." (1)

Gorges claimed that in the Royal Patent to the Massachusetts Bay Colony, it was expressly conditioned that the grant should contain nothing to prejudice his son Robert, who in 1622 had obtained under the great New England Charter, the patent of a tract extending ten miles on Massachusetts Bay. But the Massachusetts agents claimed that this grant was "void in law", and the Colony were advised "to take possession of the chief part thereof", which was forthwith done. (2)

In January, 1629, before the Puritan colony had been organized upon the shores of Massachusetts, the Pilgrims had received from the Plymouth Council of Gorges an advantageous grant on the Kennebec, since called the Kennebec or Plymouth Patent, comprising a territory of about 1,500,000 acres, fifteen miles in width on each side of the Kennebec River, between Woolwich and Cornville. This grant was sold by the Pilgrim Colony in 1661 for £400 sterling to four persons. In 1753 the lands passed to a company, and were thenceforward known as the Kennebec Purchase. (3)

As early as 1624, Gorges had been called to the bar of the House of Commons to defend the Plymouth Council against the charge of misuse of its charter, and was required to deliver the Patent forthwith to the House.

This Gorges declined to do, because he had no authority to deliver the patent without the consent of the Council, and because it was not in fact in his custody. But the House in its presentation of grievances to King James put the Plymouth Patent at the head of the list. Nevertheless the King refused to recall it.

The next year James I died. His successor Charles I married the daughter of the French King, and stipulated in the marriage treaty to cede Acadia to France.

In 1635, D'Aulney, under Razillai, in behalf of France, took possession of Penobscot [Castine] and drove out the English who had a trading-house there. (4)

The north-eastern portion of the Plymouth patent was claimed by the French King as part of Acadia, and Gorges was again summoned to defend it—this time before the King and his Council.

As soon as the French claim had been disposed of, the Commons again moved the crown for a dissolution of the charter, which the King refused to grant. (5)

June 7, 1635, the Plymouth Council surrendered to Charles I the Great Charter of New England which had been granted by James I in 1620, having divided all the territory which had not been deeded by the Council into *eight* Royal Provinces, *four* of which were in Maine, and the others in New Hampshire, Rhode Island, Connecticut, New York and New Jersey. Gorges obtained Western Maine, being all the territory between the Piscataqua and the Kennebec, more than one sixth of the present area of the State.

The Council also petitioned King Charles to revoke the Massachusetts Bay Charter, alleging that it had been obtained surreptitiously and was held wrongfully, that a portion of their territory rightfully belonged to Robert Gorges, son of Sir Ferdinando, who, when Governor took actual possession of it, and that the Massachusetts Bay colonists claimed to be absolute masters of the continent from sea to sea, a distance of more than a thousand leagues. Judgment was given that the franchises of Massachusetts Bay should be seized into the King's hands, but in the confusion of the times it was never carried into execution.

April 28, 1634, the King had appointed eleven of his Privy Councillors, Lords Commissioners of all his American plantations, and soon afterwards he made Sir Ferdinando Gorges Governor General over the whole of New England. (6) The same year or the next, he sent over his nephew, William Gorges, as Governor of his lands in Western Maine, which he called "New Somersetshire." Governor William Gorges opened a court at Saco as the shire town March 28, 1636, which was the first organized government established within the present State of Maine.

At this time there were six permanent settlements within the Province; at Agamenticus, (now York,) at the Piscataqua settlement from Kittery Point to Newichawanock, and the Northern Isles of Shoals; at Black Point, in Scarborough; at the Lygonian

(1) Sullivan, p. 49.

(2) Chamberlain's address, p. 306.

(3) Williamson, Vol. I, p. 236.—Chamberlain's address, p. 303.

(4) Bradford's History of Plymouth Plantation, p. 332.

(5) Williamson, Vol. I, pp. 229-232.

(6) Ibid., pp. 255-259.

Plantation, or Casco, now Portland and vicinity; and at the Pejepscoot settlements, on the lower Androscoggin;—besides the Kennebec patent which was under the jurisdiction of the Pilgrims. (1)

It was not, however, until April 3, 1639, that Sir Ferdinando Gorges obtained from King Charles a Provincial Charter of his Territory, described as "all that Parte, Purpart, and Porcon of the Mayne Lande of New England aforesaid, beginning at the entrance of Pascatway Harbor," extending up that river and through Newichawanock and Salmon Fall river, "north-westward, one hundred and twenty miles, and thence overland to the utmost northerly end of the line first mentioned, including the north half of the Isles of Shoals;" * * "also all the Islands and inlets within five leagues of the Mayne, along the coasts between the said rivers Pascatway and Sagadahock, all which said Parte, Purpart or Porcon of the Mayne Lande wee doe for us, our heires and successors create and incorporate into one province or Countie. And wee doe name, ordeyne and appoynt that the Porcon of the Mayne Lande and Premises aforesaid shall forever hereafter bee called and named THE PROVINCE OR COUNTE OF MAYNE." (2)

By this memorable charter Gorges was made Lord Palatine of a princely domain extending Northerly to the mouth of Dead river and Northwesterly to Umbagog lake, the only instance of a purely feudal possession on this continent:—a charter containing more extensive powers than were ever granted by the English crown to any other subject.

Under this Charter, which made the Lord Palatine, his heirs and assigns, absolute Lords Proprietors of the province, subject only to the supreme dominion, faith and allegiance due to the crown and certain revenues payable thereto, with power to erect Courts of justice, and in concurrence with a majority of the freeholders, assembled in legislation, to establish laws extending to life or member, the colony was organized March 10, 1640, by the appointment of Thomas Gorges, cousin to Sir Ferdinando, Deputy Governor, and Richard Vines and five other Councillors, and the first General Court for the preservation of justice throughout his Province, was opened at Saco, June 25, 1640. The Province was divided by the Kennebunk River into two Counties, "East and West," the former gradually acquiring the name of "York" with its shire town at Agamenticus, and the latter the name of "Somerset," or "New Somerset," with Saco for its shire. (3)

Prior to the surrender of its Charter, the Plymouth Council in England had issued twelve land patents within the limits of Maine, in addition to the two already mentioned, viz:—(4)

IN 1630.

To Lewis and Bonythan on the North side of the Saco River, four miles along the coast and eight miles inland.

To Oldham and Vines, a similar tract in Biddeford, on the South side of the Saco.

The Muscongus Grant, a territory thirty miles square between the Muscongus and Penobscot Rivers, afterwards known as the Waldo patent.

The Lygonia Patent, extending from Kennebunk to Harpswell and forty miles inland, including rights of soil and government.

IN 1631.

The Black Point Patent in Scarboro', to Cammock, 1,500 acres on the sea coast, on the East side of Black Point River;

The Pejypscoot Patent on the North side of the Androscoggin River, to Bradshaw;

The Agamenticus Patent, to Godfrey and others at York, 12,000 acres;

Richmond's Island and 1,500 acres on the mainland at Spurwink, in Scarboro', to Bagnall;

Cape Porpoise, (Kennebunkport,) 2,000 acres on the South side, to Stratton.

IN 1632.

The Trelawney and Goodyear Patent "between Black Point and the River and Bay

(1) Williamson, Vol. I, pp. 264, 265.—Chamberlain's address, p. 212.

(2) There is now little doubt that our state derived its name from its great extent of main-land, as distinguished from its almost innumerable islands, and not from the Province of Maine in France, as was once supposed. See Chamberlain's address, p. 314, and authorities cited in his note.

(3) Williamson, Vol. I, pp. 272-286.—Chamberlain's address, p. 314.

(4) Williamson, Vol. I, pp. 236-244.—Chamberlain's address, p. 310.

of Casco," including the ancient town of Falmouth, (Portland and vicinity) Cape Elizabeth and a part of Gorham.

The Pemaquid Patent at Bristol, between the Muscongus and Damariscotta Rivers, 12,000 acres along the sea coast and up the River, besides all the Islands three leagues into the ocean, with powers of government.

The Way and Purchas Patent on the lower Androscoggin, reaching to Casco Bay:—

The whole embracing the entire seaboard from the New Hampshire line to the Penobscot (save the coast between Sagadahoc and Damariscotta, a tract of five leagues, including the Sheepscoot plantation and the Islands, and the most even of that small strip was claimed under the Kennebec Patent). Some of these grants conflicted with each other. (1)

April 10, 1641, Sir Ferdinando Gorges, by a special charter of incorporation, erected Agamenticus into a "borough," and by a second charter dated March 1, 1642, incorporated it with a territory of twenty-one square miles, into a city called Gorgeana, with a charter which allowed no appeal to England. Under this charter, in 1644, a woman was tried, convicted and executed at Gorgeana, for the murder of her husband. (2)

Encouraged by the success of Republicanism in England, Sir Alexander Rigby, a member of the Long Parliament, purchased the Lygonia Patent, taking an assignment of the charter April 7, 1643, and claimed exclusive jurisdiction thereunder from Kennebunk to Harpswell, but agreed to submit his claim to the Magistrates of Massachusetts Bay, who, in June, 1645, dismissed the case, advising the disputants to live in peace until a decision should come from the proper authority.

In March, 1646, the Earl of Warwick, whom the House of Commons in 1642 had appointed Governor General and High Admiral of all the American Plantations, and sixteen Commissioners (of whom John Pym and Oliver Cromwell were two,) decided that Rigby was "the lawful owner and proprietor, in fee-simple, of the Province of Lygonia, being a tract of land forty miles square lying on the South side of the river Sagadahoc and adjoining unto the great Ocean, or sea, called Mare del Nort," and directed the Governor of Massachusetts Bay, in case of resistance, to afford Rigby's officers all suitable assistance. This restricted Gorges to the Kennebunk River on the East. (3)

The next year, Sir Ferdinando Gorges died in England while in arms for King Charles I against the Parliamentary forces.

At the death of Gorges, the present area of Maine embraced four great political sections:

First—The restricted Province of Gorges, extending from the New Hampshire Line to the Kennebunk River, and one hundred and twenty miles into the interior.

Second—Lygonia, extending forty miles East from Kennebunk River, and forty miles inland, including Harpswell and the Islands of Casco Bay.

Third—The Sagadahoc Territory, extending from Kennebec River to the Penobscot, including several detached settlements, chief of which was the Pemaquid Patent; and

Fourth—The region between Penobscot Bay and the Passamaquoddy or St. Croix River, at that time in substantial possession of the French and claimed by them as part of Acadia. (4)

Discouraged by the dismemberment of the Province and the death of the Lord Palatine, followed in less than two years by the execution of the King, the people of Wells, Gorgeana and Kittery held a consultation at Gorgeana in July, 1649, where they formed themselves into this "Social Compact:"—"We, with our free and voluntary consent, do bind ourselves in a body politic and combination, to see these parts of the Country and Province regulated, according to such laws as have formerly been exercised, and such others as shall be thought meet, but not repugnant to the fundamental laws of our native Country." (5)

Two years later, the General Court of Massachusetts Bay put forth a new claim. King Charles' Charter of 1628-9 embraced "all the lands within the space of three English miles, to the Northward of the River Merrimeck, or to the Northward of any and every part thereof," meaning, as had always been supposed, three miles *beyond* the river, but the colonial government now contended that their charter conveyed all

(1) Chamberlain's address, p. 312.

(2) Williamson, Vol. I, p. 288.

(3) *Ibid.*, pp. 292-302.

(4) *Ibid.*, pp. 325-328.

(5) *Ibid.*, p. 326.

the territory South of a line drawn due East, across the country, from a point three miles North of the *source* of the Merrimac to the same Latitude on the Maine coast.

At the May session, 1652, the claim was embodied in a Legislative Resolve, and commissioners were appointed to procure "suitable artists (1) and assistants" to take a true observation of the latitude and to make the survey, which they accomplished, Aug. 1, 1652, fixing the source of the Merrimac at Lat. $43^{\circ} 40' 12''$, and at the October session their report was accepted, and the jurisdiction of Massachusetts was declared to extend as far North and East as a line drawn due East from a point three miles North of the head waters of the Merrimac in Lat. $43^{\circ} 43' 12''$, "touching the Southernmost bend of the River Presumpscot, and touching the coast at Goose Rock," (on the line which still divides the towns of Falmouth and Cumberland) "and terminating at Split Rock, on the Northern point of Upper Clapboard" (Sturdivant's) "Island, in Casco Bay, about three miles Eastward of Casco Peninsula" (Stover's Point). (2)

The authorities of Massachusetts Bay at once proceeded to enforce their claim as fast as practicable upon the inhabitants of the Province of Maine and of Lygonia, South of $43^{\circ} 43' 12''$. Luckily for them, Edward Rigby, son and heir of Sir Alexander who had died in 1650, was pleased, at this juncture, to address to the leaders of Lygonia a letter, dated London, July 19, 1652, notifying them that he conceived that all political power derived from his father expired at his death, and commanding them to desist and abstain from the further exercise thereof, thus extinguishing the Lygonia government of which Saco had been made the shire. (3)

In November, 1652, a Commission appointed by the General Court of Massachusetts Bay was opened at Kittery, which had been incorporated into a town under the Government of Gorges five years before, and the inhabitants were persuaded to acknowledge their subjection to the government of Massachusetts Bay in New England.

Proceeding to Gorgeana, which had been erected into a borough by Sir Ferdinando Gorges in 1641, and chartered by him as a city in March, 1642, they abolished its charter and named it York, being the second town incorporated in the State. The next year, Wells, Saco, and Cape Porpoise (now Kennebunkport) were incorporated as towns by the Massachusetts Bay Commissioners. In July, 1658, Scarborough and Falmouth were incorporated out of the Lygonia territory, and declared to be a part of Yorkshire. October 27, 1658, the towns of York, Kittery, Wells, Saco and Cape Porpoise presented their memorial to "Lord Cromwell," expressive of their satisfaction in the new government as administered by Massachusetts Bay, with a request for its uninterrupted continuance. (4)

At the restoration, in 1660, Ferdinando Gorges, grandson of the Lord Palatine, made claim to the Province of Maine, appealing to King Charles II in Council, and to Parliament. (5)

Although the Committee of Parliament reported in favor of Gorges, it was not until January 11, 1664, that he obtained from the King an order to the Governor and Council of Massachusetts Bay forthwith to restore to him his Province, or without delay assign their reasons for withholding it, and June 11, 1664, the King addressed to them a letter communicating his decision. But, notwithstanding neither the King nor the Parliament of Charles II had any sympathy with the Massachusetts authorities, and in spite of the defects in that Colony's title, the General Court succeeded in delaying final judgment for twenty years. (6)

But as early as March 12, 1664, the King had granted to his brother James, Duke of York and Albany, (afterwards King James II) all the Dutch territory on the Hudson River, including Long Island, together with the whole region between the St. Croix and Pemaquid, "thence to the Kennebeck and so upwards, to the River of Canada Northward."

This grant was known as "The Duke of York's Property,"—"The Territory of Sagadahock,"—"New Castle,"—and "The County of Cornwall." It was an encroachment upon the Kennebec Patent, the Pemaquid Patent, the Muscongus Patent and others. Col. Nichols assumed the government of the ducal Province as Deputy Governor under his Royal Highness, and Sept. 5, 1665, possession was taken of the Sheepsco

(1) One of the "artists" was "Jonathan Ince, of Cambridge College." Williamson, Vol. I, p. 337. Sullivan calls him, "Jonathan Juice." Sullivan, p. 51.

(2) Sullivan, p. 51.

(3) Williamson, Vol. I, pp. 334-342.

(4) *Ibid.*, pp. 343-356; 396.

(5) *Ibid.*, p. 399.

(6) *Ibid.*, p. 406.

plantation as the shire of the New County of Cornwall, the plantation being named Dartmouth or New Dartmouth. (1)

By 1670, the "Province of Maine" had been substantially reduced to the subjection of Massachusetts Bay; the interior regulations of Yorkshire had been perfected by the establishment of Courts and the appointment of magistrates, commissioners and judges, chief of whom was Thomas Danforth.

But the French, who were in full possession of Nova Scotia (including New Brunswick) and the territory West as far as the Penobscot River, boldly claimed jurisdiction over the rest of the Duke of York's Patent, even to the Kennebec.

In this aspect of affairs, both Massachusetts Bay and the Duke's colonists had reason to apprehend the sale or resignation of his entire Eastern patent to the French.

"To contravene a measure so much apprehended, the General Court in May, 1671, suspecting the correctness of the survey of 1651," determined to have a revision of their Northern line, which was accordingly made by Mountjoy of Falmouth in 1672, who found it six minutes further North, at 43° 49' 12", crossing the Kennebec near Bath, and terminating at White Head Island in Penobscot Bay. This new line, "run more suitable to the exigency," added to the Massachusetts Bay Charter an extensive seaboard, also Arrowsic, Parker's and George's Islands, with Monbegan, Matinicus, Damariscove and in fact all the other Islands along the coast, and even the principal settlement at Pemaquid, "but happily, not embracing Dartmouth, the seat of the Duke's Government."

Encouraged by the recapture of the fort at New York by the Dutch armament July 30, 1673, the General Court of Massachusetts Bay sanctioned Mountjoy's survey, and in October, 1673, proceeded to erect the Easternmost section of the readjusted patent beyond Sagadahoc into a new County. In May, 1674, a court was opened at Pemaquid, which was made the shire of the "County of Devonshire," extending from Sagadahoc to Georges' River.

But by a treaty of peace signed February 9, 1674, Holland had already restored the Province of New York to the English, and June 22, 1674, King Charles granted to the Duke of York a new patent comprising all the territories embraced in that of 1664. The Duke thereupon commissioned Sir Edmund Andros, Governor of both Provinces, New York and Sagadahoc, and Andros assumed the government in October. (2)

In 1676, Gorges and Mason, in their complaint against Massachusetts Bay which they had instituted in 1659, succeeded in persuading the King to serve legal notice of the charges upon the Massachusetts Bay authorities and to require the appearance of its agents in defence.

Toward the end of the year the Massachusetts agents appeared before a committee of the Privy Council who gave a decision substantially extinguishing the claims of Massachusetts Bay to Maine, but leaving the rightful ownership of the Province undetermined.

In consequence of this decision, the authorities of Massachusetts Bay employed John Usher, a Boston trader then in England, in behalf of the Colony to purchase of Gorges all his interest in the Province. May 6, 1677, Ferdinando Gorges gave Usher an assignment of THE PROVINCE OF MAYNE for £1,250 sterling, with all "royalties, jurisdictions, ecclesiastical, civil, admiral and military;—the privileges, governments and liberties" which had been granted to Sir Ferdinando Gorges by charter of King Charles I, April 3, 1639, covenanting that "Usher should stand seized of an absolute, perfect and independent estate of and in the said County Palatine," excepting the grants made by the original proprietor or his agents. (3)

The purchase of Maine by the colony of Massachusetts Bay displeased Charles II, who was himself, at the time, in treaty with Gorges for its purchase for his natural son, the Duke of Monmouth, (afterwards executed by Charles' brother James) and he remonstrated with the colonial government on their conduct, and even required the colony's agents to assign it to the crown upon payment of the purchase money; to this demand little attention was paid, and at the October session, the General Court resolved to keep the Province. Accordingly in February, 1680, it was determined to assume the Royal Charter granted to Sir Ferdinando Gorges and to frame a civil administration over the Province in conformity with its provisions, consisting of a standing Council of eight members appointed by the Massachusetts Bay Board of Colony

(1) Williamson, Vol. I, p. 407.

(2) Ibid., pp. 440-445.

(3) Ibid., pp. 448-451.

Assistants and a House of Deputies chosen by the towns in the Province, with a President chosen by the Board of Assistants. (1)

Thomas Danforth of Cambridge, Deputy Governor of Massachusetts Bay, was chosen President of Maine and at once entered upon his duties, proclaiming his authority at York in March, and at Fort Loyal at Casco Neck in Falmouth (now Portland) September 22, 1680, where President Danforth and his two assistants gave the name of North Yarmouth to a new plantation adjoining Falmouth on the East, the eighth town incorporated in Maine. (2)

But the charter of Massachusetts Bay was now so violently assailed that in 1683, the General Court directed its agents in England to resign to the crown the title deeds of Maine provided that the colonial charter could thus be saved. Their proposition was not acceptable, for a writ of quo warranto had already been brought before the Court of King's Bench July 20, and was served on the Governor of Massachusetts Bay in October, 1683. This not proving sufficient, a writ of scire facias was sued out of the Chancery Court at Whitehall in June, 1684, under which the Royal Charter granted to the Colony of Massachusetts Bay by Charles I in 1628 was promptly adjudged to be forfeited and the liberties of the colonies were seized by the crown. (3)

The infamous Col. Kirke was immediately appointed by Charles II, Governor of Massachusetts Bay, Plymouth, New Hampshire and Maine, but before his embarkation from England, the Duke of York succeeded to the throne as James II, Feb. 16, 1685, and was publicly proclaimed at York in April. He was not inclined to renew the appointment of Kirke, but commissioned Joseph Dudley a native of Massachusetts, as President of Massachusetts, New Hampshire, Maine and Rhode Island, with fifteen mandamus Councillors appointed by the Crown to assist him.

The last General Court under the Massachusetts Bay charter of Charles I organized May 12, 1686, but was dissolved by President Dudley, May 20. (4)

Within five months he was superseded by Sir Edmund Andros, who arrived at Boston December 20, 1686, and on the same day published his commission.

He had been for eight years Ducal Governor of New York and Sagadahock, and was now made Captain-General and Governor-in-Chief over all New England. (5)

April 18, 1689, a revolution took place in Boston, and the populace seized and imprisoned Governor Andros and thirty of his partisans, and Andros was finally induced to surrender the keys of government and the command of the fortifications.

A general convention of the people assembled April 20, and a meeting of the General Court was called at Boston May 22, which determined to resume the government, according to charter rights, a resolution which was carried into effect May 24, 1689.

Two days after, news arrived from England that James II had abdicated the British throne December 12, 1688, and that William and Mary had been proclaimed King and Queen, February 16, 1689.

Danforth was re-elected President of Maine and continued to govern the Province of Maine under the provisions of the Charter to Gorges until May 6, 1692.

Finally the Province of Massachusetts Bay, the Pilgrim Colony of Plymouth, the Province of Maine, together with Sagadahock, and Acadia, (or Nova Scotia, including New Brunswick) were all incorporated into the Royal Province of Massachusetts Bay by the Charter of William and Mary which received the Royal sanction, October 7, 1691, and took effect May 6, 1692. But Nova Scotia (with New Brunswick) was soon after relinquished by Massachusetts to the entire exclusive dominion of the British crown.

The present State of Maine at the time of this consolidation, consisted of three principal divisions:

I.—The original "Province of Maine" granted by Charles I to Sir Ferdinando Gorges in 1639, extending from the New Hampshire line to the Sagadahock or Kennebeck and one hundred and twenty miles into the interior, which his grandson Ferdinando Gorges sold to the Massachusetts Bay Colony in 1677.

II.—The Province of Sagadahock between the Kennebeck River and Nova Scotia, and extending "Northward to the River of Canada," or latitude 48°, embracing not only the second principality in the eight great divisions of 1635, lying between the Kennebeck River and Pemaquid, but the ducal province of James II, (as Duke of

(1) Williamson, Vol. I, pp. 554-558.

(2) *Ibid.*, pp. 558-564.

(3) *Ibid.*, pp. 571, 572.—Chamberlain's address, p. 324.

(4) Proceedings of Massachusetts Historical Society, for September, 1864, pp. 484-486.

(5) Williamson, Vol. I, pp. 577, 578.

York) being the rest of the whole territory between Pemaquid and the St. Croix, which had reverted to the crown on his abdication in 1688.

III.—The territory North of the original grant to Gorges, between the Northern limit of his patent and the Canada Line. (1)

As the Palatine Province of Maine was limited to one hundred and twenty miles from the sea, it may be asked how the Colony of Massachusetts Bay could, either by its purchase from Gorges or under the charter of William and Mary, acquire title to that considerable territory in the North-western corner of the present State of Maine, between the Northerly line of Gorges' Province and the Canadian boundary, as conceded by the treaty of independence.

Perhaps no better answer can be readily given than that of the learned Attorney General of Massachusetts, in the first year of this century;—the question "is not of much consequence." (2)

The Provincial Charter of Massachusetts Bay continued to be the foundation and ordinance of civil government in Massachusetts and Maine for eighty-eight years, until the adoption of a Republican Constitution by the parent Commonwealth, October 25, 1780. (N. S.)

With the consolidation of 1692 disappeared the ephemeral Counties of Somerset, Cornwall and Devonshire, and for sixty-eight years thereafter the County of York, which was created by Sir Ferdinando Gorges, Lord Palatine of the Province of Maine in 1640, and the first volume of whose records begins with the court opened at Saco, June 25, under the charter of Charles I, embraced the whole of Maine until November 2, 1760, when the Counties of Cumberland and Lincoln were created by an act of the Provincial Legislature.

The formation of a Republican Constitution by the people of Massachusetts Bay and the recognition of that Commonwealth as an Independent State within three years afterward seem to have inspired in the inhabitants of Maine a desire for a separation. Indeed, as early as 1778 the Continental Congress had divided Massachusetts into three districts, the Southern, Middle and Northern, the last embracing the three Eastern Counties of York, Cumberland and Lincoln, which thus acquired a distinctive name, "THE DISTRICT OF MAINE," which it retained until the separation. Twelve years later the First Federal Congress re-established the same division under the National Constitution.

Very soon after the acknowledgment of Independence, separation began to be generally agitated throughout the District, and in September, 1785, a notice appeared in the Falmouth Gazette, a paper which had made its appearance on New Year's day, calling a Conference at Messrs. Smith and Dean's Meeting-House in Falmouth, October 5th, to consider the proposal to erect the three Eastern Counties into a separate Government. Accordingly thirty-three delegates appeared from twenty of the principal towns of each of the Counties, and organized a Convention, whereof William Gorham, of Gorham, was chosen President, and Stephen Longfellow, Jr., also of Gorham, Secretary. The convention voted to call another convention at the same place on January 4, 1786, to consider the expediency and means of forming a separate State.

Governor Bowdoin, in his speech to the General Court, October 20, 1785, by advice of his Council, deprecated the movement, and the General Court, in their reply, concurred in his views.

The Convention, however, assembled and appointed a Committee of nine whose report, stating the grievances and inconveniences under which the District labored, was signed by the President and sent to every town and settlement in Maine, and the Convention appointed another Convention to be held at the same place, September 6, 1786; it was also voted to request the towns and plantations at their next March meetings, to choose delegates and to certify the number of votes for and against the choice.

A Convention, consisting of thirty-one members, accordingly assembled and appointed a Committee to petition the General Court that the District of Maine be erected into a separate State and adjourned to January 3, 1787.

On its re-assembling, the Convention found that of the ninety-three towns and plantations in Maine only forty had been represented in any Convention, and of those only thirty-two had made return of their votes; that the whole number of votes returned was only 994, of which 645 were in favor of separation and 349 opposed. Finally the Convention, by a majority of two, directed the Committee to present or retain the petition, at their discretion, and adjourned from time to time until Septem-

(1) Williamson, Vol. I, pp. 590-603.

(2) Sullivan, p. 48.

ber, 1788, when it expired through non-attendance of its members. The Committee finally decided to present the petition in 1788, and it was duly referred to a Committee of the General Court, which was the end of the agitation for nearly thirty years.

At the close of the war of 1812-15 the subject was revived, and at the January session of the General Court in 1816 petitions were presented from forty-nine Maine towns in their corporate capacity, and from individuals in many others, in favor of separation, whereupon the Legislature directed town and plantation meetings to be held on the question throughout the District May 20.

At the June session it was found that out of the whole number of 37,828 legal voters only 16,894 had voted, of whom 10,393 favored separation and 6,501 opposed it.

Thereupon the Legislature of Massachusetts called for a second vote from the District in September, and authorized each town to choose delegates to a Convention to be held at Brunswick on the last Monday in September, which should count the votes, and if five ninths of the votes returned were in favor of separation, should also form a Constitution, but not otherwise.

A Convention of 185 delegates assembled and elected William King, of Bath, President, but of the 23,316 votes cast, only 11,969, a majority of less than five ninths, were for separation.

Nevertheless the Convention appointed a Committee to frame a Constitution and another to apply to Congress for admission into the Union and then adjourned to December.

But the General Court, convening in the meantime, dissolved the Convention.

Still the agitation continued and at the May session of 1819, petitions for Separation were presented from about seventy towns.

By an act passed June 19, the General Court directed the voters of Maine to vote on the question July 24, and if the majority in favor of Separation should exceed 1,500, the Governor was authorized to proclaim the result and to direct the towns at the September election to choose delegates to a Constitutional Convention.

August 24 Governor Brooks made proclamation that Separation had been carried by the requisite majority of 9,959 to 7,132, and issued his call for a Convention. The delegates chosen the next month assembled in Convention at Portland, October 11, and organized by electing William King, President, and Robert C. Vose, Secretary.

The Convention completed the proposed Constitution Oct. 29, and adjourned to January 5, 1820, after submitting it to the people in town-meetings to be held December 6, 1819.

On re-assembling, the Convention found that the Constitution had been adopted by a large majority and announced the result to the people of Maine, as did Governor Brooks in his message to the General Court of Massachusetts. The Convention also applied to Congress for admission which was granted by Act of March 3, 1820, and Maine became an Independent State of the Union March 15, 1820.

During its connection with the Commonwealth of Massachusetts, six new Counties were incorporated within the District of Maine, viz:—

Hancock and Washington,	May 2, 1790	by act of June 25, 1789;
Kennebec,	April 1, 1799	“ “ “ February 21, 1799;
Oxford,	“ “ “	“ “ “ March 4, 1805;
Somerset,	June 1, 1809	“ “ “ March 1, 1809;
Penobscot,	April 1, 1816	“ “ “ February 15, 1816.

Since its Independent existence, seven other Counties have been organized in Maine viz:—

Waldo,	July 4, 1827	by act of February 7, 1827;
Franklin,	May 9, 1838	“ “ “ March 20, 1838;
Piscataquis,	May 1, 1838	“ “ “ March 23, 1838;
Aroostook,	May 2, 1839	“ “ “ March 16, 1839;
Androscoggin,	March 31, 1854	“ “ “ March 18, 1854;
Sagadahoc,	April 5, 1854	“ “ “ April 4, 1854;
Knox,	April 1, 1860	“ “ “ March 5, 1860;

being in all sixteen Counties.

In conclusion it may be said that Private Land Titles in Maine are derived from six principal sources.

I—Possession.

II—Indian deeds.

III—The patent of the French King Louis XIV, in 1603, to Monsieur de la Motte Cadillac, substantially confirmed by a Resolve of the General Court of Massachusetts Bay passed July 6, 1787.

IV—The Great Charter of New England granted by James I, King of Great Britain, to the North Virginia or Plymouth Colony, issued November 3, 1620;—through divers grants from the Plymouth Council before the surrender of its Charter in 1635, viz:—between 1622 and 1632.

V—The Provincial Charter granted by Charles I, King of Great Britain, to Sir Ferdinando Gorges, April 3, 1639; through sundry grants from Gorges prior to the sale of his Charter by his Grandson Ferdinando Gorges to the Massachusetts Bay Colony, in 1677, and through grants directly from the Colony of Massachusetts Bay and the Province and State of Massachusetts after said sale.

VI—The Royal Charter issued by Charles I to the Colony of Massachusetts Bay, March 4, 1628; through grants directly from the Colony after its assertion of a claim thereunder to Latitude $43^{\circ} 49' 12''$ and to $43^{\circ} 49' 12''$ in 1652 and 1673.

The Political Sovereignty and Authority of Government in Maine is derived, of course, directly from the act of Congress admitting Maine into the Union, passed March 3, 1820, and the consent of Massachusetts expressed in the act of its General Court passed June 19, 1819.

The Independence of Massachusetts itself rests upon the Declaration of the Continental Congress, adopted July 4, 1776.

But the Province of Massachusetts Bay which sent its delegates to the Congress was chartered by William and Mary, October 7, 1691, which charter is, strictly speaking, the basis of the government of the States of Massachusetts and Maine.

Yet the germs of the State of Maine are to be found in the grant of James I to the North Virginia or Plymouth Colony, issued November 3, 1620, and to the Pilgrim Colony of Massachusetts, dated June 1, 1621, and what is known as the Warwick Patent to the Pilgrims issued in 1629-30;—in the two grants of his son Charles I, one to Sir Ferdinando Gorges, dated April 3, 1639 and purchased by Massachusetts Bay in 1677, and the other to the Colony of Massachusetts Bay, March 4, 1628-9;—in the extinction by conquest of the claim maintained by France to the Eastern part of Maine until the capture of Canada by the British government in 1759;—and in the terms of the Treaty of Independence of September 3, 1783, by which Great Britain conceded to the United States a boundary which included within the limits of the District of Maine a portion of territory in the Northwest extending beyond the terms of any prior grant from the British Crown, but which was curtailed on the Northeast by releasing to Great Britain its territory Northerly of the river St. John, in the settlement of the Northeastern boundary in 1842.

C. W. G.