

MAINE STATE LEGISLATURE

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1863.

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FORTY-SECOND LEGISLATURE.

SENATE.

No. 1.

REPORT

OF THE COMMISSIONERS ON THE AFFAIRS OF THE PENOBSCOT AND PASSAMAQUODDY INDIANS.

*To the President of the Senate, and
Speaker of the House of Representatives:*

The undersigned, appointed under a "Resolve in relation to the Penobscot and Passamaquoddy Indians," approved March 15th, 1862, have the honor to report:

PENOBSCOT INDIANS.

Their population in April, 1861, was 506. Their fund in the treasury of the State was, in January, 1862, \$51,918.44. They are entitled to the interest of this money annually. It was derived from the sale of their lands to the State. They are also entitled to the annuities in clothing, provisions, and money guarantied to them by treaty by the commonwealth of Massachusetts. These also belong to them of right. They gave an ample consideration for them when they surrendered their lands to the Commonwealth, whose treaty obligations to them Maine has assumed. And in the receipt of this interest and these annuities they are not the recipients of the charities of the State, but only of their own dues. These means, prudently husbanded and honestly administered, are sufficient, we think, with their own earnings, for the support of the tribe. Every consideration, however, alike of justice and humanity, require their most favorable consideration in case of sickness or need. But they should be influenced as much as possible to rely upon themselves; and the policy of the State should be to

stimulate them to self-exertion, and to encourage them to self-improvement.

We refer to the recent well considered reports of the Agent of the tribe for their general condition.

There are certain islands in the Penobscot river to which our attention has been called by the Indians.

1st. A cluster of islands, five in number, called "Grassy Islands," and situated near the foot of Orson island, and between Oldtown island and Marsh island.

These islands are so low down and near the mills at Oldtown that they are very valuable for their shore privileges and for the facilities they afford for securing and holding logs. Zebulon Bradley, under a warrant from the Surveyor General of the State, dated July 14, 1835, surveyed the islands in the Penobscot river between Oldtown and Mattawamkeag, being in all 146, and these "Grassy Islands" are numbered 7, 8, 9, 10 and 11 on his plan returned to the Land office, Nov. 18, 1835.

The Indians claim that these islands belong to the Penobscot tribe, and that therefore they should have them to mow and cultivate, and that the shore privileges appertaining should be rented for their benefit. Until within a few years, as we are informed, the Indians have mowed the little grass upon them without opposing claim, and in other respects treated and regarded these islands in the same way as their other islands in the river. But General Veazie now claims to own them as we are advised, deriving title under a joint deed from the Land Agents of Maine and Massachusetts of 20th June, 1837, to Nathaniel Lord, recorded in Penobscot Registry of Deeds, in Book 91, p. 490, and has ousted the Indians of their possession.

It may be justice to the Indians and policy in the State, that the title of these islands should be judicially settled. The conveyance to Lord is a release deed and with a further caveat as to title. The Land Agents refer to Resolve of Massachusetts of 13th February, 1829, and of Maine of the 3d of March, 1829, as their authority for deeding.

The Resolve of Maine of 3d of March, 1829, authorizes the Land Agent of Maine jointly with the Land Agent of Massachusetts, to quitclaim "all such small tracts or gores of land in this State as remain the undivided property of said States." The Resolve of Massachusetts is to same import. Do these islands come within

the description of the Resolves? If they do, were they the undivided property of Maine and Massachusetts, or did they belong to the Indians?

By the treaty of 29th June, 1818, before the separation of Maine from Massachusetts, Recorded in the Penobscot Registry of Deeds, Book 4, p. 195, and confirmed, and its obligations assumed by treaty of 17th of August, 1820, the Indians were guaranteed the undisturbed use of all the islands in the Penobscot river above Oldtown, and including Oldtown island. So that, if the Indians, as may, perhaps, be well contended, had not *so* used and improved these islands before, as under Colonial and State legislation and treaty stipulation, as to have acquired an earlier and indefeasible title—this gives them a right to the use and possession of these “Grassy Islands” if they are *above* “Oldtown.” What place, then, was intended by “Oldtown?” It was not the town, territorially, that was referred to, for Oldtown was not then constituted a town. It was all *Orono* until *Oldtown* was incorporated in 1840. And if it was the Indian village at the foot of Oldtown island, or if it was the village of whites centering near Wadleigh’s tavern, or if it was “Oldtown Falls,” then, in either case, these Grassy Islands are *above* Oldtown, and belonged, not to Maine and Massachusetts, but to the Indians. But if Oldtown “island” was meant, then they are not above it, but alongside of it.

The Legislature of 1829, that passed the Resolve of 3d of March, 1829, under which the Land Agent assumed to deed these islands as undivided property of Maine and Massachusetts, could hardly have so regarded them, for the same Legislature, by Resolves of 2d February, 1829, authorized the “Governor of the Penobscot tribe of Indians, the principal chiefs and a majority of said tribe, under the advice of their Agent,” to sell “Smith’s island above and near Oldtown Falls,” as belonging to the Indians; and Smith’s island is, as the Resolve says, but just above the “Fall,” and away below “Grassy Islands.” And, again, the Legislature of 1831, by Resolve of the 19th February, 1831, authorized the Indians to sell Pine island, situated just below “Oldtown Falls,” the purchase money to be paid into the State treasury, and there to wait the ascertainment of the fact, whether the Island belonged to the Indians or not; it being probably asserted that the falls were the “Oldtown” intended in the treaty, and that, therefore, Pine Island, being below, did not belong to the Indians.

But without discussing the question of title, or further alluding to considerations that tend to sustain or invalidate it, we content ourselves with the expression of the opinion that the deed of the Land Agents of Maine and Massachusetts to Nathaniel Lord, did not pass any title to the said "Grassy Islands."

2d. Nicatow Island—which is a large Island situated just below the junction of the East and West branches of the Penobscot river. The owners of the main land, A. 6 Range, have built a dam connecting the South shore of the Island with the South shore of the river—thereby creating a valuable mill-privilege; and they have erected saw mills and other machinery upon it. By a Resolve of 25th of February, 1828, the Indians were authorized to sell the Island. But we do not learn that it has been sold, or that any rent is being paid for the use of it. Nor is its use now very valuable, but the right of the Indians to it should be asserted and maintained, for the time will come when Nicotow will be a large village, and this water power may be the site of factories.

3d. There are Islands of considerable value both in the West and East branches of the Penobscot river. Do they belong to the Indians? And there are Islands of greater value in the narrow lakes through which the West branch flows, and do they belong to the Indians? If they do, the State, as the guardian of the Indians, should not waive their claim to them by an acquiescence in any adverse possession.

The shores of the lower Islands are used for the purpose of hitching, receiving and booming logs. And these shore privileges are of great value, and must continue to be so as long as logs in large quantities are floated down the Penobscot. But from improper influences that have prevailed in the leasing of them, they pay to the Indian fund, in the treasury of the State, only some four or six hundred dollars per year. They ought to pay as many thousands. And in favorable years, and under such judicious management as private owners ordinarily bestow upon their affairs, they could, we think, easily be made to do so. But in the matter of leasing these shores, we fear, from the evidence disclosed to us, that some past agents have not conducted as the State had a right to expect of them, as stewards of a poor and dependent race. And the approval of the renewal of old leases of most valuable shores, several years before their expiration, in the last hours of a State administration, and at a rent hardly more than nominal, indicates

but too clearly that Executive Councillors, also, have sometimes failed in that vigilance and care of the property of the Indians, that a helpless race and a confiding State had also a right to expect of them.

But these leases and their renewals were so long ago—though some of them have yet many years to run—that we incline to advise that no attempt be made to rescind them. Such attempt would be attended with great expense, and might not be effectual. Or, if the Legislature should assume the right to revoke them, the lessees or their assigns might claim damages of the State, possibly successfully; or, if not, would quite certainly greatly annoy by their importunity. But we earnestly suggest to the Committee on Indian Affairs, that such legislation be recommended as shall, for the future, insure to the Indians a fair compensation for the use of their property. For the property belongs to them of right, and its use is assured to them by treaty guaranty. We ought, then, as the voluntary trustees, who have assumed the guardianship of their persons and the care of their property, to see to it that the Indians do not suffer from any neglect of ours in their rights of person or property.

PASSAMAQUODDY INDIANS.

For the number and condition of this tribe, reference may be had to the careful Report of the Indian Agent, for 1861.

Their Property.

The Commonwealth of Massachusetts, by a treaty made with the Passamaquoddy Indians on the twenty-ninth day of September, 1794, “in consideration of the said Indians relinquishing all their right, title, interest, claim or demand on any land or lands lying and being within the said Commonwealth of Massachusetts, and also engaging to be peaceful and quiet inhabitants of the said Commonwealth, without molesting any others of the Commonwealth aforesaid, in any way or manner whatever,” did “assign and set off to the aforesaid Indians the following tracts or parcels of land lying and being within the Commonwealth aforesaid, viz: all those Islands lying and being in Schoodic River, between the Falls at the head of the tide, and the Falls below the forks of said River, where the north branch and the west branch part, being fifteen in number

and containing one hundred acres, more or less;" also "Township No. 2, in the first range, surveyed by Mr. Samuel Titcomb, * * * containing about twenty-three thousand acres, more or less, bounded," &c.; also "Louis Island, lying in front of said township, containing ten acres, more or less; together with one hundred acres of land lying on Nemcass Point, adjoining the west side of said township; also Pine Island, lying to the westward of said Nemcass Point, containing one hundred and fifty acres, more or less."

The treaty also secures to the tribe ten acres of land at Pleasant Point, and "a privilege of *setting down* at the carrying place at West Quoddy, between the Bay of West Quoddy and the Bay of Fundy, to contain fifty acres."

We took some pains to examine and ascertain what portion of the premises thus conveyed or secured to the tribe by this treaty they are now possessed of, or are deriving any benefit or income from.

The Islands in the Schoodiac River.

It would seem from the manner in which these islands are paraded in the treaty—"being fifteen in number and containing one hundred acres, more or less"—that they must have been deemed by both parties to the treaty as of considerable importance and value. We made the voyage of the River from "Louis Island" to the "Falls at the head of the tide," most of the distance in canoes with Indian boatmen, the remaining distance by land. There are many more than fifteen islands in the Schoodiac River between the points named in the treaty, but all those lying on the east side of the main channel or thread of the River are within the Province of New Brunswick, and, of course, were not included in "all the islands" mentioned in the treaty. Of the fifteen islands conveyed, very few are now of any appreciable value. Most of them are very small, and have neither timber nor grass upon them. The first island above "the Falls at the head of the tide" which the Indians claim, lies in the Falls at Milltown. At present it is claimed and controlled by parties living on the British side of the River, as being in British waters. Very manifestly the principal channel of the River is now between the island and the American shore. But the aged Indians say that before any mills or dams were built from the island to either shore, the main chan-

nel was as manifestly between the island and the British shore. And the same fact is affirmed by aged white persons living in the vicinity. The question as to the nationality of the island must be settled before the Indians' title to it can attach. For agricultural purposes this island was never of any value; but lying as it does, in the Falls of the River, with two dams abutting upon it, or connected with it, on which are extensive mills, it must be of considerable value to somebody; and if it is really the property of the Indians, it would seem that the State, as the faithful guardian of the Indians and their rights, should adopt some means of reinstating them in the possession.

There is an island of some two or three acres in extent, between Milltown and Baring, that would produce a fair annual crop of meadow grass, but for the fact that it is overflowed by the dams below, for a considerable portion of the season, and is cumbered with logs and drift stuff, and trodden down by those using it for boom purposes. We could not learn that the Indians are in receipt of any or much of any income from it.

By far the largest island of the "fifteen" is that called "Grass Island," in Baileyville. It is some seventy-five rods in length, and from ten to thirty rods in width. It is of fertile soil, and annually produces a bountiful crop of good grass. That it was one of the fifteen islands conveyed by the treaty, there is no doubt in the mind of any one who knows its situation. But it is claimed by Mr. Granger of Calais, as having been conveyed to William Bingham, as a part of the township since called Baileyville, by deed from the Commonwealth of Massachusetts, of date one year earlier than the treaty with the Indians. The question of title between Mr. Granger and the Indians is now in litigation, and will be settled, probably, early in the ensuing year, by the S. J. Court. We need not, therefore, encumber our report with any discussion of the question of title. But we may remark, in passing, that as this is really the most valuable island of the fifteen granted in the treaty—worth more, indeed, than all the other fourteen, if we except the island at Milltown, of doubtful nationality—it would seem but just that the State of Massachusetts, or the State of Maine, if she succeeded to the liabilities of the parent State in reference to the Indians, should make good to the tribe any damage or loss occasioned by any failure of title under the treaty. We find in the "Acts and Resolves" of 1855, "A Resolve in relation

to Passamaquoddy Indian lands," approved March 16, 1855, which relates to this very matter. But we cannot learn that any action has been had under it likely to lead to any result beneficial to the Indians. They are poor and needy, and whatever act of justice the State intends towards them, it ought to do without another seven years delay.

There is an Island directly in the forks of the river, containing some ten or twelve acres, which the Indians claim as being one of the fifteen granted to them. The soil of this Island is excellent for grass or tillage. It is under partial cultivation, and there is a man residing upon it who claims to be the tenant of the owners of the land adjacent between the rivers. Whether the Island was included in the fifteen named in the treaty, is to be decided by the question whether it lies "between the falls at the head of the tide, and the falls below the forks of said river." As the Indians evidently believe it to be their property—as they have not been remarkably successful in deriving income from other Islands owned or claimed by them, and as this Island is quite remote from any roads or settlements, and cannot be valued very highly, we suggest whether it might not be an object for the State to make an effort to end the dispute as to ownership, by acquiring the quit-claim of the adjacent proprietors, if it could be done for a reasonably small sum.

Louis' Island.

This Island, said in the treaty to lie in front of the Indian township, and "containing ten acres, more or less," has nearly or quite disappeared from among the things that are. The building of the dam, at the outlet of the lake, has caused the Island to be swept away. We hope the lease to the owners of the dam and mills is so far favorable to the Indians as to compensate them for the annihilation of this Island, which was of sufficient importance once, to give its name to this whole locality. "Princeton" is the corporate name of the town and village lying South of the lake and stream, but it is much better known at home and abroad as "Louis' Island," and the railroad from here to Calais is called the "Louis' Island Railroad." The Island has indeed disappeared—old "Capt. Louis" cannot long remain, but let the name be preserved and perpetuated.

The Indian Township.

If the "fifteen Islands," so bravely paraded in the treaty, have so dwindled in size and importance, or have so glided from the

possession of the Indians, and "Louis Island" has floated away to the unseen—we are glad to state that the township has proved a more substantial benefit. Under a Resolve of the Legislature approved March 30, 1853, the timber and grass upon the township were sold, and the water privilege leased to parties in Calais for the term of fifteen years, for about (\$20,000). A subsequent Resolve, approved March 13, 1861, authorizes the extension of this lease for a period of fifteen years from the 20th of August, 1868. The sum received for this sale and lease has been paid into the State treasury, and mainly constitutes the fund belonging to the tribe, which the Treasurer's Report for 1861 states to be twenty thousand three hundred seventy-one dollars (\$20,371). The township originally contained, as surveyed by Titcomb and estimated in the treaty, about twenty-three thousand (23,000) acres. By a Resolve, approved March 14, 1860, the Land Agent was "authorized to convey a strip of land on the Eastern side of the township, one mile in width, to any party who shall build a good turnpike road across said township along the valley of the Tomah Stream . . . commencing at the River St. Croix and ending at the Southern line of Waite township." The Resolve also provided that the parties receiving the grant should "build one-half of a bridge across the St. Croix River at the point where said road strikes said River." That the bridge has been built, and a road leading from it on the township, we know from having seen so much, as we passed down the river. We understand the road has been built the whole distance across the township, and that a strip of the township, one mile wide, has been conveyed, and is no longer the property of the Indians. We suppose we are to take it for granted that there was a necessity for this road and bridge, or the State would not have given some four thousand acres of the Indians' land to have them built. But we were unfortunate in not finding any one who could inform us what the necessity or occasion was for the road. We found the bridge fenced across.—The soil of the remaining part of the township belongs to the Indians. There is a bridge across the river, just at the foot of the lake, connecting the township with Princeton, and from this bridge the great road from Calais to Aroostook County passes through the entire length of the township. On this road there is much good settling land. But of course there are no settlers upon it, because it has not been open to settlements by whites; and the Indian set-

tlement is mainly upon "Peter Deury's point," some distance up the lake, and far away from this road or any other. As the timber upon the township has been sold and mostly removed, as we learn, and as the Indians can derive no possible benefit from the soil until it is improved, we submit whether it would not be wise for the State, by the requisite legislation, to provide that, at least, that part of the township bordering this road should be surveyed and offered for sale to actual settlers. For purposes of cultivation, by themselves, the Indians do not need it, and will not use it, at least for many years to come. They do need the annual income of any money that might be received as the price of sale. The village of Princeton is a young and thriving place. Situated at the outlet of a chain of lakes, navigable and *navigated* by steamboats, having one of the finest water privileges in the State, and connected with Calais by a well-built railroad, it must flourish whenever the unhappy troubles of the country shall be settled and business resume its legitimate channels. But so long as the Indian township remains, as now, shut up to settlers, there must be eight or ten miles of road, beginning almost at the door of its principal hotel and stretching away towards Aroostook, without house or field, or other mark of civilization. If one or two tiers of lots on each side of this road were surveyed and offered to actual settlers on reasonable terms, we have little doubt that they would soon be taken up and paid for and improved, thus adding something to the Indian fund, increasing the wealth of the County and State, and giving encouragement to the enterprising spirit which has invested so much capital in opening a communication between this beautiful chain of lakes and ocean navigation.

The future well-being of this dependent people requires that they should be encouraged, by every proper means, to depend more upon themselves and less upon their Agent, and what he can do for them in the distribution of their inconsiderable annual income. As one means to this end, we suggest whether it might not be good policy for the Legislature to provide for the laying out of a series of farm lots, say of twenty to thirty acres each, on the shores of the lakes, and perhaps on the river below Louis' Island, to be conveyed to such individuals of the tribe as would engage to enter upon, improve and cultivate them. We are strongly inclined to the belief, Fourierism to the contrary, notwithstanding, that there is too much of the *community* principle among the Indians for them

to succeed in making any considerable progress in the arts of civilization. The land which belongs to the *tribe* in common, no *individual* feels any particular interest in cultivating and improving. The Indian, like the white man, likes to contemplate the field he clears, and ploughs and enriches, as *his*—an imperishable something which he can conclusively control while he is alive, and which will belong to his children and his children's children when he is dead. We do not recommend such a conveyance in severalty to individuals as would give them power to sell to persons outside of the tribe, for that, we think, would be neither wise nor safe.— But that such small farm lots in the township should be conveyed to individual Indians, to be held by them and their heirs, in severalty, and perhaps with the power to sell to other Indians, may we think be an experiment worth the trial.

That portion of this tribe residing at Pleasant Point, suggested to us that they have no wood-lots, and that to buy all the wood they need, makes a large draft upon their limited income; and in this suggestion they were seconded by the Indian Agent. If a wood-lot, of adequate area and within a reasonable distance, could be obtained at a fair price, it might be economy for the State to purchase it. Having such a lot, the Indians would perform much of the labor in chopping and hauling their wood, which now has to be paid for by the Agent. And we the more freely suggest the propriety of this outlay on the part of the State, because it is only about three years since the State assumed to convey a whole mile strip, from the Eastern side of the Indian township, without putting a single dollar into the Indian fund. Assuming that the State did not make this grant of some four thousand acres of the Indians land without adequate inducement or consideration—is it more than just to the Indians at Pleasant Point, that the State should purchase for them the wood-lot they so much desire? Would it be more than their share of a reasonable equivalent?

S. H. BLAKE,
J. A. MILLIKEN.

STATE OF MAINE.

IN SENATE, January 21, 1863.

Ordered, That 350 copies of the Report of the Commissioners on the affairs of the Penobscot and Passamaquoddy Indians, be printed for the use of the Legislature.

EZRA C. BRETT, *Secretary*.