

# MAINE STATE LEGISLATURE

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REPORT  
ON  
ISLAND TITLES  
ALONG THE  
COAST OF MAINE  
UNDER  
RESOLVE OF 1913, CHAPTER 180  
BY  
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OF AUGUSTA  
MEMBER OF THE KENNEBEC BAR

REPORT ON ISLAND TITLES

ALONG

THE COAST OF MAINE

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To the Honorable Blaine S. Viles, Land Agent for the State of Maine.

I herewith submit my report of my investigation of island titles on the coast of Maine, which has been in progress, with such time as I could devote to same, since July of 1913,--said investigation being made for your office under Resolve of 1913, Chapter 180.

From the statement of facts accompanying, it appears that the object of the resolve is to determine what islands along the coast, the State of Maine still retains title to; and its context would indicate that even the smaller islands and ledges were considered of importance.

An examination of the charts of the Maine coast, with its long indented coast line, dotted with very numerous islands, together with an examination of the data at hand relative to the disposition of these islands, led me to realize the importance and necessity of devising some good system, a pursuance of which would, as far as possible, give me the required results.

I accordingly obtained the services of the late Joseph Williamson, a man who had a considerable experience with island titles and a good knowledge of the sources of land titles in Maine, to assist me in devising some method of doing this work. After an examination of the material available, we adopted a method along the lines of which this work has been done.

#### METHOD

I was unable at the Land Office, or elsewhere, to find any index or catalog of the islands on the Maine coast, and perhaps none was ever made. It was apparent that as a starting point it would be necessary to make a catalog of all such islands as the Resolve contemplated, and such a catalog as would locate each island definitely and avoid the confusion incident to the similarity of names which are everywhere found.

In looking for some map covering the entire coast, and on such a scale as to show the smaller islands, I found the only map of such description, was the coast charts published by the United States Coast and Geodetic Survey, which I adopted and which furnishes the basis for this whole investigation. These charts, nineteen in number, cover the entire coast.

From these charts I proceeded to make a catalog of every island and ledge on the Maine coast as far as it appeared from said chart to be in any part above water at high water mark. I listed some thirteen hundred islands and ledges along the coast.

#### DESCRIPTION OF CARD INDEX

To avoid confusion in names, as well as to make possible an accurate listing of these islands, I adopted the method of dividing each chart into squares, using lines of longitude and latitude of four minutes each. I thus have the longitude and latitude of each square, by which it may be readily located. I have numbered each square on these charts consecutively commencing with 100, to avoid confusion with island numbers; and numbered each island in the square consecutively beginning with one. The size of these squares is mere arbitrary selection with a view of making a square as large as possible consistent with its not containing too large a number of islands to be easily listed.

I then prepared a card index of all these islands, not in alphabetical order of their name, but in numerical order of the squares, using a heavy index card for each square, followed by cards in numerical order containing the name and number of islands as appear on charts. As stated before, this method definitely locates a particular island, and avoids the confusion caused by the fact that many of these islands have the same name.

This card index and charts are a part of this report, and are filed with it in the Land Office.

#### HOW TO USE THE CARD INDEX

For information about a particular island, locate the island on the series of charts. It will be found numbered in a certain square--for instance, island No. 1 in square 100. Go to the card index and under square 100, as indicated on the heavy index cards, on the first card will be found whatever this investigation may have discovered about that particular island.

With an index or catalog of all of these islands, it then became a process of eliminating those already conveyed.

I find, like all other lands in Maine, the three great sources of island titles along the coast are from ancient grants by the British Crown and its grantees (which will be more fully discussed later); the Commonwealth of Massachusetts--Colony of Massachusetts Bay, the Province and State of Massachusetts--before the separation of Maine and afterwards during its joint ownership in the public lands; and the State of Maine.

There is on file in the State Land Office copies of deeds given by Massachusetts and Maine, and a separate index of island conveyances. The island index is arranged alphabetically, and was made by going through the list of deeds and listing each island as therein named.

From the fact that Massachusetts commenced deeding these islands as early as 1780, invariably designating them by letter rather than name, with reference to some ancient plan or survey; the fact that these islands have often changed names since their conveyance; and the fact that many of them were conveyed by name without sufficient description as to location to distinguish them from other islands of the same name--made this index of little use, in determining whether an island as known and designated on the maps today was ever conveyed by Massachusetts or Maine. For illustration: If you wanted to know whether Ingall's Island had been conveyed by Massachusetts or Maine, an examination of the index would not show its conveyance, as it was conveyed by Massachusetts under the name of Island A, and the index would so have it. To determine just what island as shown on the maps today, was intended in each of these conveyances, either by other names or imperfect description, involved considerable labor. Fortunately the old Massachusetts plans under which most of these islands were deeded have been preserved, and are on file at the Land Office; so by a comparison with the coast charts, it has been possible to locate the islands intended. From various other sources I have located islands granted under meager descriptions and feel that I have had good success in locating the islands intended in these conveyances, and making this index of practical use today.

My index above described will show the name under which an island was conveyed, if by another name than it now bears; the person to whom it was conveyed; book and page of record at Land Office; and a reference to book and page of plans. To take the above illustration, the card in my index designated "Ingalls Island"--its present name--would show as follows: "Conveyed as Island A to William Ingalls, June 15, 1786. Vol. 4. Page 27. Plan Book 8, Page 142."

My report must necessarily appear largely in my card index, as I have there attempted to indicate on the card for each island the disposition made of it, if any, and any facts relative to it. I do not think it expedient to mention individual islands already conveyed in a report of this kind--the facts about such may be found in the index. Nor does my report or index attempt to deal with titles subsequent to their conveyance by the State, the fact of such conveyance eliminating the island from my list as far as the object of this inquiry is concerned.

In making this investigation, I have come across a great deal of information relative to Maine island titles, much of which I shall incorporate into this report even at the risk of making it bulky and disconnected, with an idea of preserving it and making it easily accessible to anyone interested in this subject.

In my research I was unable to find any works treating of the source of titles to these islands as a whole, but was obliged to gather my information from various historical works, acts and resolves.

At this point it will perhaps be of benefit to enter a history of legislation relative to the sale of these islands from two of the great sources of title, Massachusetts and Maine, from the time of the Treaty of Peace of 1783,--when this territory came wholly under the control of Massachusetts--to the present time. (The matter of ancient grants from the Crown will be treated hereafter.)

#### MASSACHUSETTS

By a resolve of May 1, 1781, a committee consisting of Jedediah Preble, Johnathan Greenleaf, David Sewell, John Lewis, and William Lithgow was appointed to look after the unappropriated lands of the Commonwealth. They were authorized to protect them from trespass; to examine the authority of claims of title; to run the lines between lands of individuals and the Commonwealth; to make plans and ascertain the acreage.

By resolve of July 11, 1783, a special committee, with authority similar to the above, was appointed for lands within the County of Lincoln. It consisted of Samuel Phillips, Jr., Nathan Dane, and Nathaniel Wells.

By resolve of October 28, 1783, a mode for doing the business of the Commission was pointed out to the Committee. Among other things, it recommended that a surveyor be added to the committee and Rufus Putnam was appointed. The Committee was authorized and directed "to proceed in the disposal of said lands at public or private sale."

In July of 1784 the Committee contracted with Rufus Putnam for a survey between the rivers Schoodic and Cobscook. Putnam made his survey, and reported in November of that year. In 1785 he undertook the survey of the coast from Penobscot River to Cobscook. This work was completed and reported by the Committee to the General Court in 1786. Its reference to islands is as follows: "Together with 360 islands, being all the islands between Passamaquoddy Bay and Penobscot Bay, including all the islands in that Bay east of a line drawn from the West extreme of the Fox Islands to the mouth of the Penobscot River."

In Vol. I, Eastern Lands, Deeds, etc., Massachusetts Archives, pages 510 to 521 are the instructions given Putnam, Dodge and John Barnard, who made the surveys of these lands. The instructions to Putnam were as follows: "You will begin your survey at Soward Neck and the River Cobscook where your surveys terminated last year, and continue them westward. Take a general plan of the sea coast to Penobscot Bay, and the situation of the principal rivers between Penobscot River and Cobscook as far into the country as you may find best, and of the islands found West of Quoddy Head, as far Westward as you shall survey the main." A very full report of the doings of this Committee on lands in Lincoln is to be found in the first pages of this volume. Putnam's Plans of Island survey are on file in the Maine Land Office, Vol. 8.

In 1785 the Committee advertised the sale of these lands, announcing "besides, a number of valuable islands are also ready for sale."

By resolve of November 30, 1785, John Brooks was added to the Committee in place of Nathan Dane.

By resolve of November 16, 1786, Leonard Jarvis and Rufus Putnam were added to the Committee. "Any two of whom by consent of the majority are hereby empowered to transact and complete any business that is or may be assigned to the Commission by virtue of the aforementioned or other resolves."

By resolve of March 26, 1788, John Read and Dr. Daniel Cony were made members of the Committee.

By resolve of June 19, 1801, the Committee for the sale of Eastern Lands were discharged and John Read and Peleg Coffin were appointed agents for the Commonwealth with all powers that the Committee possessed.

By resolve of March 15, 1805, William Smith was appointed agent in place of Peleg Coffin.

Other resolves relative to this subject are:

Resolve of February 27, 1813,  
Resolve of June 13, 1817,  
Resolve of June 17, 1820,  
Resolve of January 30, 1823,  
Resolve of June 13, 1823,  
Resolve of February 22, 1828,  
Resolve of March 14, 1832.

In 1890 James Malcolm, acting under the Land Office, surveyed the islands lying outside the limits of the Waldo Patent returning plans and description of same which are now on file at the Land Office.

I have gone into this matter of Massachusetts resolves creating this Commission and Agents, and changing its personnel from time to time, quite extensively because under them that great mass of islands from the Penobscot to the St. Croix were surveyed and very many of the larger and important ones sold; the deeds bearing the signatures of these various members of this Commission. Some 150 islands, outside of those grants made of groups which contain large numbers of islands, such as the Fox Islands and Mt. Desert, were made by Massachusetts prior to the Separation. A large number of these often being sold to one person.

### MAINE BECOMES A STATE

On June 19, 1819, the General Court passed the Act of Separation by which Maine became a state. On August 24 a proclamation was made that provided "That the consent of this Commonwealth be and the same is hereby given that the District of Maine may be formed and erected into a separate and independent state, if the people shall in the manner, and by the majority hereinafter mentioned, express their consent and agreement thereto upon the following terms and conditions; and provided that Congress of the United States shall give its consent thereto before the fourth day of March next."

It directed the voters of Maine to vote on the question July 24th. On August 24th a proclamation was made that the required majority had been obtained, and the call issued for a convention. The convention met October 11 and completed the proposed Constitution October 29th, when it adjourned to January 5, 1820. The proposed Constitution was submitted to the people in town meetings on December 6, 1819, and adopted. The convention applied to Congress for admission, which was granted March 3, 1820. Maine became a state March 15, 1820.

### MAINE BECOMES A JOINT OWNER OF THE PUBLIC LANDS

The Act of Separation provided: "And all lands belonging to the Commonwealth within the District of Maine shall belong the one-half thereof to the said Commonwealth, and the other half thereof, to the state to be formed within said District, to be divided as hereinafter mentioned."

So that by the Act of Separation, as soon as Maine became a State it acquired along with other public lands a joint ownership in all islands along the coast then owned by Massachusetts with a few exceptions hereafter mentioned.

The Act of Separation further made provision for a division of these public lands, and the appointment of a commission of six commissioners to make the division.

"They shall have full power and authority to divide all the public lands within the District between the respective States in equal shares or moities, in severalty having regard to quantity, situation and quality; they shall determine what shall be surveyed and divided from time to time, the expense of which survey and the Commissioners shall be borne equally by the two states."

Pursuant to this section of the Act, Commissioners are appointed by Massachusetts and Maine. They commenced their work in 1822 and finished in 1827, during which time a great deal of the public land jointly owned by the two states was set off in severalty.

At the completion of their work the doings of the Commissioners in the form of the minute of all their meetings and findings were made up in duplicate in the handwriting of their secretary, and filed one with Massachusetts and one with Maine. The doings of these Commissioners is of the utmost importance in tracing land titles originating from Commonwealth or State conveyances during the period of joint ownership of these lands. The copy filed with the State of Maine was dug out of obscurity by ex-Secretary of State Brown, who realized its value, and is now on file at the Secretary of State's office.



On December 28, 1822, the Commissioners took up the matter of a division of islands, and proceeded to divide the islands remaining un conveyed between the Commonwealth and the State of Maine.

The records of the Commissioners contain a list of the islands awarded to Massachusetts and Maine, giving location and acreage. The lists are preceded by the following statements:

"And thereupon the Commissioners divided and assigned to the share of the Commonwealth of Massachusetts, all the right, title and interest which the said Commonwealth or the said Commonwealth and State of Maine had or might have in the islands hereinafter named and described within the State."

"And to the share of the State of Maine the Commissioners assign all the right, title and interest the said Commonwealth and the State of Maine had or may have in the islands hereinafter named and described within the said state."

The lists are followed by this statement: "And the said Commissioners do adjudge that the said right, title and interest in the islands assigned to the share of the said Commonwealth of Massachusetts and to the share of the State of Maine are equal, and that the said Commonwealth of Massachusetts and the said State of Maine do have and hold the right, title and interest in the said islands in the shares assigned to them respectively in severally."

I will digress from the narrative of this report at this time to deal with the title of islands deeded by Massachusetts during her period of joint ownership with the State of Maine, and I think it will be of enough value to those tracing island titles in the future to warrant incorporating in this report a list of islands conveyed by Massachusetts during this period, showing her right to convey the whole title. During the period from the time Maine became a State and became a joint owner in the public lands--March 15, 1820--to the time Massachusetts disposed of her interest--October 5, 1853, Massachusetts conveyed many islands in severalty. As the deeds by which these islands were conveyed made no mention of the title of the State of Maine, and it is a possible construction that Massachusetts may be deeding only her interest,--to one knowing of the joint ownership during this period, in an examination of these deeds at our registries, it is not apparent where Massachusetts gets its right to deed the whole title. I understand there have been frequent inquiries on this point by owners and prospective purchasers of islands deeded during this period.

There are two ways by which Massachusetts after the Act of Separation acquired or retained a right to deed the whole title to these islands:

First: By the Act of Separation itself.

Section 7 of the Act provides as follows:

"All grants of land, franchises, immunities, cooperate or other rights, and all contracts for, or grants of land not yet located, which have been or may be made by the said Commonwealth before the separation of said District shall take place, and having or to have effect within the said district, shall continue in full force, after said district shall become a separate state."

This section provides for those grants by the Commonwealth made during the period between the date on which the Act of Separation was passed, June 19, 1819, and the date on which Maine became a State. The Act seems to clearly consider an interval of time between its passage and a compliance by the District of Maine with the conditions which would make it effective, and a possible failure of a sufficient majority of the voters of Maine to be obtained in favor of separation, and to make provision for grants and contracts made by the Commonwealth in the interval so that they might be valid whatever the outcome.

It also reserves from the granting clause of this Act all lands contracted for prior to the time when separation took place, and some islands were subsequently deeded under that provision.

Second: By the assignment in severalty of various islands by the Commissioners, as has been previously described.

All islands conveyed by Massachusetts alone between the date on which Maine became a State--March 15, 1820--and the date of the deed from Massachusetts of her remaining interests in the public lands--October 5, 1853--showing her right to convey the whole title.

Name	Present Name	Location	Date
Black Island (Assigned by the Commissioners)	Spruce	North of Isle of Holt	Sept. 2, 1825
Island G. (Assigned by the Commissioners)	Buckle	North of Isle of Holt	Sept. 2, 1825
Poor Island (Assigned by the Commissioners)	Green	Near Deer Isle Thoro- fare	Sept. 2, 1825
Island M. (Assigned by the Commissioners)	Bold	Near Deer Isle Thoro- fare	Sept. 2, 1825
Island I. (Assigned by the Commissioners)	Devil	Near Deer Isle Thoro- fare	Sept. 2, 1825
Camp Island (Assigned by the Commissioners)		Near Deer Isle Thoro- fare	Sept. 2, 1825
Island H. (Assigned by the Commissioners)	Little Camp	Near Deer Isle Thoro- fare	Sept. 2, 1825
Indian Island (Assigned by the Commissioners)	Russ	Near Deer Isle Thoro- fare	Sept. 2, 1825
Ash or Saddleback (Assigned by the Commissioners)		Near Deer Isle Thoro- fare	Sept. 2, 1825
Island D. (Assigned by the Commissioners)	Shingle	Near Deer Isle Thoro- fare	Sept. 2, 1825
Island E. (Assigned by the Commissioners)	Enchanted	Near Deer Isle Thoro- fare	Sept. 2, 1825
Islands K. & L. (Assigned by the Commissioners)	Coat I's	Near Deer Isle Thoro- fare	Sept. 2, 1825
Island V. (Assigned by the Commissioners)	Rock	Near Deer Isle Thoro- fare	Sept. 17, 1823
Island W. (Assigned by the Commissioners)	Andrews	Near Deer Isle Thoro- fare	Sept. 17, 1823
Island X. (Assigned by the Commissioners)	Mark	Near Deer Isle Thoro- fare	Sept. 17, 1823

Name	Present Name	Location	Date
Island Z. (Assigned by the Commissioners)	Sand	Near Deer Isle Thoro- fare	Sept. 17, 1823
Moose Island		Near Deer Isle Thoro- fare	Dec. 10, 1822
(Contracted for by Samuel Allen, October 18, 1819)			
Dyer Island		Narraguagus Bay	Apr. 19, 1821
(Contracted for by Edward H. Robbins, Jr., June 10, 1818)			
Pond Island		Narraguagus Bay	Apr. 19, 1821
(Contracted for by Edward H. Robbins, Jr., June 10, 1818)			
Jordan's Delight		Narraguagus Bay	Apr. 19, 1821
(Contracted for by Edward H. Robbins, Jr., June 10, 1818)			
Trafton's Island		Narraguagus Bay	Aug. 17, 1873
(Contracted for by James Campbell, June 22, 1819)			
Goard Island		Narraguagus Bay	Aug. 17, 1873
(Contracted for by James Campbell, June 22, 1819)			
Birch Island B		Frenchman's Bay, near Mt. Desert	Nov. 18, 1820
(Assigned by the Commissioners)			
Island D	Trumpet	Blue Hill Bay, near Mt. Desert	Sept. 17, 1823
(Assigned by the Commissioners)			
Ship Island		Blue Hill Bay, near Mt. Desert	Sept. 17, 1823
(Assigned by the Commissioners)			
Island E.	Little Driscoc	A little So. Mispeskey Reach	Sept. 17, 1823
(Assigned by the Commissioners)			
Tebut or G. Island	Sheep	Mispeskey Reach	Sept. 17, 1823
(Assigned by the Commissioners)			
Island I. (no name)		A little So. Mispeskey Reach	Sept. 17, 1823
(Assigned by the Commissioners)			
Island G	Stevens	A little So. Mispeskey Reach	Sept. 17, 1823
(Assigned by the Commissioners)			
Island M	Shabbit	A little So. Mispeskey Reach	Sept. 17, 1823
(Assigned by the Commissioners)			
Islands Q, R, S, T, U	Goose	A little So. Mispeskey Reach	Sept. 17, 1823
(Assigned by the Commissioners)			
Driscoc or Island P	Doyles		July 14, 1836
Allen's Island		At the mouth of George River	July 17, 1823
(Assigned by the Commissioners)			
Bald Porcupine	Sheep Porcupine	East Mt. Desert	June 16, 1820
(Contracted for by Wm. W. Parrott, June 10, 1818)			
Great Porcupine	Long Porcupine	East Mt. Desert	June 16, 1820
(Contracted for by Wm. W. Parrott, June 10, 1818)			
Little Porcupine	The Hop	East Mt. Desert	June 16, 1820
(Contracted for by Wm. W. Parrott, June 10, 1818)			
Middle Porcupine	Burnt Porcupine	East Mt. Desert	June 16, 1820
(Contracted for by Wm. W. Parrott, June 10, 1818)			
Jordan's Island		East Mt. Desert	June 16, 1820
(Contracted for by Wm. W. Parrott, June 10, 1818)			

Name	Present Name	Location	Date
Heron (Contracted for by Wm. W. Parrott, June 10, 1818)	Turtle	East Mt. Desert	June 16, 1820
Turtle (Contracted for by Wm. W. Parrott, June 10, 1818)	Heron	East Mt. Desert	June 16, 1820
Lane of Schoodic Island (Contracted for by Wm. W. Parrott, June 10, 1818)		East Mt. Desert	June 16, 1820
Little Island (Assigned by the Commissioners)		Eggamoggin Reach	Aug. 28, 1824
Campbell Island (Contracted for by John Campbell, Oct. 18, 1819)		East of Deer Isle	Feb. 10, 1824
Head Island (Assigned by the Commissioners)	Birch	Near West end of Little Deer	Sept. 17, 1823
Brimstone (Assigned by the Commissioners)		Between Ten Pound and Matinicus	Nov. 14, 1831
Four Acre Island (Assigned by the Commissioners)		Opposite Heard's Bay	Sept. 24, 1832
Holt's Island (Assigned by the Commissioners)		Carrying Place Bay	Sept. 24, 1832
Great Green Island (Assigned by the Commissioners)		Near Matinicus	July 14, 1823
Hog Island (Assigned by the Commissioners)		Near Matinicus	July 28, 1823
Little Green Island (Assigned by the Commissioners)		Off Thomaston	1833
McCobbs Island (Assigned by the Commissioners)		Off Thomaston	1823
Maunana (Assigned by the Commissioners)		Near Monhegan	1823
Monhegan (Assigned by the Commissioners)			1823
Matinic (Assigned by the Commissioners)		Near Matinicus	1824
Moose Island (Assigned by the Commissioners)		Bluchill Bay, near Mt. Desert	1824
Ragged Arse (Assigned by the Commissioners)		Near Matinicus	1831
Seaveys Island (Assigned by the Commissioners)		Off Thomaston	1823
Sowards Island (Assigned by the Commissioners)		Flanders Bay, near Gouldsboro	1825
Wooden Ball (Assigned by the Commissioners)		Near Matinicus	1823

The only islands assigned to Massachusetts in severalty by the Commissioners not conveyed by her at the time of her deed to Maine of her remaining interests in the public lands--October 5, 1853, are as follows:

B. Island	Folly	Between Mt. Desert and Bartlett's
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Name	Present Name	Location	Date
A. Island	Black	In Mt. Desert Bay	
Hopkins	Alleys	In Mt. Desert Bay	
A. Island	The Twinies	East of Thomas Island	
		--Frenchman's Bay	
B. Island	The Twinies	East of Thomas Island	
		--Frenchman's Bay	
Black Island		Frenchman's Bay	
Burnt Island		Frenchman's Bay	
Petit Manan		South of Steben	
Bar Porcupine	Bar Island	Frenchman's Bay, Mt. Desert	

A complete list of lands in Maine contracted for with Massachusetts prior to the Act of Separation is to be found in the Massachusetts Resolves of 1820, page 167.

#### MASSACHUSETTS AFTER THE SEPARATION

By resolve of January 30, 1823 and June 13, 1823, George Coffin and the Treasurer were appointed agents with instructions to sell all lands, reserved lots and islands which fell to the share of the Commonwealth in the division by the Commissioners, and complete the same if possible within the present year--1823.

Acting under these instructions, the agents proceeded to sell these islands, and as will be seen from the foregoing tables, had sold almost all the islands assigned to Massachusetts by the Commissioners before disposing of the balance of the public lands to Maine--1853.

#### MAINE BECOMES SOLE OWNER OF PUBLIC LANDS

The year 1853 marks another epoch in the history of the public lands in Maine. Back in 1821 before the division by the Commissioners an effort was made to purchase these lands of Massachusetts, and a committee appointed to negotiate with a committee of the Commonwealth. The committees met and reached an agreement as to the purchase of these lands belonging to Massachusetts. On March 19, 1821 a resolve ratifying the agreement was introduced, but neither of the State Legislatures would ratify it. For a number of years there had been a growing feeling of dissatisfaction with the policy of Massachusetts in the management of its public lands, especially in the building of roads and bridges and making such improvement as would open the lands to settlement. This culminated in a resolve of the Legislature April 3, 1852, directing the Governor to lay before the authorities of Massachusetts the grievances of which Maine complained. The final result was an offer by Massachusetts to sell to Maine all her lands in this state, and the same were purchased by Maine's Executive. This purchase was ratified by the Legislature by resolve of September 23, 1853.

Pursuant to this agreement a deed was given by Massachusetts to Maine under date of October 5, 1853. Although a full schedule of the lands conveyed by this deed was incorporated in it, no mention whatever was made of islands. A copy of this deed is contained in House Document No. 14 of the Public Documents of 1854.

Whatever interest Massachusetts retained in the islands along the coast of Maine, would, however, pass by the following clause of the deed:

"Together with all the right, title and interest of said Commonwealth to and in any other lands within the said State of Maine, whether described or not described in this deed, not heretofore granted or conveyed by said Commonwealth."

So that by this deed Maine became sole owner of all islands, title to which was in Massachusetts at that time.

#### MAINE--1820 TO 1876

A resolve of June 26, 1820, authorized the appointment of a Land Agent.

An act entitled "An Act to promote the sale and settlement of public lands" approved February 25, 1824, provided that the islands which had fallen to Maine in the division of lands with Massachusetts claimed by settlers might be sold and conveyed to them upon such terms and conditions as the agent deemed just and equitable. "And all other said islands and parts of said islands as may not be held or claimed as aforesaid, shall be sold by said agent in such manner as to him may seem fit."

By resolve of March 26, 1826, the Land Agent was authorized to make conveyances of all lands granted by the Legislature.

An act entitled "An Act to promote sale and settlement of public lands." Approved February 20, 1828, provided for the appointment of an agent by the Governor and Council to superintend and manage the sale of public lands, and authorized him to sell and convey certain lands. It repealed all previous acts relative to the sale and settlement of public lands.

The first Land Agent was James Irish and acting under the above acts and resolves and by special resolves of the Legislatures some of the islands, principally among those assigned to Maine by the Commissioners, were disposed of.

That the islands along the coast early came under the attention of the Legislature is to be seen from a resolve of March 23, 1838, directing the Land Agent to procure from Massachusetts an attested copy of all plans and surveys of islands situated in this state. Also a schedule of all islands sold by Massachusetts; and deposited same in Land Office.

Acting under this resolve, Oliver Frost went to the Massachusetts land office and made a copy of all records, plans and documents relating to islands since the establishment of the land office in 1784, and prepared a schedule "embracing all islands on the coast of Maine which had been surveyed under the authority aforesaid, and which were not embraced in any grant of Main land."

In his report which is contained in full in Land Agent's report of 1839 he says:

"I have arranged them--islands-- in a table according to the requirements of said resolve, designating all islands sold by Massachusetts, the date of such sale, and the names of the respective purchasers, to which I have added the number of acres contained in each island, the page referring to the book of plans in the land office, where their relative situation may be seen, and those assigned to the State of Maine in the division of lands between the Commonwealth since the Separation."

He also made copies of all plans Massachusetts had of islands and filed them in our Land Office.

Notwithstanding this interest manifested in islands and the securing of all possible information relative to same, no great number of islands were conveyed during this period.

The first island conveyed by Maine was September 6, 1824. Until 1876 she disposed of but forty-one islands, and twenty-nine of these were conveyed prior to 1830, mostly from among those assigned to her by the Commissioners. An examination of the reports of land agents prior to 1875 shows little or no space devoted to the subject of islands in their reports on the public lands. This long period of comparative inactivity in the disposition of islands while other lands were being rapidly disposed of, is probably due to the fact that but little information was to be had about those not included in the Massachusetts surveys, most of which were early disposed of, no schedules ever having been made by the Land Office of the others.

#### MAINE DETERMINES TO DISPOSE OF ALL HER ISLANDS

The year 1876 is an important one in the history of island legislation, for in this year Maine started in earnest to get rid of all her islands.

This year was preceded by some activity on the part of the Land Office to determine the State's interest in these islands, and the Land Agent, Parker P. Burleigh, calls attention to them in his report of 1875 as follows:

"Among the very numerous islands in the ocean and bays which skirt the shores of Maine, many are still the property of the State, but exactly which is not known. No full schedules have ever been made of them, though plans of them exist among the documents donated by the State of Massachusetts. During the past year progress has been made in ascertaining the state of the title to these islands, but the difficulty of the task and the very great number of them makes the work a slow one. Frequent applications are made for the purchase of one or another, but no sales have been ventured in the present state of the records. The perfecting of these schedules with proper entries of the character, position and other necessary information respecting the property, forms an important duty yet to be performed."

Following this report the Legislature in 1876 passed the following act:

Chapter 79, of the Laws of 1876--approved February 11, 1876:

"That the Land Agent under the direction of the Governor and Council is hereby authorized and required to sell all the islands on the coast belonging to the State, at public auction, after suitable plans and examination shall have been made, and proper notice given of the time and place of such sale in such newspapers as may be deemed necessary."

Under this act the Land Agent, Edwin C. Burleigh, made an investigation of island titles along the coast with an idea of determining what islands the state still owned, a committee from the Council visiting many of the islands. The result of this investigation is shown in the Land Agent's report for 1876:

"Under the provisions of the statute of 1876, Chapter 79, entitled 'An Act to authorize the sale of islands belonging to the State', a very thorough examination was made into the title of the very many islands which skirt the coast of Maine, in order to ascertain what had been sold, also to determine what remained to be sold under the act. The search necessarily carried the examination back to the earliest history of the State, even to the time of the Revolution and before, and involved a great amount of labor and research among the archives of Massachusetts and Maine. The investigation thus instituted disclosed certain conveyances and grants of very many of the islands at different times, the perpetuation of which information has been thought of sufficient interest and importance to warrant their publication in connection with this report. The schedules H and I annexed contain lists of all such, with the dates of the grants and names of grantees or purchasers.

"Besides those thus granted and conveyed, a list of sixty-six in number remained, the title of which appears never to have passed from the State. As many of these were more or less in occupation of individuals, the committee of the Council on public lands visited the islands so far as they are located west of the line of Washington County, and ascertained the facts respecting them. This investigation leads to the conclusion that the title of all of these was still in the State, and therefore subject to be sold under the Act referred to.

"A public sale of all of these was accordingly made at Rockland on the 21st day of November, 1876, previous notice having been given according to the Act. Payment has since been made and deeds executed of the whole list, except those which will probably be sold at an adjourned sale to be held in December, unless previously paid for by the bidders.

"The aggregate amount of money already received from the sales is \$1,109.15. The annexed schedule J contains a list of all the islands thus sold, together with the names of the purchasers and sums bid. With the exception of some small unimportant islands lying in front of the County of Washington, the above disposes of all the islands belonging to the State, so far as has been possible to ascertain."

The adjourned sale was held on December 28, 1876. This report contains a schedule of all islands conveyed by Massachusetts prior to 1852, and all islands conveyed by Maine prior to November 24, 1876.

The Council passed the following orders relative to this sale:

Council order of October 26, 1876: "Ordered that the Land Agent be and is hereby directed to advertise for sale all the islands along the coast of the State of Maine belonging to said State, at public auction, at Rockland, November 21, 1876, at 10 o'clock A.M."

Council order of November 17, 1876: "That the sale of islands belonging to the State under the act of 1876 be made under the conditions that if the title of any island fail or be found not in the state, the consideration money paid therefor shall be refunded, or if such title shall partially fail, then such part of the consideration shall be refunded as in the opinion of the Governor and Council shall be proportionate in value to the whole. All deeds of islands sold under said Act, shall describe only the right, title and interest of the State, and the deed shall express in substance the purport of the foregoing conditions."

These sixty-six islands were for the most part sold for a few dollars each, the price ranging from twenty-five cents to four hundred and forty dollars. Thirty-four brought \$5.00 and under; ten more between \$5.00 and \$10.00; the whole yielding \$1,109.15. This sum could hardly have paid the expense of the investigation.



This investigation at this time must have covered exactly the same field as I am at the present time, as its object was the same, to wit: To determine what islands the State then owned; but outside of the list of islands conveyed prior to 1876, and a list of the islands title to which were found in the state and sold, contained in the report for that year, I was unable to find at the Land Office or elsewhere any record of their work. In such an investigation they must have considered such questions as the location and validity of the ancient grants, the construction of the various deeds of some of the larger groups of these islands; in fact must have considered all phases of the state's title to islands on every part of the coast--from a close examination of the results of their work, as shown by the islands they sold, I know they did. A complete record of their work at that time would have aided very materially in any later investigation, and probably made any such investigation unnecessary. The want thereof, being so obvious a loss, has prompted me to make this report somewhat fuller than a compliance with the resolve under which I am acting would necessitate.

The next year the following act was passed by the Legislature:

Laws of 1877, Chapter 166--Approved February 7, 1877: "The Land Agent under the direction of the Governor and Council, is hereby authorized to sell either at public auction or private sale, any islands on the coast belonging to the State."

The report of the Land Agent for 1877 is as follows:

"Under the acts of the Legislature of 1876 and 1877 seventy-seven islands lying in the sea along the coast of Maine were sold during the past year, as appears in schedules annexed. Several remain which were withheld from sale on account of the uncertainty of title."

Under the above Act, during this year, the islands above mentioned, lying in front of Washington County, were disposed of. They were sold in blocks to seven purchasers, and the State realized \$251.00 from the sale. They were disposed of under a Council order similar to that of November 17, 1876.

An act passed in 1878, Chapter 51 of the Laws of that year, authorized the Land Agent under the direction of the Governor and Council to convey islands.

These conveyances in 1877 ended the attempt by Maine to dispose of all of its islands, the state at that time considering the task completed, as shown in the Land Agent's report for 1878:

"The islands along the coast belonging to the State have been sold and conveyed excepting some unimportant cases, and where serious doubt exists as to the right of the State to interfere."

However, from this time to 1892 islands received some attention in the reports of the Land Agent, and often a revised schedule of those that had been previously conveyed were annexed.

The Land Agent in his report of 1880 says on this subject:

"On account of the almost numberless islands on our coast, it has been found difficult to ascertain the number belonging to the State, so that they might be placed on the market. The only way that now appears feasible is to act on each application as presented."

## ISLANDS RECOGNIZED AS VALUABLE FOR SUMMER RESORTS

The growing value of our islands for summer resort purposes commence now to be realized, as shown by the Land Agent's report of 1882:

"There are numerous applications now on file in the Land Office for islands and ledges on our coast, and as the Land Agent has no personal knowledge of the value of them, and their value does not appear to warrant the expense of a personal inspection, no action has been taken on them.

"Our sea coast, lined with almost innumerable islands, has become a fashionable summer resort for large numbers of the inhabitants of the crowded cities on the Atlantic Coast, and the inviting cool summer breezes are drawing a large population onto these islands during the hot summer season. This summer travel is not likely to decrease, but appears to be increasing each year. Small and barren islands, hitherto of no value, are sought for by these pleasure seekers, and houses have been erected for their accommodation. The title to these small islands has not been considered of any consequence, but when expenditures of money are to be made upon them, it becomes a question of some importance to know who holds the title."

In his report of 1883 the Land Agent says:

"The sale of lands and islands must be limited, as it was supposed that all the islands and lands, except such as were reserved for settlement, were sold in 1878."

In his report of 1889, the Land Agent says:

"The repeated calls for information about the titles to islands on the coast is somewhat perplexing. Inquirers evidently think that there is somewhere a schedule of all the islands on the coast and that they can easily ascertain whether the State claims any title or not. All islands not previously sold, and that were considered to be of any value, were scheduled by Maine and Massachusetts in 1822, and divided between the states as provided in the Act of Separation. These islands have all been sold, and the islands remaining were not considered of any value, and no list or schedule of them was ever taken or filed."

In his report of 1892 the Land Agent says:

"I have prepared a new list of all islands that have been conveyed by the State, including those by Massachusetts before Maine became a State. The general opinion seems to be that the islands not included in this list are still the property of the State and should be so regarded, although in many instances there are pretended owners basing their claims upon the fact that members of their family have claimed them for many years. In some instances where improvements have been made, and the land actually occupied, perhaps these claims should be recognized to a certain extent, but where there has been no actual occupation and no improvements made, I fail to see how any valid claim against the State can be set up."

The Forest Commissioner's Report for 1908 contains a revised schedule of islands conveyed to that time. He says:

"The islands of the State have always been the source of much controversy, and there is still much interest taken in them. The bulk of the islands in which the State has or had an interest has been disposed of by deed or grant."

"In 1876 an Act was passed by the Legislature authorizing and requiring the Land Agent to sell, under the direction of the Governor and Council, all the islands on the coast belonging to the State. Acting under that order the majority of the unsold islands were disposed of. Little account was taken at that time of small islands or ledges. Owing to the general increase of values in coast property for summer resort purposes, there has of late years sprung up a demand for even the smaller of these. It has, however, become the settled policy of the Governor and Council to refuse all applications for these small islands and ledges, deeming it of more general interest to retain these resting or landing places for the general use of fishermen and the public."

An examination of the acreage of islands sold in 1876 and 1877 shows that islands as small as one-half acre were considered in those sales.

One reading these reports of the different Land Agents since 1877 must be struck by the varied opinion as to the number and value of islands belonging to the State--some considering the State as having disposed of practically everything it had, and others considering the State as still retaining many valuable islands. This cannot be wholly accounted for by the fact that a general increase in value of coast property for summer resort purposes, made the smaller islands of importance and value.

The cause, I believe, is rather lack of information at the Land Office as to the source of title of islands on some sections of our coast, where Massachusetts or Maine have made few or no conveyances, and there are many valuable islands,--the reports reflecting the opinion of individual land agents on the State's title to such.

From the time of the large sales in 1876 and 1877 to the present time Maine has continued to dispose of a few islands from year to year. For a while by act of the Governor and Council until that body adopted a settled policy of reserving the remaining islands to public use and refused all applications for them: and then by resolves of the Legislature.

The policy long ago adopted by the Governor and Council of saving the remaining islands and ledges for public use, has been gaining favor in recent years, and culminated in the last Legislature in the following act:

Chapter 132, Section 2, Laws of 1913: "The title to all islands located in the sea within the jurisdiction of the State of Maine, except such as has been previously granted away by the State, or are now held in private ownership, shall remain in the State of Maine and be reserved for public use."

Thus ends the history of island legislation by two of the great sources of island titles, with a complete reversal of that policy of 1876 which sought to rid the state of every island it owned.

### ANCIENT GRANTS

The third great source of island titles is grants from the British Crown, proprietors, and in some instances Indian grants, prior to the Treaty of Peace in 1783.

An investigation of these grants takes us back to some of the earliest settlements on this Continent, and makes one almost entirely dependent on historical works for information concerning them.

These grants were made with little actual knowledge of the geography of the country, and not only overlapped each other, but often covered the same territory as previous grants. This fact was the cause of almost endless contention and litigation, which retarded the settlement of the lands for many years. These claims of adverse claimants under these various grants, purchases from the Indians, and possessory titles, as far as the main land is concerned were finally adjusted, often by grants of other territories, as the simplest way of adjustment where there was an abundance of land of little value.

Islands, as well as mainland, were included in these ancient grants, but were probably of not enough value or consequence to receive much attention in those adjustments that confirmed land titles along the coast. Any attempt at this late date to definitely trace the title of many of these islands back to some particular grant would perhaps be impossible.

Some of the best authorities I have found on these early grants are the following:

- Sullivan's History of the District of Maine  
James Sullivan--1795
- Statistical View of Maine  
Moses Greenleaf--1816
- A Survey of the State of Maine  
Moses Greenleaf--1828
- Oliver Frost's Report on Lands Reserved  
Land Agent's report of 1830
- Sources of Land Titles in Maine  
Hon. Chas. W. Goddard, 4th revision  
of Maine statutes--1883
- Introduction in Volume I, York Deeds
- History of the Wild Lands of Maine  
Land agent's report of 1908

With his survey of Maine in 1828, Moses Greenleaf published a map of the District of Maine, the first correct one ever made of the District. This map shows the character of the occupation along the entire coast--whether proprietary, Indian deeds, or possession--settling each off in different colors.

It will perhaps be of value here to give a brief description of these early grants.

### SOURCES OF LAND TITLES

1. Nov. 3, 1620: Grant to the Council of Plymouth 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 (from the Bay of Chaleur as far South as Philadelphia).

Note: An earlier grant of land in Maine was made by the Crown, but this is the first one under which titles are claimed.

2. August 10, 1622: Council of Plymouth granted to Gorges and Mason a patent conveying all the country between the Merrimac and Kennebec to the furthest 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."

3. 1627-1628: Grant by the Council of Plymouth to Colony of Massachusetts Bay--John Endicott et al--between the Merrimac and the Charles, and within three English miles to the Northward of the River Merrimac, 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. (A part of Maine subsequently claimed under this grant.)

4. January, 1629: Grant to the Pilgrims by Council of Plymouth of the Kennebec or Plymouth Patent--15 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 pounds to four persons.

In 1753 the land passed to a company, and was thereafter known as the Kennebec Purchase.

The Great Charter of New England was surrendered by the Plymouth Council to Charles I on June 7, 1635, who divided all the territory of the Council not deeded into eight Royal Provinces, four of which were in Maine. Gorges obtained Western Maine, being all the territory between the Piscataqua and the Kennebec.

There were six permanent settlements at that time:

1. Agamenticus (York)
2. Piscataqua (Kittery Point and North half of Isle of Shoals).
3. Black Point in Scarborough.
4. Lygonian Plantation or Casco (Portland and vicinity).
5. Pejepscot Settlement on lower Androscoggin.
6. Kennebec Patent.

5. April 3, 1639: Gorges obtained a Provincial Charter of his territory "All that part, purport and porcon of the Mayne Lands of New England aforesaid, beginning at the entrance of Pitcatway Harbor, extending up that River and through Newichawannock and Salmon Falls River Northwestward one hundred twenty miles, and

then overland to the utmost Northerly end of the line first mentioned, including the North half of the Isle of Shoals--also all the islands and inlets within five leagues of the Mayne, along the coast between said River Piscataquay and Sagadahoc, all of which par, purport or porcon of the Mayne Lands and premises aforesaid shall forever hereafter be called and named The Provinces or Countie of Mayne."

In addition to the Gorges and Mason Grant--Portsmouth to the Kennebec--and the grant to the Pilgrim Colony--15 miles each side of the Kennebec--and any right the Massachusetts Colony might have under its grant from headwaters of the Merrimac,-- the Council of Plymouth made twelve other grants as follows:

1630

1. To Lewis and Bonthan on the North side of the Saco River four miles along the coast and eight miles inland, with adjoining islands.
2. To Oldham & Vines, a similar tract in Biddeford, on the South side of the Saco, with adjoining islands.
3. The Muscongus Grant, a territory thirty miles square between the Muscongus and Penobscot Rivers, afterwards known as the Waldo Patent, and islands within three miles of the main.
4. The Lygonian Patent, extending from Kennebunk to Harpswell and forty miles inland, including islands of Casco Bay--rights of soil and government. Assigned to Alexander Rigby April 7, 1643. Confirmed to him by Earl of Warwick and Council in March, 1646.

1631

1. The Black Point Patent in Scarborough, to Cannock, 1500 acres on the seacoast on the East side of Black Point River.
2. The Pejepscot Patent on the North side of the Androskoggin River, to Bradshaw.
3. The Agamenticus Patent,--to Godfrey et als, York, 12,000 acres.
4. Richmond Island and 1500 acres on the mainland at Spirwink in Scarborough,--to Bagnall.
5. Capre Porpoise--2000 acres on South side,--Stratton.

1632

1. The Trelawney & Goodyear Patent between Black Point and the River and Bay of Casco, including the ancient town of Falmouth (Portland and vicinity) Cape Elizabeth and a part of Gorham.
2. The Pennaquid Patent at Bristol between the Muscongus and Damariscotta Rivers--12,000 acres along the seacoast and up the river besides all the islands three leagues into the ocean.
3. The Way and Purchase Patent on the lower Androskoggin, reaching to Casco Bay.

"The whole embracing the entire seaboard from the New Hampshire line to the Penobscot (except the coast between Sagadahoc and Damariscotta, a tract of five leagues including the Sheepscot Plantation and the Islands, and the most even of that small strip was claimed under the Kennebec Patent and purchases from the Indians.

Some of these grants conflicted with each other.

In 1651 the Massachusetts Bay Colony put forth a claim under their grant to a point as far East as Goose Rock (on the line which still divides Falmouth and Cumberland) and Split Rock on the Northern part of Upper Clapboard Island (Sturtevant's).

Massachusetts proceeded to enforce its government over the inhabitants of the Provinces of Mayne and Lygonia.

Massachusetts later--1671--under another survey claimed East as far as Whitehead Island in Penobscot Bay.

In 1676 Gorges and Mason obtained a decision on their complaint against Massachusetts Bay instituted in 1659 extinguishing the claim of Massachusetts Bay Colony to Maine, but leaving the rightful ownership of the Province undetermined.

On May 6, 1677, Gorges gave John Usher for the Massachusetts Colony an assignment of the Province of Maine as granted to Gorges by Charter of King Charles I, April 3, 1639, "excepting grants made by the original proprietor or his agents."

Note: Under this assignment Massachusetts claimed the Province of Mayne--New Hampshire line to the Kennebec.

#### DUKE OF YORK GRANT

March 12, 1664: The King granted to his brother James, Duke of York the whole region between the St. Croix and Pemaquid, and then to the Kennebec "The Territory of Sagadahoc" "New Castle" "the County of Cornwall."

This was an encroachment on the Kennebec Patent, The Pemaquid Patent, Muscongus Patent, Sheepscot Plantation and others.

This patent was confirmed by a new patent to James, June 22, 1674.

Reverted to the Crown on James' abdication in 1688.

On May 6, 1692, the Province of Massachusetts Bay, The Pilgrim Colony at Plymouth, The Province of Maine (New Hampshire line to the Kennebec) together with Sagadahoc (between the Kennebec and Nova Scotia) and Acadia, (Nova Scotia including New Brunswick) were incorporated into the Royal Province of Massachusetts Bay by the Charter of William and Mary.

The County of York was incorporated in 1640 and embraced the whole of Maine until Nov. 2, 1760, when the Counties of Cumberland and Lincoln were created by act of the Provincial Legislature.

Other counties incorporated while part of Massachusetts were Hancock and Washington, May 2, 1790; Kennebec, April 1, 1799; Oxford, March 4, 1805; Somerset, June 1, 1809.

The French at times claimed the coast of Maine as far West as the Kennebec, but the only French grant recognized was that of Louis Fourteen in April, 1691, to Monsieur de La Motte Cadillac, grandfather of Madame De Gregoire which was confirmed to her by Resolve of Massachusetts July 6, 1787, as to such part as the Commonwealth then had title to. (This grant was part of Mt. Desert and nearby islands.)

Also Indian deeds of certain lands between the New Hampshire line and Damariscotta have been held good.

By 1716 the whole region between the Piscataqua and the St. Croix was united at last in a single political division, but the Kennebec was still an important boundary. Unappropriated lands on the Eastern side of the River still belonged to the Crown. The right to govern the territory had been granted to Massachusetts, but the right to the soil remained in the King. It followed as a matter of law and was provided in the Province Charter that while the general court might of its own motion dispose of lands West of the Kennebec, no grants East of the River could take effect until they should be approved and confirmed by the King. This distinction continued during the remainder of the Colonial period.

The powers of government and territorial rights reserved by the King, as well as those previously conveyed by Charter, passed finally by conquest to the State of Massachusetts, and was formally relinquished by the Treaty of Peace between Great Britain and the United States concluded Sept. 2, 1783.

It will be seen from the above abstract that at an early date the entire coast from Portsmouth to the Penobscot, including the islands, had been covered by these grants of the Council of Plymouth.

#### MAINE'S TITLE TO ISLANDS

It is a popular theory that Maine in her sovereign right as a state has title to all islands and ledges in the sea not previously conveyed either by herself or Massachusetts, as expressed in the report of the Land Agent for 1892, above given; but we have seen in the earlier pages of this report that Maine's title to these islands is that of a purchaser, and she came into possession of such islands and such only as Massachusetts had title to at the time of Separation--1820--, and the time of the deed or her remaining interest in 1853.

This leads us to the question, What title had Massachusetts to these islands along the coast of Maine at the time of separation, involving the two further questions. What part of them did she ever have title to, and What of those had she conveyed prior to that date, both of which because of the antiquity and indefiniteness of these early grants are difficult problems which perhaps it is impossible to answer with entire satisfaction.



### SOMETHING OF MASSACHUSETTS TITLE

We may say the source of all island titles emanates from the British Crown who laid claim to such by right of discovery and possession, as our entire coast ultimately came under the control of Great Britain by the conquest of Canada in 1759, followed by the treaty of 1763 extinguishing the French claim to the eastern part of our coast,--as none of the French grants have been held good save that of one in the vicinity of Mt. Desert by Louis XIV to Monsieur de la Motte Cadillac in 1603, which was afterwards confirmed to his heirs in part by Massachusetts. Under the various grants from the British Crown, and the obtaining of its remaining interests by conquest resulting in the peace of 1763, title to the coast and islands is held.

We have seen in the above abstract of sources of land title that the Colony of Massachusetts Bay under its grant of 1627 and 28, and the Royal Charter issued by Charles I, March 4, 1628, asserted claim to the coast of Maine and all islands along the same in 1651 as far as the dividing line between Falmouth and Cumberland, and later--1671--as far east as Whitehead Island in Penobscot Bay, but this claim, although some of the grants made by the Colony at that time held good, was extinguished by a decision obtained by Gorges and Mason in 1676 on their complaint against Massachusetts Bay Colony instituted in 1659.

On May 6, 1677, Massachusetts Colony obtained from the heirs of Ferdinando Gorges an assignment of the Province of Maine as granted to Gorges by Charter of April 3, 1639, "excepting grants made by the original proprietor or his agents." Under this grant Massachusetts claimed the Province of Maine--Portsmouth to Kennebec. But numerous grants had been made by Gorges and his agents, as well as infringing grants by the Council of Plymouth within this territory which held good, such as the Lewis and Bonythan grant on the west side of the Saco River; the old Oldham and Vines grant on the south side of the Saco; the Black Point grant in Scarborough; the Lygonia grant from Kennebunk to Harpswell, and others.

In the "History of the Wild Lands of Maine" the author says:

"It will be seen from the foregoing sketch of the grants from the Crown and Council of Plymouth, and the claims under Indian deeds, that out of the territory purchased of Gorges, and the additional territory included in the charter of William and Mary in 1691, about 2,500,000 acres were covered by previous grants, the titles under a part of which were then admitted, and the remainder has been since adjudged to be good; and which of course never passed into the hands of the Colony as proprietors of the soil. These lands with but trifling exceptions occupy the whole of the present County of York, all the sea coast of Cumberland, the whole of Lincoln and Waldo, the greater part of Kennebec and upward of 200,000 acres in Somerset,--embracing the whole of that part of the country which was settled prior to the war of 1756, and much the larger part of that which was settled before the Revolution."

Charter of William and Mary to the Inhabitants of the Province of Massachusetts Bay, October 7, 1692:

The Province of Massachusetts Bay, The Pilgrim Colony, at Plymouth, The Province of Maine (New Hampshire line to the Kennebec) together with Sagadahoc (between the Kennebec and Nova Scotia) and Acadia--(Nova Scotia including New Brunswick) were incorporated into The Royal Province of Massachusetts Bay.

By this Charter lands were granted to the inhabitants of the Province of Massachusetts Bay from Nova Scotia to Piscataqua, subject to all previous grants, "with all the islands and islets lying within ten leagues directly opposite to the mainland within the said bounds."

The Governor and Assembly were authorized to make grants within the Province of Maine--Portsmouth to the Kennebec--but provided "no grant or grants of land between Sagadahoc to the Gulf of St. Lawrence to be of any force, validity or effect until approved by the King."

It will be seen that the right to govern the territory east of the Kennebec was granted to Massachusetts, but the right to the soil remained in the King. This continued during the remainder of the Colonial Period. This point was under consideration in Hill vs. Dyer, 3 Maine, page 441, lands in the town of Sullivan granted during this period being involved.

Treaty of Paris--September 3, 1783.

By this treaty Great Britain acknowledged the independence of the United States and relinquished the claim to the government and territorial rights of the same, and every part thereof.

The East boundary was defined in this treaty as follows:

"East by a line to be drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lands to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy and the Atlantic Ocean, excepting such islands as now are or heretofore have been within the limits of Nova Scotia."

It will be seen by this treaty that whatever title remained in the British Crown to the lands and islands of the territory now embraced in the State of Maine, passed to Massachusetts Bay. Thus Massachusetts acquired title to such part of the coast and islands between the Kennebec and St. Croix as remained in the Crown.

#### LANDS BETWEEN THE PENOBSCOT AND ST. CROIX

Perhaps something should be said here of the French occupation and claims to the eastern part of our coast, although no grants, except one afterwards confirmed by Massachusetts have been held good, as the very fact of this French occupation and claims prevented any effective settlements or grants of this territory during that period when the remainder of the Maine territory during that period when the remainder of the Maine coast was being settled and made the subject of grants. Not until near the close of the war of 1756--treaty was made in 1763--were any effective settlements or grants made, and even these grants as they required confirmation by the Crown--the trouble preceding the Revolution coming on and preventing same--were not confirmed until after 1783, and then by Massachusetts.

### FRENCH OCCUPATION

The coast of Maine was a bone of contention between England and France for over two hundred years, both claiming it by right of discovery. By a Royal Patent November 8, 1603, Henry IV of France granted Acadia to De Monts being all the territory between the fortieth and the forty-sixth degrees of northern latitude--Cape Breton to the Hudson. A settlement was made on the St. Croix as early as 1604. A Jesuit settlement was made at Mt. Desert in May of 1613. These settlements were destroyed by Captain Argall and a fleet of fishing vessels from Virginia. Settlements were made as far east as the Penobscot--Castine.

The eastern coast of Maine followed the fortunes of Acadia, being alternately in the possession of England and France, and having its coast continually ravaged and its settlements broken up by the numerous wars between these two countries. During this period England held without much contention the coast as far east the Kennebec, and France the coast from the Penobscot, except those periods when England was in possession of same by treaties; the coast in between was always a subject for dispute between them.

The treaty of St. Germain's March 20, 1632, ceded Acadia to France. In 1655 the Province was confirmed to the English who held it for thirteen years. By treaty of Breda July 31, 1667, Acadia was again ceded to France. Her agents extended their jurisdiction westward to the Penobscot, and laid claims to the coast as far west as the Kennebec. By the treaty of Utrecht March 30, 1713, Acadia again came into possession of the English. The capture of Canada in 1759 finally confirmed the territory in Maine to England. Not until then were conditions east of the Penobscot stable enough to be conducive to permanent settlement.

So that Massachusetts in 1783 took title to these lands and islands east of the Penobscot practically free from any prior grants, and their disposition has been made for the most part since the Massachusetts Land Office, 1784, which has given us surveys and proper records of their conveyance. So that by eliminating the conveyances of Massachusetts we may know with certainty what islands Massachusetts retained title to at the time of Separation.

### LANDS BETWEEN PORTSMOUTH AND THE PENOBSCOT

From the foregoing description of Massachusetts' title to the Maine coast and islands, and of the ancient grants, the difficulty is apparent along sections of the coast covered by these early grants and settlements prior to the peace of 1783, of determining just what particular islands Massachusetts acquired, so that by eliminating all those she has since conveyed,--if it was possible to ascertain that fact with accuracy--we might know definitely what islands she retained title to at the time of the Separation. It would involve in the territory between Portsmouth and the Kennebec determining with exactness the extent and validity of these various grants infringing and carved out of the Gorges territory, which, as we have seen, caused endless disputes and litigation for many years and were perhaps never adjusted in their bearing on islands; determining the validity of the grants made by the various proprietors and their agents, the descriptions of which are difficult of application today; and determining the validity of possessory and Indian titles. Along the remainder of the coast to the Penobscot we would meet with much the same difficulty.

Perhaps no amount of investigation along these lines today would give us any practical results, or accomplish with certainty the object desired.

There is, however, one other path we may pursue, which ought to give some definite knowledge as to Massachusetts title to these islands, and that is Massachusetts attitude towards them during that period from 1783 to the time of Separation, when under her Commissioners and Agents for the sale of eastern lands, she made full inquiry into the title of various claimants to lands in Maine, with a view of determining her own right and title; surveyed those lands, and opened them to sale and settlement. I think we may fairly presume that from Massachusetts known activity in the survey and sale of islands that she would overlook no considerable number of them along a wide extent of our coast, which in size compared favorably, and in value must have exceeded those which were surveyed and sold by her. Her Commissioners, keenly alive to her interests in the public lands, were in a better position to know her title at that time, than we are to determine it today. Whether she ever had title, or had parted with it prior to this time, as may be the case in some instances, is immaterial to our inquiry as to what title she had at the time of Separation.

Yet it is a fact that many of our most valuable islands in this section have never been granted by either Massachusetts or Maine.

#### MASSACHUSETTS ATTITUDE DURING THIS PERIOD

1. Surveys: An examination of the surveys made at this time as shown by the plans left us and the reports of the surveyors, shows us that island surveys were at first made only as far west as a line drawn from the west extreme of the Fox Islands to the mouth of the Penobscot. Later under James Malcolm the islands were surveyed lying outside the limits of the Waldo Patent, such as Monhegan, Matinicus, and Allen and Burnt off the mouth of the St. George River. She surveyed nothing west of these.

2. Sales: During this period an examination of the islands conveyed will show that Massachusetts made no conveyance of any islands west of the west line of the Waldo Patent, and none west of the Penobscot, but such as lay without the limits of the Waldo Patent. The farthest island west conveyed by her is Monhegan. After the separation she joined Maine in the conveyance of one island within these limits,-- little Mark Island near Harpswell, in 1827--but this was a quit-claim to the United States for lighthouse purposes.

3. Division of Islands: The division of public lands by Commissioners immediately after the Separation has been already described, and need not be again repeated. An inventory was taken of the public lands belonging to Massachusetts within the District of Maine and a division made by the Commissioners. They made a division of islands as well as the other public lands, and their doings on this point are expressed in their report as follows:

"The Commissioners proceeded to a division of the islands, which by a report of George W. Coffin, agent of the Land Office, of the Commonwealth of Massachusetts, appeared to remain, in the title thereto, the property of the Commonwealth....."

A list of the islands divided is given in their report, so that we may know definitely just what they were, after determining what islands under the names that we know them by today were included in this division.

This report made by Mr. Coffin at this time upon which the Commissioners based

their division, would undoubtedly throw a great deal of light upon this subject as he must have investigated Massachusetts title to islands on this section of the coast, and it would seem must have satisfied the Commissioners from Maine of lack of title to them, as a reason why they were not submitted for division,-- but a diligent search both at the Land Office here and the Massachusetts archives has failed to discover it nor was I able to find anything in the records and reports of these Commissioners throwing any light on Massachusetts title to islands in this section--the most such an examination yielded was a certainty that in the performance of their duties relative to the exploration and sale of public lands, they had no dealings with them.

An examination of the list of islands thus divided and the location of each, shows that in this division no islands were divided west of the west line of the Waldo Patent--those farthest west lying off the mouth of the St. George River-- Allen, Burnt and Monhegan.

I do not by any means intend to convey the idea that no islands but those included in this division passed to Maine by the Separation and subsequent purchase, for it is very obvious from an examination of the island surveys, as shown by the Massachusetts plans, returned and now on file, that very many of the smaller islands were not included in these surveys and plans, probably for the reason they were not then considered of any consequence or value for purpose of sale--but of course such an explanation would not apply to a failure to include such valuable islands, even at that time, as those of Casco Bay, for instance.

While the mere fact that a certain island or islands were not included in this division seems of no consequence to me, the fact that this division comprised only islands along a certain section of our coast--East of the Penobscot, with the exception of those lying without the Waldo Patent--confirming as it does Massachusetts' attitude towards these other islands, as shown by her surveys and sales, seems to me of the greatest importance as showing the view of Massachusetts and Maine on this point at that time.

#### MAINE'S ATTITUDE TOWARDS ISLANDS IN THIS SECTION

Since Maine became a state and acquired an interest in the islands along the coast, she has made conveyances, within the limits of this territory under consideration, of only sixty-seven islands and ledges of the very many valuable islands along this section of the coast. All of these, with two exceptions, were conveyed subsequent to 1880--Little Mark in 1827 jointly with Massachusetts to the United States for lighthouse purposes, and one of the Isle of Shoals in 1876. These conveyances were the result of applications to the Governor and Council or Legislature by persons wishing to acquire these islands, rather than any attempt on the part of the State to sell them, and if this fact indicates anything, being a conveyance of the State's right, title and interest may express a willingness on the part of the State to part with any title it might have, if the purchaser desired it, rather than an assertion of title by the State to islands within these limits. That such is a fact in some instances, is known from an examination of reports and correspondence with the Committee of the Council relative to their sale.

As previously shown in the History of Island Legislation in Maine, the State in 1876 ordered an investigation made of her title to islands on the coast. AS

preliminary to a sale of "all islands on the coast belonging to the State." In pursuance thereof the Land Office made such an investigation--see Land Agent's reports 1876-77--and proceeded to sell at public sale all islands belonging to the State so far as it was possible to ascertain. An examination of the Schedule of islands sold at that time and their location, shows that with one exception no island was conveyed west of Monhegan--the exception being Cedar Island of the Isle of Shoals. So that while Maine has conveyed islands to some extent within this territory under consideration upon application being made for them, the one instance when acting upon information based upon an investigation of island titles, she offered islands for sale, she seems to have carefully kept out of these limits.

While, as has been previously stated, no records remain of the conclusions arrived at by the investigator of island titles at that time to islands within these limits, the results of his labors, as shown in the schedule of islands sold would indicate that he at that time considered the State had no interest in these islands under consideration.

In 1890 the State sold Wood Island, in Casco Bay near Phippsburg, to Charles W. and George W. Pye. This was an island not previously conveyed by Maine or Massachusetts unless included in confirmation of land titles in Falmouth in 1684. An action was commenced against the purchasers, and they were advised by counsel their title was not good.

The following resolve is found in the Laws of 1895, Chapter 93:

"That the sum of \$250.00 and interest from July 3, 1890, be and is hereby appropriated for the purpose of reimbursing Charles W. and George W. Pye for money paid by them to the State for property to which the State had no valid title."

For the reasons above stated, it seems to me that Massachusetts at the time of Separation had no title to islands west of the Penobscot, except such as lie without the limits of the Waldo Patent, the most westerly of these being Monhegan--either never having title to the same because of grants of settlements prior to her acquisition of the coast of Maine, or having previously conveyed them in her confirmation of land titles to the inhabitants of the District. If Massachusetts had no title at that time, then Maine took none when she acquired Massachusetts' interests in the public lands.

I realize that this conclusion is contrary to the popular theory and that perhaps many will not agree with me in it, but my investigation has convinced me of this fact, and I have endeavored to set forth at some length the reasons therefor.

Accordingly I shall not here report as unconveyed any islands west of the Penobscot, except such as lie outside the Waldo Patent, but merely note on my index cards such conveyances as have been made by Maine within this territory, and make an entry on all other cards of "Title not Acquired by Maine--See Report."

#### SOMETHING OF THE TITLE OF PARTICULAR GROUPS OF ISLANDS EAST OF MONHEGAN

##### Cobscook Bay and Tributaries

There are a number of islands in the inland tidal waters in this vicinity of which there is no record of a conveyance as such. The towns in this part of

Washington County were surveyed by Rufus Putnam, and conveyed from 1786 to 1800. The outline of these towns, giving their boundaries, are to be seen in Plan Book No. 8 at the Land Office. These towns along the coast from Calais to Cross Island were for the most part deeded as a whole, and an examination of their descriptions will show that they were deeded by mates and bounds going entirely around them, and would include any islands within their boundaries.

In the town of Cutler, islands within its bounds are especially mentioned. An exception is the towns of Eastport and Lubec--number 8--which were granted to various settlers. A few of the islands, such as Treat, Dudley, Burial and Pope's Folly were conveyed in 1785, and all others in these two towns were conveyed to Solomon Thayer May 30, 1825, recorded Volume 3, Page 143.

I have made an entry on my index cards of islands in this vicinity of "Surveyed and Sold as a part of Mainland" without attempting to state under which particular grant they were included. There are some thirty-five islands disposed of in this way which do not appear on the index at the Land Office of Islands Granted, as ever having been conveyed.

#### MT. DESERT AND VICINITY

On July 23, 1688, certain officers of Louis XIV granted to Monsieur de la Motte Cadillac "The place called Donaquec, consisting of two leagues on the sea-shore and two leagues in depth, viz: One league on each side of Donaquec--now Jordan--River, together with the island of Mt. Desert and other islands which are on the forepart of said two front leagues."

This grant was confirmed by Louis XIV in April, 1691, specifying the mainland, but not mentioning any islands whatever. This territory came finally into the possession of Massachusetts by the Treaty of 1783. On November 6, 1786, Marie Therese de Gregoire--granddaughter of Cadillac--and her husband petitioned the General Court of Massachusetts to confirm to them the territory covered by this grant. On July 6, 1787, the General Court by resolve granted to the de Gregoires. "All such part of the island of Mt. Desert and the other islands and tracts of land particularly described in the grant of Louis XIV to Cadillac which now remain the property of the Commonwealth."

The island of Mt. Desert had previously been conveyed to Gov. Bernard, and later confiscated. Prior to the de Gregoire grant, by resolve of June 23, 1785, one-half of the island was restored to his son John Bernard; while some of the other islands that might have been within the limits of the original grant to Cadillac, such as Black and Placentia to the south, had previous to this grant been disposed of by Massachusetts, and thus would not be included in it.

The Gregoires could not take possession until after their naturalization, which took place November 2, 1787. Shortly after, November 23, 1787, by a resolve Samuel Thompson was appointed to join with them in establishing their lines between the lands granted them and those of the Commonwealth.



On August 2, 1792, the Gregoires conveyed to one Jackson their interest in these lands conveyed to them by Massachusetts, specifying thirteen islands, each of which is named and the number of acres given--all of which lie south and west of Mt. Desert. This property afterwards came into the possession of the Bingham.

Although this deed of the Gregoires conveying all their interest, specified certain islands, it would seem to me that by the terms of the original grant as later confirmed by Massachusetts--one league on each side of the Jordan River, and islands which are on the fore part of said two front leagues--many other of the smaller islands would be included in this grant which lie in front and between the east and west bounds of the same. This seems to have been the construction given by the purchasers of this property as shown by their conveyances.

The exact limits of this grant are difficult to ascertain. Its construction was before the Maine court in Roberts vs. Richards, reported Vol. 84, Me., page 1, in which it was held that Round Porcupine was not within the limits of this grant, but was to the east thereof. The court based its decision largely on the contemporaneous and subsequent acts of the parties to the grant, saying, "It is idle to undertake to ascertain what islands lay on the fore part of said two front leagues two centuries ago, by making it depend upon the precise curvature of the banks of the river where it now empties into the sea."

From the report of Commissioner Thompson, and the specification of islands in the deed by Gregoire, it is certain that Bartlett's Island on the west lies in front of this grant, and the above decision locates Round Porcupine outside its eastern limits.

Accordingly, of islands and ledges within these known limits not conveyed--Maine has conveyed a few islands within these limits such as Black, N.W. of Bartlett's; Folly, between Bartlett and Mt. Desert; The Twinies east of Thomas Island--I have made an entry on my index cards of "Within the Gregoire Grant." Some twenty-three islands and ledges are included. These, including Mt. Desert and others mentioned in the Gregoire Grant, do not appear in the index at the Land Office of Islands Granted as ever having been conveyed.

#### WALDO PATENT

A very full description of this grant is to be found in Williamson's History of Belfast, where a chapter is devoted to it. The author says:

"Before surrendering their charter, the Plymouth Council made several grants of land within the State of Maine which, through all subsequent revolutions of government, have been generally respected and upheld. One of these subordinate grants was the Muscongus Patent, called from the river of that name."

In 1629 the Council of Plymouth granted to John Beauchamp and Thomas Leverett a tract 30 miles square on the west side of Penobscot Bay extending from the Penobscot River to the Muscongus--now Madomac--River. Williamson says of its limits:



"It includes the whole of the present County of Knox, except the Fox Islands, and of Waldo County, except what is now Troy, Burnham, Unity, Freedom, Palermo and a part of Liberty. Subsequent surveys added a portion of Penobscot County."

This tract came afterwards into the possession of Brigadier General Waldo, and from him descended to the family of General Knox. The part of the above grant applicable to islands is as follows: "Together with all islands lying and being within a space of three miles within the space of said land and premises or any of them."

This grant was confirmed to the heirs of General Waldo by Resolve July 4, 1785. The part applicable to islands reads as follows:

"Together with all islands whose center falls within three miles of any part of the land before described." Other resolves applicable to this grant are: February 17, 1798--February 23, 1798--February 5, 1800.

The construction of that part of this grant applicable to islands was before the Maine court on report in *Lazell vs. Boardman, Ensign Islands* decided to the plaintiff by Maine in 1879 was within the Waldo Patent, and that point depended on whether the statute of the marine mile was contemplated by the terms of this grant. The court said:

"It is not claimed that the State acquired any title to any part of the territory or islands included in the Muscongus Grant or Waldo Patent. It is likewise agreed that the island, if measured by the statute mile, is more than three miles from the mainland, and therefore became the property of the State by the Articles of Separation from Massachusetts; and if measured by the geographical or marine mile, that it is less than three miles from the mainland, and consequently became a part of the Muscongus or Waldo Patent, and was never owned by the State."

The court held that the three mile limit should be measured by the marine mile, which defeated the title granted by the State.

A great many islands lie within these limits none of which appear in the index of Islands Granted at the Land Office as ever having been conveyed. As per the scale of the coast charts which I adopted as a basis for this work, such islands as appear to be within the three mile limit, as above defined, I have entered on my index cards as "Within the Waldo Patent"--some one hundred islands and ledges.

#### FOX ISLANDS

The first permanent settlement of these islands was in 1762. By the time of the Revolution there were a great many settlers on the two islands. After the Peace of 1783 a great many new settlers arrived. A meeting was held in March of 1785 by the inhabitants and it was voted to petition the general court praying to be quieted in full possession of their lands--"They therefore pray that Your Honor would relinquish any claims that the Commonwealth may have to the said islands, to all the inhabitants, their heirs and assigns forever."

Resolve of March 13, 1786:

"Whereas it appears to the court from a survey and plan of certain islands lying in Penobscot Bay, within the County of Lincoln, called Fox Islands, taken by Rufus Putnam in the year 1785, that said islands contain 16,527 acres (and that not more than one-half of said islands is of any value) whereon were seventy-five settlers before the first day of January, 1784; and whereas John Calderwood and other settlers on said islands have petitioned this court for a grant of the same to them their heirs and assigns;

Therefore resolved: That all the islands belonging to and composing the Division of the Fox Islands as described on the aforesaid plan, viz: Bounded westerly and northerly by Penobscot Bay; easterly by Fox Island Bay (which separates these islands from the Isle au Haut and Deer Island Division of islands) and southerly by the Atlantic Ocean, be and are hereby granted and confirmed, with all the privileges and appurtenances to the same belonging, to John Calderwood and the other settlers who settled there before the first day of January, 1784, their heirs and assigns, on condition that the said Calderwood and others interested as aforesaid appropriate of good land two hundred acres for use of the ministry, and two hundred acres for the use of a grammar school; and that they pay into the treasury of this Commonwealth within one year from this date, on interest, the sum of 108 pounds in specie, for the expense of surveying the said islands and other charges, and also the sum of 66 pounds, 7 shillings, in consolidated securities of this Commonwealth.

Provided, that where any original settler has sold, or otherwise disposed of his improvements to any other person, the purchaser of such improvements, his heirs or assigns shall hold the same lands which such original settler would have held by virtue of this resolve, if there had been no such sale or disposition."

Other resolves relative to these islands are:

Resolve of February 19, 1787.

Resolve of June 17, 1791.

I have set out the description of this grant in full, as its construction determines the title to very many of the smaller islands in this vicinity.

This group was surveyed by Rufus Putnam, and a plan returned of it, called "The Fox Island Division." This plan shows the outline of this cluster of islands, and contains a list of twenty-one which were surveyed, and make up the acreage of sixteen thousand five hundred and twenty-seven acres. Others are shown on this plan which bear no name and were not surveyed; while perhaps still others do not appear on the plan at all.

Were any other islands than the twenty-one named on this plan, together making up the acreage specified in the preamble of the resolve, included in this grant?

A glance at the map will show that the two large Fox Islands named on the old plan as North and South Fox Islands, and the numerous small islands surrounding them, form a distinct group of islands separated from the mainland and all other islands by a considerable expanse of water on all sides.

While a reference is made, both in the preamble and granting clause of this resolve, to the Putnam plan, the group of islands is also definitely bounded-- on the west and north by Penobscot Bay; east by Fox Island Bay (which separates these islands from the Isle au Haut and Deer Island Division); and southerly by the Atlantic Ocean.

It would appear to me from the location of these islands, distinctly grouped by themselves as they are, that the bounds specifically mentioned would be controlling, and that all of the islands of this group, whether mentioned in the list accompanying the plan or not, would be included. They were probably not considered of enough importance by Putnam to survey.

During the former investigation of island titles in 1876, this question was under consideration; and I found from looking over the correspondence of that time on this subject that a legal opinion on the construction of this grant was furnished the Land Office by Hon. Albert W. Paine, of Bangor, which I think it will be of value to quote here.

"I have carefully examined the language of the resolve in favor of John Calderwood et als making a grant of the Fox Islands; also the maps of the premises at my command, including one of an old date and from these and the language of the resolve I have no doubt of the true conclusion to be drawn. The grant is doubly described, viz: First by the general name of "Fox Islands" and secondly by a definite boundary. If any doubt exists under the first designation, the particular bounds would seem to conclude the matter. Their bounds or limits are the Penobscot Bay on the one side--the Fox Island Bay (or Isle au Haut Bay)--and the Atlantic Ocean on the other. What the Fox Island Bay means is defined to be the bay which separates the Fox Islands from the Isle au Haut or Deer Island. As a matter of fact it is known that there is a broad bay between the two clusters, leaving no doubt as to the meaning. All islands between the one bay named and the other are included in the grant, although not named in the list or reckoned in the number of acres named. The reason for not naming the islands is very clearly shown by the Resolve, wherein they are said to be 'one-half of no value.'

"At all events I regard the conclusion as very clear as above stated. The whole cluster of the "Fox Islands" between the Penobscot Bay and Fox Island or Isle au Haut Bay is granted."

I have accordingly entered on my card index of these islands, some eighty-five in number--"Granted to John Calderwood et als by Resolve of March 13, 1786." None of these islands appear on the index at the Land Office of Islands Granted as ever having been conveyed.

#### DEER ISLAND

Hosmers' Sketch of Deer Isle says:

"When the settlers first came here it was not altogether certain to whom the territory belonged. The first grant made of it was by James I as it was included in its description. It was in 1620, to the Plymouth Company, in England, and that embraced all between the 40th and 48th parallels of latitude. Afterward the Earl of Sterling had a grant of all the State as far west as Pemaquid, now the town of

Bristol. It was surrendered in 1688 to the Province of Massachusetts, and a few years after confirmed to her. In 1783, some twenty years after settlements were begun here, it was secured to her by the treaty of that year, and that fully established her ownership."

By resolve of March 22, 1786, Deer Island and Sheep Island, were granted conditionally as follows: One hundred acres each to Joseph Tyler and eighty settlers; the remainder to Joseph Tyler and fifty-eight others.

By resolve of March 24, 1788, the conditions not having been complied with as specified in the previous resolve "the whole of islands aforesaid excepting as hereinafter mentioned be and hereby are granted and confirmed under Joseph Tyler and George Tyler."

A resolve of March 7, 1791, repealed the resolve of 1788, the conditions of payment not having been complied with.

By resolve of February 22, 1796, all of both islands was confirmed to settlers before January, 1784, and January, 1786.

A deed of these islands from Massachusetts to Joseph Tyler et als was given February 20, 1810, recorded Vol. 4, Page 45, Mass. Deeds, Maine Land Office. The description in this deed is as follows: "All the right, title and interest of the said Commonwealth in and unto the residue of Deer and Sheep Islands in the County of Hancock aforesaid which remain after quieting the settlers on said islands in one hundred acres each who settled before the first day of January, 1784 . . ."

This deed is based on Putnam's plan, and from the description would, on casual inspection, appear to grant those two islands as there shown. But the grantees are described as "Joseph Tyler of Deer Isle and fifty-eight others named in the said resolve of the 22nd day of March, 1786, their heirs and assigns forever." Moreover the deed describes all of the above resolves mentioned, as being made pursuant thereto.

The resolve of March 22, 1786, to which the other three resolves refer for a description of the land granted, contains a very much different description of these two islands than appears from the plan as they are designated thereon. As the deed is made pursuant to these several resolves, it would appear to me that we must look to them for a description of the lands intended to be included in the grant.

In the resolve of March 22, 1786, the following description appears, and is made up from the Putnam plan; "Northerly on Eggamogan Reach, which separates Deer Island from T. No. 4 lying between Penobscot River and the Indian River: Beginning at Hardy's Point, at the north end of the said island; from thence running Southeasterly by several headlands to Campbell's Point; from thence Southwesterly to the Northwest point of Campbell's Island; thence by the Westerly and Southwest shore of Campbell's Island to the South extreme of the same; from thence Easterly, passing on the Southerly side of Island B; as marked in said plan, to Northeast point of Stinson's Neck; from that Southerly, touching the extreme headlands of Stinson's Neck, to the most Southerly point thereof; from thence Southwesterly to the East point of Baviges Neck; from thence Southerly to the Southeast point of Deer Island; from thence Southwesterly and Westerly touching the extreme headlands of Deer Island to a point thereof opposite Crotch Island by Deer Island Thorofare; from thence

Northwesterly to the West Point of Deer Island near Southwest Harbor; from thence Northerly touching the extreme of Sheep Island to Donham's Point or Ragged Head; from thence Northeasterly touching the East extreme of Carne Island to Hardy's Point aforesaid which description includes Deer Island proper, Greenlaw Neck, Stinson's Neck, Naviges Neck, and Sheep Island which lies near the west shore of Deer Island."

It will be seen that this description not only designates these two islands by name, but commencing at Hardy's Point on the Northwest corner of said island, goes completely around these two islands from headland to headland, signifying the intention of not only including in the grant those two islands as designated on the plan, but everything lying within these lines running from headland to headland.

This would include a great many small islands lying in and about Deer Island within the headlands, that otherwise did not appear to have ever been granted by the State, about which there has been more or less controversy. I have accordingly entered these islands on my index cards as "included in Grant of Deer Isle,"-- there are numerous small islets and ledges close to the shore of Deer Island, within these bounds, not named on the chart, which do not appear in my index. None of these islands appear in the index at the Land Office of Islands Granted, as ever having been conveyed.

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I have gone into this matter of the granting of island groups somewhat fully, setting out in full the deeds or resolves granting them, because some of these involve the construction of those deeds or resolves upon which the title of many small islands depends, and I thought the same would be of value to anyone interested in island titles in these vicinities. Also they dispose of some 250 islands and ledges not appearing on the Island Index at the Land Office as having been conveyed. This fact, together with the fact, as has been seen, that the islands along a large section of our coast were disposed of by ancient grants from the Crown and its grantees--including hundreds of valuable islands,--and which, of course, do not appear as having been granted by this index, may account for the varying opinions held at the Land Office, as expressed in the reports of their Agents from year to year, as to the number and value of Islands still remaining in the State.

#### SOMETHING AS TO THE SETTLEMENTS BETWEEN THE MUS- CONGUS AND THE KENNEBEC

##### PEMAQUID AND VICINITY

In 1632 the Council of Plymouth granted to Robert Aldsworth and Gyles Elbridge a tract of 12,000 acres, and one hundred acres to each settler who should be planted upon the territory within seven years, and reside there three years.

This grant was located from the head of the Muscongus River to the head of the Damariscotta River, and between them to the sea--covering the present towns of Bristol and Bremen. It included the Damariscove Islands, and all islands and islets within the limits aforesaid three leagues into the main ocean.

This territory was claimed by several other claimants, either as included in part in grants to them or from Indian purchases. Not until 1813 were the disputes of these various claimants finally settled.

#### BOOTHBAY AND VICINITY

The territory between the Damariscotta River and the Kennebec, a tract about five leagues in width, very early attracted settlers. A settlement was made at Cape New Wagan as early as 1623. By 1630 there were fifty families on the Sheepscot farms. The Damariscove Islands, including Fisherman's Island, the Hyprocrites, Damariscove proper, White Island, Heron Island and Pumpkin Rock are supposed to have been owned by one Humphrey Damerill before 1650. In 1614 they were shown on the map as Damerill's Islands. Settlements were made at Georgetown and Arrowsic Islands as early as 1623.

Title to many of these larger islands in this vicinity were from Indian deeds. The Peninsula, now the town of Boothbay, and coast in that vicinity was claimed by at least three rival claimants under grants and Indian purchases.

#### ISLANDS OF CASCO BAY

On February 4, 1884, John T. Hull made a report to the City Government of Portland on "Title of Islands within the limits of Portland." As what he says in this report is applicable to all islands of Casco Bay, and the report now being out of print and copies very scarce, I will quote from it here quite extensively-- in fact make an abstract of it.

Hull says:

First grant was King James to Council of Plymouth in 1620. Council of Plymouth granted to John Mason and Sir Ferdinando Gorges the territory from the Merrimac to the Kennebec. Subsequently in 1634 Mason and Gorges divided the territory, Gorges taking the part between the Piscataqua and the Kennebec, excepting certain previous grants made by the Council of Plymouth to other parties. Gorges obtained at that time a new patent which made his title good as to the land between these two rivers.

In 1636 Gorges conveyed to George Cleeve and Richard Tucker by a lease of two thousand years, the territory which now comprises the City of Portland on the mainland, and also Hog Island. This is the first conveyance of any of the islands. The Dye Patent purchased by Col. Rigby, was founded on a grant made by the Council of Plymouth to John Dye et als of a tract of land between Cape Porpoise and the Kennebec, extending back 40 miles. The existance of this grant caused a great amount of litigation and disturbance subsequently. Gorges sold a few of the islands in Portland.

Cleeve went to England in 1647, and by his influence Sir Alexander Rigby purchased the Dye Patent. Cleeve was appointed Rigby's agent, and he renounced his former allegiance to Gorges, and as agent for Rigby commenced selling lands and making grants of territory claimed by Gorges. This brought on a controversy between

the Gorges government and Cleeve acting under the Lygonia Claim, which resulted in Massachusetts taking possession of the territory in 1653, and its purchase from the grandson of Gorges by the Governor and Colony of Massachusetts Bay in 1678. By that purchase Massachusetts received a good title of all the territory now within the limits of Portland, except what had previously been conveyed by Gorges and Cleeve on the mainland, and the two islands Hog and Peaks.

While the territory of ancient Falmouth was in dispute between the rival claims of Gorges and Rigby, some of the islands were taken possession of by squatters, after Massachusetts obtained possession of Falmouth under the purchase from Gorges' heirs. She did not recognize these squatter titles, but all the parties who owned them were obliged to obtain the title from Massachusetts.

After the purchase of Maine, Thomas Danforth was appointed President of Maine. He came to Falmouth in 1680, and made grants to various persons, respecting all grants made under Gorges and Cleeve. He granted several islands, which with those granted by Gorges and Cleeve, took up about all of the principal islands within the limits of Portland. This action showed that at that time Massachusetts claimed to own the islands as a portion of the estate purchased of the Gorges heirs.

After Massachusetts acquired a right to the soil of Maine by purchase, some fear seemed to have been entertained by land holders as to the security of their titles. In 1681 the General Court empowered the President of the Province to make legal confirmation to the inhabitants of their properties in the land under his hand and seal according to the directions of their charters.

In accordance with this authority, President Danforth came to Falmouth and on the 29th day of July, 1684, executed a deed to Captain Edward Tyng et als, trustees on the behalf and for the sole use and benefit of the inhabitants of the Town of Falmouth as follows:

"All that tract or parcel of land within the Township of Falmouth in said Province, according to the lines and limits of said township, to them formally granted by Sir Ferdinando Gorges, Knight, or by any of his agents or by the General Assembly of Massachusetts, with all privileges and appurtenances to the same appertaining or in any way belonging; all Royalties reserved to His Majesty by the charter granted to Sir Ferdinando Gorges, Knight, as also that by said charter granted to said Sir Ferdinando Gorges, Knight, his heirs and assigns, together with the rivers, streams and coves contained within the limits or bounds of said township, always to be excepted and reserved."

Similar indentures and conveyances were given by President Danforth to the towns of North Yarmouth and Scarborough. The execution of this deed shows two things; first,--That Massachusetts had a rightful claim and a good title to land in Falmouth; not previously granted, including islands in Casco Bay that had not previously been conveyed by Gorges or his agent. Second,--That in accordance with these rights they had given and conveyed by good deed to the inhabitants of Falmouth, as described in said deed, intending that the inhabitants should have a good title to, and full possession to the lands granted."

During the time from 1684 to 1820 I cannot find by any researches that Massachusetts ever claimed any of the territory, or made any sales or grants within the limits of old Falmouth.

When Maine was separated from Massachusetts an inventory was taken of the public lands in the District of Maine belonging to Massachusetts by Commissioners. The public lands were sub-divided between Massachusetts and Maine by Commissioners appointed on the part of both states for that purpose. In their report the Commissioners say: "And we have divided and allotted the islands in the said state, which by a report of George W. Coffin, Esq., agent of the Land Office of the Commonwealth of Massachusetts, appeared to remain, in the title thereto, the property of the Commonwealth...."

In the division of islands I find no mention of any of the islands of Casco Bay and vicinity. Therefore if Massachusetts had no claim to any of the islands of Casco Bay, within the limits of the City of Portland, Maine has none. If Massachusetts owned them and did not divide them at that time, they would pass by deed in 1853.

Conclusion. The investigation of this part of the question seems to be conclusive as to these facts: That in 1684 Massachusetts had granted to the town of Falmouth all the unsold and ungranted territory; that it has not claimed any of it since; and that the State of Maine as succeeding to the right of Massachusetts has no valid claim to any of the ungranted islands in Casco Bay.

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Old Falmouth included Cape Elizabeth, Portland, Deering, Westbrook and Falmouth. Similar deeds to that mentioned above were given by President Danforth to trustees for the inhabitants of North Yarmouth, Scarborough, and York.

If Mr. Hull's construction of this deed of President Danforth to Falmouth,-- that it includes all the unsold and ungranted territory within the limits of the town--is correct, then possibly all of Massachusetts' interest to the coast and islands between the Kennebec and Portsmouth was disposed of in the confirmation of titles of lands to the inhabitants of the several coast towns within these bounds, as President Danforth was authorized to make legal confirmation to the inhabitants of the District of Maine. That he gave such trust deeds as that to Falmouth to the inhabitants of North Yarmouth, Scarborough, and York. I know, but from sources available I have been unable to learn of others to the inhabitants of the other coast towns within these limits.

Possibly a careful investigation of this point by someone by training qualified for such work, would give us definite information as to both the construction to be given and the number of these trust deeds, and might determine the question of Massachusetts' title of these islands between the Kennebec and Penobscot at the time of Separation beyond all doubt whatever. I could not spare the time for such a research and there are undoubtedly others who from their knowledge of the available ancient records and material in York and Cumberland counties, better qualified for this work if it is deemed of sufficient importance.

The following is a list of islands and ledges along the coast between the Penobscot and St. Croix Rivers, and outside the Waldo Patent, which appear never to have been conveyed by Massachusetts or Maine:



No name: W. County--St. Croix River--a little north of Pleasant Point--sometimes called Lower Island--about three rods square.

Simpson's Island: W. County--East Machias--North of The Rim--size two or three acres.

Lobster Island: W. County--Machiasport--A small ledge in upper part of Little Kennebec Bay.

Porcupine Island: W. County--Little Kennebec Bay--off end of Johnson's Point, and connected with it at low water,--a very small island of little value.

Buckhead Ledges: W. County--Machias Bay--a small rocky island destitute of vegetation, about 200 yds. from Birch Head.

Gray's Rock: Washington County--Little Kennebec Bay--a large ledge barred to shore.

Fans Island: W. County--Little Kennebec Bay--a small island with a growth fir.

Gull Rock: W. County--Englishman's Bay--West of Black Head.

Calf Island: W. County--Englishman's Bay--near Calf Point--1 acre, about half bare rocks. Worth about \$100.

Shag Ledge: W. County--Englishman's Bay--south of Pt. Mann--a small low rocky island covered with grass.

Shag Rock: W. County--Englishman's Bay--east of Double Shot Island.

Green Island: W. County--Englishman's Bay--north of the Brothers-- $\frac{1}{2}$  acre--of little value.

Pulpit Rock: W. County--Englishman's Bay--south of Halifax Island--a low bare islet, entirely destitute of vegetation.

Bar Island: W. County--Chandler Bay--N. E. Popplestone Beach--a fair sized island barred to shore.

John White's Island: W. County--North of Cape Split--entrance to Forts Harbor--a rocky island of about 5 acres, partly wooded,--worth about \$50.

Nash Harbor Island: W. County--north of Cape Split--entrance to Nash Harbor--a low, rocky partly wooded island, of about 3 acres--worth about \$50.

Marsh Cove Island: W. County--off Moose Neck--Cape Split Harbor--about 7 acres partly wooded--value \$100.

Pot Rock: W. County--south Cape Split--a barren rock about 10 feet above high water line.

Daniel's Island: W. County--north of Carrying Place Cove--Moose Neck--6 acres, mostly rocks--worth about \$30.

One of the Goose Islands: W. County--west of Moosebec Reach.

Duck Ledges: W. County--east of Moose Neck--three large bare rocks or ledges all uncovered at half tide, with the northermost almost bare, showing as a bare, white rocky islet.

Sea Duck Rock: W. County--south of Norton Island and Moosebec Reach--a high bare rock.

Batson's Ledges: W. County--west of Great Wass Island--a great mass of ledges of which the most prominent is a rocky islet about 20 feet high, called Batson Ledge, a little over 350 yds. long and always bare.

Norton Island Ledges: W. County--south of Norton Island and Moosebec Reach--bare rocky islet.

The Old Bachelor: W. County--west of Great Wass--a bare ledge.

Popplestone Ledge: W. County--west of Great Wass.

Norton Point Ledge: W. County--west of great Wass.

One Bush Island: W. County--N.W. Head Harbor--a low, rocky islet.

Virgin Island: W. County--east of Moosebec Reach and Kelley's Point--a small islet with a round grassy top--without trees.

Woodward Island: W. County--south of Head Harbor Island--probably barred by Crow Point. Very small islet.

- Black Rock: W. County--S. E. Nash Island.
- Stanley's Ledge: W. County--west of Great Wass--bare and rocky, and connected with Outer Sand Island by a bar of sunken rocks.
- Egg Rock: W. County--S. W. Great Wass.
- Seal Rock: W. County--S. W. Great Wass.
- Freeman Rock: W. County--S. E. Great Wass.
- Cranberry Island: W. County--Harrington River--N.W. Hardwood Point--not of much value.
- No name: W. County--Harrington Riv er--Sandy Cover--small islet or ledge.
- Chamberly Island: W. County--Harrington River--Pinneo Point--a low sandy islet with its surface covered with scrubby bushes and its shores lined with boulders,--worth about \$25.
- Guard Island: W. County--Pleasant River--north of Guard Point--worth about \$15.
- Shag Island: W. County--Harrington Bay--west of Ripley's Neck.
- Otter Island: W. County--Pleasant Bay--near northwest part of Dyer's Island. Worth about \$50.
- Potato Island: W. County--Pleasant Bay--south Ripley's Neck-- $1\frac{1}{2}$  acres--a small low rocky island.
- No name: W. County--Pleasant Bay--near northwest part of Dyer's Island.
- Goose Island: W. County--North of Tumble Down Dick Head.
- Gooseberry Nubble: W. County--Pleasant Bay--North of Norton's Island.
- Money Islands--Washington County--Gouldsboro Bay--north of Roger's Point. Two rocky islets joined at low water to Roger's Point.
- Hogg Island: W. County--Pinkham's Bay--north of Dyer's. Worth about \$20.
- Pop Island: W. County--upper part of Dyer's Bay--worth about \$20.
- Fish Island: W. County--upper part of Dyer's Bay--south of Good's Point. Worth about \$20.
- Bar Island: W. County--upper part of Pigeon Hill Bay--west of Dyer's Point. Oval in shape and about 5-8 of a mile long; a bar dry at 3-4 ebb connects it to the mainland; contains 84 acres and is valued at \$420.
- No name: W. County--Carrying Place Cove--north Petit Manan Point--a fair sized island sometimes called Sheep.
- Pea Island: W. County--Pigeon Hill Bay--south of Dyer's Point.
- Douglass Island Ledge: W. County--Narraugus Bay--north of Douglass Island--a detached rock.
- Seal Cove Ledge: W. County--east of Bois Bubert--about 250 yds. from shore and out at high water.
- Big Pot: W. County--Pleasant Bay--north Cone Island--a high bare islet entirely destitute of vegetation and about 100 yds. long.
- Little Black Ledge: H. County--entrance to Prospect Harbor--south Cranberry Point--a bare ledge nearly covered at high water.
- Big Black Ledge: H. County--entrance to Prospect Harbor--south Cranberry Point--a bare rocky islet.
- Bar Island: H. County--Gouldsboro Bay--south of Young's Point--about 2 acres.
- Bald Rock: W. County--Gouldsboro Bay--southwest of Dyer's Point.
- Little Ledge: W. County--Dyer's Bay--South Dyer's Point.
- Boney Chess Ledge: W. County--Dyer's Bay--south of Dyer's Point.
- The Castle: W. County--Dyer's Bay--south of Dyer's Point.
- Gull Rocks: W. County--Pigeon Hill Bay--west Bois Bubert.
- Egg Rock: W. County--Pigeon Hill Bay--south Bois Bubert--a small low rocky island about 10 feet high and destitute of vegetation.
- Schoodic Ledge: H. County--north of Schoodic Island.

Middle Ledge: H. County--north of Schoodic Island.

Stewart's Island: H. County--Skillings River--Kilkenney Cove. A small low wooded island of oval shape--contains about five acres and worth about \$50.

Sheldrake Islands: H. County--Skillings River--Young's Bay. Two bare rocks lying close together and connected at low water.

Young's Island: H. County--Skillings River--southwest of Young's Point. A low wooded island of oval shape--about 150 yds. long, about 50 ards from shore--contains about 5 acres.

Hill's Island: H. County--Skillings River--N.E. Hyde's Point--middle of entrance to Hill's Cove--joined to shore at low water. Contains 10 acres--worth about \$100.

Shooting Ledge: H. County--Skillings River--Raccoon Cove--small island composed of bare rock.

Bean's Ledge: H. County--north of Bean's Point--Sorrento--a detached rock or island.

Welsh's Ledge: H. County--Sullivan Harbor--south of Ingalls Island. 3/8 acre.

Hog Island: H. County--Flanders Bay--west Gouldsboro--a large island of considerable value.

No name: H. County--West and close to Stave Island--several rocky islets joined to each other and to the shore at low water.

Bigger's Island: H. County--east shore of Winter Harbor--about 20 feet high and about 400 yards long--contains 15 acres and worth about \$300.

Holmes Island: H. County--east shore of Winter Harbor--small island about 20 feet high and near shore--contains 3 acres and worth about \$100.

No name: H. County--East shore of Winter Harbor--north Bigger's Island--contains about 1/4 acre and of little value.

Pond Island: H. County--west of Schoodic Point--near northern shore of Pond Island Cove. Contains 8 acres and is worth about \$100.

The Triangles: H. County--Blue Hill Harbor.

Clossons Island: H. County--west shore of Morgan's Bay--a half tide bar island 50 yds. from shore. Size about 50 x 70 ft. at high water--of small value.

Bird Rock: H. County--Morgan's Bay--west of Jedd's Island--a bare rock islet--30 yds. in diameter.

Seal Ledge: H. County--Morgan's Bay--northwest of Jedd's Island--a bare islet.

Goose Rock: H. County--Union River--south of Newbury Neck--about 100 yds. from shore and sometimes called Treworgy Hub--about 1/4 acre with a growth of scrub spruce.

Carleton Island: H. County--Blue Hill--Salt Pond--about 5 or 6 acres--worth about \$250.

Long Island Hub: H. County--southwest of Long Island--half tide bar of about 50 yds. connects it with main island--about 1/4 acre of broken ledge with a few bushes on it.

Seal Rock: H. County--south of Long Island.

Chatto's Island: H. County--Eggamoggin Reach--Center Harbor--a rocky islet of irregular shape, 30 feet high and 400 yds. long--valued at \$225.

No name: H. County--Eggamoggin Reach--south of High Head--ledge of 1/4 acre at high tide.

Gander Island: H. County--south of Flye Point--a sand split of but little value.

Goose Island: H. County--south of Flye Point--contains about 1 acre--but little value.

Flye Island: H. County--south of Flye Point--contains 12 acres and worth about \$300.

Channel Rock: H. County--south of Flye Point--a high round bare rock.

No name: H. County--Eggamoggin Reach--east Hog Island.

York or Sheep Island: H. County--east Stinson's Neck and close to same--a small island.

No name: H. County--east Stinson's Neck and close to same--a very small islet.

Long Ledge: H. County-- Blue Hill Bay--south of Opechee Island--a bare rocky islet.

Lamp Island: H. County--Blue Hill Bay--north of Pond Island--a small island 100 ft. long and 70 ft. wide--joined at low water to Pond Island--bar has about three feet of water at high tide--of but little value.

The Triangles: H. County--Blue Hill Bay--S.E. of Black Island and east of Phinney's Island--three small bare rocks joined at low water by ledges--area about 150 yards.

West Barge: H. County--Blue Hill Bay--east of Pond Island--a group of bare rocks.

East Barge: H. County--Blue Hill Bay--east of Pond Island--a group of bare rocks.

Ship and Barges Ledge: H. County--Blue Hill Bay--east Pond Island--has a beacon on it.

Sheldrake Rock: H. County--south of Stinson's Neck--sometimes called Eastern Yellow Rock--a very small island of a peculiar whitish color.

Phoebe's Island: H. County--south of Stinson's Neck and east of Saddleback Island--a small island.

Egg Rock: H. County--Jericho Bay--northwest of Swans Island--a mass of bare rocks with a beacon on it.

Halibut Rocks: H. County--northwest of Marshall Island--two islets, one of which has a beacon.

Clam Island: H. County--Deer Island Thorofare--southwest of Eastern Mark Island--a large mass of rocks--two small nubbles always out.

Garden Islands: H. County--close to north shore of Swans Island--south of Orono--two small islands.

Ram Islands: H. County--east of Swans Island and close to same--a small island.

Potato Field: H. County--Burnt Coat Harbor--an islet about 100 yds. in diameter--low and level and 100 yds. from shore.

No name: H. County--east shore of Burnt Coat Harbor--Long Cove--two low flat islets joined to each other and the shore at low water.

Little Black Island: H. County--southwest and close to Black Island--Blue Hill Bay--probably barred to Black Island.

Inner Daves Ledge: H. County--Blue Hill Bay--northwest and close to Black Island.

Greene Islands: H. County--Blue Hill Bay--south Black Island--also called Scrag Islands--two small rocky islets 3-4 miles south of Black.

Drum Island: H. County--Blue Hill Bay--south Black Island--a very small island--3-4 miles south of Black Island.

Eastern Fog Island Ledge: H. County--Jericho Bay--northwest of Fog Island.

Popplestone Ledge: H. County--Jericho Bay--east of Fog Island.

Rich Ledge: H. County--east of Isle au Haut--north of York Island.

Doliver's Island: H. County--east of Isle au Haut--north of York Island--contains 1-2 acre and worth about \$50.

Rabbit's Ear: H. County--between Isle au Haut and York Island--contains about 1-2 acre and worth about \$50.

North Poppelstone Ledge: H. County--west of Marshall's Island.

Saddleback Ledge: H. County--Jericho Bay--west of Marshall's Island.

Spirit Ledge: H. County--Jericho Bay--east of Marshall's Island.

- Green Ledge: H. County--Jericho Bay--south of Fogg Island.
- White Ledge: H. County--Jericho Bay--south of Fogg Island.
- York Island: H. County--east and close to Isle au Haut--a large island close to the east shore of Isle au Haut, incorporated as part of town--contains 50 acres and is valued at \$300.
- High Sheriff Island: H. County--southwest of Swans Island--a bare rock about 100 yds. in diameter.
- Black Ledge: H. County--south of Marshall's Island.
- Heron Island Ledge: H. County--south of Swans Island.
- Bristone Island: H. County--south of Swans Island--a small islet between Greene and Heron.
- Scrag Island: H. County--south of Swans Island--a rocky islet--low--with northern half covered with trees.
- No name: H. County--south of Swans Island--between Scrag and Harbor Island--a small bare rock.
- John's Island Dry Ledges: H. County--southwest of Swans Island.
- Dry Money Ledge: H. County--southwest of Swans.
- Harbor Island: H. County--north of Little Deer Isle--Buck's Harbor--a good-sized island--about 40 feet high at ends and quite low in middle.
- Buck Island: H. County--south of Cape Rosier and Weir Cove.
- Thrumcap: H. County--east of Cape Rosier--south of Orcutt's Harbor--a small low islet about 100 yds. in diameter.
- Black Ledge: H. County--south of Cape Rosier.
- Fiddle Head: H. County--south of Cape Rosier--northwest of Hog Island--a rocky islet--bare of trees--connected at low water with Hog Island.
- Two Bush Island: H. County--west of Little Deer Isle--a small low level island.
- Little Sally Island: H. County--east and close to Little Deer Isle--a very small round islet 175 yds. from shore--joined by a bar.
- No name: H. County--west of Little Deer Isle and northwest of Eaton's Island.
- Spoon Ledge: K. County--north of Fox Islands.
- Sloop Island: K. County--north of Fox Islands--a small islet.
- Torry's Castle: H. County--between Deer Isle and Torry's Islands--a bare rock.
- Two Bush Islands: H. County--south of Stonington.
- Round Island: H. County--south of Stonington--a bold, rocky islet about 30 feet high and 250 yds. long.
- Grog Island Ledge: H. County--Deer Isle Thorofare--northwest of Grog Island.
- Sheep Rock: H. County--east of Deer Isle--south of Sheep Island--a small white rock, which at low water forms a large ledge.
- No name: H. County--two small islets--Deer Isle Thorofare--east and close to Camp Island.
- No name: H. County--Deer Isle Thorofare--north of Devil's Island.
- The Brown Cow: H. County--southwest of Deer Isle--a bare rock or islet about 10 feet out at low water and at high tide nearly covered.
- Sparrow Island: H. County--South of Deer Isle and Crotch Island--a small islet.
- West Halibut Ledge: H. County--south of Deer Isle and Crotch Island--a bare rocky islet with somewhat steep faces.
- Scraggy Ledge: H. County--south of Deer Isle and Crotch Island.
- Marsh Cove Ledge: H. County--west of Isle au Haut and close to Kimball's Island--a small ledge.
- No name: H. County--between Merchant's Island and George's Head--south of Deer Isle.
- No name: H. County--between Isle au Haut and Merchant's Isle.
- No name: H. County--north of Isle au Haut and Burnt Island.
- No name: H. County--north of Isle au Haut--near Point Lookout.
- No name: H. County--west of Isle au Haut and close to north shore of Kimball's Island.

No name: H. County--north of Isle au Haut and close to north shore of Burnt Island.

The Cow Pen: H. County--east of Isle au Haut--several small islands.

The Turnip Yard: H. County--east of and close to Isle au Haut--small ledges.

The Halfway Rock: H. County--east of Isle au Haut.

White Horse: H. County--east of Isle au Haut and south of Little Spoon--a bare rocky islet 200 yds. long and 20 feet high.

Black Horse: H. County--east of Isle au Haut and south of Little Spoon-- a bare rocky islet 20 ft. high.

Grass Ledge: H. County--north of Fox Islands--about 150 yds. in diameter.

Green Island Seal Ledge: K. County--south of Muscle Ridge and Large Greene Island--two half tide ledges close together.

Two Bush Ledge: K. County--northwest of Matinicus--150 yds. in diameter.

Eastern Black Ledge: K. County--east of Matinicus--100 yds. in diameter.

Western Black Ledge: K. County--east of Matinicus.

The Hogshead: K. County--south of Matinicus--a small detached bare rock.

Pudding Island: K. County--south of Matinicus--about 150 yds. from north shore of Ragged Island--1/8 mile long, rocky and barren.

Zepher Ledges: K. County--northeast of Matinicus.

Brig Ledge: K. County--South of Matinicus--a rocky islet--100 yds. in diameter.

High Ledge: K. County--south of Matinicus--a rocky islet.

Camp Cove Ledge: K. County--south of Matinicus--a bare rock.

Greene Ledge: K. County--south of Matinicus--a rocky islet 100 yds. in diameter.

Negro Islands: H. County--Bagaduck River--north of Castine--two fair sized islands.

Winslow's Island--H. County--Northern Bay town of Penobscot--a small island.

Gravel Island: H. County--Bagaduck River--north of Young's Island--a very small island about 20 feet high--of coarse gravel.

Young's Island: H. County--Bagaduck River--quite a large flat island.

Pumpkin Island: H. County--Bagaduck River--near Johnson's Point--a small islet close to shore.

Green Island: H. County--South Bay--North Brooksville--quite a large island.

Nabs Island: H. County--South Bay--North Brooksville--a fair sized island.

Hutchinson's Island: Waldo County--East of North Islesboro--and barred to it-- quite a large island.

Nauticus Island: H. County--Castine Harbor--quite a large island, low and rocky.

Ram Island: H. County--Castine Harbor--a small island.

Trotts Ledge: H. County--Bagaduck River.

Hospital Island--H. County--Castine Harbor--an islet low, rocky and wooded.

Great Island & Small Island to South of it: H. County--Castine Harbor.

Sheep Island: H. County--Smith's Cove---Brooksville.

No name: H. County--east shore Smith's Cove--east of Sheep Island.

No name: H. County--east shore of Smith's Cove--south of Henry's Point.

No name: H. County--east shore of Smith's Cove--south of Henry's Point.

Dry Ledges: K. County--between Allen and Burnt Island.

Little Burnt Island: K. County--north of Burnt Island and connected at low water.

Black Rock: K. County--west of Metinic--a bare rocky islet.

Cat Ledge: K. County--east of Metinic.

Duck Rocks (two): L. County--west of Monhegan--one has a beacon on it.

Eastern Duck Rocks: L. County--North of Monhegan--a bare rocky islet.

Inner Duck Rocks: L. County--west of Monhegan.

Seal Ledges: L. County--west of Monhegan.

Old Hump Ledge: K. County--bare rock 150 yds. square--west of Allen's Island.

Seal Ledges: K. County--west of Allen's--a large rock.

Little Egg Rock: K. County--southwest of Allen's Island--a bare rocky islet 175 yds. long.

Shark Island: K. County--southwest of Allen's--a bare rocky islet 250 yds. long.

## VALUE

The resolve under which this investigation is made directs the Land Agent to determine the value of these islands. An examination of the above list of islands reported as unconveyed, will show that many of them are small islets and ledges of but little value--for the most part they would not warrant the expense of an examination, and even then any estimate of value would be largely speculative. Of the larger islands reported, I have given their value so far as I could get an opinion of the same by the assessors of the towns in which they are located. I have made an entry of same on my index cards.

## OWNERSHIP

The above islands appear never to have been conveyed by Maine or Massachusetts. A number of them, especially those near the mainland, are claimed by various persons who have been in possession of them for years and paid the taxes assessed upon them. I have in mind one island--York, just east of Isle au Haut--of which I find no such conveyance, and yet find records of its conveyance by its claimants as early as 1798. Of such islands, I have made entry on my index cards of such facts as I have been able to learn as to their claimants.

Has the State title to such islands? There are two things to be considered, which I will discuss briefly:

1. Bar Islands: There are many islands either barred to the mainland, or some larger island, by bars which are laid bare at some stage of the tide, which have always been claimed by the owners of the adjoining lands and conveyed by them in their conveyances of such, or claimed by the successive owners of such lands.

It seems to me that such an island is no less a separate and distinct island because of the fact of its being connected either to the mainland or another island by such a bar, and being such, would not pass in deeds from the State as appurtenant thereto.

Of course, in some instances, this fact might depend upon the construction of a particular deed given by the State of such adjoining land. If such lands or islands were deeded by reference to a plan, the plan would control--this might show the barred island as a separate island, or as part of the adjoining land. Again, in the case of islands--and perhaps in some instances in deeds of the main--if deeded by name without reference to plans, and without particular description, the deed would convey what that name was commonly understood to designate or cover.

There is on file at the Land Office a legal opinion by Hon. Albert W. Paine, of Bangor, on this subject, furnished the agent in 1876 when a previous investigation of island titles was being made. It goes quite fully into this subject. Acting under it, the State conveyed many of such islands then, and has to some extent since.

This question was under consideration by the Maine Court in *Inhabitants of Eden vs. Pineo*, reported in 108 Me., P. 73. The court there held that Bar or Rodick Island near Mt. Desert, to be a separate island and no part of Mt. Desert Island, although there was a bar between the two left bare by the tide twelve hours out of every twenty-four.

This question was called to the attention of the Legislature by Oliver Frost in his report on islands made in 1838. His report says:

"It will be seen by reference to the plans herewith returned, that there are many small islands and ledges represented near the shores and contiguous to larger islands, and frequently connected with them by bars, of which no account was taken by surveyors. It is supposed that these were reckoned as a part of the mainland or islands with which they were connected--and in all applications for the purchase of such islands not contained in the schedule, nor in the assignments to the respective States, care should be taken in all new contracts, to preserve the equitable rights of the purchasers of our larger islands."

In connection with this point, the question arises, What formation of rocks, ledges or other substances arising above the surface of the water may be termed an island?

This question was before the Maine court in Babson vs. Tainter, reported in 79 Me., P. 368. It was held that a parcel of land containing about two acres unfit for the habitation of man, must be considered as having size and permanency enough to entitle it to the appellation of an island--and would be subject to adverse possession.

In King vs. Young, reported in 76 Me., P. 76, the Court held that a mussel-bed over which water flows at every tide is not an island, but flats. Other cases bearing on this subject are cited in these decisions.

2. Adverse Possession: Many of these islands have been claimed by persons and their grantors for years, under some sort of occupation. The question arises, could the claimants by an open and adverse possession acquire title thereto against the State?

That title by adverse possession could not be acquired at the present time is a certainty, under the principle of law that title by adverse possession cannot be acquired, except by statute, against the sovereign, be it Crown, or National Government or State--and we have no such statute. See United States vs. Burrill, 107 Me., p. 382.

But at an earlier date both Massachusetts and Maine had statutes under which the decisions seem to hold a title by adverse possession could be acquired.

Revised Statutes of Massachusetts, 1836, C. 119, S. 12.  
Revised Statutes of Maine, 1840, Chapter 147, Sec. 12.  
Revised Statutes of Maine, 1857, Chapter 105, Sec. 11.  
Revised Statutes of Maine, 1871, Chapter 105, Sec. 11.  
Revised Statutes of Maine, 1883, Chapter 105, Sec. 11.

The Maine statute was as follows: "No real or mixed action for the recovery of any lands shall be commenced in behalf of the State unless within twenty years after the time its title shall accrue."

Decisions under these statutes, holding or assuming that a title by adverse possession may be acquired against the State are:

Nichols vs. Boston, 98 Mass., P. 42  
Trest vs. Lord, 42 Me., P. 552.  
Hinckley vs. Haines, 69 Mr., P. 76.  
Roberts vs. Richards, 84 Me., P. 1.

This statute was repealed by Chapter 368 of the Public Laws of 1885, but such repeal was undoubtedly not retrospective.

If title by adverse possession could have been acquired against Massachusetts



or Maine prior to 1885, the question then becomes of importance, What must the character of such possession have been to have been considered adverse to the State so that it would ripen into title?

The only Maine case I find in which this exact point is involved is that of *Roberts vs. Richards*, reported in 84 Me., P. 1. Here the issue involved was whether possession of an island had been of such a character that the claimant might have acquired a title thereby against Massachusetts and Maine.

The facts depended on by the plaintiff to constitute an adverse possession were as follows: Claiming possession under color of title--an invalid deed; payment of taxes; pasturing sheep on the island; cutting grass on parts of same; erecting a brush fence across it, and occasionally repairing same; erecting a flag staff and a short flight of steps.

The Court in its opinion goes into a very full discussion of this whole subject citing many cases on all points involved. The Court held that these acts were not sufficient to disseize the State of its title, saying in part:

"The law does not undertake to specify the particular acts of occupation by which alone a title by adverse possession can be acquired. Every case must from sheer necessity be determined by its own peculiar circumstances, for the essential particular acts are as various as the nature and locality of real property, the purpose for which it is adapted or to which the owner or claimant may choose to apply it.

"The doctrine of adverse possession rests upon the presumed acquiescence of him against whom it is held, and such acquiescence rests upon notice express or implied, which it not to be presumed by the court, but may be inferred by circumstances. The essential use and occupation unless expressly brought home to the knowledge of the owner, must be of such unequivocal character as will reasonably indicate to him visiting the premises during the statute period, that instead of their suggesting the probable invasion of a mere occasional trespasser, they unmistakably show an asserted exclusive appropriation and ownership. There must be overt acts which leave no room to inquire about intention, and which amount to actual ouster.

"All that was done upon this comparatively barren, uninhabitable rock in the sea, with no stream or spring of fresh water thereon, was to take a little hay, feed down the grass, which had caught in the spots of shallow soil and among the bushes, and throw up the short fence mentioned. Nothing of any value was ever put upon it except the temporary fence, flagstaff and short flight of steps erected by the Fremonts.

"If the Agents of the State had seen everything there including the presence of the few sheep whether in or out of their pen, the cutting of the small quantity of grass which grew there, spontaneously, all of which could be of no injury to the State and but slight benefit to the harvesters, they would hardly suspect that the authors of these acts were other than harmless technical trespassers."

I have not attempted to inquire into the character of the occupation of these various claimants and their predecessors in title. Such an investigation of each individual island whenever there is a claimant, involving the character of the possession prior to 1885, the facts about which would be difficult to ascertain today, would, it seems to me, in most instances involve an expense out of all proportion to the value of the island, and then would be but an expression of opinion on my part.

While this investigation perhaps has not yielded as definite results as the framer of the resolve under which it is made may have anticipated, I trust that it may be of value.

I have incorporated into this report many things about islands which I have come across during my investigation, with an idea of preserving them, and making them easily accessible to anyone interested in this subject. If it furnishes some suggestions or ideas, or contains data for useful reference, which will lighten to some extent the labors of those tracing island titles, or of some future investigator for the State, the length of this report may perhaps be justified.

Respectfully submitted,

MELVIN H. SIMMONS.

November 16, 1914.