

## HOUSE.....No. 66.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, March 17th, 1846.

THE Special Committee, to whom were referred the Petition of Charles Crooker and William D. Crooker, of Bath, in the State of Maine, for remuneration from said Commonwealth, for loss of land and costs, through defect of title derived from said Commonwealth, have heard the petitioners and their evidence, and ask leave to submit the following

### R E P O R T

of the facts.

Charles and William D. Crooker, of Bath, in the State of Maine, purchased of the State of Maine and Commonwealth of Massachusetts, certain islands lying in Penobscot Bay, in the State of Maine, and described as follows:—"Little Bermuda," containing one third of an acre, "Saddle Island," eleven acres, "Job's," seventy-five acres, "Ensign," ten acres, "Horse Head," thirteen acres, and "Mark Island," forty acres, by deed, dated December twentieth, in the year eighteen hundred and thirty-nine, duly signed and executed by George W. Coffin and Rufus McIntire, land agents for said States respectively, for the consideration of three hundred dollars, paid as therein expressed, one half to each of said States;—"releas-

ing to said Charles and William D. Crooker, their heirs and assigns, all the right, title, interest, and estate, which the said Commonwealth and State have in and unto said islands, be it what it may, or however otherwise the same may be described, and be the quantity therein contained more or less, without any recourse to either of said States for any deficiency of quantity of land or defect of title whatsoever."

Upon the receipt of said deed by said Crookers, they employed one Ingraham Duncan, (who, it will appear hereafter, was the agent of the Crookers to purchase said islands,) to take possession of said Job's Island, which he did, and employed a man to cut wood thereon for said Crookers; that he cut a few days, when he was driven off by one Charles Pendleton, who claimed to own the island by inheritance from his ancestors, who had occupied it for more than sixty years.

The Crookers then consulted counsel, and also the land agent of the State of Maine, who, finding a lawsuit was likely to grow out of the matter, proposed to refund the Crookers their money, and the agent of this Commonwealth agreed then, to do the same, as will appear by Mr. Coffin's letter to Mr. McIntire, dated July 24, 1840, in which he says, "I am perfectly willing, and desirous even that the deed of the islands should be returned to us, (or perhaps a reconveyance may be necessary, if the deed from us has been recorded,) and the money be repaid," though he subsequently declined, as the matter had passed beyond his jurisdiction. But the Messrs. Crooker deny ever having had any knowledge of the fact, that the land agent of this Commonwealth was willing to refund the money on a reconveyance. And McIntire, in a letter to Hon. William R. Miller, dated February 15, 1845, says, "I suggested to Mr. Coffin the propriety of returning the money received, and take back a release from the purchasers, (Messrs. Crooker,) or offering to do so, but he declined to do so, under the circumstances, as he had returned the account of sales." And as both agents considered Pendleton's title without foundation, as against the State, no conveyance ever having been made to him or his ancestors, and the Messrs. Crooker, by advice of their counsel, tried titles with Pendleton in law.

A writ of entry was accordingly sued out by said Crookers, demanding an island in Penobscot Bay, called Job's Island, against said Charles Pendleton, and entered in the Supreme Court of the State of Maine, for the county of Waldo. The case was heard by the whole court, and, in the opinion drawn up by Whitman, chief justice, and delivered at the July Term, 1843, (vide Maine Rep. vol. 23, p. 341), they say, "The defence set up by the defendant is, that he and his ancestors, under whom he derives title, have been in peaceable and uninterrupted possession of the premises demanded, ever since 1766; at which time, he alleges, that his great grandfather, Job Pendleton, under a grant which has been lost by time and accident, from the then colonial government of Massachusetts, had entered and become possessed thereof. Evidence was introduced at the trial, strongly tending to establish the presumption of such a grant; and, as the judge presiding intimated an opinion, that, in connection with the lapse of time, a presumption would be authorized that such a grant had been made, the parties agreed, if such should be the opinion of the whole court, that judgment should be entered for the defendant, otherwise, that a new trial should be ordered." And they go on to say:—

"If this were a claim under individual grants, the plaintiff, by the statute of limitations, would have been barred long ago. But as the plaintiff set up a claim under the States of Maine and Massachusetts, against whom the statute is supposed not to run, and especially against the former, they contend that they are not barred by any lapse of time, running against them, and so that they have a right to recover. And there may be good reasons why a presumption should not avail against a state, so readily as against an individual. The state cannot be so much on the alert to look out for its interests, as would be expected of individuals. Individuals, therefore, would be barred in twenty years, without corroborating circumstances. In this case, more than sixty years had elapsed; and strong circumstances, tending to render it probable, that a grant had been originally made and established. We cannot think it unreasonable, therefore, that the defendant should remain unmolested against such a dormant title. We are, therefore,

clearly of opinion, that judgment should be entered for the defendant." Your Committee would further state, that it appeared in evidence before them, that Mark Island was claimed by one Lassel by deed from the said Job Pendleton, dated July 24th, 1772, and recorded August 23d, 1824, in the registry of deeds for the County of Hancock in the State of Maine. This was the only other island of any considerable value, and from the decision of the court given above, it is not difficult to conjecture what would be the issue of a contest to recover the same.

Failing to establish their title in the legal tribunals of that State, the Messrs. Crooker applied by petition to the Legislature of the State of Maine, for the year 1845, praying them to refund to them one half the purchase money and interest, together with one half the costs they had been put to in defence of their title to said islands.

Upon hearing and considering the same, the Legislature of Maine passed a resolve, on the fifth day of April last, authorizing the payment to said Crookers of the sum of \$197 25, or one half the purchase money with interest, from the date of the conveyance, on condition of a reconveyance of the title to Maine and Massachusetts, which said Crookers obtained by a deed dated December 20, 1839.

And, now the Messrs. Crooker ask of this Commonwealth the same as they prayed for from the State of Maine, and represent their claim to consist of the original purchase money,	\$300
Interest on same, six years two months,	111
	————— \$411
Other moneys paid by them, as will appear by the Schedule hereto annexed, and sworn to by Mr. Charles Crooker,	760 06
	—————
Making a sum total of	\$1171 06

One half of which, or the sum of (\$585 53) five hundred and eighty-five dollars and fifty-three cents, they ask this Com-

monwealth to reimburse to them, on reconveyance by said Crookers of all title derived from this Commonwealth.

The origin of the purchase of these islands, will appear from the testimony of a witness called by the petitioners.

*Ingraham Duncan*, sworn. In the fall of 1839, I called on Mr. McIntire, land agent for the State of Maine, with the intention of purchasing two or three small islands in Penobscot Bay, belonging to the States of Maine and Massachusetts. Of these were Little Burmuda, containing one third of an acre, which I wished as a permanent place to fasten my nets and carry on the fishing business unmolested; the others called Ensign Islands, containing about ten acres, I was desirous of purchasing for a sheep pasture. On examining his maps, Mr. McIntire could not find the islands laid down. He then produced a small pamphlet and showed me another map of Maine, with this cluster of islands, "Little Burmuda," "Saddle," "Job's," "Mark," "Ensign" and "Horse Head" marked as *rocks*. Mr. M. proposed I should buy the whole. Told him I could only pay for the little ones. He still urged the whole; I then asked him the price, and he said I must apply to Mr. Coffin, the Land Agent of Massachusetts. Afterwards, I called on Mr. Coffin to purchase the small islands, as I was unable to buy the larger ones, having been recently stripped of all my property. He said this cluster was all there were in the bay owned by the States, and he wished to sell the whole.

On his inquiry, I told him they were once covered with wood, which had been cut, and a second growth was already begun upon by plunderers. I also told him the quantity of land as near as I could by guess-work, (as above, in all 149½ acres). I had never been upon Job's Island but once, and then only on the shore about an hour in 1813, when I was a boy, and had no means of accurately judging of its contents. Mr. Coffin told me I might have all the islands for \$300, or two dollars per acre. I asked him his terms, and he said sometimes they were conditional, with one third of the money down and a bond given; but advised me to pay the cash and take a deed. There was nothing said as to the kind of deed he was to give

or about the title, except he shewed me Mr. Malcom's report by which it appeared that these islands were without the Waldo Patent, and consequently States' lands. I told Mr. Coffin I would take them if I could raise the money. I then went home and proposed to the Messrs. Crooker to advance the money and take a deed of the lands; and received the cash from them, which I paid to the Land Agent on receipt of the deed. I was informed, by letter from Mr. Coffin, that a deed would be ready for me at Bangor, and on going there, found the deed in the Land Agent's office with Mr. Coffin's signature. I then asked the clerk in the office if that was the right kind of a deed, and said I thought the State gave a warrantee deed, and he replied, that they only gave such as that. The deed was then sent to Augusta for Mr. McIntire's signature, and subsequently returned. There was no agreement between me and the Messrs. Crooker, as to what part of the lands I should have, but I thought if they made a good bargain, they would let me have the little islands, I first wished to purchase; and I did suppose it would be a good purchase for them. Afterwards, I went by request of the Messrs. Crooker, to take possession of Job's Island, and told the man who lived there, Mr. Fenwick, that the Crookers had purchased the island of the States, and his reply was, that "he ought to have purchased it himself," and also said, "that the Crookers should never have any thing there." But, on consulting his wife, he gave me possession, and I put a man on there to cut wood, who, in a few days returned, and said that Pendleton drove him off. After that, the suit was commenced for possession. At the time of the purchase, I did not suppose Job's Island contained one half the land I have since understood that it did contain.

*George W. Coffin*, Esquire, was also sworn, and said he had nothing to say contradicting Mr. Duncan except he had omitted to state that he was to have called on him (Mr. Coffin,) again, previous to his leaving Boston, when the kind of deed he was to receive would have been explained to him.

By order of the Committee,

JOSEPH S. BEAL, *Chairman.*

*State of Massachusetts and Maine To C. & W. D. CROOKER, DR.*

1839. Dec. 21.	For cash paid Land Agent of Maine and Massachusetts for Job's and other islands in Penobscot Bay,	\$300 00	Interest.
	Recording deed, . . . .	63	
	Interest on \$300 from Dec. 21, 1839, to Feb'y 21, 1846, 6 yrs and 2 mos.,		\$111 00
1841. Nov. 21.	Expenses of journey from Bath to the islands, to take possession of same, and to Belfast to see and engage counsel, . . . .	17 00	
	Interest on same, . . . .		4 25
	My time on said journey, absent 10 days at 9s.,	15 00	
1842.	Expense attending court at Belfast two terms, in action Crooker & Pendleton, . . . .	16 00	
	Interest on same, . . . .		2 88
	My time and services, 10 days at 9s., . . . .	15 00	
	Cash paid witnesses in action Crooker & Pendleton, for attendance at court, two terms, to wit:		
	Mr. Trim, . . . .	\$9 78	
	John Peabody, . . . .	7 02	
	R. Wade, . . . .	5 00	
	J. Duncan, . . . .	15 00	
	Mr. Coy, . . . .	9 04	
	Sheriff's fees summoning, . . . .	2 78	
		<hr/>	
		48 62	
	Interest on same, . . . .		8 74
		<hr/>	
	Amount carried forward, . . . .	\$412 25	\$126 87

			Interest.
	Amount brought forward, . . .	\$412 25	\$126 87
1842. Aug. —	Expenses in attending to taking deposition of Rufus McIntire at Parsonsfield, by citation of Pendleton — including fees paid counsel, . . .	28 50	
	Interest on same, . . .		5 98
	My time, 9 days, at 9s., . . .	13 50	
1842. Sept. —	Expenses of taking deposition of Isaac Coffin, Boston, by citation of Pendleton, . . .	24 25	
	Interest on same, . . .		4 97
	My time, 7 days, at 9s., . . .	10 50	
	Postage of letters, . . .	2 00	
	Paid N. Groton, (attorney,) advice, . . .	2 00	
	Resolves of Massachusetts, postage, &c., . . .	3 50	
1844. Jan'y. —	Expenses to Norridgewock for writ of injunction against Pendleton—horse and sleigh, &c., . . .	16 00	
	Interest on same, . . .		1 92
	My time and counsel fees, . . .	8 00	
1844. April. —	Dep't, Pendleton's bill of costs, . . .	146 82	
	Interest on same, . . .		17 00
	Alden & Crosby bill, my counsel, . . .	60 00	
	Interest on same, . . .		6 00
		\$727 32	\$162 74
	Amount of interest, . . .	162 74	
		\$890 06	



1845. ——— Expenses at Augusta pre-  
 senting claim before Com-  
 mittee of Legislature of  
 Maine, including time,  
 counsel fees and cash  
 paid J. Duncan as wit-  
 ness, . . . . . \$125 00

\$1,015 06

Expenses at Boston, pre-  
 senting claim before Com-  
 mittee of Legislature :—

Passage from Bath and re-  
 turn, . . . \$12 00

38 days board, \$1, 38 00

38 “ time, \$1, . 38 00

Counsel fees, \$20, 20 00

Witness, J. Dun-  
 can, 14 days, . 14 00

His board, 14 days, 14 00

Duncan's passage  
 and expenses, . 20 00

\$156 00

\$1,171 06





