

1887

Report of Commissioners appointed under resolve approved March 10, 1887, to investigate condition of settlers in Madawaska Territory

State of Maine

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REPORT
OF
COMMISSIONERS

APPOINTED

Under Resolve Approved March 10, 1887,

TO INVESTIGATE

CONDITION OF SETTLERS

IN

Madawaska Territory.

REPORT
OF
Maine COMMISSIONERS

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Under Resolve Approved March 10, 1887,

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IN

Madawaska Territory.

AUGUSTA:
BURLEIGH & FLYNT, PRINTERS TO THE STATE.
1888.

STATE OF MAINE.

IN COUNCIL, March 15, 1888.

Report accepted, and seven hundred and fifty copies ordered printed.

Attest:

ORAMANDAL SMITH,

Secretary of State.

REPORT.

To the Honorable Governor and Council:

The undersigned, Commissioners appointed under the resolve approved March 10th, 1887, entitled a "Resolve relating to the settlers on lands in the Madawaska Territory," respectfully submit the following report:

By the treaty of Washington, or the Webster-Ashburton treaty, as it is frequently called, made in 1842, a large proportion of what was known as the disputed or Madawaska Territory, was confirmed to the United States, and with its settlements, begun as far back as the time of the American Revolution, became a part of the State of Maine. Article IV of that treaty carefully stipulates for the rights of all settlers in this territory, providing that all grants theretofore made by either party shall be confirmed and made valid by the other; that all possessory titles of six years' or longer duration, shall be deemed valid titles; and, lastly, binding each party to "deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory."

That the State has faithfully carried out the letter and spirit of these treaty provisions will not be for a moment controverted by anyone who is familiar with the resolves of February 21, 1843, February 29, 1844, and April 12, 1854, and the reports of the Commissioners appointed under them, as carried into effect by the deeds given in accordance with such reports. Settlers who were on this territory at the date of the treaty have been confirmed in their title to land aggregating some 52,000 acres, owned in common by Maine and Massachusetts, and some 35,000 acres owned in sev-

eralty by Maine, all of which was set off to them by the commissions as matter of right under sections one and two of article fourth of the treaty. In addition to that, the commissions set off about 30,000 acres to settlers who had not been in possession the six years requisite to bring them within the second section above referred to, and whose only claim was to be equitably dealt with under section third. All these various settlers have received their deeds from the State, and have enjoyed quiet possession and complete security in their title, except in a few instances which will be hereafter referred to. Hence it will be seen that the settlers who were therein dwelling at the date of the treaty have acquired a good title to more than 100,000 acres of the land included in this territory, by reason of the treaty and without any new or further consideration on their part. A portion of this was their just due under sections one and two above referred to, and the balance, amounting to nearly one-third of the whole, was a bounty to them, under section three. This land, set off and conveyed in accordance with the reports of the commissions, comprises what are known as the treaty or river lots, and are called by the latter name in the preamble to the resolution under which this commission is acting. The title to these lands is not in dispute, only so far as the exception above noted, which arises from the fact that after the deeds had been made by the Land Agent to cover all the lands set off by the commission, it was discovered by him that some townships, in which certain of these lots lay, had been already deeded to proprietors without reserving any rights of settlers therein. No deeds of these lots were given, and they amount in the aggregate to 4,940.53 acres.

The relation of the State to the settlers on these lots was considered by Judge L. A. Emery, then Attorney General, and very clearly and admirably defined in an exhaustive opinion, dated January 31st, 1878, and rendered to the Legislature of that year, under the resolve of February 9, 1877. This opinion undoubtedly states correctly and fairly the legal and moral responsibility of the State in this matter; but the

course advisable for the State to pursue in regard to the settlers on these lots may be modified to some extent, in the light of the present circumstances, as hereafter suggested. In the schedules annexed to that opinion will be found a detailed statement of these settlers and their lots, as well as a few other cases where deeds have not been delivered, presumably because never called for.

The work of these commissions and all deeds and conveyances made under their reports, it must be remembered, had reference only to lands on which there were settlers at the date of the treaty, 1842. The settlers who dwelt on these lands were a sturdy, contented race, and not inclined to be migratory. Many of them had large families, and with the rapid increase of population their children, and children's children have come forward to be the heads of families. At first, provision was made for them by a division of the treaty lot owned by the father; but there is a limit to such subdivision, and soon these river or treaty lots were occupied to their full extent. The population then broke over the boundary lines of the treaty lots and the younger generation spread out in nearly every direction. Under laws then existing these settlers could secure title to the wild lands, under certain conditions, by payment therefor in labor on roads. Some took up land in compliance with law and got titles to their lots; some took it up understanding that they were to get title in some way that perhaps they did not clearly comprehend, and did some work for which they got no credit in the land office, through the negligence or carelessness of someone. But, considering the ignorance of these settlers, who never had a public school up to the time of the treaty, and the disadvantages they were under in not understanding the language of the State of which they had become a part, we are constrained to believe that the great majority of these settlers simply took up and occupied this land without any definite idea as to ownership, or of obtaining title in any way. They simply entered to make a home for themselves and their families on the wild land, which, to their moderate comprehension, was

as free as the air and light, and in most cases they or their grantees have remained in possession to the present time. The State, from time to time, sold these townships to proprietors and made no reservation of the rights of settlers in them, who had no title or interest in these lands, so far as the records of the Land Office showed, and who, in fact, in many cases, had no legal or equitable rights, unless the peculiar circumstances and condition of these people entitle them to some special claim to protection from the State. Recognizing the fact that this state of affairs existed, and desiring, no doubt, to do anything which they reasonably could to remedy it, the Legislature of 1873 passed the resolve of February 27th, under which Noah Barker was appointed Commissioner and made his report to the Legislature of 1874, dated January 10th, of the same year.

For many years previous to this resolve, the title to these lands had been to some extent a matter of controversy between settlers and the proprietors, and the settlers, as their knowledge and prosperity had increased, had come more and more to realize that there was an insecurity about their homes. Commissioner Barker, assisted by P. C. Keegan, Esq., whose acquaintance with the subject matter is probably greater than that of any other person, made a very thorough inquiry into the condition of these settlers, and the several claims of each in detail appear in his report, which was re-printed with the Land Agent's Report for 1885. This may be assumed as very nearly a correct statement of the number of families and the land claimed by each at that time. Unfortunately, no practical solution of the matter has yet been reached, although Commissioner Barker's report laid all the facts before the Legislature with great particularity and accuracy.

The present commissioners having informed themselves of the history of these settlers and their lands, so far as they were able by a careful study of such documents and records as they could obtain, proceeded to visit the territory and the people, in the latter part of August. Due notice of meetings at convenient times and places was given for the purpose of

coming in contact personally with these settlers and hearing their claims. So far as the commissioners are able to ascertain, the State parted with all its title to the land in question long since, the earlier conveyances being at least forty and the last more than twenty years ago; and as the commission is limited, by the terms of the resolve, to settlers who were on the lands when sold, it will be seen that all our inquiries were to be directed to lands which had been occupied for more than twenty years. These lands are all covered by the report of Commissioner Barker in detail. We began our work at Fort Kent and proceeded thence down the river through Frenchville, Madawaska and Grand Isle, making trips into the interior to such points as were most convenient for the claimants, in many instances hearing parties from the various adjoining townships, and spending about three weeks in this part of the work. We may here be permitted to say that we are greatly indebted to Mr. John A. Nadeau of Fort Kent, Henry Gagnon of Frenchville, the representative from that class, and Mr. Charles Morneault of Grand Isle, for their valuable assistance in these matters. We found, upon consultation with Mr. Gagnon, that it was intended and supposed, both by him and by the settlers, that this inquiry was to have wider scope than the lands owned by the State when they were taken up, and that the investigation was to be directed toward, and the recommendations made in regard to, the whole matter of disputed titles and their complete adjustment. We had, from the first, heard the statements of all parties appearing and claiming land, irrespective of when they began the occupation, and we so continued to do. We did not deem it advisable to undertake to make a detailed report of the claims of individuals, because we did not conceive such to be the information desired under the resolve, and because, as we have said, settlers on lands sold by the State were all included in the Barker report. We compared, in all instances, the statements made by settlers with that report and found very few discrepancies, and those usually arising from causes easily to be explained from abandonment, claim to land not occupied with any build-

ings, and the peculiar method of conveyance which they have, by simple word of mouth. This of itself goes far to show the crude ideas these people, as a rule, have in regard to the title to land, or, perhaps, we had better say, the want of any adequate ideas in regard to such title. They buy, sell, barter and exchange land as they do any personal property, and hence, in many instances, they are unable to give the names of their predecessors in possession or the boundaries of the land they occupied, and frequently, in stating their own claim, they can only give the length of the front of their farm, claiming their occupation to cover a piece of irregular shape running back an indefinite distance from the front line.

We did not discover, among the many cases that we heard, anyone who was on one of the treaty lots heretofore mentioned, for which no deeds were given, and we are inclined to believe that the proprietors have not been disposed to claim these lots, but rather to treat the fact, that no reservation of them was made in their deeds, as a mutual mistake. The point seems to be well taken by Judge Emery in his opinion, that there must be an eviction in order for the holders of these lots to have any claim; but it seems to us that in case it should be thought advisable hereafter for the State to purchase the title of the proprietors to any lands in this territory, a release should be given by them to the State of their interest, if any, in these treaty lots which have not been deeded, so that the State may then give deeds to the proper parties covering this land. As we above remarked, it would seem as though the proprietors had never laid claim to these lots, and, if satisfactory terms were made for the settlement of the other titles, we are led to think that these would be released without further consideration, in which case the State might well afford to go to the trifling expense of having deeds executed to the proper parties.

No claimant personally appeared before us who had any receipt or writing of any kind purporting to show that he had performed any labor or paid any money toward the purchase of land from the State. Some there were who claimed

to have done certain work years ago for which they had received no credit, but the testimony was meagre and unsatisfactory, and the number of such claimants very few. We were told of certain parties who had been in possession of such receipts from local agents, but none were produced, and no one made claim under the persons alleged to have had such receipts. The times at which these lands were taken up, range, in the cases stated in the Barker report, from 1843 to 1870; and some of the parties who came before us claimed under a possession begun in this very year and since the passage of the resolve under which this commission was appointed; and these claimants represent, all together, as near as we can estimate, six hundred families, comprising nearly four thousand persons, and claiming 35,000 acres of land. Such, in short, is the nature of their rights, or more exactly want of rights, to the lands claimed. The inhabitants of this territory have greatly improved in condition during the last decade, but are still the same uneducated, honest and industrious people as of old. They are depending more and more on the outside world to furnish them with the necessities of life which they formerly made for themselves, and many of their peculiarities of dress, implements and household arrangements disappear as their means of intercourse with the rest of the world increase. They are a peaceable, home-loving people, who are usually well satisfied with their lot, and with little desire to emigrate, although not without ambition to improve their condition where they are. This is more particularly the case with the inhabitants of the treaty lots, whose titles are secure. Their buildings are better; they have more land under cultivation; they have more stock and are more ambitious. While the inhabitants of the disputed lots are honest and industrious, and have bravely stood up in the battle of life, considering their education and surroundings, yet there is still the depressing influence of this lack of title, and they have not the courage of their neighbors, nor the inducements to improve their lands. The practiced eye can readily dis-

tinguish to which of these two classes a community belongs by the appearance of their homes.

Time, here as everywhere else, has wrought its changes, and the long continued possession without actual eviction, although frequently threatened, has tended to strengthen the feeling of ownership in the settlers. But, to counterbalance this, time has also brought education to a greater degree, and a contact with the outside world, and an adoption to some extent of its customs, and thereby the settler has been forced to realize that he has no deed of his land, whatever his possessory rights may be. When he desires to sell or, perhaps, to mortgage his farm to obtain certain needed improvements, he is made to feel that there is a difference between him and his neighbor who lives on a treaty lot. That deed, which to him twenty years ago was a meaningless and worthless scroll, has now become a thing to be much coveted.

During all these years the controversy between the settlers and the proprietors has been going on; yet, so far as we can learn, comparatively few actions for the possession of the land have ever been brought; but the settlers have constantly had the matter kept in mind by demands for possession, entries made by agents of the proprietors, and claims for stumpage, when perchance they had made a few shingles or something of the sort, from trees cut on the land. In some instances the proprietors have made settlements with certain settlers, giving deeds and taking notes and mortgages. Mr. E. S. Coe of Bangor, succeeded in getting a settlement with every settler on a tract of land in Frenchville which he owned, and when we visited that district many of the settlers exhibited their deeds with great pride. In the great majority of cases of isolated settlements with individuals they have failed to pay their notes and the mortgages have been foreclosed. This may have arisen to some extent from the fact that their neighbors were paying nothing for the land, or it may have been from some other cause not apparent; but we think, as a whole, these people would pay whenever they could. Messrs. Donworth, Keegan and others bought from the proprietors their

interest in Township Letter K, which had settlers on it to quite an extent, and they settled with them all, and we think have been well satisfied with the way in which the settlers have paid.

At a comparatively recent date the proprietors of land in Frenchville and Madawaska brought suits against the settlers for the land, and at the February term, 1886, of the Supreme Judicial Court, at Houlton, five of the suits were tried, resulting in the following verdicts :

Value of improvements, \$600, land \$90 ; value of improvements, \$1000, land \$50 ; value of improvements, \$600, land \$15 ; value of improvements, \$1200, land \$75 ; value of improvements, \$1000, land \$75 ; and in every case the demandants elected to abandon the land to the tenants.

In estimating the value of the land in their verdicts the juries have ranged from fifteen to sixty cents per acre. There are still pending in that court sixteen suits between the land owners and tenants. The result of these cases is, on the whole, claimed as a victory for the tenants, for they thus get the title to their land at a moderate price ; but, on the other hand, in many instances, they were very likely dearly bought victories after the costs and expenses of a law-suit, prosecuted by them at a long distance from home, were paid.

There have been some overtures looking toward a settlement of these disputes, but nothing has ever come of them, and, it would seem that the parties are farther, if anything, than ever from any adjustment. Again, the course of the Legislature, by its various resolves and investigations concerning these matters, has led the settlers to think that the State would in some way provide a title for them to their lands, as it did to those on which their fathers settled. Another thing which has, no doubt, tended to complicate matters, is the fact that certain resolves have passed the various Legislatures, either without a proper knowledge of the facts, or, in consequence of a misrepresentation of them, whereby the Land Agent was instructed to give deeds to persons therein named, of certain tracts of land, to which the proprietors

claim that they, and they alone, have title. Without venturing an opinion as to the validity of their claims, it is enough for us to say that it was no kindness to the settlers to give them a deed, the only effect of which was to stir up the proprietors, and which, at best, could convey to the tenant an undisputed title to nothing but a law-suit. The proprietors recognize the fact that their lands are covered with squatters, some of whose occupation has ripened into a good possessory title, and some of whose claims for betterments are so great that the proprietors' only remedy is to abandon the land at whatever value the jury put on it. They realize that they have a perfect theoretical remedy at law, which in some of its practical workings is no remedy at all; and while it would be difficult to get, in advance, a statement of just what these proprietors will relinquish their lands for, to the State, we feel confident, after talking with many of them, that they would be entirely reasonable in a cash price when someone is authorized to buy. The quality of the land varies greatly. Some of the proprietors with whom we talked named prices at which they would sell to the State, ranging from twenty-five cents to one dollar per acre. The settlers are willing to pay what the lands are worth, so far as they can, and in most instances they have the ability, if proper arrangements were made as to the times and amounts of payments. But they, alone and unaided, have neither the ability nor the means to effect these settlements with the proprietors, if they could agree upon the price.

By a strict construction of the resolve under which we were appointed, and considering only the legal or equitable rights of the settlers, such as would exist between individuals under like circumstances, our duty would be plain and our work easy. From this view alone we should say that in all probability there are but few claimants who have proof that they ever had a contract with the State or anyone in its behalf, for the purchase of land, on account of which they performed labor or paid money. None presented themselves to us and Mr. Barker reports none. Again, the State parted with its

title to the last land it owned in this disputed territory more than twenty years ago, and, if any of these contracts then existed, the parties or their successors are presumably still in quiet possession of the land, and would probably hold it by "twenty years' possession," as it is popularly called. Lastly, we should add that it would be time enough for the State to take action when the tenants are evicted.

There is, however, a broader, more humane, and, it seems to us, under all the circumstances surrounding this matter, in the past as well as the present, a more reasonable and better view to take. These settlers exist within the territory of our State and form a large part of our population in that beautiful valley of the St. John, with its tidy hamlets, frequent churches and growing industries. They are our citizens and such they will remain, with all their faults, with all their troubles and too, with all their virtues and their possibilities of development toward a higher and better citizenship. They are a religious people and careful observers of outward ceremonies, to say the least. Their spiritual ministers have cared for their temporal advancement as well, and have accomplished much in that direction. Much has been done for them by the State in the way of schools, with good results, and much more will be done in the future, from which it is hoped that even better results may be derived.

A certain portion of this population, amounting in all to some four thousand, are under a cloud, arising from the condition of the title to their homes, which have been occupied by them for all lengths of time from forty years down. They do not feel on a par with their neighbors who are the happy possessors of treaty lots. If we grant that in nearly if not all, these cases the settlers squatted on land which was the property of private individuals to which they had no claim whatever, and on which they were, in point of law, mere trespassers, yet we must remember their origin, the early wrongs of their race, the condition they were in when the treaty was concluded, the liberality with which the State then dealt with their fathers, the fact that the State passed laws whereby they

might take up land for homes, and afterwards sold out all this land, under a policy, the wisdom of which many have doubted. Considering these things we cannot wonder that when the treaty lots were peopled to their utmost extent the young men entered upon the wild land surrounding, which they had, to say the least, received some assurance the State was to keep for settling lands. They must go somewhere, and go they did to the nearest land which was unoccupied where they might clear for themselves homes. In some instances, no doubt, they entered on State lands, to which they might have acquired title had they taken the proper steps; but, as we suggested above, they took up this land with little or no idea as to the title to it or of the utility or manner of obtaining such title, relying on the State to somehow protect them in these homes. They were not wholly without excuse in the beginning. They have since received some encouragement that the State would furnish such protection, from the action of the Legislature from time to time, and from assurances of persons who were far in advance of them in education, which could not be fulfilled, and which were doubtless made either designedly for personal ends, or from a want of knowledge of the facts.

Under these favorable circumstances this occupation of disputed lands has grown to such large proportions that, coupled with the attending difficulties before alluded to, it is beyond the scope of ordinary private means of settlement. The courts furnish no adequate relief to the proprietor, and there is little encouragement for him to bring suits; and if he does the defense is burdensome, expensive, vexatious, and, in some instances, doubtful for the tenant. One of the marks of a civilized government is the interest that the State takes, not in the private disputes themselves of its citizens, but in their settlement. It provides, at the public expense, courts, judges and juries, to patiently hear and impartially determine the most trivial private differences of its citizens, not because the State as a whole has any interest in the subject matter, but because it recognizes the importance (we might say the necessity, if

good order and citizenship are to be maintained), that difficulties shall be fairly settled and not left to smoulder along in an unsettled state, ready to break out with redoubled energy when fanned into flame by some new occurrence.

Believing that this controversy is one which cannot be suitably adjusted in the usual course of procedure, and that it can only be successfully settled by considering it as a whole, we recommend that the Legislature, if it shall deem it just to take any action in this matter, authorize the purchase, from the proprietors, of land, in the following named towns and plantations, to the amount set opposite each, which is the amount estimated to be occupied in whole or in part by settlers, together with such other lands as are adjacent thereto, so as to make said lots, to be purchased by the State, cover all the interest of the proprietors in entire lots or tracts of land, whether wholly taken up by settlers or not, viz :

Grand Isle.....	5,000
Madawaska.....	12,000
Frenchville.....	15,000
Fort Kent.....	17,000
Wallagrass	7,000
	<hr/>
	56,000

We further recommend that there be appropriated for for this purpose the sum of thirty thousand dollars, and provide for a commission to make such purchase and attend to the subsequent sale or conveyance of said land, all deeds and conveyances to be made by the Land Agent to such persons and on such terms as said commission shall recommend, and proper records thereof to be kept by him; that such commission cause said land to be surveyed at once, and that they be given full power to direct the possessory title of any or all of the settlers to be confirmed by deed without payment, when justice so demands, and to sell said land to them at such price as the said commission shall deem reasonable, and take payment therefor on such terms as they

may think proper, in cash, notes, or in labor. Such restrictions as seem proper might be placed on the manner of settlements, but we are convinced that the commissioners must possess plenary powers in order to accomplish the object desired, and to that end be empowered to exchange land with the settlers and to cause disputed boundary lines between adjoining lots to be settled before conveyances are made, and, from the land remaining, to satisfy the claims of any settlers who have taken up land not included in this purchase and who desire to take lots in exchange therefor.

We have considered many expedients by which some relief might be afforded or the desired result might be accomplished by piece-meal, but we are firmly convinced ourselves that no adequate remedy can be found except the treatment of the trouble as a whole, by a process which will secure to the State a title to all these lands, and leave it free to arrange matters with these settlers as seems right and just. After making due allowance for the amount which the settlers will pay, the net expenditure of money required will be considerable, it is true, but not much when the number affected is considered, as compared with the expenditures of the State to induce certain foreign immigration and to foster the immigrants after they had arrived. In the case in hand the people are here and already citizens, and, as such, they have certain rights, and the State has certain duties toward them which should be recognized and performed; and we believe that the sooner this is done, and these people put on a solid foundation, so far as their land titles are concerned, the sooner we may look for them to stretch forward toward the intelligence, thrift and good citizenship of the typical Maine farmer.

Respectfully submitted,

SETH M. CARTER,
MORRILL N. DREW,
GEO. H. SMITH.

AUGUSTA, December 29, 1887.

