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JOHN A. PETERS.

MEMORIALS

OF THE

Bar of Lincoln County

MAINE

1760—1900

BY R. K. SEWALL.

"Benedicta est expositio quando res redimitur a destructione."—4
Coke, 26.



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1900

Memorials of the Bar of Lincoln County.

SECOND EDITION.

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At a meeting of the Lincoln County Bar Association, held at the Court House, in Wiscasset, on the sixth day of March, 1900, it was

Voted: That Messrs. R. K. Sewall, Geo. B. Sawyer, and Emerson Hilton be a committee to negotiate and provide for the printing, for the use of the Bar, of one hundred copies of the report of the proceedings on the occasion of the banquet given by this Bar, Nov. 3. 1899, in honor of the Hon. John A. Peters, the voluntarily retiring Chief Justice.

Memorials of Lincoln Bar.

INTRODUCTION.

BY R. K. SEWALL, ESQ.

Under the administration of the late Charles Weeks, Esq., as Clerk of the Courts, Lincoln bar held an historical reunion at Squirrel Island on Saturday, August 18, 1883. Organized and executed with success by the clerk, the literary exercises consisted of an historical sketch by R. K. Sewall, a poem by Benjamin F. Smith, and "post prandial exercises" by addresses from Judge Barrows, Nelson Dingley, Jr., M. C., and gentlemen of the bar of Lincoln and Sagadahoc. The entertainment was served at the Samoset House, on Mouse Island. It was the first service of the bar relating to its historical incidents, and a formal, distinguished and successful gathering under conduct of the Sheriff of Lincoln County and a Judge of the Supreme Court of Maine.

The suppletory matter of the present issue was then and there elaborated and is now introductory to the colonial narrative of this memorial issue.

As an outgrowth of pre-existing conditions of colonial civil life, forces prevailing in England, having organic effect in the charter of the 10th of April, 1606, the charter party of the Popham voyage and landing on the coasts of Maine, in August, 1607, and practically applied on the peninsula of Sabino of Sagadahoc, in a formal act of "seizure and possession"

¹ Gorges. Mass. Hist. cul. vol. 18.

of New England under the English theories and application of the law of valid land title, Lincoln bar is the legal representative of this English common law antecedent in New England. In its personals eminent men have practised more or less at Lincoln bar. John Adams attended Court at Pownalboro in 1765.¹ William Cushing, a graduate of Harvard, 1737, came to Lincoln and was the only resident lawyer prior to 1769. He was Chief Justice, and Sargent, Sewall and Sumner, associates, at the opening of the S. J. Court in 1786. Cushing was created associate justice of the Supreme Court of the U. S. on its organization in 1789. Daniel Webster, it is said, attended a case at Lincoln bar and George Evans, John Holmes, and Benj. F. Butler have practised at Lincoln bar; and our honored senator, Wm. P. Frye, acting president of the Senate of the U. S., was admitted to practice law at Lincoln bar.

Our record of notable men at this bar would be incomplete without the names of Hon. Samuel E. Smith, for four years governor of the state; Hon. John Ruggles, late of the senate of the United States; and the fact that the Hon. Chief Justice of the Supreme Judicial Court of Massachusetts died on the bench in this County of apoplexy on the second day of the court, whose monument in marble is yet standing in the old Wiscasset graveyard, inscribed "Erected by the members of the bar practising in the Supreme Judicial Court of this Commonwealth, to express their veneration of the character of Hon. Samuel Sewall, late Chief Justice of this court, who died suddenly in this place, June 8th, 1814."

¹ Frontier Missionary, p. 82.

CHAPTER I.

Law of "Scizin and Possession" as a Factor of Valid Land Title. Its Origin and Application as a Colonial Factor in New England.

LAW AS A CIVIL ELEMENT.

Law and the Christian religion are types of the highest developement in human civilization, and are not only props but pillars of state. Both are rooted in the principles of natural right and justice; and summarily expressed in the Mosaic code of the rock-written decalogue.

It is a philosophical axiom that *order* is nature's *first law*. But order is a fruition—the creation of law. Back of all order, in the chaos, where cause and effect work out issues, there must be a law-maker; and while law marshals organic relations of each molecule of matter, every throb of thought, all acts of the will, in material, mental, moral, social, civil and religious organism, it is only an expression of purpose, developement of design, movement of a plan by force of an intelligent cause. The law-maker is behind all. Law links the chain which holds all creation to its activities, and in its proper place all its forms, natural, moral and civic. Society is one of them, and the state an aggregation thereof, an outgrowth of law. The integrity of the state is upheld by force of law which keeps in proper action to their true functions the underlying forces of right and wrong in life's drama. Law is therefore a science, and right and wrong the sphere of its operations.

Law as related to valid land title in English jurisprudence, known as that of "seizin and possession" is of ancient origin and as held and applied, is a common law, appurtenant to, and safeguard of, homestead rights in land. This common law force was brought into use as a factor in colonial adventure in foreign lands early in the history of North American empire, by England as an initial step.

In 1492 the fact of a new continental world in the west from Europe was revived and certified to the maritime nations of Europe. In 1493 the lands of the new continent were partitioned to Spain and Portugal in virtue of alleged Divine vice-geral authority, by Pope Alexander VI, as a dotal act. This act startled and excited England and France. The question of the validity of such title was raised. France wanted Adam's will produced and the clause in it shown by which she was barred from a share in the new world. England appealed to natural right, and declared there was no good title in newly discovered land without *possession*. It was her common law doctrine of *scizin and possession*. A legal issue of international scope was started and grave questions of homestead holdings abroad opened among the nations. The British lion shook his mane in parliamentary ferocity. Bristling with resentment at Papal presumption, England roared: "*prescriptione sine possessione haud valcat*," and prepared to enforce her common law postulate of homestead holding, as an element of international law applicable to trans-atlantic titles instead of Papal dotal title. The English dogma was novel. It was also revolutionary. Spain was supreme in prestige and power on land and sea and a favorite of Rome.

National issues of trans-atlantic title had become involved with other matters of state. England was resolute. The issue narrowed to more or less of religious prejudice and church perquisite. Spain was incisive and led off, not only as the champion of her right to the exclusive possession of her church dotal in the choice lands of the American continent, but also in the assumption of the Divine vice-geral authority and persquistes of the Pope. More than a century had passed since the Papal grant, when, in 1580, England declared¹ that by the law of nature and nations *scizin and possession* were the sole grounds of good *title* to newly discovered lands; whereupon this issue became the battle ground of statemanship and diplomacy in the legal arena of international right.

THE CRISIS.

The argument ended in 1588. Spain decided to cut the Gordian knot with the sword. She marshalled an "Armada," heralded the invincible, and called her great American captain and dog of war, Pedro Menendez, to lead it. Death intervened to defeat his leadership, and the fleet entered the English channel on the 19th of July, 1588, under another command.

England gathered her wooden bulwarks, massed her guns in defense, to storm the channel waters under her Admiral Drake. On the 21st of July battle was joined. Fifteen different engagements were fought. The conflict raged to the 27th of July. For six days a cyclone of fire and shot swept the sea around the shores of England.

¹ Holmes annals Vol. I. p. I.

Spain lost five¹ thousand men and seventeen ships of war, sunk, burned and scattered. This catastrophe of arms and storm cleared the sea of Spanish supremacy; and England vaulted to empire and became herself mistress of the sea, a position she has ever since held. Thereafter the English common law of "seizin and possession" became a great colonizing force.

England and France at once applied the beneficent principle to trans-atlantic homestead life on North American shores. English maritime restlessness and enterprise in the west organized to discover and take "seizin and possession" of eligible sites in the new world. In 1602 the Concord, Gosnold, master, was chartered and started in execution of the enterprise. This ship-master conceived the plan of a new and direct route across the sea to American shores as the winds and currents would permit. It was within the parallel of the 43d degree N. L. In seven weeks he struck New England, on the coast of Maine, in a land full of hillocks, an out point of tall grown trees ahead north, a rocky coast at a point fringed with white sands. It was a sunrise view of a May morning. A Spanish sloop with native seamen, some clad in European costume, came along side and chalked a map of the country on the Concord's deck and called it "Ma-voo-shan." The relation of Gosnold arrested the attention of the commercial circles of England. In 1605 a "new² survey" of this Gosnold land was projected, and the ship "Arch-Angel," Capt. Geo. Weymouth, was sent out from the west of England to execute it, which was done before autumn and in latitude

¹ Teig's Hist. Chronology.

² Strachy.

north, 43 and 44 degrees. This survey made discovery of a magnificent harbor, the little River Pemaquid and the notable River Sagadahoc, the great river of the country of Mavooshan, the landfall of the Gosnold voyage of 1602. This landfall of harbor facilities, hillocks, rocky shores, fringed with white sands, and rivers described, became in England a coveted point of commercial and colonial attraction, valuable for "seizin and possession." The relation of Gosnold supplemented by the Weymouth survey fixed in England the *locus in quo* of eminent domain for a "great State."

The spacious harbor, grand river tributaries, magnificent woods of great mast trees and oak ribs for ships, abounding seashore fisheries, beaver haunts and otter ponds, were the appreciated features of commercial and industrial promise "of places fit and convenient for hopeful plantations."¹

Gosnold's landfall of the Ma-voo-shan country, the beaver haunts of the Sheepscot and Kennebec, Pemaquid and Muscongus, environed with the "strangest of fish ponds" in the sea, and land marks most remarkable from Monhegan and its island archipelago with hills north and east and the twinkling mountains of Aucocisco in the west, in 1606 had become a land of promise to the commercial industries of England for a seat of empire in North America.

But France had forestalled England in the application of her law of seizin and possession to the lands of the new world and planted colonial foothold in New England on the St. Croix River, east of Ma-voo-shan in 1604. Nevertheless, recognizing the legal tenure of

¹ Charter, 1620.

the French occupancy, England hastened to make good her legal hold in the lands west. On April 10th, 1606, the English purposes to utilize her common law of seizin and possession in North America in the latitudes of her surveys took form and expression in legal muniments of contract.

The Chief Justice, Popham, of the bench of England, organized a corporate body on a crown grant hedged with specific agreements. "We do grant and agree," is the opening of the contract. In tenor it was a license conditioned to the issue of future and further concessions. The grantees were government contractors. The transaction was a formal, legal conception of a valid permanent title of possession of homestead holdings of the English race at the points of seizure, discovered and seized as "fit and convenient"¹ places for making of habitations and leading out and planting of *volunteer* subjects of Great Britain. The contractors agreed to build and fortify where they should inhabit; and could lawfully colonize only such residents as would voluntarily emigrate. Permanency of possession, homestead establishment of English people, alone could fulfill the conditions precedent of the colonial undertakings. Such a colonization accomplished, insured, under royal stipulation, endowment of plenary right to the fruits of their undertaking to the contractors, their heirs, assigns and successors, in letters patent or crown deed to the lands by them seized and occupied, which issued in the great New England charter of 1620.

I need not say the facts above stated were a practical expansion and enforcement of the English common

¹ Charter, 1606.

law doctrine of valid land title to North American soil, to serve purposes of state as well as corporate interests. The contract of the 10th of April, 1606, pregnant with the forces of English common law land title, at once began to unfold the era of English colonization north of Florida, in English cartography marked "Verginia."

Two colonial adventures were started within definite bounds for the shores of North America, known as the first and second colonies. This scheme for seizing and establishing a legal land title in right of the English race on North American soil, was applied in Maine and set to work out natural results with all the machinery of law into which the civilizing forces of Christian ethics, natural right and justice fully entered to shape an embryo state on the 20th of August, 1607.

THE RIGHT ASSERTED.

The French, who had forestalled the English in a "*seizure and possession*" east, alert to extend the possession of the celtic race in New England, some three years after the English seizure within the 43d degree and a supposed abandonment, on rumor thereof at St. Croix, planned an expedition to seize the abandoned region, led by Captain Plastrier, the French commander. Reaching Monhegan, a dependency of Pemaquid off Popham's Port, two English ships from the little harbor of Monhegan captured Plastrier and held him prisoner by force and arms till he promised to return east and abandon his purpose of expansion of French territory at the expense of English rights of possession in the latitude. The Englishmen produced letters of royal authority in justification of their acts,¹ saying "they were masters of

¹ Caryon's letters. Baird's narrative.

the place," probably the charter of the 10th of April, 1606, of the Popham colonial enterprise. This public assertion of land title in right of the English race was the earliest outgrowth of the English law of seizin and possession recognized as an element of international law now put in force in the colonization of North America.

The charter licence of April 10th, 1606, (and charter party of the Popham colony), is therefore the guarantee of land titles to colonial life in New England. The common law of land titles in England applied as an international right to the soil of the North American continent, in its expansion and application to colonial holdings prior to 1619 and in virtue of the Popham colonial startat Sagadahoc, established legal possession of New England in right of the English race and settled English homestead life in *more than one place*, agreeable to the desire of the colonial settlers on the coast of Maine. On the 20th of August, 1607, the climax of English land title was consummated, on Thursday, when all the colonists landed at Sagadahoc, and the President, Popham, "*set the first spit of ground*" to fortify, and after him all the rest followed, thus waiving and merging the ancient symbolic act of seizure by "turf and twig," by breaking the soil with a spade.

CHAPTER II.

LINCOLN (MAINE) BAR.

Its Colonial Rootlets 1607, and Climax 1899.

In English jurisprudence the bar represents a conception and contrivance in the administration of law, founded on the Roman idea of a tribunal of justice. The bar is a factor of our civilization. It is, in fact, a duly organized body of men, schooled and skilled in the principles of justice to be an organ of sovereignty, to determine questions of right and wrong in society, and enforce the demands of natural justice, agreeably to good conscience and fair dealing.

Lincoln bar is the representative of legal procedure in the earliest appliances of the common law of England in New England as a colonial factor. Originally its jurisdiction embraced a section of the coast of North America in and about 44 degrees N. L.:—a country specifically located between Cape Small Point and the eastern expansion of Pemaquid dependencies, on discovery, in 1602, called by the natives "Mavoo-shen"¹; in the English colonial transactions of 1607 contracted to "Moashan"²; and in the annals of colonial English literature described as "The Kingdom of Pemaquid."³ The earliest civil organization for general legal procedure, was formed into a ducal province, as the county of "Cornwall," after that of England, the home in the fatherland of many of the early immigrants thereto.

¹ Hutchinson Hist. Map.

² Popham's despatch.

³ Strachy.

Lincoln was applied to the same civil jurisdiction in 1760, in honor, (it is supposed), of the ancestral home of Governor Pownal, who signed the act creating the county.

With these facts relating to the origin, succession, name and *jurisdictional territory* of *Lincoln bar*, we proceed to the facts of antecedent administration of law and justice within its bounds; together with the principles of civil polity on which the administration vested underlying legal rights.

We therefore go back to the reign of Queen Elizabeth of England, when her nobility besieged the throne with calls of urgency for English colonial seizure and planting of North American soil. "The wings of a man's life," they cried in her ears, "are plumed with the feathers of Death,"¹ till the head of the English bar was authorized to act in the premises, and the Royal Licensure of April 10, 1606, was issued, — the charter-party of the Popham colonial exodus from England, in 1607, embracing a code of civil principles which were organized on the colonial landing, and into its Pemaquid expansion, and enlarged in the patent of February 20, 1631, and there reduced to practical use in the judicial construction of a civil polity on the basis of the common law of England.

The first court organized in New England was within the ancient jurisdiction of Lincoln County and in Popham's town of Fort St. George, where first were applied the forces of the common law of England as a colonizing agency. The antecedents of Lincoln bar were the outgrowth of the royal charter aforesaid:—an inden-

¹ Brown's Genesis.

ture drawn up by Lord Chief-Justice Popham of England.

Its execution began in the English seizure and possession August 20, 1607, of the peninsula of "Sabino," the west shore of the mouth of the Kennebec river, then, as now, known as the "Sagadahoc," its Indian name. The colonial grant was a pregnant act, having fuller expansion at Pemaquid and old "Sheepscot farms," up to 1689; and matured in the administration of law, as now, at Wiscasset Point in 1794.

The unfolding of the charter of April 10, 1606, started English homestead life and industries on North American shores in lat. N. 43 to 44 degrees. One hundred and twenty English colonists landed under the English flag. The site of a town was chosen. The first act was solemn consecration of the spot by the worship of God and a sermon, according to English canonical law and formularies of the English Episcopal Church. A code of law was promulged and civil polity organized, and a court of law opened.

Sir George Popham was nominated, not as a viceroy, governor or mayor, but as president of the embryo state, to wield the sovereignty thereof, and duly inducted to office, with subordinates, by solemn oath.

The material fruits of the movement were an English hamlet of fifty houses, a warehouse, a church with a steeple to it, an elaborately entrenched fort, well mounted with guns, a shipyard with a thirty-ton vessel on the stocks and a court of law.

The president, with sworn assistants, were the Court officials. It had a seal. "*Sigellum Regis Magnae Britanniae, Franciae et Hiberniae*,"¹ was the legend of one

¹ Popham Memorial vol., Appendix S, p. 133.

side ; and on the other, "Pro Concillio Secundae Coloniae, Virginiae."

All the rights, privileges and liberties of English home-born citizenship were guaranteed. Trial by jury and the writ of *habeas corpus* were grants of right to the people.¹

Every safeguard of life, personal liberty and property, to the English common law appurtenant, was set about the new homestead life of the English race here,



PEMAQUID HARBOR.

(Site of "Jamestown," Capital of Cornwall County, (1605), and Fort Charles.)

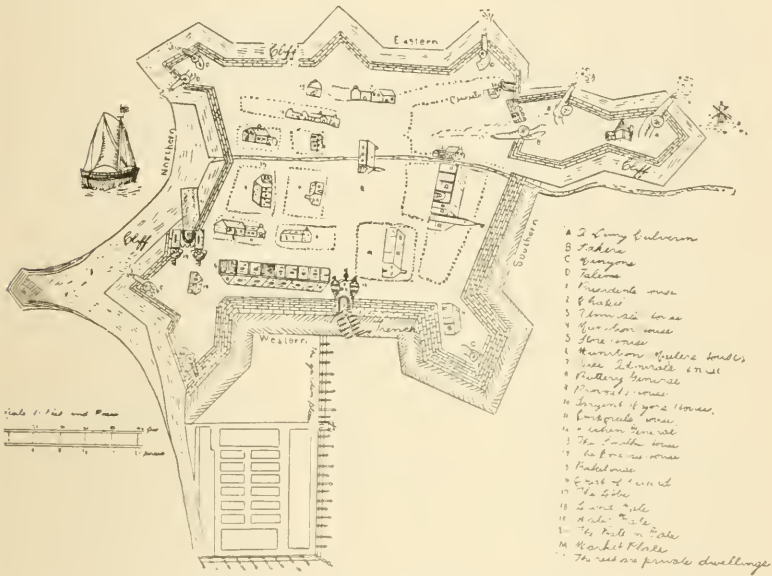
as a hedge, even to the use of the elective franchise in the civil office of chief magistrate." So all the forces of Christian civilization were planted at Sagadahoc. Tumults, rebellion, conspiracies, mutinies, sedition, manslaughter,

¹ *Idem*, Appendix A, p. 94.

² "These my loving subjects shall have the right annually to elect a president and make all needful laws for their own government," etc. Memo. vol. page 94.

incest, rape and murder were capital crimes. Adultery, drunkenness and vagrancy were penal offenses.¹

All offenses were required to be tried within the colonial precinct. Magistrates were ordered to hold sentence on judgments recovered, in abeyance for appeal to royal clemency to secure a chance for pardon. To



facilitate this feature of legal mercy, the court was required to keep full records and preserve the same. Preaching of the Christian religion was ordained as matter of law, as well as Christian teaching and civilization of the Indians.

It will be seen the scope of jurisdictional issue of the court at its colonial start in this county was substantially,

¹ See Charter, April 10, 1606.

as relates to crime, the same in its cognizance as now.

No records of the adjudications of the court of Popham's town of Fort St. George have yet been recovered.

The only legal public paper extant is a dispatch of President Popham to the King of England, dated at the old town, December 13, 1607, detailing present success and incidents of promise of the colonial holdings, written in Latin, the then language of state papers.

Lord George Popham, the first president of a civil magistracy (shall we say within the United States?) and first chief justice of a court of law within the ancient jurisdiction of Lincoln County, is described as having been an aged, God-fearing man,¹ stout built, honest, discreet and careful, somewhat timid and conciliatory; but he was the life of the colony, made up of London men and West of England rural life.

Rawley Gilbert, second in command, representative of the London city element of the colonial adventure, is said to have been a very different man from his chief. He is described to have been a "sensual, jealous and ambitious man, of loose habits, small experience, poor judgment, little religious zeal, but valiant," and a mischievous factor in colonial affairs.

The prudent Popham, nevertheless, reconciled differences and soothed friction during his administration, which ended with his life in February, 1608. The last of January, fearful thunder, lightning, mingled rain and snow, hail and frost, for seven hours in awful succession overwhelmed with cyclonic winter rigors the colonial

¹ Brown's *Genesis of the United States*.

hamlet at Sagadahoc. It survived the climatic rigors, but encountered the death of its godly chief on February 5, 1608, further to experience catastrophe in the selfishness, irresolution and caprice of the Gilbert succession to the management of the life issues of the new beginnings. Popham was no doubt a victim to the climatic convulsion of the January storm.

The spring brought timely supplies from England. Capt. Davis reported "he found all things at Sagadahoc in good condition :—many furs stored, and the "Virginia," a pretty, thirty-ton vessel, built, launched, ready for service."

Nevertheless Admiral Gilbert planned a return to London ; and having the sympathy of the London faction of the colonists, set sail in the London ship "Mary and John," with the pretty "Virginia" and her master-builder, Digby of London, laden with colonists in sympathy at least with Gilbert,—abandoning the colonial Sagadahoc river site. "The colonial president was dead, and Admiral Gilbert had sailed away on or about the eighth of October, 1608, with all but 'forty-five' of the colonists,"¹ is the story of Captain John Smith. So it is not certain there was entire consent to the return of all the colonists on the official abandonment. It is certain the Popham flagship, the "Gift of God," and her fly-boat or tender, are not mentioned in the return.

But the Lord Chief Justice of England, Sir John Popham, had died, and his son Francis had succeeded to his father's estate ; and by him it seems this abandonment was protested. It is certain the Popham interest in the colonial adventure did not concur in the Gilbert move-

¹ Smith, Mass. Hist. Soc. vol. 18, p. 115.

ment. Sir Francis withdrew his father's ships and interest from the corporation, and put them in service on the same coast in the fur trade and fisheries, out of which a "Port" was created and opened at Pemaquid; and of such influence, importance and extent, that the great historian of our colonial life in New England, Strachy, recorded "that to the north in the height of (lat.) 44 degrees lyeth the country of Pemaquid:—A kingdom wherein our western colony upon the Sagadahoc was some time settled."

History so connects Pemaquid and Sagadahoc in the Popham colonial planting of English life, law and civilization here and within the ancient jurisdictional limits of Lincoln Bar.

The settlements were of the same colonial parentage; and we must now turn to Pemaquid in further search of colonial court procedure.

Prior to 1625, the Popham interest at Pemaquid had grown to an expansion as well as a concentration of commercial industries, absorbing the entire trade of Indian peltries on the main; and population had increased at and about Popham's "Port," described on John Smith's great map of New England, and sketched at the head of John's Bay named "St. Johnstown," so that land had become valuable for speculative purchase.

In 1614, when Smith made his surveys from Monhegan Island, for the great map of New England, he found the Popham "Port" and describes and sketches it at the head of John's Bay, and gave it the name of "St. John's Town. Here one John Brown, a mason, had settled, and began the purchase of large bodies of land,

under Indian titles, "Sa-ma-a-set" the "Lord of Pemaquid," favored Brown's greed for land. Popham's port of "St. Johnstown," had now become "New Harbor," in the annals of the day.

Robert Aldworth, mayor of the city of Bristol, England, had established a trade plantation at the mouth of Pemaquid River, and transferred a branch of the mercantile firm of Aldworth & Elbridge, of that city, to the west shore of Pemaquid Point, to utilize the harbor trade. Abraham Shurt was the resident agent of the firm, and an English magistrate of the plantation.

Brown, Sa-ma-a-set, Ungoit (probably Samoset's wife), and Shurt here executed the first deed of a great land deal, with the neat, compact formulary of acknowledgement still used in New England, of which Abraham Shurt was the author, and probably used a formulary of the common law of England, as follows, viz: "July 24, 1626, Captain John Samoset and Ungoit, Indian Sagamores, presonally appeared, and acknowledged this instrument to be their act and deed at Pemaquid, before me, Abraham Shurt." This is the only record of a formal legal transaction, with the implied existence of a magistrates' court and record, earliest in the Pemaquid section of the Sagadahoc colonial settlement.

In 1631, the Aldworth and Elbridge Plantation had grown to the importance of an emigrant depot, with a ship of 240 tons, sixteen guns, in current trade with Bristol, England, called the "Angel Gabriel," unfortunately driven ashore and wrecked in the harbor of Pemaquid in an August gale, 1635. The business

1 M Historical Collection, vol. 5, pp. 168, 186, Samoset of Plymouth History.

expansion of this harbor site had reached the sea-island dependencies of Monhegan and Damariscove and a proprietor's court was organized and held there, of which Thomas Elbridge was the judge, to which the inhabitants of these islands (and no doubt the neighboring mainland communities) resorted for redress of legal grievances. We have yet found no records of this court extant. Its charter privileges and scope of civil rights are found in the Pemaquid patent, granted Feb. 29, 1631. A census of the year preceding shows eighty-four families, besides fishermen, appurtenant to this plantation.¹ Indeed this Pemaquid settlement was larger and more important than the capital of Canada.² The bill of civil rights to the people of Pemaquid recites that its issue was made with a view to "replenish the desert with a people governed by law and magistrates!" It authorized a democracy in scope and practice as perfect as that of this day, of which our existing concessions of civil rights, we think, are offshoots.

The principle of a majority rule was set in the machinery of civil power at Pemaquid. "From time to time, (it was declared), the people may establish such laws and ordinances for government, and by such officer and officers as most voices shall elect and choose."³ Such were the principles of civil right and law, laid as the basis of legal enforcement and adjudication of the proprietors' court at Pemaquid till Sept. 5, 1665.

On the twelfth of March, 1664, the great fishing plantation of Aldworth and Elbridge, and Popham's

¹ 5th vol. Mass. Hist. Soc. Col., p. 197.

² 5th vol. Mass. Hist. Soc. Col., p. 195. Thornton.

³ See Pemaquid Patent.



JAMESTOWN OF PEMAQUID WITH FORT CHARLES IN 1677 AS DESCRIBED.
A Village; B Fort; C Harbor; D Point called Barbican; E Subterranean passage.

estate on the east side possessions, were acquired by the Crown of Great Britain, and converted into a ducal province for the Duke of York, under the style of "Pemaquid and Dependencies." A new civil organization was created Sept. 5, 1665, by a royal commission at "Sheepscot Falls," which held its sessions at the house of John Mason.

Pemaquid and its dependencies were erected into a county, called Cornwall, and two towns as centers of administration of civil affairs were created. The chief or capital embraced the Pemaquid Harbor Plantation, Islands and "New Harbor," the old Popham Port, and named "James Town" of Pemaquid, probably in honor of James, Duke of York, the royal proprietor of the Province.

The "Sheepscot Farms," were created a shire town, called "New Dartmouth," probably, from the fact that most of the population were immigrants from Devonshire, and its river "Dart."

A new legal tribunal was organized, called "Court of General Sessions," and made a court of record. Its sittings were held on the last Wednesday of June and the first Wednesday of November. The November session was at Jamestown, where the chief justice resided. The circuit was held at New Dartmouth.

Sullivan says this court had jurisdiction of ecclesiastical affairs. In disagreements of opinion, Chief Justice Jocelyn decided. William Short¹ was clerk of court at its Jamestown sessions; and Walter Philips, at the New Dartmouth sessions, who resided in Newcastle, near the bridge.

¹ M. Hist. Col., vol. 5, p. 57.

The records were described "Rolls and acts and orders, passed at sessions, holden in the territories of the Duke of York." John Allen of Sheepscot was high sheriff. This important record has not yet been found. May it not yet exist among the title papers in the royal family or archives of York in England?

The precepts of this court, with a declaration of claim, authorized a *capias* against a respondent. We have notes of one trial for murder at Pemaquid, in November, 1680. Two parties were arraigned, Israel Dymond and John Rashley, for the murder of Samuel Collins, master of a vessel called the Cumberland, by drowning him. Of final results, we have no record.

But we have record of this court of the trial of John Seleman of Damariscove in the New Dartmouth shire, Nov. 16, 1686, for assault on the sheriff, and threats of murder of his wife. On plea of not guilty issue was found for the king; Seleman was fined and placed under bonds for future good behavior.

CHIEF JUDGES OF COURT OF GENERAL SESSIONS.

Henry Jocelyn, a magistrate of the Province of Maine, under Gorges, moved to Jamestown, Pemaquid, and in 1677 we find him holding court as chief justice of the session and head of the judiciary of the ducal state. At Jamestown, he lived and died prior to 1683. Eminent for loyalty to the crown, peace and good order, fidelity to his public duties and uprightness of life, Chief Justice Henry Jocelyn died in his judicial robes, unsullied, and was buried at Jamestown, Pemaquid, between the 24th of August, 1682, and the 10th of May, 1683, his remains still laying within the confines of the Old Fort cemetery.

Public necessity required the vacant chief's seat at the head of the court of general sessions to be filled and on the 28th of April, 1684, Thomas Giles was commissioned chief justice of the same court.

Judge Thomas Giles was a land owner and of agricultural habits, residing near the Fort, with outlaying farms near Pemaquid Falls above. He was a strict observer of the Sabbath, and otherwise seems to have been a conscientious and God-fearing man, and exerted himself, not without difficulty, in correcting abuses of military authority. During his administration the revolution of William and Mary occurred. The English throne, under the Stuart dynasty, tottered and fell, ending the Duke of York's jurisdiction at Pemaquid in 1689.

The French were alert to suppress English supremacy in New England, and stirred up Indian allies to improve the opportunity of public confusion and anarchy incident to a change of dynasty. The combined forces planned invasion and overthrow of British rule and to seize the English Fort Charles of the ducal province, and subdue the old county of Cornwall. It was the 12th of August, 1689. Judge Giles had gone to his farms at the Falls with his little sons to superintend harvesting of crops and the care of his corn field. It was noon. Dinner had been served to his workmen. Giles and his sons were still at the farm-house and workmen dispersed to their labor. Suddenly the guns of Fort Charles sounded an alarm. All were startled. The Judge said he hoped it heralded good news of reinforcements arrived at the Fort, with soldiers returned who had been drawn off. The next moment a savage yell and the war-hoop with crash of volleys of musketry from a hill in the rear

shocked the ear. This din of war brought the Judge to his feet, crying, "What now? What now?" It is the story of his boy, a child, his youngest, an eye-witness. His father seemed handling a gun. Moxus, sachem of the Kennebec Indians, led the fray. The child fled. A painted savage with a gun and cutlass, the glitter of which dazed the child, who, falling to the earth, was seized and pinioned. Led back to his father he saw him walking slowly, pale and bloody. The men at harvest in the field were shot down where they stood or as they fled to the flats, and others were tomahawed, crying, "O, Lord; O, Lord." Those taken captive were made to sit down till the slaughter ended and then led towards the Fort, a mile and a half distant, on the east side of the river. Smoke and crash of fire-arms were seen and heard on all sides. The old Fort Charles was in a blaze which with the roar and flash of cannon added to the din and dismay.

The Judge was brought in, Moxus expressing his personal regrets, saying, "Strange Indians did the mischief." The Judge replied: "I am a dying man; and ask no favor but a chance to pray with my boys!" Then earnestly commending them to the care and favor of God, with the calmness of assuring faith, took leave of his children with a blessing, encouraging them with the hope of a meeting hereafter in the better land. Pale and faint with the loss of blood now gushing from his shoes with tottering steps he was led aside. "We heard the blow of the hatchet, but neither sigh nor groan," is the story of the child. Seven bullets had pierced the body, which was buried in a brush heap where he fell. It was in view of the Fort where the smoke and thunder of battle raged

till surrender of the Fort and town was achieved, and some twenty houses of Jamestown were burned to the ground. This catastrophe ended the civil, religious and industrial existence of old Cornwall County with its Pemaquid dependencies of Popham's Fort, Smith's St. Johnstown, the Aldworth and Elbridge Plantation of Jamestown, and the new Dartmouth municipality of "Sheepscot Farms" of near three-quarters of a century's standing and growth. With the death of Chief Justice Giles, the ancient aristocratic organization, social, civil and religious, with old Cornwall County passed away.

REVIVAL OF CIVIL ORGANIZATION.

The result of the fall of Fort Charles made the ducal province subject to Massachusetts Bay jurisdiction under Governor William Phipps, a native of Pemaquid, who erected the famous stone fort, William Henry, in 1692.

The civil existence of the county of Cornwall was, however, ended in the catastrophes of French and Indian assault, upon the capture of Jamestown and the fall of Fort Charles of Pemaquid, 1689; collapse of the Stuart dynasty, involving the tragic death of Chief Justice Thomas Giles at Pemaquid Falls, and the capture of his wife and children.

Town and court records, title deeds, and public papers were all scattered and destroyed; the country made desolate and waste. The ancient plantations of the ducal province became solitudes, and so remained till 1716, when Georgetown, embodying the Arrowsic Island re-settlements of 1714, was incorporated by Massachusetts and made the shire of a new county called Yorkshire.

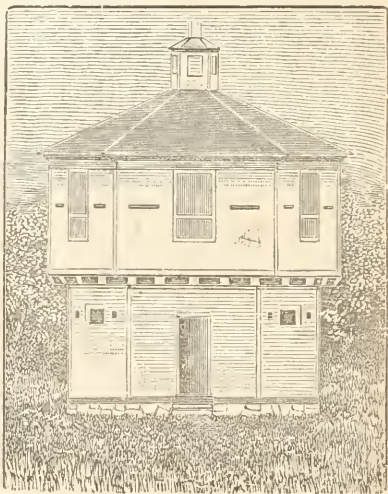
Anno Domini, 1728, Samuel Denny became a citizen of the New Town and had his Garrison House near the

Watts Fort, head of Butler's Cove, where a meeting house stood in a hamlet of some twenty or thirty homesteads. Denny was an educated Englishman, industrious and thriftful, and also a civil magistrate. There he held a court and, it is said, acted as his own bailiff. John Stinson, also, was a Yorkshire magistrate, whose jurisdiction covered Wiscasset; and Jonathan Williamson of Wiscasset was a deputy sheriff. But no court of record existed till the organization of Lincoln County, June 19, 1760.

The interest and influence of the old Plymouth land company fostered the new county developement, caused to be incorporated a new town on its lands, called Pownalboro, as the shire town of the new county of Lincoln, and erected a court house and jail on the east bank of the Kennebec, built of hewn timber.

Lincoln succeeded to the jurisdictional territory of old Cornwall, the province of 1664, embracing the kingdom of Pemaquid, of the colonial transactions of 1607.

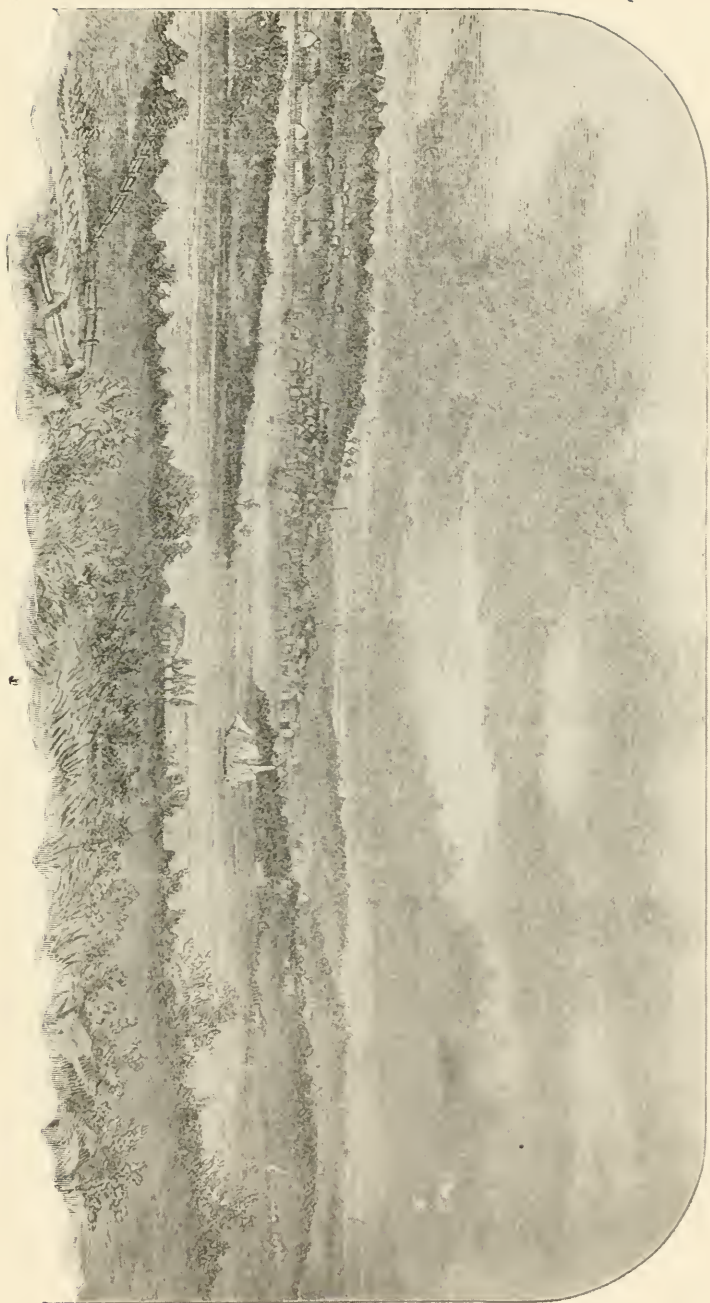
The organization of a court of record for Lincoln in 1762, laid the foundations of Lincoln bar. The court retained the style of the old Cornwall courts, court of sessions, with sittings on the second Tuesdays of June and September.



SAMUEL DENNY FORT.

The Homestead of the first Judge of Lincoln Bar, Samuel Denny, near Butler's Cove, Arrowsic Island. 1728—30

WISCONSIN IN 1858.



Samuel Denny, William Lithgow, Aaron Hinckley and John North were its judges. Its first session opened as follows, viz :

“Lincoln SS.

Anno Regni Regis tirtii, Magnae Britainiae, Franciae et Hiberniae primo”: and the first order declared Jonathan Bowman clerk ; and the next the establishment of a seal, thus : “At his Majesty’s court of general sessions of the peace at Pownalboro, within and for the county of Lincoln, on the first Tuesday of June, being the first day of the month, 1762, it was further ordered, that a seal presented by Samuel Denny, Esq., the motto whereof being a cup and three mullets (being the lawful coat of arms of the said Denny’s family) with said Denny’s name at large in the verge thereof, be accepted, and that it be established to be the common seal of this court.”

In 1786, the supreme court of Massachusetts began sessions in the old Pownalboro court house.

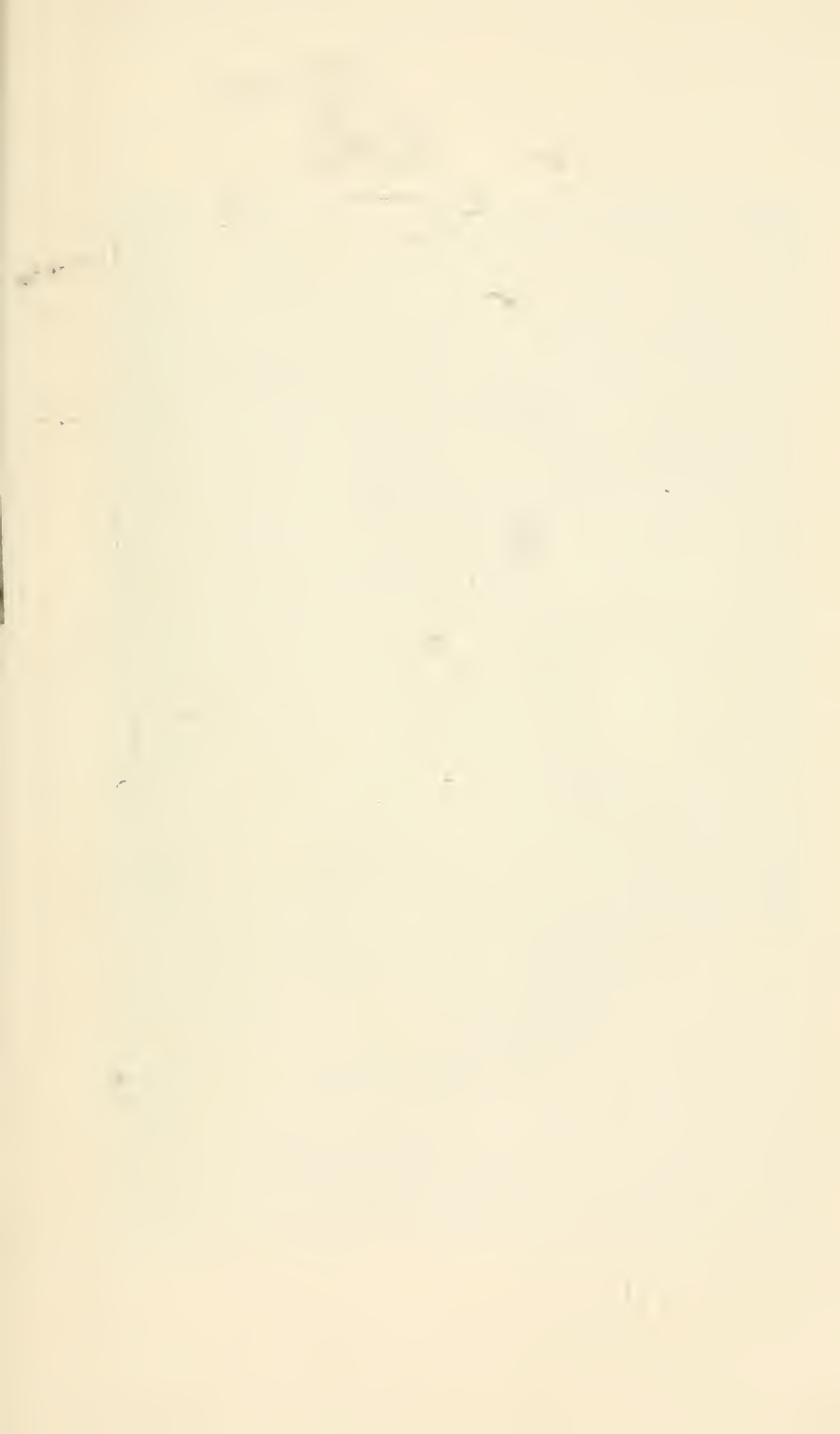
In 1794, court holdings were changed from the Kennebec to the Sheepscot Precinct of Pownalboro, at Wiscasset Point, with alternate sittings at Hallowell. Cushing, Sewall, Sargent and Sumner were justices presiding. The first session after this change had a formal and dignified opening. Three sheriffs in cocked hats, armed with swords and bearing long white staves, marched in procession before the judges, the bar following to the beat of a drum. From then till now, Lincoln bar has worked out the issues of law and justice here, at Wiscasset Point, a site of one of the old Sheepscot Farms, granted by Governor Dougan, a governor of Pemaquid and dependencies of the old ducal province of 1664.

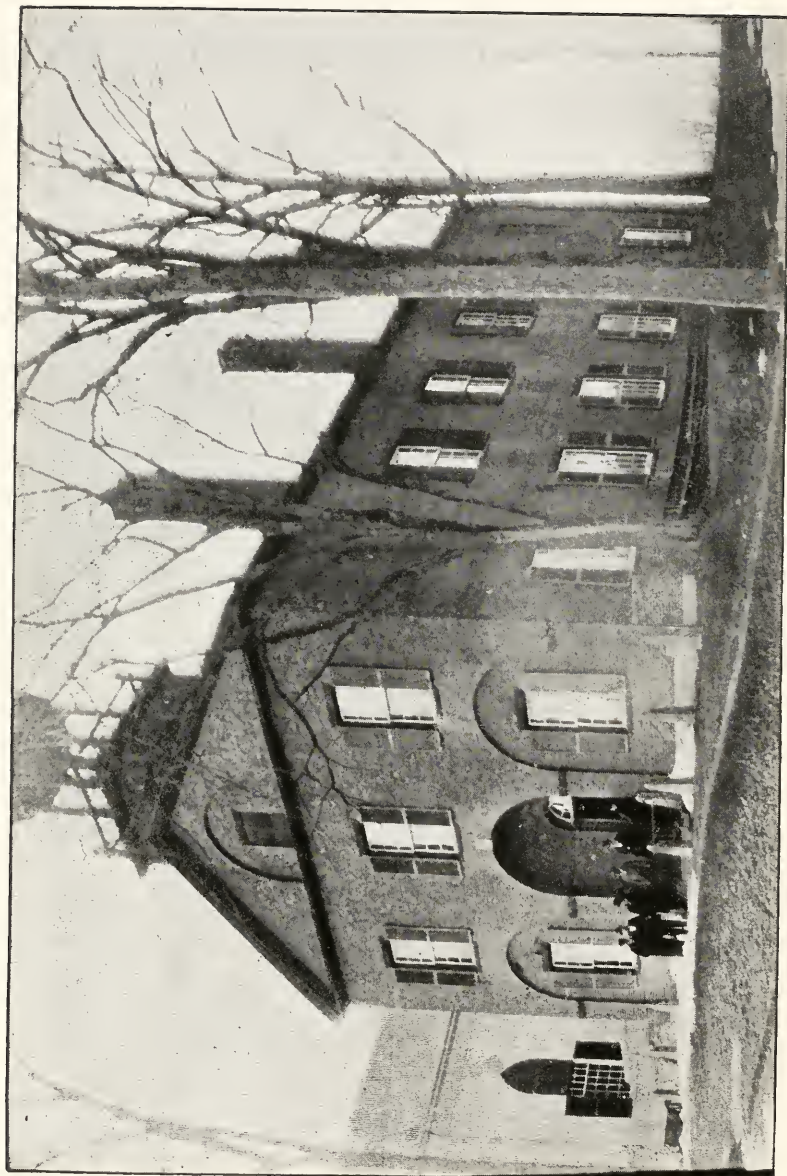
THE CLIMAX.

CLOSE OF THE ACORN TERM.—THE FAREWELL.

The planting a baby oak on the court-house lawn at Wiscasset, and an evening banquet, in honor of Chief Justice Peters, were the concluding exercises of the occasion. A thrifty five-foot sprout from the Penobscot Oak had been carefully selected, prepared and nursed for the occasion by the Lincoln bar, to be set out and fostered as the "Peters Oak."

During the court recess of Friday, the third of November, 1899, the bar gathered at the place of planting. Headed and led by the Wiscasset Cornet Band, the youth from the Wiscasset academy, the children from the grammar schools and primary departments of the village, and their teachers, two hundred strong, marched in procession to the planting ground, and formed a hollow square about the bar members and the little tree. Geo. B. Sawyer, Esq., set the sprout with a new spade, cheered by cadences of appropriate strains of soft music from the band. He also explained the novel scene. William H. Hilton, Esq., formally dedicated the little tree as the "Peters Oak," as the president and in behalf of the Lincoln bar; whereupon R. K. Sewall, Esq., moved that the transaction be entered of record on the bar registry, which was adopted. R. S. Partridge, Esq., made a spirited address of thanks to the school children for their sympathy and aid, and in eulogy of the honored chief justice; and the whole closed with the song of "America," and three cheers for the Chief. At 9 o'clock, P. M., the banquet at the Hilton House was opened. There were a dozen courses. "The brains and fame of





COURT HOUSE, LINCOLN BAR.

the State of Maine were there," to participate in the quiet, heartfelt farewell of Lincoln bar to the justice. Most of the associate justices of the Supreme Court of Maine added to the eminence of the occasion, with the United States senator, Eugene Hale. The post prandial exercises were opened by President Hilton in a brief, appropriate address of welcome, as follows :—

BRETHREN AND FRIENDS :—In behalf of Lincoln bar it affords me great pleasure to extend to you a cordial greeting. We are glad to find you within our borders ; we are happy to meet you around this board. It is well that we should occasionally lay aside the cares and perplexities incident to our profession and cultivate the social side of life. While your neighborly, brotherly and social qualities are universally recognized, yet it is well known and understood that a special purpose prompts us to gather here this evening. We have assembled to do honor to our worthy Chief. We wish to demonstrate and emphasize our profound respect and affection for him.

I have always believed and have often declared that, in my judgment, the highest attainment to which a man may aspire is, that after a long, useful and successful business career, with a mind richly stored with knowledge, and a heart full of kindness, and personally radiating warm sunshine, he shall in the afternoon of life become a living magnet, drawing to and around him not only men, but children, who will delight in his companionship and in his entertaining and instructive conversation. Very like such a man is our distinguished guest, Chief Justice Peters.

Brethren : Salute your Chief. I propose the health of Chief Justice John A. Peters, with the hope that many



years of usefulness, content and happiness may be added to the years already so well spent.

His honor was greeted by a standing recognition of the propriety of the toast, and rising said in reply :—

“I thank you for this dinner and this assemblage of friends. As you all know, I am about to retire from the bench of Maine. I am proud to say, I am doing it while I have mind and sense enough to know what I am doing. I have always been fascinated by old Lincoln, and held more terms of court here than in any other county in the State, except, possibly, Penobscot. Lamb has said on a like testimonial it ‘was like passing from life into eternity.’ Well, I am not ready for eternity; and I do not believe that eternity is ready for me. But I have a sort of indescribable feeling of being buried alive, in thus taking leave of my duties on the bench. Yet I tell you, gentlemen, if I am to be buried alive, I would rather be buried in old Lincoln county than anywhere else in the world.

An eastern monarch offered a reward for a new pleasure. Were he alive today, that sought for pleasure would be his, were he to come to old Wiscasset . . . stroll to the quiet old court house . . . ramble across the long bridge to the island . . . and bring up under the old oak ‘Penobscot.’

The toast master for the occasion was R. S. Partridge, Esq., who introduced the bar speeches by proposing “Lincoln County, the Mother of Counties,” and called for R. K. Sewall, Esq., who responded as follows :—

May it please the court, members of the bar and gentlemen of the jurisprudence of Maine: As I rise to answer this call, I am deeply impressed, almost startled, with the fact, that we are standing on this occasion among

the centuries, making history, at work on the capstone of a new niche, as a climax in the life of Lincoln bar, if not in the jurisprudence of our State!

I am given the motherhood of Lincoln as a theme. "*Mother!*" Who does not appreciate its import? The word itself is an epitome of all that is true and tender in affection, faithful in nurture, enduring in sympathy, in humanity! It suggests a look into the cradle, at the infancy of law within the ancient jurisdictional territory of Lincoln Bar.

On the twentieth of August, 1607, was organized the first court of record, with a seal and marshal, in New England, and within the jurisdictional precincts of Lincoln bar of old, under royal charter dated April 10, 1606, drawn up by the chief justice of the bar of England, to plant the soil of New England with the privileges and principles of the common law of England, as a colonizing factor. The proceedure of the administration whereof Lincoln bar was representative, has reached a climax this term of court. Having brought forward the skeleton of legal proceedure and principles of colonial antecedents of the jurisdictional territory of Lincoln bar, to be crowned with memorial symbols; shall it be with oak?

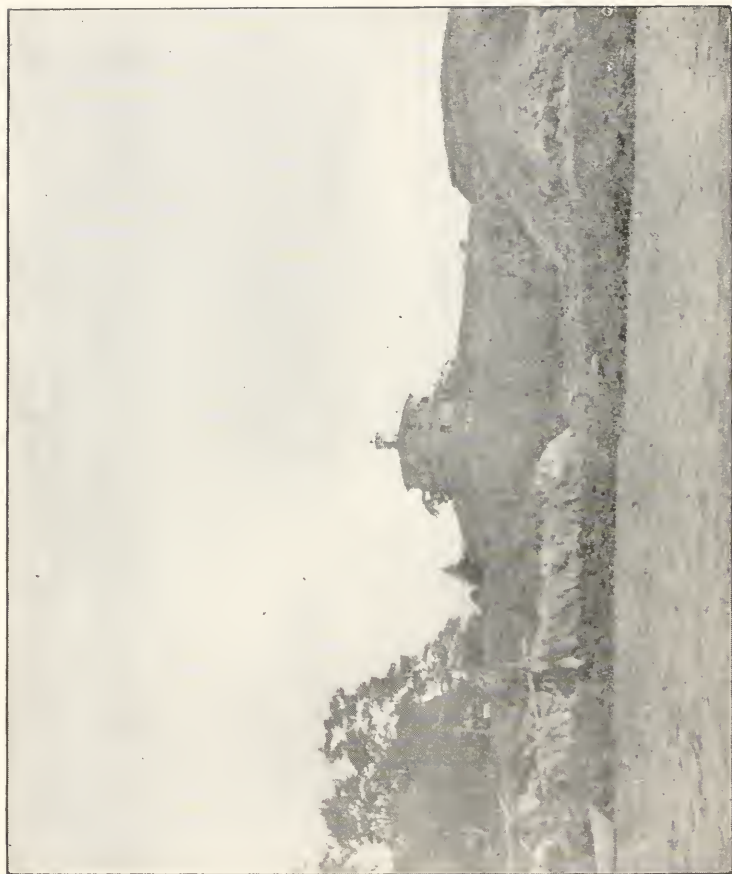
Hark! Is it a song of echoing centuries?
On the banks of the Sheepscot near the old fort,
Chief Justice Peters was caught in an oak.
Not like Absalom by the hair of his head,
But in toils of beauty and strength it is said.
This oak responsive to the judicial caress
Put out its fronds with a view to impress
A due sense of gratitude and promised fruit.
Acorns soon fell in copious showers
To win the judge from all other bowers,
And give a new name to judicial sitting,
A name in fact of rural fitting.
So we have it now in full, and firm

Our Chief Justice Peters' "Acorn Term."
 The oak and its acorns have blocked the way,
 To close a term with a gala day :
 Not with Longfellow hanging his crane,
 Illustrative of life's domestic train :
 Nor yet with fronds of the old tree top,
 But the hanging of an acorn drop.
 Or if preferred, you soon shall see
 Memorial hidings in a junior tree ;
 And that none shall ever doubt or croak
 It's a scion true of the "Penobscot Oak" !

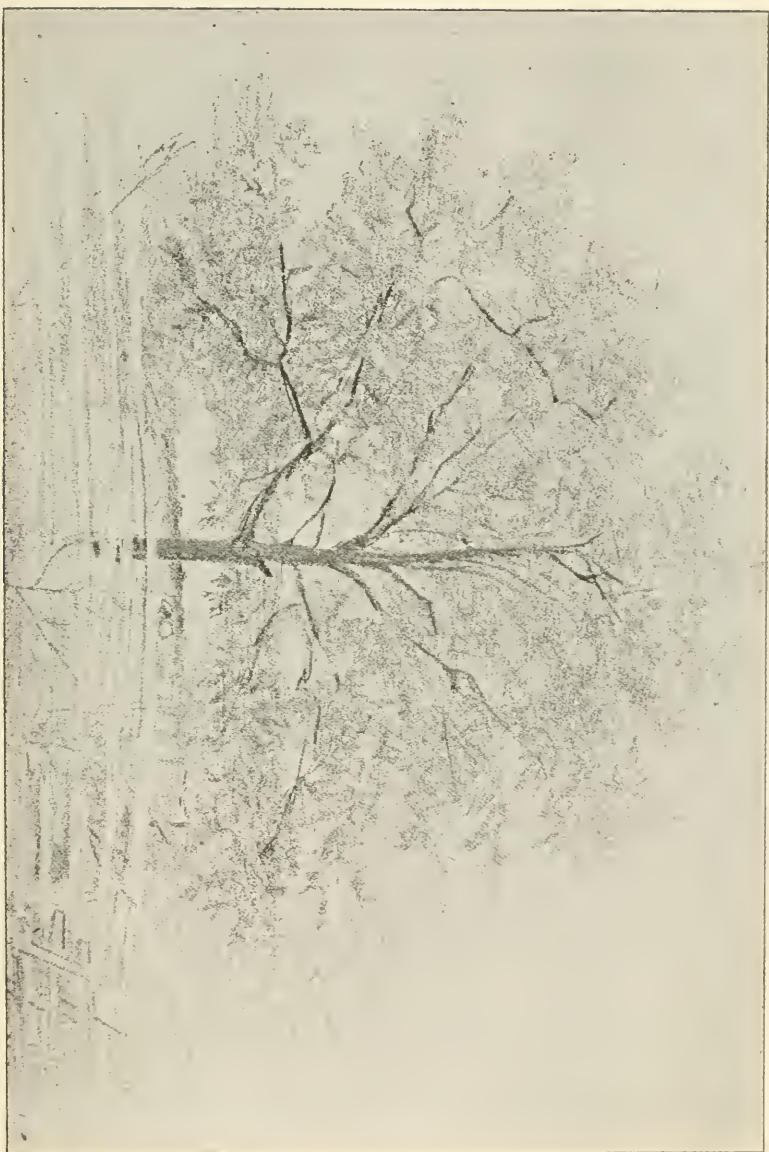
The story we will give in a summary of this judicial finding.

In his service on the bench of Lincoln bar, at Wiscasset, his honor became enamored of the pure spring water of the old town ; also, of its rural environments. The labors of the day suggested recreation and exercise, by rambling in the woods, and extensive walks. Lured by the long bridge to quaff refreshing sea airs across the Sheepscot tides, and to revel in the scenic beauties of landscape and forest attractions of "Folly Island," the site of the ancient military defenses of Wiscasset Harbor and the heart of Maine as well, the island still pitted with earthworks frowning over the narrows, and through the port-holes of the gun deck of a wooden castle, known as the "block house," the judge encountered an oak tree of remarkable features. It excited interest and commanded admiration. Members of the bar were wont to share his honor's athletic perambulations.

It was the October term of Lincoln bar, A. D. 1873, and Wales Hubbard and Hiram Bliss, Esqs., were with the judge at the oak finding of the court. It was a beautiful October afternoon, the party came upon the tree. The sight of the tree arrested the party, striking them with awe and the judge with inspiration.



OLD BLOCK HOUSE ON "TOLLY ISLAND."



PENOBSCOT OAK.

In its proportions, the tree seemed majestic; not so exceptionally tall as it was massive and heavy. Its wide-spreading branches were large and ponderous.

The character of its fruit was a matter of admiration, and won marked attention of all as it lay spread on the ground. Its acorns were then and are now the largest ever seen in Maine. Every nut picked in season, is thoroughly sound and handsome in shape: shells smooth as if varnished, and almost uniformly exact in size with each other.

There was then no evidence that the place where the tree stood had been frequented. It appeared a stranger to humanity.

Its site is one of the most picturesque spots on the river or bay. The judicial tramp had been one of discovery. The discovery called for a name. What should the tree be called? The discussion suggested a variety of names. The judge was in doubt. He thought the most appropriate name would be "Neal Dow Oak," because it drank nothing but water and takes any quantity of that! Finally the problem was solved in a call for "Penobscot"; and Penobscot Oak has ever since attached. It has been the charm of the venerable chief justice's October term, for years; and this term he has been wont to call "Acorn Term."

In the plentitude of his inspiration, the judge has profoundly and instructively soliloquized, ravished with visions of psychological novelties, in possible virtues of vegetable life in his favorite oak, he asks, "Has it sensation, or the function of thought?"

His answer, "Certainly! anything that is alive, has sensation to a certain degree. This monarch looks as if it might know something! It can adapt itself to storms

and wind. It is said the difference between man and the grades of animal life below, is, that while animals may be conscious they do not know they are conscious, but man is conscious that he is conscious.

So vegetation in the form of a huge oak, may have consciousness. Who knows?

"This great tree has likewise in form and shape its twists and turns, its straightness and crooks, its upward slopes and downward declensions, its vigor and weakness, its beauties and deformities, like to many a human being, illustrative of character, mentally and bodily. Most any character, from the judge on the bench himself, to the court crier, or janitor of court room where the judge sits, may be found in the multifarious limbs of this great oak tree! And there, innumerable, are both beauties and deformities yet to be discovered in the manifold branches thereof, illustrative of human character through the imagination of the philosophic humorist and investigator."

Such lessons are the judicial suggestion of the find of a Penobscot oak on the Sheepscot, in a niche of the history of Lincoln bar.

But the oak has a history as a memorial. In vegetation it is the forest king. In industrial hands, it is the strongest rib of the builder's art. In the annals of humanity, it has been the hiding place of precious memories: a beacon light to retrospection: a charm to sacred association, a symbol to inspiration of immortality!

This forest king to the Roman was "Quercus," and to the Greek "Druis." Near two thousand years before Christ, and more than thirty-six hundred years ago, an oak stood a memorial factor to the family of Jacob, the Hebrew, a monument of fraternal goodwill, in a family

jar; and was made a memorial of the purgation of his household of heathanism.

The strange gods of his family—"their earrings" and trappings of idolatry, offensive to the conscience of the old patriarch—"he hid under an oak of Sechem." This endowed it with a religious character, and so made the oak a hiding place from sin in aid of reformation.

The dead nurse of Jacob's mother was buried under an oak to mark the spot as a "place of weeping," and so made it a memorial of departed worth and a keepsake of affectionate regard.

But the oak has been used to have legal matters in memorial keeping. Joshua, the great Hebrew captain, during the Canaanitish wars, codified rules of government for his nomadic race; and when he had written up the book of the law of the Lord, he took a great stone and set it up under an oak. (Jos. xxiv. 26.)

The stone and the oak were used as memorials of a legal crisis in the nation, viz: *codification of its laws*. Gideon too, in a crucial stage of servitude of the Hebrew race, in seeking divine relief, met God under an "oak of Ophra."

These facts show the early eminence of the oak, in use for memorial service, in the dawn of civilization. Hallowed memories were its secrets.

The oak in history appears to hold no mean distinction as a memorial of beneficent events in society, worthy of perpetuity.

Its robust durability is suggestive of fitness for memorial uses. It has therefore been built into human history as a rib of perpetuity of affectionate and sacred reminiscences.

Humanity has voiced the idea of immortality: and in the oak, in the idealism of nature, to our Saxon fathers, its symbol.

The Druids of Britain hung their memories of the past, as well as hopes of the future, on the oak in the tree tops of sacred groves.

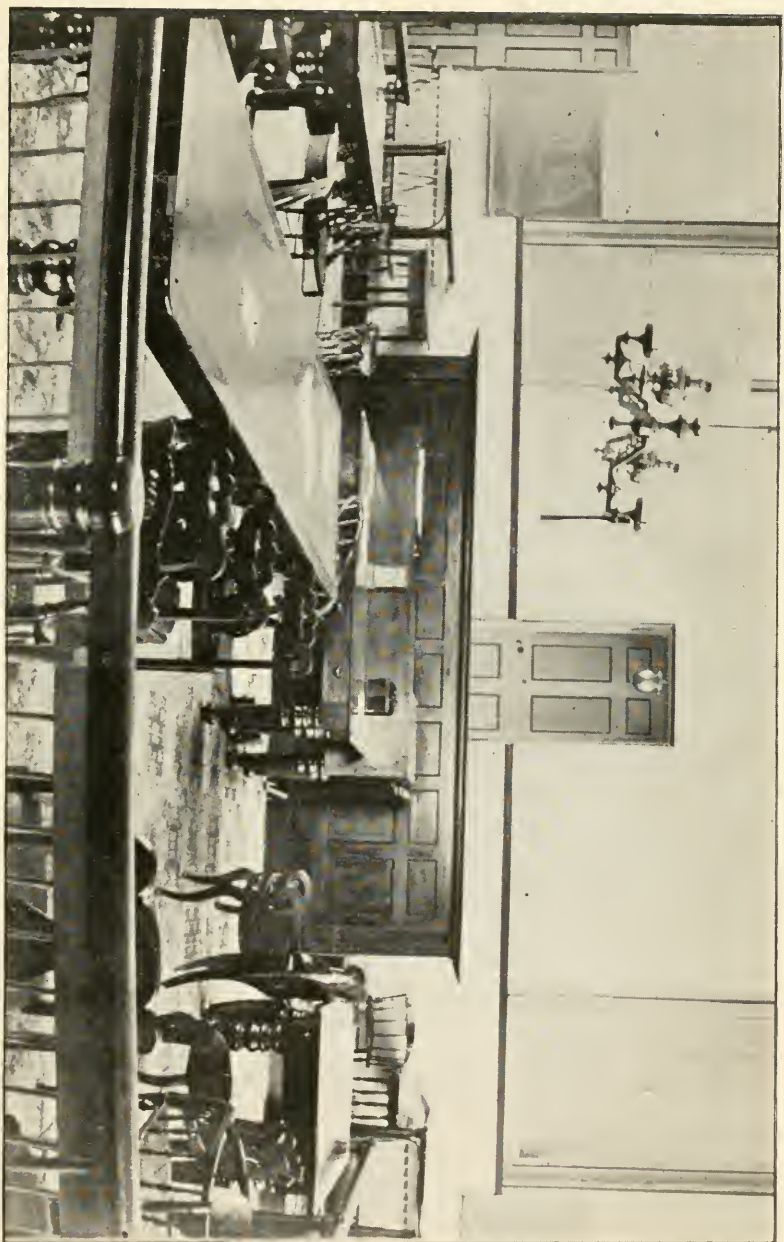
Is it not fit, therefore, that the bar of old Lincoln, crowned with hoary memories of the colonial local civil life of New England of near three centuries,—the successor of old Cornwall in jurisdictional service of the common law of England, should take the oak as its memorial keepsake and adopt the family of the Penobscot oak (a loan from the Sheepscot,) and make it a living symbol of the service of the venerable chief justice of the bench and bar of Maine?

Shall we not adopt its scion, or acorn, in perpetuity of the respect and affection of Lincoln bar, for our honored chief justice of the judiciary of Maine, John A. Peters, of Bangor, whose "acorn terms" have so honored and adorned our bar?

Shall we not hold these living symbols in perpetuity of his services to society and civilization (and of partiality to our bar), of the green old age of our venerable chief, and in memorial of a useful life, in conserving the peace and good order of society, the stability of our civilization, the eminence of Maine, in a wise and just jurisprudence and adornment of her bench with decisions of law, of merit and sense?

To Lincoln bar it will be a crown of honor that the honored chief of the judiciary of Maine has made it the sittings of the "acorn terms" of his court, and so given it a place in the niche of the legal history of New England; and the name of Peters a worthy place in the crowning eminence of the grand old past of Lincoln county.

Now, gentlemen, with an apology for the use of your time and patience—and of the thunder of the chief justice, to get the lightning for this occasion—I take my leave of the motherhood of Lincoln bar.



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