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29 Provincial Papers of New Hampshire iv-vi (Albert S. Batchellor ed., 1891)

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STATE OF NEW HAMPSHIRE.

DOCUMENTS

RELATING TO

THE MASONIAN PATENT,
1630-1846.

INCLUDING THE

CHARTER OF THE COUNCIL OF PLYMOUTH, OF DATE NOV. 3, 1620, THE
VARIOUS GRANTS AND PATENTS TO JOHN MASON, THE RECORDS AND
MISCELLANEOUS PAPERS OF THE MASONIAN PROPRIETARY, WITH
NUMEROUS OTHER PAPERS CONSTITUTING A PART OF THE
DOCUMENTARY HISTORY OF THE PATENT AND THE TITLES
CLAIMED UNDER IT, ARRANGED IN CHRONOLOGICAL
ORDER, WITH CITATIONS TO OTHER DOCUMENTS
AND AUTHORITIES RELATIVE TO THE SAME
SUBJECT, AND COMPLETE INDEXES.

VOLUME XXIX.

TOWN CHARTERS, VOLUME VI.
MASONIAN PAPERS, VOLUME III.

ALBERT STILLMAN BATCHELLOR,
EDITOR OF STATE PAPERS.

CONCORD:
EDWARD N. PEARSON, PUBLIC PRINTER.
1896.

JOINT RESOLUTION relating to the preservation and publication of portions of the early state and provincial records and other state papers of New Hampshire.

Resolved by the Senate and House of Representatives in General Court convened:

That His Excellency the Governor be hereby authorized and empowered, with the advice and consent of the Council, to employ some suitable person—and fix his compensation, to be paid out of any money in the treasury not otherwise appropriated—to collect, arrange, transcribe, and superintend the publication of such portions of the early state and provincial records and other state papers of New Hampshire as the Governor may deem proper; and that eight hundred copies of each volume of the same be printed by the state printer, and distributed as follows: namely, one copy to each city and town in the state, one copy to such of the public libraries in the state as the Governor may designate, fifty copies to the New Hampshire Historical Society, and the remainder placed in the custody of the state librarian, who is hereby authorized to exchange the same for similar publications by other states.

Approved August 4, 1881.

PREFACE.

In the introduction which preceded the principal text in volumes twenty-seven and twenty-eight of this series of state publications, which were also designated as Masonian Papers, particular attention was called to two elements in New Hampshire history, viz.:—the controversy over the boundary between this province and the colony of Massachusetts Bay, and the controversy over the Masonian claim in its various forms and aspects. No less essential to an apprehension of correct theories as to the developmental history of the province is a recognition of the inter-relation of these two controversies, the identity of interests involved in them and which were constantly moving upon events, and were potent in the accomplishment of the most important results exhibited in the building of this commonwealth. A collection of the documents relating to the former subject, the boundary line controversy, is given in volume nineteen of this series. The papers there presented and the authorities cited afford the material for the study of this subject, or direction as to where it is accessible, with reference to the probable requirements of investigators.

A similar collection of documents relating to the Masonian claim, its origin, its persistent prosecution in varying degrees of vigor and success, both in the courts of the province and in those of the mother country, its status and character as a factor in political and business affairs, the changes in its proprietorship, the eventual qualified recognition of its validity, and its relations with the fundamental titles to a large part of the territory included within the present boundaries of the state, has long been a recognized desideratum in the documentary history of the province and state.

In so far as this deficiency had been already met in the volumes of this series previously published, the result was necessarily fragmentary and desultory. Documents presented in the earlier volumes, edited by Dr. Bouton, were for the most part those found in the state archives. Incidentally with the material of later volumes, largely legislative and executive journals, papers relating to the Masonian claim are incorporated, and are of unquestioned importance as constituting parts of the entire body of Masonian documents. The editors of the early volumes containing these

papers were at a serious disadvantage owing to the fact that a considerable part of the documents which may be described as Masonian, were in private custody and inaccessible as regards public examination and use.

In 1746, if it be permissible to recite here facts of such common knowledge, a number of gentlemen of the province obtained a conveyance of the Masonian title by purchase from John Tufton Mason, an heir sixth in descent from John Mason, the original proprietor. With the muniments of title, a valuable and interesting mass of documents passed to the new proprietors. They were not a corporation in the sense in which the term is now used, but rather an organized association of joint owners. They had a recording officer, and a record of their transactions was continued until all the lands of the proprietary had been disposed of and their business concluded. The early history of this title includes a number of patents. The collection of these papers given in this volume is as complete as modern investigation in American and foreign archives has made practicable. For convenience and completeness of record the charter to the Council of Plymouth is given first place in the order of arrangement. The body of this volume is divided into two parts, the first containing the several patents and other instruments above referred to as constituting the basis of the title of John Mason to that portion of New England established as the province of New Hampshire, and the second containing the records of the associated proprietors, with accompanying documents of a general nature relating to the title in its various stages and conditions of progress in its own history and in the history of the province and state.

It will be noted that many papers relating to this subject, which have appeared in previous volumes of the state publications and which are accessible in other places of reference and custody, are described and cited in their proper consecutive order. It must be remembered that the early history of the Masonian title is largely involved in the history of the beginnings of the settlement of the New Hampshire towns and of the province. Hence all the histories of that period, so far as they relate to New Hampshire distinctively, or to New England, with any special reference to this province or to its early towns, are indispensable as commentaries on and treatment of the principal subjects of these documents. Equally important, in the same connection, are a number of conspicuous biographies of men of large influence in the early years of New England and New Hampshire. Of the former class the work of Dr. Belknap is still without a rival as an authority upon the period of which he treats; and, of the latter class, are the admirable biographies of John Mason and John Wheelwright, the former the work of Mr. Tuttle and Mr. Dean, and the latter from the pen of Governor Bell. Upon an examination of these narratives and of the

Masonian documents, it will be observed that the history of the title is traced through periods in which it was a remarkably active element in the progress of events, while in other intervening periods it would seem to have been comparatively quiescent and obscure. Such an interval followed the death of John Mason in 1635. In the years immediately prior to the establishment of the province in 1679 and until the death of Robert (Tufton) Mason, grandson of the proprietor, in 1688, this subject was of overshadowing importance in the political concerns of the people, in their courts, and indeed in respect to the immediate title to and possession of the homes which they had established.

The establishment of the province government was due to the activity and influence of Robert (Tufton) Mason in the revival of the Masonian claim. This influence dominated the selection of royal appointees for the administration of the province and their conduct in office. The heirs of Robert Mason, being minors, allowed the people a respite from the agitation and further enforcement of their rights for the time being. This period, however, was of short duration. In 1691 their title was transferred to Samuel Allen by a valid conveyance, as it was considered, the formality of docking the entail by fine and recovery in the court of king's bench in England having been observed and pursued, the lands which were the subject of the proceeding being considered by a fiction of law as lying in England, in the parish of Greenwich.

Many years later the validity of this proceeding was questioned, and it was treated as invalid, both on technical and material grounds.

Mr. Allen procured a commission as governor of the province in 1692. The prosecution of his claim (for a time after that date known as the Allen title) was thereupon energetically renewed and persistently continued during succeeding administrations in the province until the death of Thomas Allen, in 1715, son and heir of the governor. Another interval of subsidence of the agitation of this interest ensued. The forceful activity of the Masons seems to have been transmitted from generation to generation. The next revival of their efforts to enforce the title emanated from John Tufton Mason, advantage having been taken of the defect in the Allen title before adverted to, and the entail having now been docked in the local courts of this jurisdiction. A sequence of this movement on the part of Mr. Mason was the sale to a number of gentlemen, who, in the parlance of the present day, might, perhaps, be termed a syndicate. The personal character, the financial resources, the social and political connections of these men, and the well-conceived method of their association afforded the Masonian title a status which it had never before gained and occupied with the people and with the several departments of government in the province. The associ-

ation controlled resources which enabled them to formulate far-reaching plans and to carry them into successful execution. They manifested singular wisdom and tact in their dealings with the people, both in individual and political relations. It was inevitable that they should sooner or later encounter antagonisms of a potential and dangerous character. Men of less influence, less wealth, and less steadfastness of purpose, men less closely identified with the various forces which moved upon the opinions of the masses and influenced the attitude of courts and the action of legislatures, would have failed in this enterprise, long discredited and still burdensome, hazardous, and unpromising. Their administration of their rights as successors to the Masonian interest was judicious and conciliatory.

However promising the outlook may have been for the new proprietary in the early years of their administration, the future was pregnant of difficulty. The historic line which was supposed to bound their grant on the west and northwest may be traced on the map which accompanies volume twenty-six of this series.

In almost forty years succeeding 1746, the course of affairs with them was comparatively uneventful. Soon after the Revolution, however, and at almost one and the same time, they were assailed from two directions. The Allen claim was revived with much apparent determination, and another and adverse construction of the terms of the patent in relation to the specifications of boundaries was asserted on behalf of the state. The nature of both claims is fully disclosed in the records and documents which follow. The proprietary did not resort to protracted litigation, or prolong the issue in the legislature. Compromises were effected, both with the state and the Allen interests, but only by a very large outlay on the part of the proprietary. The state's contention, advanced in the general court, was that there was no warrant for the assumption that the Masonian boundary on the northerly and westerly sides was a curved line. The running of a straight line between the two terminal points of this curved line marked off a considerable area, which, in the state's construction of the terms of the patent, would belong to the public instead of to the proprietary. The deed of the state to the proprietors, June 18, 1788, and the deed of the Allen heirs to the proprietors, January 28, 1790, will be found hereinafter on pages 340 and 345, respectively.

From this time onward to the conclusion of the record, the history of the proprietary and of the Masonian title pertains mainly to the routine of business, resulting finally in the disposal of their holdings and a practically complete execution of their undertakings with respect to the territory included in the Masonian patents.

A few years since, Mr. William M. Sargent of Portland, Me., who was engaged in the examination and transcription of records for the publications known as "York Deeds" and "Maine Wills," discovered, in the custody of Moses A. Stafford of Kittery, an ancient sheep-bound folio manuscript of eighty-four pages, which, for nearly two centuries had been in the custody of descendants of Lieut.-Gov. John Usher. The book contains certified copies of many documents relating to the Masonian claim. Mr. Sargent is of opinion, based on careful investigation, that these papers were used in the trials of the cases, *Mason v. Waldron*, at New Castle, 1683, *Allen v. Spencer*, at Wells, 1704, *Allen v. Waldron*, at Portsmouth, 1707.

This collection contained several valuable additions to be made to the published literature of subjects of which they treat. Several of these papers are incorporated in this volume, with special designation of the source from which they were obtained.

No record or copy of the conveyances made in mortgage or in some other form for the security of Lieut.-Gov. Cranfield, of which mention is made by Dr. Belknap (*History of New Hampshire*, Farmer's edition, p. 96), has been discovered, though diligent search has been made in the land and court records in this country and in England.

The greater part of the documents here presented are from the collection which came to the custody of the state from Robert Cutts Peirce of Portsmouth in 1891. This has supplied material which has been the basis and principal feature of the three volumes now published and designated as "Masonian Papers." Two of these volumes were devoted to the township charters issued by the Masonian proprietary, while the papers of a more general nature, pertaining to the subject, were reserved to this, the third volume of the Masonian series.

In relation to the two grants of New Hampshire and Masonia to Capt. John Mason, both of date April 22, 1635, the student of these documents should read the note of explanation on pages 216-218 of Tuttle and Dean's life of "Capt. John Mason," published by the Prince Society, 1887.

The plan adopted for this work has not contemplated the incorporation of numerous or extensive explanatory and historical notes. It has, however, required methodical and logical arrangement of the material, fidelity in the transcription and in the imprint, and the addition of accurate and exhaustive indexes, whereby every feature of the collection, every material fact, and every name, may be readily and certainly found and made available to those who have occasion to consult the work.

A. S. BATCHELLOR.