

1890

PROVINCETOWN

WHO OWNS THE PROVINCE LANDS,

THE COMMONWEALTH OR ITS TENANTS?

If any intelligent citizen should read the statute laws relating to the Province lands, he would say at once the case was very clear that the title was in the State; but let him go to Provincetown and announce that theory, and he would soon find himself an object of suspicion and contempt.

The question naturally arises, Why is there so wide a difference between the laws of the State, which are supposed by most of the community to be supreme, and the opinions of those who live on these lands?

One reason is, that the generation which is now fast passing away to a large degree bought and sold these lands as though they were in actual ownership, and the present generation, in many cases, were not aware of the fact of State ownership. The question of title has been often before raised, and as often subsided without disturbing the occupants; and now when the question is up again for consideration, the reply is, "We have heard this whole matter talked over since we were children. It will die out just the same as it has in times past." The particular agitation at this time seems to have considerable more vitality than has usually been the case, and, as it seems to be headed towards the Legislature, it is getting more attention in Provincetown than its predecessors.

The whole subject has been put so clearly and so vigorously that at last the *State ownership is conceded*, and all the wit and wisdom is now being directed to prevent the problem getting into the Legislature.

All sorts of fine-spun theories are again to the front, — peaceable possession for a century, payment of taxes, staking, fencing, inheriting by will, purchase, warranty deed, etc.

To make the chain complete, I quote from a deed made several years later, showing what Thomas Prence "bought for the cuntry" about 1654, "or sometime before that date."

"This Indenture made the fifth day of
between Samson Indian of Pottonumacutt,

in the
collonie of New Plymouth of the one pte and Capt. John ffreeman of Eastham in the collonie of New Plymouth, aforesaid Esqir Witnesseth, that whereas the said Samson did in the year of our Lord one thousand six hundred fifty and four, or some time before that date bargain sell and infeofe vnto the honored Thomas Prince Esq' Late Gou'r of the said Collonie. for the said Collonies vse their heirs successors and assignes foreuer all that his p'sell of land lying and being vpon Cape Cod, begining att the point of land commonly called the house point on the southerly syde of the harbour Comonly called Cape Cod harbour; extending westerly as farr as the Creek Comonly known there by the Name of Louells Creek together with all the beaches, flatts, waters proffitts priviledges and Appurtenances to the said bargained P'mises belonging or any wise appertaining from sea to sea on both sides of the Said bargained p'sell of land; and also all his said Right title and interest into any of the lands from the Said Louells Creek extending Round the Said harbour; easterly untill it comes to a little pond Next the eastern harbour, being about too or three miles as is sup-ssed short of said easteren harbour and by a southerly line from the said little pond to the said Cape Codd harbour near against the eastermost point of the said house point of land; and from the said point Northerly to the back sea; which contains the bounds sett by the said Gou'r Prence; and assigned for the said Collonies vse for fishing Improvements for and in consideration of 2 brass Kettels, sixe coates, twelue howes, 12 axes, 12 knives and a box; by the said Gou'r Prence to the said Samson in hand payed; the Receipt whereof the said Samson doeth heerby acknowledge; and himself therewith fully satisfied contented and payed; and thereof doth acquit and discharge the said Gou'r Prence and Collonie their heires, Successors and assines for euer and by these p'sents doth fully ffreely and absolutely convey Infeoffe and confeirm vnto the said John ffreeman in behalf of the said Gou'rment and Collonie of New Plymouth their heires successors and assignes for euer; all the said bargained p'mises and appurtenances." "To have and to hold to the onely proper vse and behoof of the said Gou'rment and Collonie their heires Successors and Assignes for euer."

The easterly line mentioncd in this deed and the northerly end of the purchasers' bounds are the same line. This territory, deeded to Thomas Prence, Esq., about 1654 "or sometime before that date" is the Cape Cod of the Pilgrims, and is known as the "Province lands," and comprises all that

part of Provincetown lying west of the westerly fence of the eastern schoolhouse, and extends southerly from the said fence about 18° east to the harbor, and from the said fence northerly about 18° west to the ocean. These lands, being composed wholly of drift quartz, — coarse sand, — and not having any value for agricultural purposes, were early reserved as a colonial fishing right, from which the Colony obtained an income, and later were set apart as a fishing right to be held in common. In confirmation of this statement, I quote from the records of the Colony:—

"June 5, 1661. It is enacted by the Court that noe Stranger or forraigner shall Improue our lands or woods att the Cape for the making of fish without liberty from the Gou'rment, and that all such as shall have libertie shall attend such further orders as shalbe givien them consarning the same — and that they shall pay six pence a kentell for all such fish as shall be made as aforesaid, to the collonies vse."

June 1670. Our people must pay the water Baily — Thomas Paine — six pence per barrel for mackerel caught at Cape Codd and foreigners must pay one shilling and six pence.

June 5, 1671, Thomas Paine, of Eastham, was sworn as water bailiff. The oath was as follows:—

"You shall faithfully serue in the office of a water bayley in the jurisdiction of New Plymouth and shall carefully obserue such orders of Court as concerns youer said office, with special reference vnto the improuement therof att Cape Cod and plauces adjacent, you shall faithfully discharge the trust imposed vpon you in demanding and receiuing whatsoever shal be due vnto the collonie by such fish as shalbe there taken, and shall seasonably giue in a true accompt thereof vnto the Treasurer yearly. So help &c."

"June 5, 1671. In answere vnto the petition prefered to this Court by Mr John Prince and M^r Nathaniel Bosworth of the towne of Hull allies Nantaskett, in the behalfe of the said towne to haue libertie to employ some boates and their companies for the takeing of mackerell with netts, att the season thereof att Cape Codd, this Court doth graunt vnto them libertie for two boates and there companies, to take mackerell there att the season thereof; soe as they make payment of what is due to the colonie from forraigners, notwithstanding any order of Court extant prohibiting others to fish there."

1672. "An order directed to Thomas Paine the Water Bayley."

"This Court being enformed that few or none of ours are like to fish att the Cape by saine, and that diuers strangers desire libertie there to fish, these are therefore to impower you in the behalfe of the Court to giue