

To  
Harry L. Crobbree Esq.  
with the sincere regards of  
William Otis Sawtelle.

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SIR FRANCIS BERNARD  
AND HIS  
GRANT OF MOUNT DESERT

BY  
WILLIAM OTIS SAWTELLE

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Islesford, Maine, September 22, 1922.

My dear Mr. Crabtree:-

Trust you received the Bernard pamphlet which I sent to you by George Hadlock. I am now hard at work, having sent the family back to Philadelphia, and can now go ahead without any interruptions, on Cadillac and De Gregoire.

By the way, have you ever heard anything about Bartlett's Island and the claim put in for it by Esther Deschamps, a niece of Mme. de Gregoire? Esther afterwards married a Bartlett, so I hear, but the Mt. Desert records are silent on this point, as they are on so many others that we should like to know about. Perhaps Esther married a Bartlett before she made her claim. I don't know. In fact I am ignorant of the whole thing, but when anything comes to my attention in regard to this region I am going gunning for what there is in it.

I would like to get more about those French settlers at Trenton, but it seems to be pretty lean picking.

I told George to tell you that I have scarcely been off Little Cranberry Isle for all summer which is a fact - only been to Northeast Harbor twice and that was to consult the town records and to get my hair cut before it caught in the keys of my typewriter.

Hope you find "Bernard" interesting if you have time to glance through it.

Kindest regards,

Sincerely,

W. O. Sawelle ,



Sept. 25, 1922.

W. O. Sawtelle, Esq.,

Islesford, Maine.

Dear Mr. Sawtelle:-

Your letter of Sept. 22 received this morning and I am very glad to hear from you. I owe you a sort of an apology in a way because, although George Hadlock brought in your very interesting pamphlet several days ago, I have not acknowledged receipt of it, but the explanation for that omission is that I have been out of town very much since receiving it, having been engaged in surveying land in Seal Harbor and in gathering information about titles and on returning to Ellsworth I have been busily engaged in hunting the records here and doing other things connected with the real estate title on which I am working so that things that do not absolutely have to be attended to have been lain aside. You will guess, therefore, that I have not yet read the pamphlet. I am keeping it for a time when I can read it with care because I realize that there must be a lot in it that bears directly upon many important titles that are in our office so I will be glad to use it.



No, I have never heard anything about a claim being put in for Bartletts Island by Esther Deschamps. I would like to know more about it anytime when you can give me some information. I have been hoping you would come up to see me this summer and perhaps even now you will have time to come up before you go home. After I read the pamphlet on Bernard you will hear from me again.

Very sincerely yours,

HLC-S





Engraved for The Colonial  
from a map in The Atlantic Neptune  
owned by the Massachusetts









Engraved for The Colonial Society of Massachusetts  
from a map in The Atlantic Neptune published 24 April 1776  
owned by the Massachusetts Historical Society



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BY  
WILLIAM OTIS SAWTELLE

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Because of his public acts, so harshly has Governor Bernard been treated by historians of the Stamp Act period that sight has almost been lost of the part he played in the settlement and development of Eastern Maine territory on Penobscot and Passamaquoddy Bays and on Mount Desert Island; while of his efforts to prove the title of Massachusetts to land between the Penobscot and St. Croix Rivers, but few accounts are to be found in print. As the representative of his sovereign, he was in duty bound to uphold the royal authority, and had his lot been cast in times less turbulent he would, no doubt, have made a good chief magistrate.

Francis Bernard<sup>1</sup> was the eldest son of Francis Bernard, rector of Brightwell, Berkshire, and Margery, daughter of Richard Winlowe of Lewknor, Oxfordshire. As a boy he attended the Westminster School, and later was a student of Christ Church, Oxford, receiving the degree of Master of Arts in 1736. He chose the law as a profession and was called to the bar at Middle Temple. Steward of Lincoln, recorder of Boston, solicitor at the Court of Chancery were some of the positions which his eminence as a lawyer permitted him to fill. He was also a classical scholar of some note.<sup>2</sup> In 1758 he was appointed governor of New Jersey, a position which he held for two years, and so successful was his administration that his appointment to Massachusetts came in the nature of a promotion.

In 1741 Bernard married Amelia, daughter of Stephen Offley of Norton Hall, Derbyshire, and to them were born six sons and four daughters. As it was customary for royal governors to seek colonial appointments with an eye to bettering their financial condition, the emoluments provided by the Massachusetts office no doubt looked attractive to Bernard, who had so large a family for which to provide.

Bernard's grant<sup>3</sup> of Mount Desert Island was made by the

<sup>1</sup> For Bernard's genealogy and family history, see J. Nichols, *Literary Anecdotes*, ii. 235n-237n; Lipscomb, *History of Buckinghamshire*, i. 519; Mrs. Napier Higgins, *The Bernards of Abington and Nether Winchendon*, vols. i and ii. The exact date of Bernard's birth is not known, but he was baptized on July 2, 1712.

<sup>2</sup> *Antonii Alsopi Aedis Christi olim Alumni Odarum Libri Duo*. Londini, MDCCLII. "This little volume," says Nichols, "was dedicated by Mr. Francis Bernard, the ingenious editor, in an elegant copy of Verses, to Thomas Duke of Newcastle" (*Literary Anecdotes*, ii. 233-234).

<sup>3</sup> A week earlier the Court had granted also twelve townships east of the Penobscot: see p. 204, below.



General Court in 1762, for reasons that will appear later, but his landed interests were not confined to that island. On November 12, 1764, he, in company with Colonel Thomas Goldthwaite of Fort Pownall, purchased of General Jedediah Preble 2,700 acres of land in the vicinity of what is now Fort Point, on the west bank of the Penobscot, originally a part of the Waldo patent.<sup>1</sup> Bernard and Goldthwaite<sup>2</sup> were instrumental in settling 2400 able men in this part of the country. Soon after he became governor of Massachusetts, Bernard took an active interest in the boundary question between Nova Scotia and Massachusetts. The General Court had in the same month that the grant of Mount Desert was made appointed a committee to consider the matter of the provincial boundary,<sup>3</sup> and two years later John Mitchell was sent as a surveyor to the St. Croix region — early proceedings in what was afterwards destined to become an international question, which all but resulted in war between the United States and Great Britain and was not finally settled until 1908.

When Charles Morris, the surveyor-general of Nova Scotia, ran his boundary lines in 1765, he was supplied with information by Governor Wilmot of Nova Scotia which the latter had received from Bernard, who, realizing the importance of L'Escarbot's account of De Mont's settlement on the St. Croix<sup>4</sup> and Champlain's descriptions of the site of the colony as first-hand evidence in determining the true St. Croix, procured copies of those works, of which he made a careful study. His conclusion, that the St. Croix River of the Indians was not the St. Croix of De Mont's, the ancient boundary of Nova Scotia, communicated to Wilmot was ignored by Morris; possibly, as Dr. Burrage suggests, because he had been instructed to carry the boundary line as far west as possible.<sup>5</sup>

In 1765 Bernard applied for and received a grant of 100,000 acres

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<sup>1</sup> Lincoln Deeds, iv. 80; Bangor Historical Magazine, vi. 20.

<sup>2</sup> Royal Commission on the Losses and Services of the American Loyalists, 1783 to 1785 (Roxburghe Club, 1915), p. 264.

<sup>3</sup> Burrage, Maine in the Northeastern Boundary Controversy (1919), pp. 10-18.

<sup>4</sup> Gov. Shirley in a letter to Secretary Willard, June 24, 1752, recognized the importance of these works with reference to province bounds. See Massachusetts Archives, liv. 204-207; Documentary History of the State of Maine, xii. 180.

<sup>5</sup> Burrage, Maine in the Northeastern Boundary Controversy, p. 16.



of land in the Passamaquoddy Bay region from the province of Nova Scotia,<sup>1</sup> although he had claimed that a part of this territory was under the jurisdiction of Massachusetts.

Bernard's interest in the eastern lands, therefore, was not confined to the Mount Desert region. He made three voyages thither, at his own expense going as far on one trip as the river and bay of St. Croix. He was instrumental in having accurate surveys made of a greater part of the territory, some of them executed under his own personal direction. These surveying parties were sent out in various directions and it is of interest to note the work that they did. One party, accompanied by Indian guides, went from Fort Pownall up the Penobscot River, through the Chaudière to Quebec and, returning by a different route, made observations and drew plans of both passages; while the same men afterwards travelled from Fort Pownall across country to Fort Halifax on the Kennebec; and still another party explored the Passamaquoddy and its islands as far as the mouth of the St. Croix and a few miles beyond. Certain members of this last mentioned party ascended the Passamaquoddy River to the head of the West Branch and thence through a multitude of lakes to the Penobscot, meeting that river some seventy miles above Fort Pownall; then down the river to the fort.

"I have also run," Bernard writes to the Earl of Halifax, November 9, 1764, "a line from Fort Pownall to George's River, being the most easterly settlement on that side of Penobscot, & have had an horse-road cut thro' the whole, being the length of 50 miles: this addition makes a clear land passage from Boston to Fort Pownall, which will be soon continued, whenever the Settlements on the East side of Penobscot shall be allowed to be improved."<sup>2</sup>

In October, 1762, Bernard visited Mount Desert, made surveys of the island and laid his plans for a country place for himself and a future town at Southwest Harbor. Fortunately he has left a record of this visit in a brief journal, from which a few extracts show that the governor<sup>3</sup> and his surveyors spent a busy week.

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<sup>1</sup> W. H. Kilby, *Eastport and Passamaquoddy* (1888), p. 45.

<sup>2</sup> *Documentary History of the State of Maine*, xiii. 391.

<sup>3</sup> Bernard was a clever draughtsman and, as Hutchinson says (*History of Massachusetts*, iii. 105 note), "a very ingenious architect." He was the architect of the present Harvard Hall.



Oct. 2. . . . We anchored about the middle of the Southwest Harbour about 5 p.m.

Oct. 3. After breakfast Went on shore at the head of the bay & went into the woods by a compass line for above half a mile; . . .

Oct. 4. We formed two sets of surveyors: I and Lieut Miller took charge of the one & M<sup>r</sup> Jones my surveyor had the care of the other. We begun at a point at the head of the S West Harbour, proceeded in different courses & surveyed that whole harbour except some part on the south side.

Oct. 5. It rained all morning &c: We compared our observations & protracted the surveys: in the afternoon surveyed a Cove in the North River.

Oct. 6. I & L<sup>t</sup> Miller surveyed the remainder of the S. W. harbour & a considerable part of the great harbour. M<sup>r</sup> Jones traced & measured the path to the Bass Bay creek & found there many haycocks. In the afternoon we made some general observations & corrected our former surveys. . . .

Oct. 7. Took an observation of the sun rising. . . .

Oct. 8. We observed sun rising; but could not take his amplitude by reason of clouds near the horizon. M<sup>r</sup> Miller surveyed the Island on the East side of the river. M<sup>r</sup> Jones ran the base line of the intended Township. . . . In the afternoon M<sup>r</sup> Jones finished his line, & we gathered various plants in the Woods. In the evening I received several persons on board proposing to be settlers;<sup>1</sup> and it was resolved to sail the next morning if the wind would permit.

<sup>1</sup> <sup>1</sup> A letter from Abraham Somes to Eben Parsons, dated April 20, 1816, the original of which is in the Boston Public Library, refers to these settlers. In that year Somes, who was the first permanent settler on Mount Desert, was called upon to defend his title and this letter was one of several written to his lawyer. The following is copied from the original:

"sometime before the French War was over I received a letter from Sir Francis Barnard inviting me to go to Boston for in it he wanted to see me — Accordingly I went to see him, He asked me if I did not want a farm on the Island of Mount Desert I excepted the proposal he likewise requested me to procure as many Setlers as I could to go with me to settle the Land. I accordingly came down immediately after the War was over and peace ratified between Great Britain and the French & Indians — so that I could be safe in moving into the Wilderness; I came to this place which was in the Autumn of the year 1761 and made a pitch on this Lot I now live and in June the year following I moved my family and settled on the same lot, . . .

"In the year 1763 or 4 the said Sir Francis came in person . . . to this Island and remained here some Considerable time, and I attended on him, and piloted him and assisted him in making discoveries of Natural privile[ges] if any there



Oct. 9. At half after 8 we weighed Anchor; stood for the sea in a course S S W, . . . <sup>1</sup>

Two years later surveys were undertaken of the islands in East Penobscot Bay and Bernard informs the Earl of Halifax that the Fox Islands had been connected "with the Continent by trigonometrical lines, by which means, & by the survey of the Sea Coast in laying out the 12 Townships granted by this Province, We shall have a regular Chart of all the Sea Coast for near 50 miles East of Penobscot." <sup>2</sup>

It was also during this same summer of 1764 that surveyors were busy, to quote again from Bernard's letter to the Earl of Halifax, — running inland lines thro' & above the said townships, by which the rivers & principal inland waters shall be made known. After this there will be only wanting the Sea Coast between the East end of the 12 townships into the Bay of Passamaquoddy, which is about 70 or 80 miles more, to compleat the survey of the whole coast between the rivers Penobscot & St Croix; which would have been an easy Summer's Work, if I could go on with it; But this must be deferred untill the designation of the Country is determined: as I cannot now ask our Assembly for this business.

It will be the work of the great part of this Winter to get all these Surveys protracted, & copies of them made: the first I can get properly might be. At that time he gave me this lot with all the priviledges thereunto belonging, and advised me to build mills and clear up my farm, for said he you never shall be interrupted, I accordingly proceeded, and have been in the peaceable possession of the premises for the full term of fifty two years before any difficulty." <sup>1</sup>

In another letter in the same collection, also dated April 20, 1816, *Somes* says that he and *Ebenezer Sutton* of Ipswich visited Southwest Harbor in 1755 when *Somes* bought *Greening's Island* from the Indians for a gallon of "occopy" (rum), while *Sutton's* purchase of the island which still bears his name cost him two quarts. The Indian governor from whom the purchases were made drew the deeds on a piece of birch bark, but *Somes* and *Sutton* "not understanding neither the description nor the worth of the Islands, never attended to the Subject nor took care of the birch bark and left them to drink their Occopy and to take the good of their bargain." To *Mrs. Fannie Hardy Eckstorm* of Brewer, Maine, I am indebted for deciphering this Indian word for rum. She has pointed out that *Somes's* occopy is the *aukouubi* as given by *Rasle* (*Memoirs of the American Academy of Arts and Sciences*, New Series, 1833, i. 437). Cf. *J. L. Locke*, *Sketches of the History of the Town of Camden, Maine*, p. 47.

<sup>1</sup> Bernard Papers, x. 21-27.

<sup>2</sup> Documentary History of the State of Maine, xiii. 391.



finished, I shall transmit to your Lordship together with more particular accounts of the Country thro' which these routs have been made. And I shall at the same time, as I do now, make an offer of my best Services for settling & improving this great Wast, whether it shall be allowed to be within my Government or not.<sup>1</sup>

An account of Bernard's "best Services" may be brought to notice by relating in detail the story of his grant of Mount Desert Island; a story which, though of some importance in the history of Massachusetts Bay Province, is of fundamental interest in the annals of Eastern Maine.

#### THE BERNARD GRANT

Shortly after Bernard had purchased his governor's commission from George II that monarch died and his successor, George III, exacted some four hundred pounds from him for a new commission. The new governor of Massachusetts, expecting to be reimbursed by the province, had expended another two hundred pounds in repairs and alterations upon Castle William and the Province House, and when he found that there was but slight chance of getting his money back he was disturbed. The double charge for his commission was also a financial hardship from which he sought relief. When informed by certain members of the Assembly<sup>2</sup> that it would be far easier to obtain from the General Court a grant of land, as they had plenty of that but no money, Bernard was quick to act upon the suggestion. It is interesting to note that he has said he would like to have some land within the territory of old Massachusetts, but was persuaded to petition for a grant of Mount Desert Island instead; that his arch enemy James Otis warmly advocated that a gift of the island be made to him at the very time he was such a bitter assailant of the governor.

Bernard's petition received favorable consideration and the following resolve passed the House February 27, 1762:

*Resolved* that in consideration of the extraordinary Services of His Excellency Governor Bernard there be granted to him his Heirs and Assigns the Island of Mount Desert lying on the North-eastward of Penobscot Bay and that a grant thereof to be laid before His Majesty

<sup>1</sup> Documentary History of the State of Maine, xiii. 391-392.

<sup>2</sup> See Bernard's memorial, pp. 212-215, below.



for his approbation be Signed by the Secretary and Speaker on behalf of the two Houses. Sent up for concurrence.<sup>1</sup> "

This resolve was soon after concurred by the Council. Bernard's own comment upon this resolution is illuminating:

The Grant accordingly passed the House on the 27th. of February 1762; and though to make it appear more honorable it is said to be in consideration of the extraordinary services of the Governor, yet the real consideration was to reimburse him for the forementioned expenses: (purchase of his second commission and outlay upon property of the province) without which most probably he should neither have asked for, nor the assembly offered him a grant of lands. For as for the island itself, he was totally unacquainted with at the time it was proposed to him.<sup>2</sup>

On February 20, 1762 (one week before the grant to Bernard), the General Court also made grants of twelve townships, exclusive of Bernard's grant of Mount Desert, situated between the Penobscot and St. Croix Rivers. By a clause in the charter of William and Mary, the king's approbation was necessary before these grants could become valid. Members of the Assembly figured, and rightly too, that Bernard would make every effort to have his grant validated by the king; and if he succeeded, a precedent would thus be established and the other grants would, as a matter of course, be approved. Bernard employed William Bollan, the former provincial agent in London, to look after his interests at the Plantation Office. A letter from Bollan to Bernard, but addressed to the Speaker of the House, sets forth, under date of June 10, 1762, the difficulties that are to be encountered by Bernard's petition to accept the grant. Only that portion of the letter which refers directly to Mount Desert is quoted:

Upon presenting at the Plantation Office the grant of Mount desert Island lately made to his Excellency the Governor several things were said by the Secretary to the following effect — That this being the first Grant of this nature made by the General Court it required an especial consideration. — That the Island granted being situated to the eastward of Penobscot it was not a part of Massachusetts Province, but a part of Acadia or Nova Scotia, all the country lying to the Eastward

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<sup>1</sup> Massachusetts Province Laws, xvii. 168.

<sup>2</sup> Cf. Bernard Papers, x. 199-200.



of Penobscot river being pursuant to the treaty of Breda delivered up to the French King as parcel of Acadia: that in the negotiations with France during the late Peace the claims of Great Britain were made accordingly; and it was necessary that in all subsequent proceedings of the Government the country lying between the Rivers Penobscot and S<sup>t</sup> Croix should be deemed and treated as part of Acadia or Nova Scotia — that the delivering up of that country to the French, pursuant to the treaty of Breda, was a matter not known and considered when the great opinion respecting the Jurisdiction and Soil of the country lying between the Rivers Kennebeck and S<sup>t</sup> Croix was given by the two late lord chancellors when Attorney and solicitor general; which opinion, you are sensible, was agreed to by the Lords of the Committee of Council, whose report was approved by the late Queen as guardian of the Kingdom, in Council, in 1732:’ and it seemed to be questioned whether their Majesties King William & Queen Mary, when they gave to the Province their charter, had such complete right to the lands lying between the Rivers Penobscot and S<sup>t</sup> Croix so delivered by King Charles the 2<sup>d</sup> to the French King that they could then well grant the same, the French Kings right not being extinguished without a cession.’<sup>1</sup> That the Province is not well entitled to these lands by the right of postliminy, upon considering particularly all the conquests and cessions made of them. This, I think, is the amount of all that was objected, and which seem’d in some measure to proceed from an inclination or formed design of some Persons in Government to make the lands between Penobscot and S<sup>t</sup> Croix part of Nova Scotia, whereof I had before received intimation. Some of the objections extend much farther than they are at present urged, or intended, I believe, to be carried, to wit, to the lands lying westward of Penobscot. To several of them I gave immediate answers, some of which seemed satisfactory; but with respect to the right of postliminy, after observing that a notable diversity of opinion had taken place amongst the ancient & modern Lawyers touching the Grounds nature and extent of it, I desired time particularly to consider this point, with some other matters now mentioned, and it was thereupon candidly agreed that I shou’d take time to examine thoroughly all the points arising in this case, in order to the right understanding of it, and that we should then have a conference upon it, and being at that time very weak the Secretary kindly offered, what he has since repeated, in case of my indisposition, to come to my lodgings for this purpose. It was then said, as I expected, that the Secretary of state was the proper Officer to lay the grant before the King, whereupon it would probably come by reference before the Plantation board for con-



sideration. I then proceeded to deliver to M<sup>r</sup> Wood the grant, to be laid before Lord Egremont, in order to his presenting it to his Majesty, together with the Governor's letter to his lordship. M<sup>r</sup> Wood, after enquiring whether the Grant had been carried to the Plantation Office, promised to take care of it. Considering the present state of Publick affairs foreign and domestic delays in cases of this kind are to be expected; but M<sup>r</sup> Wood having appointed me to be at the office to morrow I may possibly have something farther to say to the General Court hereupon before closing the letter. It will require much more time than I have yet had to examine thoroughly all the points arising in this case; but having in part considered it, it appears to me that after the conquest made by S<sup>r</sup> W<sup>m</sup> Phipps, their Majesties King William and Queen Mary were seized of the lands in question in their ancient right as parcel of the dominion of the crown of England, and that their grant thereof made by the Province charter was good and Valid, tho' no cession of the same had then been made by the French King; and altho' the objections now made contain matter new, and prior to what was considered by the Attorney and Solicitor General when the determination was made in favor of the Province, I do not yet see any reason for a revocation of any part of that determination, in case the Government shou'd incline to shake the Authority of it so far as to enquire again into its merits, in consequence of these new suggestions, which of course I shall take the greatest care to prevent, and one mean of doing it possibly may be to show in proper time that if the determination cou'd be opened no solid reason wou'd be found for a departing from it.<sup>1</sup>

June 11th

Having given a long attendance today at the Sec<sup>y</sup> of State's office representing the governor's grant, and nothing<sup>1</sup> being done, M<sup>r</sup> Wood of his own accord promised me that he would certainly inform me by letter when it should be passed upon, supposing that it would not be long deferred.<sup>2</sup>

Bollan refers to "an inclination or formed design of some persons in government to make the lands between Penobscot and St. Croix part of Nova Scotia." It would seem that a partial explanation of this "formed design" is to be found in the fact that there was before the Privy Council a petition of the Earl of Stirling and others, asking

<sup>1</sup> Bernard Papers, x. 299-301.

<sup>2</sup> The postscript of June 11 is not in the Bernard Papers, and is copied from the Massachusetts Archives, xxii. 246.



for possession of certain territory which had been years before designated as the County of Canada and extending from the St. Croix to the Kennebec, once belonging to Sir William Alexander, first Earl of Stirling. On June 12, 1760, this petition was before the Council and by them referred to a committee; on June 19 the committee referred the petition to the Board of Trade; and on August 28 it was referred to the Attorney and Solicitor General.<sup>1</sup> Since this petition was no doubt before the Attorney General when Bollan's letter was written and had brought into question the title of Massachusetts to the eastern lands, it may properly be quoted:

To the king's most excellent majesty in council.

The humble petition of William Earl of Stirling, who is nearest heir male to William the first earl of Stirling, and also to Henry the last earl of Stirling, who died in the year 1739; and of William Phillips Lee, of the city of York, Esquire, and Mary Trumbull, of Easthampstead<sup>2</sup> park, in the county of Berks, spinster; which said William Phillips Lee and Mary Trumbull are heirs at law of the said Henry the last earl of Stirling;

*Sheweth,*

That his late majesty king James the first, by letters patent, bearing the date the 3d day of November, which was in the year of our Lord 1621, did grant to the council for the affairs of New-England, their successors and assigns, all the land in New-England, in America, lying and being in breadth from forty to forty-eight degrees of northern latitude, in the length of and within all the breadth, throughout the main land, from sea to sea.

That the said council did, in the year 1635 (*inter alia*) grant to William Alexander earl of Stirling, his heirs and assigns, all that part of the main land of New-England aforesaid, beginning from a certain place called or known by the name of St. Croix, next adjoining New-Scotland in America aforesaid, and from thence extending along the sea coast unto a place called Pemoquie, and so up the river thereof to the farthest head of the same, as it tendeth northward, and extending from thence, at the nearest, into the river Kineboqui, and so upwards along, by the shortest course, which tendeth unto the river of Canada, from thenceforth to be called and known by the name of County Canada.

That the said tract of land was soon afterwards taken possession by

<sup>1</sup> Acts of the Privy Council, Colonial Series, iv. 457-458.



the said earl of Stirling, and remained many years in the possession of him and his heirs, who were at a very great expense in planting and settling the same.

That the said William earl of Stirling died in the year 1640, and was succeeded by his grandson William, who died a few months after him; and the said last named earl was succeeded by his uncle Henry.

That in the year 1663-4, James duke of York obtained a grant from his brother, king Charles II. of all that part of the main land, in North-America, lying between the rivers called Hudson's and Connecticut rivers, by the name of the province of New-York, including in his letters patent for the same, the island of Stirling, or Long-Island; for the purchasing which island, the said duke had bargained with Henry earl of Stirling; and also including therein, the said county of Canada, above described.

That the said Henry earl of Stirling never did bargain to sell to the said duke of York, this right or title to the said county of Canada, or any part thereof, nor ever divested himself of his right to the same; and the only reason, which can be assigned for the said county of Canada being included in the said grant to the duke of York, is, that in the same instrument, by which the said council for the affairs of New-England conveyed the county of Canada to the said earl of Stirling, they also convey the said island of Stirling, or Long-Island. And the duke of York, having a design to establish the province of New-York, and hearing much of the goodness of the soil of said island of Stirling, or Long-Island, and of their contiguity thereto, applied to said Henry earl of Stirling for the purchasing his right to the said islands: and the said earl having agreed to sell the said islands to the duke of York, did deliver to his royal highness, or his agents, his title deeds, in order that the boundaries of the said islands of Stirling, or Long-Island, might be inserted in the duke's letters patent for the province of New-York; but by mistake, or otherwise, there was inserted in the said letters patent, not only the boundaries of the said islands of Stirling, or Long-Island, but all other lands contained in the grant from the said council of New-England to the first-named earl of Stirling; by which means the said county of Canada was likewise included in the said letters patent.

That, in the said agreement between the said earl and duke, Long-Island only being bargained for, and there being no mention made of the county of Canada, the said Henry earl of Stirling, and his heirs, preferred several petitions to the said duke of York, and afterwards to him when king James the second, and to his successors, complaining



of injustice done them by the said insertion of the said county of Canada in the said letters patent to the said duke of York.

That their late majesties king William and queen Mary, in their charter to the province of Massachusetts-Bay in New-England, did give the jurisdiction of the country, comprehended within the said county of Canada, to the legislature of the said province of Massachusetts-Bay, (though it lies at a considerable distance from that province), but with the express prohibition to the granting any part of the soil thereof without the royal approbation.

That the petitioners humbly conceive, that the said grant to the said duke of York in 1663-4, nor the said charter to the Massachusetts-Bay in 1691, can any way invalidate their prior right, held by the said letters patent in 1621; and as no settlements have been made in the said county of Canada, by virtue of, or under the said charter to Massachusetts-Bay, with the royal approbation, the petitioners apprehend no inconvenience can arise by the petitioners being put in immediate possession of the said county of Canada, to which they are so justly entitled.

Your petitioners, therefore, most humbly pray, that your majesty would be graciously pleased to give the proper directions for putting your petitioners in the possession of the said tract of land, with all the rights and privileges granted to the said first mentioned earl of Stirling; and that your majesty would likewise be most graciously pleased to give orders to the governor of Massachusetts-Bay, to withdraw, and cease to exercise any jurisdiction therein, in order that so valuable a part of his majesty's dominions in America may be quietly and peaceably settled and improved by the petitioners. And your petitioners, as in duty bound, shall ever pray &c.

STIRLING.

WILLIAM PHILLIPS LEE.

MARY TRUMBULL.<sup>1</sup>

Bernard's petition for permission to accept the grant of Mount Desert Island reached the Plantation Office, according to the Bollen letter, in the spring of 1762. Both the governor and the General Court were naturally greatly interested in this document now that the title of Massachusetts to the eastern lands had been questioned. Vigorous efforts were made to combat the opposition in England and a voluminous correspondence passed between that country and the

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<sup>1</sup> 1 Massachusetts Historical Collections, vi. 186-189.



province, only a small portion of which has as yet come to light. Enough has been found, however, to make a fairly connected story.

On October 12, 1762, Thomas Cushing wrote to Jasper Mauduit, the provincial agent in London, who succeeded Bollan, a letter from which the following extract is taken:

Mr. Bollan in his last letter to the Court takes notice that you decline acting with respect to the Government's Grant of Mount Desert Island to the Governor and for this reason the Government has given no Instruction to the Agent respecting the same, however, notwithstanding this omission, the Government is much Interested in this matter. They have made Ten or Twelve Townships in those parts to a number of People who are obliged to settle the same in a few years, and the Confirmation of these grants they apprehend much depends upon obtaining a Confirmation of the Grant made to the Governor. They have accordingly in their last session chose a Committee during the recess of the Court to prepare Instructions for you upon this Head. You will therefore esteem this as a matter that claims your Attention and will, I doubt not, do all in your power to forward it <sup>1</sup>

But Bernard, leaving nothing to others, busied himself with material then to be found in the archives of Massachusetts, and after careful research embodied his results and conclusions in a letter to John Pownall, secretary of the Lords of Trade and Plantations; at the same time sending to England the "original journal on the Massachusetts files" of Sir William Phips's personal narrative of the capture of Port Royal in 1690, "with its dependencies . . . Penobscot and Mt. Desert particularly."<sup>2</sup> Here is Bernard's letter to Pownall:

BOSTON Dec 1 1762.<sup>3</sup>

S<sup>r</sup>

Since I wrote to you in March last desiring you would introduce to their Lordships the subject of a Grant of the General Court of this Province to me of the Island of Mountdesart, I have been informed

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<sup>1</sup> Massachusetts Historical Collections, lxxiv. 69. Cf. Massachusetts Province Laws, xvii. 168, 169-177.

<sup>2</sup> Palfrey, *History of New England*, v. 232 note, 248 note.

<sup>3</sup> Originally written "Dec 31 1762," but the "3" in "31" has been erased. In their letter of March 11, 1763, the Lords of Trade and Plantations speak of Bernard's "letter to our Secretary, dated the first of December:" see p. 230, below.



that there is like to be difficulties occur as to the recommending it for his Majesty's Approbation. The Objection apprehended is "That the Charter of King William is not valid as to the lands between the Rivers Penobscot & St Croix because He was not possessed of those lands at the time of making the Grant."

It is unlucky for me that this Objection has not been started before: if it had, I am inclined to think that this Difficulty would not now have stood in my way. As it is, If their Lordships should think there is Weight enough in it to require a public Disquisition, I must be content to wait till it can be brought on in other instances than my own. I can neither dispute with the Crown nor take upon me the defence of the Province: for which reasons I could wish that some means could be devised to extricate my business from this difficulty.

For this purpose I enclose a memorial, with a desire, that you would lay it before their Lordships at such time & in such manner as you shall think most proper. I also send with it short reasons to obviate the Objection before mentioned, by application of historical facts to it, together with the proofs of such facts as are therein alleged. If these reasons should be sufficient to induce their Lordships to waive this objection, at least in my instance, I shall have no further request to make. But if their Lordships shall not think these reasons conclusive, I must then intreat their further favor to recommend me for a grant of this Island in such other manner as they shall think proper.

In the memorial I suggest no other pretensions previous to the grant, than what were the considerations upon which the Assembly acted: but if I could with propriety enter into other particulars of Economy, their Lordships would be convinced that without some such beneficialty as this, there is little more to be expected from this Government than a bare subsistence.

I mention in the memorial my intention, by examining the lands and making experiments thereon to make them most beneficial to the Mother Country. Least these should be taken for words of course, I will mention two things, both greatly wanted in this Country, which I propose to set forward: the one is, raising hemp; the other making pot-ash. For the first there are lands upon this Island Very similar to the hemp lands in Lincolnshire, which I have had opportunity to make particular observation of: and it will be no difficult matter, by proper encouragement, to induce some Lincolnshire hemp raisers to settle here. For the other, the lands affording all the materials, Iron excepted, necessary to make Potash according to a plain & practicable Method lately published by the Society of Arts, I make no doubt but



that I can engage proper people to undertake it. And in both Cases, when the Novelty is over & the Advantage apparent, It will soon be followed.

I mention this to show that my own interest is not the only motive that makes me desire a speedy confirmation of this Island; and that your personal regard for me may not be your only inducement to promote my solicitation. I know well that your private friendship is never more active than when it cooperates with your public spirit.

I am S<sup>r</sup>

Your most faithful & most obedient Servant

FRA BERNARD<sup>1</sup>

John Pownall Esq

The Short Reasons, referred to in the above letter, have already been printed.<sup>2</sup> The Memorial, also referred to, follows:

To The Right Honorable The Lords Commissioners for Trade & Plantations

The humble Memorial of Francis Bernard Esq Governor of the Province of Massachusetts Bay sheweth

That the Memorialist was in the Year 1760 appointed Governor of the Province aforesaid & entered upon the Government on the 2<sup>d</sup> day of August in the same year. That on the 25<sup>th</sup> day of Oct<sup>r</sup> following his late Majesty died, & his present Majesty having been graciously pleased to reappoint the Mem<sup>st</sup> to the said Government, He sued out new Commissions for the same, at the same expence as the former, but without the usual allowances of Chapple furniture plate &c.

That the Mem<sup>st</sup>'s family being, by means of the Number of his children, considerably larger than that of his predecessor, upon his accession to the Government, He found himself obliged, (besides the assistance he had from the Province, which was very liberal) to expend considerable sums of his own Money in improvements & additions to the Governors house at Boston & his apartment at Castle William.

That the extraordinary expences the Mem<sup>st</sup> had been at as well in the charges of his second commission as in the improvements & additions to the Governors House & appartments as aforesaid, being taken into consideration by the House of Representatives, They of their own accord proposed to make the Mem<sup>st</sup> a compensation for the expences aforesaid by a Grant of lands, being more suitable to the state of the Provincial

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<sup>1</sup> Bernard Papers, x. 45-47.

<sup>2</sup> Documentary History of the State of Maine, xiii. 296-302.



Finances during an expensive War & to the particular Circumstances of the Mem<sup>st</sup>'s family than a pecuniary Retribution would be.

The Governor of Massachusetts Bay, considering the importance of the Province & the Variety & extensiveness of its public business, is allowed to be the worst supported of all the Royal Governors, the whole income consisting of 1000 pounds a year Salary (according to the Royal instructions) & casual fees of less than 100 pounds a year more. The House of Representatives have been so sensible of this, that, tho' they would not increase the stated Salary beyond what has been required of them, yet they have been frequently known to make the extraordinary Services of the Governors motives for occasional additions to the Salary & by that means have in some degree made up the general deficiency of the appointment.

For these Considerations the General Court of the said Province in their Session in feby 1762 did grant unto the Mem<sup>st</sup> & his heirs the Island of Mountdesart lying North Eastward of Penobscot Bay, subject to his Majesty's Approbation. And tho' in the said Grant the only Consideration mentioned is of the extraordinary Services of the Mem<sup>st</sup>, (in regard to which He only pretends to a close attention & steady application to the public business in arduous & intresting times) yet He begs leave to assure your Lordships that a Compensation for the Expences aforementioned, then estimated at above 600 pounds, was intended by the said Grant as well as a consideration for extraordinary Services.

Under these Circumstances the Mem<sup>st</sup> received this grant, at the same time flattering himself that if the Value of it should hereafter appear to be greater than the Considerations for which it was made, He might in some part make up the difference by encouraging a speedy Settlement there & rendring it subservient to the general purposes of extending & improving his Majesty's Dominions. For this Reason He immediately declared his intention that (as soon as the grant had received his Majesty's Approbation) he would settle a township there by grants of lands to the Settlers thereof wholly gratuitous & free from any charge whatsoever. And He accordingly received proposals from upwards of 60 families to settle there upon free grants of a certain quantity of land being made to each family, which have been accepted by him & are ready to be carried into Execution.

Soon after this The Mem<sup>st</sup> was informed that there were several persons settled upon the Island without pretending to any right thereto & were making great Havoc amongst the Timber & particularly such part thereof as is by law reserved for the use of his Majesty. The



Mem<sup>st</sup> thereupon found it necessary to visit the Island in person; which he did in Oct 1762. When having called the persons settled there before him, he prevailed upon them to engage to stop their wast of the timber, by assuring them that he would grant unto them sufficient lots of land for their families in the New intended Township, which he promist them should be mark't out without delay.

The Mem<sup>st</sup> begs leave to assure your Lordships, that He should not, under his present grant unconfirmed by his Majesty, have thought of entring into possession of the Island or acting as the Proprietor thereof, if the Circumstances of the times & the urgency of the people he has had to deal with, had not made it necessary. It would not in point of Prudence have been advisable for him with so imperfect a title to have entered into the Expence he has allready incurred in making a Voyage thither & employing Surveyors to lay out a Plan for a Township there, if it could have been well avoided. But He was fully convinced that if he did not interfere immediately, irregular settlements not hereafter to be easily reduced into Order & a general Devastation of the timber there would have presently ensued. He thought it therefore better for him to enter upon the Island under an imperfect title, than to suffer it to be possessed and wasted by Persons who can pretend to no Title at all.

Whilst in this state of uncertainty and diffidence The Mem<sup>st</sup> has been informed that upon a reference to your Lordships, it is to be apprehended that your Lordships may not recommend the confirmation of this Grant, upon a doubt concerning the legal effect of the Charter of King William & Queen Mary under which this Grant is made; which arises from this Objection, "that in regard to the Lands between the Rivers Penobscot & S<sup>t</sup> Croix (among which this Island may be accounted) King William was not in possession of them at the time of making the Charter & therefore could not legally grant the Same." The Mem<sup>st</sup> begs leave to assure your Lordships that at the time of the Gen<sup>l</sup> Court's making the Grant to him It was not apprehended by him nor, as he believes, by any one of the General Court that this Objection or Any other of consequence lay against the Right of the Province to originate a Grant of this Island under the Charter of King William & subject to the restrictions thereof The Records of the Province seeming to afford full Proof that King William at the time of making the Charter was in possession of the Country in question.

But the Mem<sup>st</sup> desires to be understood that he does not mean to enter upon any controversial examination of this question: it is sufficient for him, that he is satisfied that your Lordships will give it a full Consideration before you form your judgement of it. In his present



situation It would ill become him to make himself a principal in a dispute concerning the rights of the Crown, nor could he think it prudent to take upon himself the defence of the Province in so important a Claim as the present. All He can do is to wait untill The Province shall have an opportunity to interpose on their own behalf; a full Consideration of their Claim to the Benefit of the letters of this Charter, if it should be thought necessary, can be had & a determination thereof shall be made.

But as a Disquisition of this importance must necessarily take up a good deal of time; as the Circumstances of the Mem<sup>st</sup>'s Case both in regard to the Considerations of the Original Grant & the necessity he is under to enter upon and defend the lands at further expence will but ill suit with much delay; as the avowed purport of the Mem<sup>st</sup> is to establish a new Town in a Wilderness, before he begins to perceive any profit to himself; as it is his firm intention, as soon after the confirmation of his grant as may be, by examination of the Land, & by experiments thereon to elucidate the best means to make them most beneficial to the Mother Country; and as he has reason, from the testimonies he has received, to flatter himself that his publick Services have hitherto been favorably accepted by your Lordships: He is bold to hope, that if upon account of the Objection before mentioned or any other which shall bring the Province's right to make this grant in question, your Lordship's should not think it proper at present to advise the confirmation of this Grant under the Title of the Province of Massachusetts Bay, you will be so favorable to him as to recommend him to his Majesty's Grace for a grant of the Island in such a form and manner as shall neither confirm nor conclude against the Right of the Province of Massachusetts Bay, but be equally available whether The Question concerning the same shall be determined on the one side or the other.

And your Lordship's may be assured that the Mem<sup>st</sup> will use his best endeavors so to improve the said lands as not only to perform the Condition of a speedy population which is inherent to grants of this kind; but also by all other Means to make them as conducive to the general Utility as the Nature & Extent of the Island will admit of.<sup>1</sup>

In the Bernard Papers are to be found two interesting documents, presumably drawn up in 1763. One is "An Enquiry into the Origin of the Terms Acadia & Nova Scotia," and the other "A State of the Facts," etc. The latter is the "elaborate legal paper" which has led some writers to the erroneous conclusion that this document

<sup>1</sup> Bernard Papers, x. 49-56.



constituted the "extraordinary services" for which Bernard was given Mount Desert. Both documents follow.

An Enquiry into the Origin of the Terms Acadia & Nova Scotia and the use thereof.

In the year 1603 The King of France granted to the Sieur du Mont a Commission to be his Lieut general of North America lying between the latitudes 40 & 46 to which he gave the Name of Acadia. This is the proper Nominal Acadia.

In the year 1621 King James the first granted to L<sup>t</sup> William Alexander All the Lands from Cape Sable & cross the Bay of Fundy to the Mouth of the River S<sup>t</sup> Croix, & from the head of that river by a North Line to the River S<sup>t</sup> Lawrence & from thence along the Bay of S<sup>t</sup> Lawrence &c to Cape Sable. The extreme Northern parts of this Territory extend beyond the 49<sup>th</sup> degree: and This is the proper Nova Scotia.

From hence it appears that Acadia extends South of Nova Scotia & Nova Scotia north of Acadia. The Tract which is common to both is the whole peninsula of Nova Scotia & on the continent the Lands between the River S<sup>t</sup> Croix & the 46<sup>th</sup> degree of latitude. Nevertheless these two Names have of late (that is within this century) been much confounded, or what is the Same, used as Synonymous; but with great impropriety: for that part of Nova Scotia which is above the 46<sup>th</sup> degree could not properly be called Acadia; nor that part of Acadia, which lies Southwest of S<sup>t</sup> Croix, Nova Scotia.

The Origin, or at least the Confirmation, of this synonymous confusion of the distinctions of these two Territories had its rise from the treaty of Utrecht, at which time the English Ministry were thought not to be precise enough in many distinctions of greater consequence than this. And as it has been supposed that this synonymy used at Utrecht, has been a principal Occasion of the doubts concerning the right of the Massachusetts Bay to the lands between S<sup>t</sup> Croix & Penobscot, it may be proper to show that in regard to them it ought to have no effect, as by going back to the origin of their title, there will appear to be no foundation for including this Tract within the name of Nova Scotia.

It may be proper to observe that the South Boundaries of French Acadia were ideal only & therefore it is not to be wondred that it has been the subject of so much dispute. King James's Patent in 1620 to the Plymouth Company extended from the 46<sup>th</sup> to the 48<sup>th</sup> degree & therefore included all French Acadia. The English being better settlers than the French soon gained a powerful possession of the best part of these lands; the French gave way with as much reluctance as possible; & at one time contented themselves with claiming to Kennebeck River



& at another would have been satisfied with an acknowledgement of a right as far as Georges River. So that the French Boundary became (to use a Law terms) ambulatory. And It was truly So at the treaty of Breda; when our complaisant Monarch, upon his granting a territory, of which he had no idea of the Value, did not pretend to Set the bounds, but declared it to be of such part of Acadia as the French had been in possession of. In this Cession the Fort Pentagoet (Penobscot) was named among other places; and that being the most westerly of those places & lying on the East side of the river Penobscot, the English with great justice confined this disgraceful Cession to the River Penobscot, altho the french never were satisfied with such bounds.

There is not the least probability that at that time the Name of Nova Scotia was applied to Any lands West of S<sup>t</sup> Croix (except by S<sup>r</sup> Thomas Temple which was disapproved). The contrary plainly appears: In 1664 Charles the second granted to James Duke of York "All that part of the main land of New England beginning at a certain place called or known by the name of S<sup>t</sup> Croix next adjoining to New Scotland" & extending to Kennebeck. This Grant upon the accession of James the second Vested in the Crown & this was the Tract which (with the addition of the Inland Country between the Rivers Sagadahock & Kennebeck which have but one Mouth to the Sea) K William's Charter granted to the Massachusetts by the Name of the Territory of Sagadahock. The Expression of Nova Scotia or Acadia was never heard of in that Century: It was reserved for the Utrecht Negotiations to couple those two Words with an *or*; whereas a little attention on the side of the English would have placed an *and* between them, thereby comprehending the whole of both S<sup>r</sup>. William Alexanders & Dumonts Grants as well as what is common to both. This would have Saved a good deal of trouble which is now happily put an end to.

Having thus got rid of the Words Nova Scotia, which tho not really material are apt to occasion a prejudice We will state, as shortly as possible, the facts relative to the Massachusetts title & see what conclusions will follow.<sup>1</sup>

A State of the Facts upon which the Massachusetts Title to the lands between Penobscot & S<sup>t</sup> Croix depends.

1621. James the 1 granted to S<sup>r</sup> William Alexander the Province of Nova Scotia, of which the S<sup>t</sup> Croix is made the Western boundary.

1664. Charles the 2<sup>d</sup> granted to James Duke of York all that part of the main land of New England beginning at a certain place called or

<sup>1</sup> Bernard Papers, x. 91-94.



known by the name of St Croix next adjoining to New Scotland in America & from thence extending etc to the river of Kennebeck.

The Duke of York in 1676 appointed a Governor over this Country & having not aliened it in 1684 became King.

Charles the second by the Treaty of Breda, ceded that part of Acadia which the French had been before possessed of to France: in which cession The Fort of Pentagoet lying on the East side of Penobscot river is the most westerly place mentioned.

In 1690, War being declared between France & England, The Colony of Massachusetts fitted out an armament at their own expence & conquered the whole Territory between Penobscot & St Croix, & entirely removed the few french who were settled there from thence.

In 1691 The Massachusetts being in the peaceable possession of this Country, by conquest, King William & Queen Mary erected the Colony of Massachusetts & the Colony of Plimouth etc into one Province & granted to them among other things all the lands between the River Sagadahock & Nova Scotia (being the same Lands which were before granted by Chas. 2 to the Duke of York, except a small alteration in the inland Western boundary) then called Acadia, & thereafter to be called the Territory of Sagadahock; by which name it is distinguisht to this day.

By the Treaty of Ryswick King William ceded to France all conquered places in America: but this Tract was not named nor did the French ever take possession of or make any settlement upon it. During Queen Anns War The Massachusetts made it a continual object of their Arms, having fitted out two expensive Expeditions against that Country & Nova Scotia, before it was finally conquered by a regular Army assisted by the Massachusetts forces.

By the Treaty of Utrecht This Country was ceded to England under the name of Acadia, by which it had been before granted to the Massachusetts by King William. The Massachusetts immediately resumed their jurisdiction over the Country & in 1713 received the Submission of the Indians thereof as subjects of that Province. In 1717 Gov<sup>r</sup> Shute held a treaty with the Eastern Indians among whom were several of the Penobscots, who renewed their subjection to Great Britain under the Massachusetts. In 1722 a War broke out with the Penobscot & other Indians which continued 4 years at the expence of the Massachusetts much greater than the whole Value of the lands between Penobscot & St Croix. In 1727<sup>1</sup> Peace was concluded with those Indians,

<sup>1</sup> This date is somewhat uncertain: perhaps "1729." Probably the year 1726 is meant: see Publications of this Society, xx. 128-147.



who renewed their Submission to the Massachusetts. And since that there have been many other instances of such acknowledgements.

The Province has heretofore been prevented settling this Country by the combined intrigues of the french Missionaries among the Indians, but had determined to do it at the end of the War. For which purpose in 1759 Governor Pownall with a large armed force erected a Very respectable fort on the river Penobscot, took a formal Possession<sup>1</sup> of that Country in the right of the Massachusetts on the east side of the river, & having called the Penobscot Indians together, declared his intentions of settling that Country & threaten'd them with his resentment if they dared to attempt to interrupt him. And accordingly in 1761 Proposals were made to the General Court for settling 12 Townships of 60 families each on the East side of Penobscot: and 6 of the said Townships have been surveyed & Grants of them have passed to be submitted to his Majesty according to the Terms of the Charter.

#### Arguments in favor of the Massachusetts Title

Upon the aforesaid Grants being tendered for the Kings Confirmation a Question is made whether The Provinces Right under the Charter was not originally Void by the Treaty of Breda, or since avoided by the Treaty of Ryswick? to which another Question may be added, Whether if their Title is not good in strictness of Law, it ought not to be perfected upon principles of Equity or of Policy. And taking both these questions as one, We will consider it in four ways 1 Common Law, 2 Civil Law, 3 Equity 4 Policy.

1 Common Law. Every Grant contains in it implied Warranty, which Warranty is a perpetual Bar to the Heir of the Grantor. Nor will it alter the Case if the Grantor had no other title but possession. For if a disseisor makes a grant & his heir, as his heir, acquires the legal title, he shall be barred by the implied Warranty of the Grantor. Let K William possessor of this Country by Conquest be considered the Disseisor at common Law, The rest of the Argument follows. The Reason of the Law is that No one shall be allowed to defeat the grant of his Ancestor, under whom he himself claims.

2. Civil Law. By the right of Postliminium Where a Country, that formerly belonged to a state, is removed from the Enemy, all private rights are restored. Or in the Words of Puffendorf Lib 8 ca 6 sec 26 "If a part of a people be recovered by the people they were for some time divided and torn from, they again incorporate with the old Body and return to the place & rights they had before."

<sup>1</sup> Cf. p. 248 note 3, below.



3. Equity. As this Province has for above 70 years acted under a royal grant & in consequence thereof expended in the defence of this land more than ten times the Value of it, if their Title is imperfect, the King ought in equity to make it complete.

4. Policy. The Great Purpose in America is to bring forward the peopling & improving the Waste lands there. If, Where Lands lie between two Provinces, one of them is ready to settle these lands & really wants them for the use of their supernumerary people, and the other neither can nor ought in prudence to settle them, having already much nearer their headquarters land sufficient to employ them for at least 100 years to come, It surely would not be right Policy to prevent one Province extending its population, to add to the already immense desarts of the other.<sup>1</sup>

Two letters from Bernard to the Lords Commissioners for Trade and Plantations show how sedulously the governor applied himself to the task of supplying the proper officials with all the information that he could gather which had any bearing upon the proposed settlements, while his emphatic insistence on the importance of developing the territory between the Penobscot and St. Croix, irrespective of the question of title, redounds to his credit. The first reads:<sup>2</sup>

Boston Ap. 8 1763

MY LORDS

I write this to introduce to your Lordships the Grants of six townships laid out on the East side of the River Penobscot, made by the General Court of this Province & submitted to his Majesty for his royal confirmation according to the terms of the Charter. And tho' the soliciting of this confirmation is probably the Business of the Grantees only, yet the Event is so intresting, to the Province in supporting their Right

<sup>1</sup> Bernard Papers, x. 83-88.

The House Journal for 1762 has at the end, filling pp. i-xix, "Appendix to the Votes Of the House of Representatives, For the Year 1762. A brief State of the Title of the Province of Massachusetts-Bay to the Country between the Rivers Kennebeck and St. Croix." On p. xix is the following:

The Committee appointed to prepare a State of the Title of the Province to the Country between the Rivers *Kennebeck* and *St. Croix*, have prepared the foregoing, which is submitted in the Name and by Order of the Committee.

January 18, 1763.

T. HUTCHINSON.

The report was read and accepted in Council on January 20, and in the House on February 1, and consented to by Gov. Bernard.

<sup>2</sup> For the second letter, see pp. 228-230, below.



to originating grants of lands in this Territory, & to the Nation in encouraging a speedy cultivation of the Wast lands of North America, that I think it my duty to lay before your Lordships my sentiments upon both these points.

In regard to the Province's originating these Grants, I shall not enter into any disquisition of their Right to do so: If that is made a Question, the support of it must not depend upon me. I have perhaps already engaged too far in it, in what I have wrote upon the subject. At present I only mean to show in what manner they have exercised this power in these instances which are the first of the kind; and from thence to show that this power is in hands, which are not like to abuse it.

1. These Grants have been made without any other consideration than a Covenant to settle the lands; not a farthing has been paid or stipulated for on behalf of the province. 2. The Grants are not only made strictly conformable to the restrictions of the Charter, but there is also a limitation of the time in which the King's Confirmation is to be obtained, after which the Grants, which are in strictness only recommendations, for want of confirmation cease & determine. 3. The General Court has been so intent upon their main purpose, peopling the country, that they have not trusted to the forfeiture for not settling, which in other grants has been the only obligation hitherto used, but they have obliged the grantees to give Security to settle the lands within a certain time after the Grants shall be confirmed; which bonds were lodged in the Secretaries Office, before the Grants were made. From this I would infer, That the general Court have had the strictest regard to the public good in making these grants has shown itself worthy to be trusted with this power & therefore deserves to have its acts approved & confirmed, if weightier reasons not known here should prevail against it.

I need not urge to your Lordships the expediency of encouraging, by all proper means, the cultivation of the wastes of N America. The Sentiments of your Lordships have been fully shown by your unwearied endeavours to promote such purpose: And now the Motives to it have received much additional strength by the late great enlargement of his Majesty's N American Dominions. But perhaps It may be of use to endeavour to remove the obscurities which may lie in the Way of your Lordships approving the settlement, & arise from your doubts concerning the Province's right to originate Grants of Land within this Territory: which Question, if it is to be discussed with that deliberation which its importance will require, may not be determined within the time necessary to resolve upon allowing or putting a stop to this proposed settlement.



Undoubtedly This Settlement must be of general advantage to the public, whether it shall appear hereafter to be in this or that province or in neither of them: and the undertakers deserve all possible encouragement to induce them to pursue their Scheme, which is certainly planned with good judgement for the mutual support of one another. The whole 6 Townships are laid out upon a Neck of land lying between Penobscot River & a River called Mount desert river the Mouth of it being near the West End of the Island of that name. The whole Plan of the 6 Townships (each of which is intended to contain the Area of 6 miles square) extends not above 15 miles of longitude. The Spot is at present a Wilderness, & lies at a great distance from the settled parts of Massachusetts province & at a much greater distance from the nearest settlements of Nova Scotia, & would, if duly promoted, be the means of connecting in time, one with the other. On the other hand if this settlement should now be prevented, It will cast a great damp upon undertakings of this kind, & may contribute to keep this great length of coast in the desert states in which It has hitherto continued.

I must therefore submit to your Lordships whether, in case your doubts concerning the right of the Province should still remain, It might not be advisable to disengage this Settlement from the dispute concerning the Right of the Province, and let the settlement go on to wait the determination of the right. To whatever province the Land should be allotted, it will not be the Worse for having 360 families upon it. I urge this not on behalf of the Province which will gain nothing by such a proceeding, but for the sake of the settlers, many of whom are embarked so deep in this Adventure that the disappointment may be their ruin. And with great submission I conceive, that this Method of favoring them is very practicable, as it seems to require nothing but that in the Kings confirmation there be a recital of the doubts concerning the Provinces Right to these lands and a proviso that this Grant & confirmation shall not prejudice the same, but that It shall remain to be considered & decided, this Grant & confirmation notwithstanding.

I have been the more particular and indeed the more earnest in this representation, as I think it would be a great pity that a Settlement so compact & so well calculated for the public Utility should be prevented. There was an application made to the general Court for 6 other Townships; but they do not go on: 3 of them are drop't already; one of the other 3 proceeds and I believe the other two will, if they are encouraged. These 3 Townships adjoin to the other six, & will help to strengthen them. The whole if they are allowed to proceed, will form a settlement of 540 families. The first settling of a wast Country is so hard a work



that a little Discouragement is apt to defeat it. I therefore hope that this undertaking will meet with your Lordships favour.

I am, with great respect, My Lords Your Lordships

Most Obedient and Most humble Servant

FRA BERNARD <sup>1</sup>

Meanwhile, dissatisfaction had been expressed in London with regard to some of Bernard's actions. The following extract of the minutes of proceedings of the Lords Commissioners for Trade and Plantations is dated December 2, 1762:

Mr Mauduit Agent for the Province of Massachusetts Bay, attending pursuant to Order, was called in, and the following questions were put to him Viz<sup>t</sup>

"Have any Grants been lately made by the General Court of the Massachusetts Bay of any Lands, Island or Islands; to the Eastward of the River Penobscot."

"If any such Grants have been made, what are they, and to whom, and has any Application been made to the Crown for Confirmation of them."

Mr Mauduit answered, that he believed there had been some Grants made to the Eastward of Penobscot, but was not prepared at present to give any precise Account of them, whereupon the Questions were wrote down and delivered to him, and he promised to give an Answer in a few days.<sup>2</sup>

Under date of December 10, 1762, occurs the following:

Read a Memorial of the Agent for the Province of Massachusetts Bay, containing his answer to the Questions stated to him on the 2<sup>d</sup> instant, relative to Grants made by the General Court of that Province of Lands between the Rivers Penobscot and St Croix.

Ordered, that this matter be taken into further Consideration when Application shall be made for His Majesty's Confirmation of any Grants, that shall have been made by the General Court of Massachusetts Bay, of any Lands between the said Rivers.

In the meantime their Lordships were of opinion, that the Resolution of the Council of Nova Scotia of the 3<sup>d</sup> of May 1762. upon the Application made to that Government by the General Court of Massachusetts Bay, for ascertaining the Boundary Line between the two Provinces, was proper and discreet, and that the Governor of the Massachusetts

<sup>1</sup> Documentary History of the State of Maine, xiii. 308-311.

<sup>2</sup> Bernard Papers, x. 37.



Bay ought not, consistent with his duty, to have entered upon a Negotiation of this kind with the Government of Nova Scotia, until he had known the Sentiments and received the Directions fr his Majesty, upon a point of so great importance to his Majesty's Interests.<sup>1</sup>

Thereupon the following letter was sent to Bernard:

WHITEHALL Decem<sup>r</sup> 24<sup>th</sup> 1762

SIR

The inclosed copy of the Minutes of our proceedings upon some papers which we have lately received from the Lieutenant Governor of Nova Scotia, will mark out to you the Sense we have of your conduct, in entering upon a negotiation with the Government of Nova Scotia for ascertaining the Boundary Line between that Province and the Massachusetts Bay, without having communicated the affair to Us as it was your Duty to have done.

You cannot be ignorant that the River Penobscot has always been deem'd and declared to be the western boundary of Accadia or Nova Scotia, as possessed by France under the Treatys of Breda and Ryswick, and as ceded to Great Britain by the Treaty of Utrecht, and tho we do not take upon us to declare that the Province of Massachusetts Bay is, under this circumstance, absolutely precluded from any claim of property to the Eastward of that River, yet it was so far a matter of question, that, We cannot but think, that it was improper in you to assent to any Grants of Lands between Penobscot and S<sup>t</sup> Croix, untill the question was determined; and that the Countenancing a proposition for ascertaining a Boundary which implys a restriction of the limits of Acadia to the River S<sup>t</sup> Croix, without the participation of the Crown, was such an aggravation of your misconduct as our Duty to his Majesty will not permit us to pass over without animadversion.

We are Sir

Your most Obedient humble Servants

SANDYS

SOAME JENYNS

ED BACON

JOHN YORKE

EDMOND THOMAS<sup>2</sup>

Francis Bernard Esq<sup>r</sup>  
Governor of Massachusetts Bay

On the receipt of the above letter, Bernard wrote as follows to John Pownall:

<sup>1</sup> Bernard Papers, x. 33-39.

<sup>2</sup> Id. x. 41-42.



BOSTON Ap. 17. 1763

DEAR S<sup>r</sup>

Last night I received a Letter from their Lordships dated Dec. 24 referring to a resolution of the board dated Dec 10, in both which I find myself severely censured for having negotiated with the Province of Nova Scotia for ascertaining the Boundary line between that Province & this, and for assenting to Grants of lands between Penobscot & St. Croix.

Ever since I have been in America I have studied, not only to obtain, but to deserve the Approbation of their Lordships; upon some occasions I have been favored with honorable Testimonials of their acceptance of my Services; and I have never as yet, that I recollect, been charged with one instance of gross neglect. I cannot therefore help taking to heart my being condemned without having an opportunity to explain my principles or conduct; either of which, I'm persuaded would have made this reprimand unnecessary.

I shall be quite uneasy 'till I have Vindicated Myself from this charge: and as to do this in as full a manner as my present feeling seems to demand will require a retrospect of this business for near two years past and a resort to many public papers I have no other way to ease myself for the present but to transmit to you the heads of my proposed Vindication drawn up hastily & without any address that it may be used in such a manner as you shall see cause to apply it.

I should have wrote directly to their Lordships, if the time between the coming in & return of the N Y Post by which I send this would have admitted of it. As it is, I must desire you would not let this Apology, hasty as it is, be wanting to my Vindication but will lay it before their Lordships whenever you shall see a fit and necessary Occasion for it. I shall consider at more leisure what it will be necessary to add to it in my next dispatches.

The Heads of an Apology for the Conduct of Gov<sup>r</sup> Bernard in regard to the Lands Eastward of Penobscot.

I was not a prime mover in Any of the proceedings of the General Court of the Province of Mass Bay in regard to the lands Eastward of Penobscot, not even in the grant made to me. I have been only the Executor of the general Courts resolutions in which I have acted with a conscientious regard to my duty, as far as my Judgement could point it out.

It was in pursuance of such resolutions that application was made to the Government of Nova Scotia to join in a Survey of the River S<sup>t</sup>



Croix which was supposed to be the undoubted boundary of the two provinces, altho' It might be doubted which was the River S<sup>t</sup> Croix.

The Distinction of the River Penobscot bounding French Acadia & from thence being applicable to the limiting the Territory of Sagadahock was not then known, as far as I can learn to Any of the Members of the general Court. For my own part I can say that It was quite new to me when I was first advised of it long after that time.

The Apprehension that It might be a question which was the River S<sup>t</sup> Croix, was founded upon an observation that there were at least 2 Rivers that fell into the Bay of that Name.

As the determining this question must depend upon comparing the appearance of the Country with the description of it as given by the old Navigators It became a Matter of Surveying only & therefore there was no doubt but that the two Provinces might take upon them to join in ascertaining such facts as should be necessary for the determination of the boundary.

It was never in the least presumed that these Observations should prejudice his Majesty; they were expressly designed to be submitted to him as informations subject to his judgement.

And As Soon as It was known that the Question of the boundary would not depend upon the identity of the River S<sup>t</sup> Croix but upon Arguments distinct from those of land Observation the Purpose of the Survey of S<sup>t</sup> Croix was laid aside.

The Grants of the 12 Townships Eastward of Penobscot were not resolved upon till after repeated Sollicitations of the intended Settlers & at a time when there was no apprehension on either side that the Right of the province to these lands would be disputed.

It was above 6 months After the Resolution of the General Court which empowered the Granters to Survey the lands, that I received an intimation from London that the Right of the Province to lands Eastward of Penobscot was doubted. I had before that wrote to the L<sup>t</sup> Gov<sup>r</sup> of Nova Scotia to let him know that I would consent to no other Grants on that Side Penobscot till his Majesty's pleasure concerning these should be known.

But I did not think I could with propriety stop the completion of these grants for that:

1. The Grantees upon the credit of a Resolution of the general Court having put themselves to considerable Expence in surveying &c It would scarce have been equitable to have refused them an opportunity of applying to his Majesty for a confirmation of their Grants;

2. the Province being desirous to settle these lands as soon as possible



& earnest to support their right thereto, the question whereof could be brought on by no means so proper as by submitting a Grant to his Majesty for his Confirmation, I could not consistently with the good understanding which I have hitherto preserved in the general Court, have obstructed their proceeding without having any instruction or order for so doing.

3. I had a third Reason for letting these grants proceed, which was that the settling this Country must be advantageous to the King at all Events Whether It should be adjudged to one Province or the other. And on this I have chiefly relied in my recommendation of these grants to their Lordships.

Nevertheless I took Care that in the draught of the Grants all proper Reservations and provisoes should be inserted; and that the whole Tenor of them should be significant of the humility with which they are submitted to his Majesty. Not only the Terms of the Charter are strictly observed, but there is a Proviso for avoiding the Grant, if his Majesty's Confirmation shall not be obtained in 18 months time: a Caution which exceeds that of a suspending Clause; which last is generally allowed to be a sufficient Apology for a Governor's consenting to an Act, the expediency of which he doubts of.

In regard to the grant made to me It was merely accidental that It was in this Country. It took its rise from an Opinion which prevailed in the general Assembly that the Province ought to make me a compensation for the expences of my second Commission & for some charges I had been at in making some additions & improvements at the Province House & the Governors apartment at the Castle, the whole of both these amounting to 600 pounds sterling.

This Compensation would have been made in Money if the Expences of the War had not discouraged pecuniary grants. It was then proposed to do it by grant of land in the Westward, & one or two Spots were mentioned for that purpose. Afterwards The Application of Settlers at Penobscot being agitated, The Assembly turned their Eyes to the Eastward for a Grant for me: and it was from some Members of the Assembly not Many days before the Grant was made that I first heard of the Island of Mountdesart. I had all along left it to the Assembly to make this compensation in what manner they pleased: And to the last I was no otherwise active in it than barely signifying my acceptance of this proposal.

This affords a plain proof that I did not at that time apprehend that the Right of the Province to these lands was like to be disputed. If I had, I should certainly have chose (as I might have done) a Grant of



lands to the Westward where the Right was undoubted, preferable to these where It is controverted.<sup>1</sup>

And eight days later Bernard sent the following letter to the Lords Commissioners:

Boston Ap 25 1763

MY LORDS

By a Letter dated the 8<sup>th</sup> inst I informed your Lordships that the general Court had passed a Grant for 6 Townships on the East side of the River Penobscot to be submitted to his Majesty for confirmation: and I humbly offer'd to your Lordships such observations & reasons as have induced me to recommend this settlement to your Lordships favor.

Some days after this packet was sent away I received your Lordships Letter of Dec 24; which has given me a most sensible Mortification: for I had flatter'd myself that I stood in such a degree of credit with your Lordships, that I should not easily have been suspected of acting, with intention in opposition to your Lordships opinion or in prejudice to his Majesty's right. As I am persuaded that upon a full & true state of this affair, your Lordships will readily acquit me of this imputation, I was desirous of being discharged from it as soon as possible. I therefore, by the return of this Post to New York, sent a short defence of my Conduct, inclosed in a letter to M<sup>r</sup> Pownall, desiring him to lay it before your Lordships at such time as he should think it fit & necessary. I should have addressed myself immediately to your Lordships, if the hurry I was in had not made me prefer the form of a Memorial. And as upon a revisal I find it contains the chief substance of my defence, I shall avoid repeating as well as I can and in this explain such proofs as I shall think proper to introduce in support of my allegation.

The Proofs I have submitted to your Lordships are these:

A Copy of the order of the general Court for the settlement of the line between the Massachusetts & Nova Scotia; a Copy of The Report of the Committee appointed for that purpose; a Copy of my letter to the L<sup>t</sup> Gov<sup>r</sup> of Nova Scotia (in pursuance of the report of the Committee) wrote in Council & recorded there; A Copy of the records of the election of Commiss<sup>rs</sup> to join those of Nova Scotia to repair to S<sup>t</sup> Croix & ascertain the line &c.; a Copy of my Letter to the L<sup>t</sup> Gov<sup>r</sup> of Nova Scotia, (in pursuance of the last mentioned act of the general Court) wrote in Council &c.

From these will appear; 1 That I was not a mover in this intended survey and that if I am blameable for any thing, it is only for consent-

<sup>1</sup> Bernard Papers, x. 67-73.



ing to the resolutions of the two houses: with what propriety I could refuse my consent thereto will be considered hereafter. 2 That the deliberation of the general Court turned solely upon these Questions: which stream was the River S<sup>t</sup> Croix? & from what part of that River the Northern Line was to be run; and that they were not aware of an objection to their title arising from any other considerations. 3 That in my consenting to these resolutions & consequentially communicating them to the L<sup>t</sup> Governor of Nova Scotia, I judged for the best if nothing then appeared to me to invalidate the report of the Committee which I found to be agreeable with the letter of the Charters of Nova Scotia & Massachusetts Bay.

I cannot say whether at that time the boundary of Acadia as ceded by Charles the second to France was in my thoughts or not: but this I am sure of, that I had not the least apprehension that such boundary was applicable to the limitation of King Williams Grant to Massachusetts Bay. As a presumptive proof thereof (the only kind of proof which such an asservation is capable of) It appears that my immediate Predecessor Governor Pownall, altho' he came to this Government directly from England, was not acquainted with this Objection to the Provinces right. If He had, I am sure that He who was never reckoned inattentive to this duty would not have taken a formal and monumental possession of the East side of Penobscot on behalf of the Province of Massachusetts Bay, as it appears, from the inclosed Copy<sup>1</sup> of the record of that transaction, that he did. This Transaction alone, which I must suppose was communicated to your Lordships & was never, that I have heard of, excepted to, must justify me in presuming that the East side of Penobscot was allowed to belong to Massachusetts Bay.

In regard to my consenting to the grant of the 6 Townships, I believe I might, after what I have already said, safely trust my justification to the Grant itself, in which so much care has been taken to provide for the Kings rights and the public Emolument. But It may be necessary to state to your Lordships the times & manner in which it was made. The first Grant originated in the House of Representatives, Feb 20 1762, & having been concurred by the Council received my consent. (See Votes pa 265) The Grant amounted to a positive assurance of 6 Townships, of the contents of 6 miles square each, to the 360 Grantees, altho' It was incomplete untill by an actual survey the boundaries of the Townships could be ascertained. This Survey was not perfected till the end of the Summer following & it was certified upon Oath to the

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<sup>1</sup> This copy is in Bernard Papers, x. 89.



general Court at the first Session after: when on Feb 24 1763 a positive Grant was ordered to be passed under the Province Seal to be laid before his Majesty for his approbation. (see the Votes [pa 277].)

Between the times of the originating the grant & the completing it by an Authentic Instrument, I was advised that probably an Objection arising from the bounds of Charles the 2<sup>d</sup>s cession might be urged against the Provinces right: and the general Court received the same intimation from the Province Agent: but I was so far from thinking that that would authorise me without an order from your Lordships, to put a stop to this business, that I was rather inclined to forward it as much as might be, thinking it the best & easiest Way of bringing this right into Question: And I still persuade myself that when your Lordships shall have perused this Grant, you will think that the Gen<sup>l</sup> Court has introduced their claim in as respectful or proper a manner as they could well have done. Nevertheless upon the first notice of these doubts concerning the provinces right, I resolved to consent to no more grants untill the present should be determined upon.

I am very unwilling to extend the trouble I now give your Lordships unnecessarily and therefore for the rest I shall only refer to my former letters on this subject; from the whole tenour of which I flatter myself your Lordships will perceive that from the first time I had reason to think that this Question was like to be controverted I have expressed an earnest desire that I might be involved in it as little as my station would permit and tho' I have thought it my duty to lay before your Lordships such arguments as I knew would be urged in favour of the Provinces right; yet your Lordships must have observed that the general Service of his Majesty in extending the population of his Dominions has been my chief purpose.

I am, with great respect My Lords, Your Lordships most obedient and most humble Servant

FRA BERNARD <sup>1</sup>

A letter to Bernard from the Lords Commissioners on March 11, 1763, shows a much more friendly attitude than their former letter displayed, due doubtless to Bernard's careful and elaborate arguments.

WHITEHALL, March 11<sup>th</sup> 1763

SIR

We have taken into Our Consideration your letter to Our Secretary, dated the first of December,<sup>2</sup> and the several papers which you have

<sup>1</sup> Bernard Papers, x. 75-81.

<sup>2</sup> See p. 210 note 3, above.



addressed to the Board, relative to the Grant of the Island of Mount Desert, which the General Court of Massachusetts Bay is represented to have made to you in July 1762.

We can have no objection to your acceptance of this Grant as a Testimony of the approbation and favour of that Province, in whose Service, and in the Conduct of whose Affairs, you have manifested so much zeal and capacity, nor should We have delayed Our Representation upon it to the Crown, if the deed itself had been before Us. You are sensible there are some Circumstances peculiar to the situation of this Tract of Country which make it necessary to consider both the Case itself, and the manner of carrying such a Grant into Execution: When We shall be actually in Possession of the Grant We will bring the Matter to issue with all possible Dispatch, and endeavour to decide whatever questions arise upon it, in a manner which shall be agreeable, and upon grounds which shall be just to all Parties concerned.

It may be proper to observe to you, that the doubt conceived upon the Claim of the Province of Massachusetts is not founded upon the Allegation, that the lands to the East of Penobscot were not in the Possession of the Crown at the time of Granting the Charter, but upon the Operation which the Treatys of Riswick and Breda (by which Treaties this Tract of Country was ceded to France) should be admitted to have had upon the Charter itself.

We cannot take upon Us at present to say how far all future Consideration of this Question is precluded by the Order of Council grounded upon the Opinion of the Attorney and Solicitor General in 1731, this is a delicate point, which should be reserved till the deed shall come regularly before Us, and in the meantime We cannot think it expedient to advise any conditional Grant whatever of this Island. We are

Sir

Your most Obedient humble Servants

C TOWNSHEND

SOAME JENYNS

ED BACON

ORWELL<sup>1</sup>

A few extracts from letters to Bernard will be pertinent. On February 23, 1764, Lord Barrington wrote:

I understand thro' M<sup>r</sup> Jackson, that your affairs concerning Mount Desert go on well; he has promised to give me notice when I can be assistant therein. Lord Hillsborough, the present first Lord of Trade,

<sup>1</sup> Bernard Papers, x. 63-65.



is the most intimate friend I have in the world, and I have not neglected to inform him of my connexions with, and good opinion of you.<sup>1</sup>

On July 12, 1764, John Pownall wrote to Bernard:

The Grant of Mount Desert will I hope be confirmed next week, I shall be happy to be the first one to acquaint you of it, for I have your interests most sincerely at heart.<sup>2</sup>

On July 13, 1764, the Lords of Trade wrote:

The Measures taken by the General Court for laying out Townships in the District of Sagadahock, is a Matter of great Importance, and is complicated with a great Variety of difficult Questions and Considerations; all which will be brought before His Majesty by a Report, that we shall make in a few Days upon the Petition of the Proprietors of six of these Townships to have their Grants confirmed.<sup>3</sup>

And on September 7, 1764, Barrington again wrote to Bernard:

I have lately had some talk with our friend Pownall about Mount Desert, who assures me your grant shall have his best assistance, seems to think it will pass to your Satisfaction: He & M<sup>r</sup> Jackson have promised to let me know when any help of mine is wanted.<sup>4</sup>

The foregoing letters and documents have been freely used to show the method of procedure adopted by Bernard and the General Court to obtain favorable action, in England, with reference to the Mount Desert grant. The difficulties which were to beset Bernard's petition have already been mentioned in William Bollan's letter of June 10, 1762. It will now be of interest to follow the petition after it had been presented to the proper officials. On December 12, 1763, it had reached the Privy Council and on December 21 it was referred to a committee of the Council, and by this committee, February 4, 1764, to the Board of Trade.<sup>5</sup>

In the records of the Board of Trade, July 16, 1764, some interesting statements in regard to land grants in the territory of Sagadahoc are to be found. There were two points which came up for consideration; the first, as to how far it might be consistent with policy to permit an extension of the Massachusetts jurisdiction, and second,

<sup>1</sup> Bernard Papers, x. 163.

<sup>2</sup> Id. x. 175.

<sup>3</sup> Id. x. 179-180.

<sup>4</sup> Id. x. 189.

<sup>5</sup> Acts of the Privy Council, Colonial Series, vi. 359, iv. 614.



as to how far the conditions of the grants might be consistent with the laws of England and of Massachusetts. It was decided that as a matter of policy it was unwise thus to extend the jurisdiction of Massachusetts, since these new townships would mean an increase in the membership of the Assembly, which since 1692 had been enlarged from 84 to 170, while the Council still remained at 28. The remoteness of the settlements, their insecurity against hostile attack, the possibility of conditions which might arise whereby there would be a conflict with the laws of the province or with those of the established church of the kingdom caused the Board to look with disfavor upon the establishment of these new townships east of the Penobscot. But on the other hand, there was a doubt as to whether these observations were really of sufficient importance as to delay the settlement and improvement of so large a part of his majesty's domain. It was suggested that possibly it might be best to sever Sagadahoc from the province of Massachusetts Bay and erect it into a new and separate province. "How far this may be done," the record reads, "without the consent and concurrence of the General Court of Massachusetts Bay, we do not take upon ours to determine." In view of the fact that the governor of the province was expressly prohibited from taking gifts or presents from the Assembly, another complication was introduced. "But Bernard's conduct," the Board reports, "has been without reproach, and there is no room to suspect undue influence in the case of a grant which cannot take effect without his Majesty's permission." And "The Board of Trade recommend confirmation of the grant unless it may tend to invalidate any right of the Crown."<sup>1</sup>

Consequently, on the next day, July 17, 1764, Bernard's petition to accept his grant of Mount Desert, with this recommendation of the Board of Trade, was sent back to the Privy Council with the request that the Council should "consider whether the Province of Massachusetts Bay have, or have not a Right to make Grants of Land within the territory of Sagadahock."<sup>2</sup> The Privy Council took plenty of time in considering, for Bernard's petition was destined to remain in Council for more than five years.

Bernard must have learned that his petition was sidetracked, for

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<sup>1</sup> Acts of the Privy Council, Colonial Series, vi. 369-371.

<sup>2</sup> *Id.* iv. 615.



his next move was to formulate an appeal which he made direct to King George.<sup>1</sup> In this document are set forth his grievances, which were shared more or less by all the other grantees of the eastern lands; and several paragraphs in it set forth the difficulties and annoyances that beset Bernard in his attempts to develop the wilderness of Mount Desert. The document is entitled "A Statement of the Grant of the Island of Mount Desert to Francis Bernard and the Consideration for which it was made," and reads in part as follows:

Upon his informing the Lords of trade of this grant & the occasion of making it, they were pleased by their letter of Mar 11 1763 to write to him in the following words. "We can have no objection to your acceptance of this grant as a Testimony of the approbation & favour of that province in whose services & in the conduct of whose affairs you have manifested so much Zeal & Capacity; nor should We have delayed our Representation of it to the Crown if the deed itself had been with us." And He, about the same time & for some time after received frequent assurances that the grant would speedily be confirmed.

Under these Encouragements He thought He might safely venture to make preparations for settling the Island: and accordingly he has had the whole surveyed and has built some houses & erected a saw mill & markt out a town &c at the Expence of 4 or 500 pounds.<sup>2</sup> But

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<sup>1</sup> G. E. Street, who prints the document in full (Mount Desert, 1905, pp. 118n-120n), says that the appeal was "dated October, 1764" (p. 118), but the document is undated.

<sup>2</sup> In the Bernard Papers are two interesting documents. One (x. 226-228), dated September 8, 1764, is entitled "Proposals for settling a Colony of Germans at a Town in the Island of Mountdesert," and has been printed in the Bangor Historical Magazine, v. 1-2. The other (x. 207-208) is as follows:

Proposals for a fishery at Mount Desert, October 5, 1764.

The Governor at the desire of some of the Settlers there, has undertaken to provide two small Schooners & two large Whaleboats, with all proper fitting, To be employed in a fishery in the following Manner.

There shall be ten people employed in fishing, that is; two on board each Schooner, & three on board each Whaleboat, & one Shoresman with such assistants as he shall want & procure, who shall live at the flakes.

The Flakes with a house for the Shoresman, & a Storehouse for the fish, shall be built on a point of land which forms the West Side of the Strait which leads out of the South West harbour into the long Sound; all the persons concerned in the fishery shall assist in erecting the Same; The Governor finding doors



now upon account of the delay of the confirmation some Disorderly people in the neighbourhood have taken possession of the Island broke down the houses destroyed the timber & still continue to make great havoc & waste without his being able to redress himself for want of the completion of his title.

The Island, by the principal & intrest of the forementioned sums may be reckoned to have cost him already 1500 pounds, which is probably more than it would sell for, if put up to sale. He cannot therefore entertain a thought that, after having served so long & (he hopes he may add) so faithfully a government whose annual Income, at best, produces a bare subsistence & of late years has fell short of that, He shall be left to bear so heavy a loss from what was intended for his benefit. But tho' He has no reason to suppose that the intentions towards him are other than favorable, He has suffered a great deal & continues to suffer by the delay of this business.<sup>1</sup>

A plausible explanation of "the delay in this business" which Bernard deplotes, is to be found in the Acts of the Privy Council;<sup>2</sup> a deal which illustrates the chicanery of the times, putting to blush the political intrigues of more modern days. In view of the fact that the Lords of Trade had written Bernard in March, 1763,<sup>3</sup> giving him the assurance that his grant would be speedily confirmed, in October of the same year the Privy Council is advising the king to hold fast to the territory between the Penobscot and the St. Croix in case there might be, at some future time, a boundary dispute between Massachusetts and Quebec; that he then might fix the

Windows & Nails & boards & Slate for the roof, & therefore having the property of the building.

All the fish that shall be caught in the said Boats, shall be brought to the flakes, there to be cured & kept in common; or in such Divisions partnerships as the fishermen shall choose to divide themselves: provided, that every boat at least shall be in partnership.

Towards the Close of the year, & at the ending of the fishery, at one or two times as shall be thought most convenient; all the fish so made shall be divided into five parts, & one fifth part, without any deduction or charge soever, except the proportion of Salt, shall be reserved to the Governor for the use of the Boats &c; the other four fifths shall remain to the fishermen in such Divisions & partnerships as they shall have agreed upon.

We whose Names are underwritten do agree to these proposals, & do promise & engage to conform thereto, & to observe the Same, In Witness whereof We have hereunto set our hands.

<sup>1</sup> Bernard Papers, x. 216-219.

<sup>2</sup> See p. 244 note 7, below.

<sup>3</sup> See p. 231, above.



Quebec boundary to suit himself, making a concession to Massachusetts by granting title to Sagadahoc, having already set the western boundary of Nova Scotia at the St. Croix. This document is quoted in full. On October 5, 1763, is recorded "Reference to Committee of a Board of Trade representation with draft of a commission for Montagu Wilmot to be Governor of Nova Scotia." On October 7 "the commission is approved with an addition proposed by the Committee in their report of 6 Oct., which quoted the representation of the Board of Trade that" —

they have also made the River St Croix the Boundary to the Westward, for, although it be true that the ancient Limits of this Province, as it was possessed by France under the Treaties of Breda and Ryswick and ceded to Great Britain by the Treaty of Utrecht under the name of Acadia, did extend as far West as the River Pentagoet or Penobscot, yet as it appears to have been determined in the year 1732, upon a full examination of the Claims of the Province of Massachusetts Bay, as well by the Attorney and Solicitor General, as by this Board, and finally by His Majesty in Council, that the said Province had a right of jurisdiction and property under the Limitation of the Charter, to the Country between the Rivers Sagadahock and St Croix, and as in consequence of this Examination, the Instructions given to Colonel Dunbar, and to the Governor of Nova Scotia to make Settlements within that Tract were revoked, and it was Ordered that the Province should not be disturbed in the possession they claim to have of this Country it does not appear to them that this question is for the present open to a New Discussion: But as they conceive there are many material circumstances in favour of Your Majesty's Right to the Country as far Westward as the River Penobscot which were not stated in the Case laid before the Attorney and Solicitor General in 1732, upon which Case their Opinion and the Decision of the Council were founded, they do not think it advisable that this Restriction of the Western Bounds of Nova Scotia to the River St. Croix should pass without some reservation of Your Majestys Right to the Country between that River and Penobscot, being entered upon the Council Books; And they rather humbly propose this to Your Majesty, as it may be a means of hereafter removing any Objection which may be taken on the part of the Province of Massachusetts Bay to the Southern Line of Quebec, as far as it concerns their Northern Limits, for if such Objection should be made, and it should appear upon examination they have any just ground for Complaint, it will be in Your Majestys power to make them



a reasonable Compensation, by allowing their Jurisdiction to extend as far Eastward as the River St. Croix, between which and the Penobscot they have lately made some considerable Settlements

[The Committee] being of Opinion that Your Majestys Right to the Country between the River St. Croix, and the River Penobscot (the ancient Limits of the said Province) ought to be reserved in a more publick manner than by an Entry in the Council Books, do therefore propose the following alteration should be made in the said Draught of a Commission for that purpose Vizt. After the appointment of Montagu Wilmot to be Captain General and Governor in Chief in and over the Province of Nova Scotia, the description of the Boundaries of the said Province be left out, and the following words inserted in lieu thereof. Which We have thought proper to restrain and comprise within the following limits Vizt. to the Northward, Our said Province shall be bounded by the Southern Boundary of our Province of Quebec as far as the Western extremity of the Bay des Chaleurs; To the Eastward by the said Bay and the Gulph of St. Lawrence to the Cape or Promontory called Cape Breton in the Island of that Name including that Island, the Island of St. Johns, and all the other Islands within Six Leagues of the Coast; To the Southward by the Atlantick Ocean from the said Cape to Cape Sable, including the Island of that Name, and all other Islands within forty Leagues of the Coast, with all the Rights Members and Appurtenances what so ever thereunto belonging; And to the Westward although Our said Province hath anciently extended and doth by right extend as far as the River Pentagouet or Penobscot, it shall be bounded by a Line drawn from Cape Sable across the Entrance of the Bay of Fundy, to the mouth of the River St. Croix, by the said River to its source, and by a Line drawn due North from thence to the Southern Boundary of our Colony of Quebec.<sup>1</sup>

The same year that Bernard made his appeal to the king, the General Court appointed a committee on eastern grants and province boundaries. On November 27, 1764, this committee wrote a letter to Jasper Mauduit in which a few pointed statements were made. Among other things the committee stated:

The whole Province of Nova Scotia is expressly included within the Charter of this Province. The great difficulty of defending a Country so remote from our center made it a lesser hardship than otherwise it would have been for the Crown to take it from us after the Peace of

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<sup>1</sup> Acts of the Privy Council, Colonial Series, iv. 576-579.



Utrecht and to settle a distinct government there; but for the Country between the Rivers Kennebeck and S<sup>t</sup> Croix we have been at a continual expence in defending it, never imagining our right of jurisdiction and our right of granting the Property conditionally would ever be disputed, and yet as soon as that Country is freed from the dangers of Enemies our title both to jurisdiction and property as to great part of that Country is questioned and all our grants made in order to forward the settlement of it are disapproved.

This is a true state of our case. Notwithstanding all these discouragements we are bound in faithfulness to our trust to go on, as long as there shall be any room left for it, defending our cause and preventing if possible this Province which formerly was one of the first from being made the last in rank and importance of any of his Majesty's Colonies. . . .

For the Territory east of the Kennebeck we suppose Lord Sterling's claim is over as we hear nothing lately said about it and indeed it never had the least foundation. Nor can we well conceive what exception can be taken to our title under the limitations in the charter. We know that none of our grants will be of any validity without the Royal confirmation. Our principal view in making grants of the townships was the cultivating and improving His Majesty's dominions which otherwise must remain a Wilderness and can be in no respect beneficial to the nation.

We should be glad to be informed whether the exception be to our right to originate any grants, or whether it be to the particular grants either as to the Persons to whom the townships were granted, the conditions of the grants or to any other matter either in point of form or substance. If there be any prospect of the grants obtaining His Majesty's Confirmation we doubt not the General Court will do every thing proper on their part in order to promote the settlement of so considerable a part of the Province.<sup>1</sup>

This committee was wrong on one point, for the Earl of Stirling's claim was not "over," as will now appear. Evidently Stirling must have been assured by some one in authority that his petition for the restoration of the old County of Canada to him and his two associates was about to receive favorable consideration. Otherwise, why should he have launched a scheme for selling settlers lots east of the Penobscot, which is explained in the following advertisement, copied from a printed broadside in the Massachusetts Archives?<sup>2</sup>

<sup>1</sup> Massachusetts Archives, lvi. 434-436.

<sup>2</sup> cxviii. 379. Some words, as indicated in the footnotes, are written in.



## TO BE SOLD,

A TRACT of Land of One Hundred Thousand Acres, situate on the East Side of *Penobscot-River*, in the Eastern Part of *New-England*, on the following Conditions, *viz.*

The Tract is to be divided and laid out in One Hundred Lots, of One Thousand Acres each, bounding Westerly on the said River.

The Purchaser of each Lot, is to pay One Hundred Pounds Sterling, down, or secure the Payment thereof by Mortgage of the Land, or otherwise, and shall be intitled also to a Town Lot of Half an Acre, in a Town called, *Alexandria*, laid out at the Mouth of the River, and fronting on *Penobscot-Bay*; the whole to be held free of Quit Rent for ever.

The Purchaser is, on each 1000 Acre Lot, within three Years after the first Day of July, 1769, to settle at least one Family, or shall then forfeit his Grant; in which Case the Consideration Money shall be returned, with Interest, at Five *per Cent.*

A Map of the whole, with a State of the Title, is to be seen at the Earl of *Stirling's* Office, at *Baskinridge*, in *Somerset County*; at *John Smith's Esq*; at *Perth-Amboy*; at *Cornelius Low's, Junior, Esq*; at *New-Brunswick*; and at *Isaac Ogden's, Esq*; at *Newark*; all in *New-Jersey*; at *Philip J. Livingston's, Esq*; in *Bayard-Street*, and at *Mr Gerard Bancker's*, near the *Exchange*, in *New-York*; at *Jared Ingorsel's, Esq*; at *New-Haven*, in *Connecticut*; and Messrs. *Hazen and Jarvis's* at *Newberry*, in *Massachusetts Bay*;<sup>1</sup> also at *Abrā Ogden's Esq<sup>r</sup>* at *Morris Town* in *New Jersey*.

All Persons inclining to be concerned in this Purchase, are desired to enter their Names at either of the above Places, on or before the first Day of *November* next, in Order that the respective Deeds may be prepared.

*Penobscot-Bay* is one of the finest on the Coast of *New-England*; it abounds with Sea-Fish; its Navigation is safe and easy to Ships of any Burden. That Part of the River, on which this Tract is laid out, begins within two Leagues of the Bay; the Lands are as good as any in *America*, taking so large a Tract together: The Town Spot and the Islands in its Neighbourhood, are admirably well situated for carrying on the Cod-Fishery; the Rivers have great Plenty of Salmon. Those who have their Names first entered, will have the Advantage of taking the first Choice of their Lots, as to Situation.

If this Offer to the Public be duly considered, it will be found the most advantageous one that has appeared, especially to Farmers who

<sup>1</sup> The next eleven words are written in.



have large Familis of Children, and who have no great Stocks to provide them with; the Terms are intended lower than any other that has been offered for Lands so commodiously situated, purposely to encourage the Settlement of this Country, the Proprietor having other Lands in the Neighbourhood. An<sup>1</sup> Other Tract of 50,000 Acres on Castine River near the above Tract will be Laid out in Lotes of 500 Each to be Leased a Term of three Lives the first Seven Years from the 25 March 1769 rent free the remainder of the Term to pay three pence Sterling p Acre.

*July 20, 1768.*

These proposals were sent by Stirling to Bernard from New Jersey together with the following explanatory letter:

BASKENRIDGE August 10: 1768

SIR

I have the honour to transmit to your Excellency some proposals I have lately published for Setling and planting a Tract of Land belonging to me, scituate in the Eastern part of your Government; and which I have good reason to expect I shall be able to Effect so far as to the Amount of Two Hundred families next Spring, I also send your Excellency a printed State of my Tittle to that Tract of Country,<sup>2</sup> by which your Excellency will find, that it is founded on the same Original Patent under which all the other Lands within your Jurisdiction are held.

His Majesty in Council has long since been informed of my Right and Intention herein; and I cannot but hope that the Setlers on their Arrival within your Province will meet with every encouragement from Your Excellency that so laudable design merriits. I have the honor to be

Your Excellency's

Most Humble Servant

STIRLING<sup>3</sup>

His Excellency Gov<sup>r</sup> Bernard

At a Council meeting held August 30, 1768, —

His Excellency laid before the Board a letter from the Earl of Stirling of the 10<sup>th</sup> Aug<sup>t</sup>, signifying his intention to settle a Tract of Land, in the Eastern parts of this Province, which he pretends a claim to.

<sup>1</sup> This entire sentence is written in.

<sup>2</sup> A copy of this printed broadside is in the Massachusetts Archives, cxviii. 378. It is entitled "A State of the Earl of Stirling's Title, to that Part of New-England, now commonly called Sagadahook."

<sup>3</sup> Massachusetts Archives, cxviii. 377.



Advised that William Brattle & James Bowdoin Esq<sup>rs</sup> take the said Letter into consideration, and report the next Council day.<sup>1</sup>

At a Council meeting held September 7, 1768, —

The Committee appointed to take the Earl of Stirling's letter under consideration made Report and also reported a draft of a Proclamation relative to the business therein mentioned; the said Report was Accepted, and His Excellency issued a Proclamation accordingly.

The Report is as follows —

The Committee of Council to whom was refer'd the Earl of Stirling's Letter to his Excellency Gov<sup>r</sup> Bernard dated August 10<sup>th</sup> 1768 with the printed State of his title to the Lands between S<sup>t</sup> Croix and Pemaquid in the Eastern parts of this Province and his printed Advertisement for the Sale of part of said Lands, having duly considered the same, are humbly of Opinion

That in the answer to said Letter his Excellency be desired to inform the Earl of Stirling that some time after receiving from M<sup>r</sup> Bolland the Province Agent a Copy of a Petition Signed by said Earl and others to his late Majesty relative to said Lands, a Committee of the General Court prepared a State of the title of this Province to the Country between Kennebec and S<sup>t</sup> Croix: that by said State it appears that the persons claiming under Sir William Alexander first Earl of Stirling have no right or Title whatsoever to the said Country or any part thereof, and that the Province of Massachusetts Bay hath a clear and undoubted right, and equitable title to the Soil and Jurisdiction of the said Country and every part thereof under such restrictions & limitations as are expressed in the Province Charter.

That the General Court relying on the goodness of the Province title have granted twelve Townships on Penobscot River and to the Eastward on Condition that Sixty Families at least should be settled in each within a limited time: That a great part of the Families are already settled and in some of the Townships the whole number: That it is inconsistent with his Majesty's Interest that the said Grantees should be disrested,<sup>2</sup> That it would be manifest injustice in the Government to suffer it, and that this Government cannot suffer it unless it be done by his Majesty's Orders.

The Committee think it would be proper that a Copy of the said State, should accompany his Excellency's Letter which they cannot

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<sup>1</sup> Council Records, xvi. 347.

<sup>2</sup> Only two examples of this verb, dated 1696 and 1726, are given in the Oxford English Dictionary.



but apprehend will induce the Earl of Stirling to desist from his pretensions.

The Committee are further of opinion that in order to prevent any uneasiness in the Grantees aforesaid and their associates arising from the Claim aforesaid and to prevent any persons purchasing or taking Leases of the lands advertized as aforesaid, his Excellency issue a Proclamation assuring such Grantees and Associates of the Protection of this Government and cautioning all Persons against purchasing or taking Leases of any of the said Lands under the s<sup>d</sup> Earl of Stirling.

The Committee herewith present the draft of the Proclamation, which with the foregoing Report is humbly submitted to your Excellency and Honors.

W. BRATTLE  
JAMES BOWDOIN <sup>1</sup>

On the same day the following proclamation was issued:

By his Excellency Francis Bernard Esq<sup>r</sup> Captain General and Governor in Chief in and over his Majesty's Province of the Massachusetts Bay in New England and Vice Admiral of the same.

#### A Proclamation

Whereas the Earl of Stirling hath published advertisements for the Sale of a large Tract of Land situated on the East side of the Penobscot River and for Leasing another large Tract on Castine River; said Tracts being part of a Tract in the Eastern parts of this Province extending from S<sup>t</sup> Croix to Pemaquid to which he has laid Claim by virtue of a Grant made in the year 1635 to William Alexander first Earl of Stirling by the Council established at Plymouth. And whereas by a state of the title of this Province to the Country between the Rivers Kennebec and S<sup>t</sup> Croix prepared by a Committee of the General Court and Printed in 1763 by order of the said Court it is alleged that the persons claiming under the first Earl of Stirling have no right or title whatsoever to the said Country or any part thereof, and it is asserted on the behalf of the province that the Province of Massachusetts Bay hath a clear and undoubted right & equitable title to the Soil and Jurisdiction of the said Country & every part thereof under such restrictions and limitations as are expressed in the Province Charter.

And whereas the General Court have granted twelve Townships within the Tract claimed as aforesaid, which Grants now lie before his Majesty for his royal approbation, in consequence of which Grants a

<sup>1</sup> Massachusetts Archives, cxviii. 380-381; cf. Council Records, xvi. 349.



great number of Families have actually settled in the said Townships, in order to fulfill the Conditions of the said Grants if the same shall be approved, —

I have thought it fit to issue, and do by and with the Advice and Consent of his Majesty's Council issue this Proclamation, hereby declaring the Intention of this Government to protect & defend the said Lands & the inhabitants thereof against the said Earl of Sterling & all persons claiming under him untill his Majesty's pleasure shall be known therein and cautioning all his Majesty's Subjects against purchasing or taking Leases of any of the said Lands under any person or persons claiming under the first Earl of Stirling aforesaid.

Given at the Council Chamber in Boston the 7<sup>th</sup> day of Septem<sup>r</sup> 1768 In the Eighth year of the Reign of our Sovereign Lord George the third by the Grace of God of Great Britain France and Ireland King defender of the Faith &c.

By his Excellency's Command  
God Save the King<sup>1</sup>

Events were now moving swiftly in Massachusetts and the provincial period was rapidly nearing the end. Bernard, who had no talent for conciliating and who believed in accomplishing ministerial purposes by force, by his intemperate speech and the open manner in which he endeavored to crush the ever increasing spirit of freedom, succeeded only in hastening the approach of the Revolutionary War. As part of a plan of lenient measures about to be put into operation by the home government, Bernard in April, 1769, received orders from the king to leave Massachusetts and return to England.<sup>2</sup> He had, the year before, been granted leave if he should find it necessary or expedient, but had given up all idea of so doing and was planning to develop Mount Desert and his other holdings of eastern lands. The ministry had advised his recall, which was by the people considered a victory gained. The king, to whom his conduct had been satisfactory, made him a baronet April 5, 1769,<sup>3</sup> without exacting from him any payment for the patent; at the same time ordering Bernard to quit his government and to return

<sup>1</sup> Massachusetts Archives, cxviii. 382-383.

<sup>2</sup> Hutchinson, *History of Massachusetts*, iii. 225-226.

<sup>3</sup> The title became extinct by the death of the sixth Baronet, Sir Thomas Tyringham Bernard, May 8, 1883.



home — an order, says Hutchinson, which “could not at any time have been more unexpected by him.”

Accordingly, Bernard sailed for England, August 1, 1769, amid great rejoicing on the part of the populace. The House of Representatives preferred charges against him which were set forth in a petition<sup>1</sup> and sent to the king, but as no evidence was communicated to the Privy Council, when the day for a hearing came Bernard was not required to make a defence and the charges were dropped, February 28, 1770,<sup>2</sup> and the petition dismissed.

Returning now to the subject of Bernard's petition to accept the grant of Mount Desert Island, which was referred back to the Privy Council by the Board of Trade in July of 1764, it is evident that Bernard, soon after his arrival in England, took steps that led to favorable action upon his request, made eight years before.

The Privy Council on December 13, 1769, took up the matter after having concluded that jurisdiction over the territory in question belonged to Massachusetts, and referred the petition back to the Board of Trade.<sup>3</sup>

The Board of Trade proposed, May 4, 1770, “that the grant be ratified, without prejudice to the rights of the Crown in and over the territory of Sagadahoc: which proviso corresponds with a Board of Trade report<sup>4</sup> of 6 June 1732.”<sup>5</sup> A committee of the Privy Council reported, March 8, 1771, “for confirming” the grant,<sup>6</sup> and on March 28, 1771, nine years and one month after the General Court of Massachusetts had made the gift, Bernard obtained a clear title to Mount Desert Island.<sup>7</sup> The Privy Council record, after reciting the facts in

<sup>1</sup> A copy of this petition is in Bernard's *Select Letters*, London, 1774, p. 89.

<sup>2</sup> Hutchinson, *History of Massachusetts*, iii. 246 note. See the *Letters of Dennys De Berdt*, Publications of this Society, xiii. 293-461.

<sup>3</sup> *Acts of the Privy Council*, Colonial Series, v. 220.

<sup>4</sup> *Id.* iii. 282-283.

<sup>5</sup> *Id.* vi. 484.

<sup>6</sup> *Id.* vi. 504.

<sup>7</sup> In a letter to me Professor Charles M. Andrews, after pointing out that Bernard's petition to accept his grant of Mt. Desert was on July 17, 1764, sent back by the Board of Trade to the Privy Council with the request that the Council should “consider whether the Province of Massachusetts Bay have, or have not a Right to make Grants of Land within the territory of Sagadahock” (see p. 233, above), goes on to say: “Evidently this return of the report to the Board involved considerable investigation and probably a sending of the question, which was a legal one, to the standing counsel of the Board, at that time Sir Matthew Lamb. We know that Lamb was dilatory in getting his opinions back to the Board, and I presume that if we could get at the Board of Trade pa-



regard to the grant by the General Court to Bernard on February 27, 1762, continues:

And Whereas, the said Sir Francis Bernard Baronet, hath by Petition to his Majesty at this Board humbly prayed his Majesty's Royal Confirmation of the said Grant — His Majesty having taken the same into Consideration, and recieved the Opinion of the Lords Commissioners for Trade and Plantations, and also of a Committee of the Lords of his Majesty's most honorable Privy Council thereupon, is hereby pleased with the Advice of his Privy Council to declare his Approbation of the said Grant, and pursuant to his Majesty's Royal Pleasure thereupon expressed, the said Grant is hereby approved & confirmed accordingly; Provided nevertheless that his Majesty's Approbation and Confirmation of the said Grant, shall not have the Effect to prejudice the Right of the Crown, in and over the said Territory of Sagadahock, both as to the Dominion, and the Property of the Soil — Whereof the Governor, or Commander in Chief of his Majesty's said Province of Massachusetts Bay for the time being, and all others whom it may concern, are to take Notice, and govern themselves accordingly.<sup>1</sup>

When Bernard's grant was at last confirmed, he had been out of the province for a year and seven months and was unable to promote further settlement or development of his Mount Desert lands. Arriv-

pers we should find that the delay was due to Lamb's procrastination. Lamb died in 1768 and I know that he left a large number of colonial laws unreported, and it is more than likely that this matter of the jurisdiction of Massachusetts was among the matters that had not been examined. At any rate Bernard petitioned again towards the end of 1769, and his petition was received by the Privy Council and on December 13 was sent down to the Board of Trade. Just what the Board did with it I cannot say, as Lamb was dead and his successor, Richard Jackson, was not appointed until the middle of the year 1770 (the interim was November 26, 1768, to May 1, 1770). It may be that Lamb's report had come in or that the Board acted without legal advice, though the latter would be most unusual, or that they waited till Jackson came in. However, on May 4, 1770—the date looks as if Jackson had got down to business at once, and he was a very learned man—the Board sent in its second report on the petition, proposing that 'the grant be ratified, without prejudice to the rights of the Crown in and over the Territory of Sagadahoc,' a position corresponding to that taken by the Board in 1732 in the case of the petition of Samuel Waldo for land between the Kennebec and the St. Croix Rivers. It may be that all the Board did was to instruct its secretary or clerk of the reports to look up its own records, in order to find out what precedent had been established."

<sup>1</sup> Commissions, Proclamations, Pardons, etc., 1767-1775, pp. 207-209 (Massachusetts Archives). Cf. Acts of the Privy Council, Colonial Series, v. 220.



ing in England, he had received the appointment to some government position in Ireland, from which he asked, in 1774, to be released.<sup>1</sup> On April 30, 1779,<sup>2</sup> an act was passed to confiscate the estates of "certain notorious conspirators against the government and Liberties of the inhabitants of the late Province, now State, of Massachusetts Bay,"<sup>2</sup> and Bernard was deprived of his American property. Six weeks later, June 16, 1779, he died at Aylesbury, Buckinghamshire.<sup>3</sup>

By his will, made September 23, 1778, before the confiscation act was passed, Sir Francis left to trustees, for his son John, the island of Mount Desert, one half of which was restored to John Bernard by an act of the General Court, June 23, 1785; since he had "produced to this Court ample testimony of the uniform consistence and propriety of his political conduct previous to, during and since the late war, and whereas the estate of his father Sir Francis Bernard, deceased, has been confiscated, to wit, the Island of Mt. Desart which was by the last will and testament of said deceased made previous to said confiscation, devised to said John."<sup>4</sup>

On July 6, 1787, by act of the General Court,<sup>5</sup> an undivided half of Mount Desert was bestowed upon Bartolemy de Gregoire and his wife Marie Therese de la Mothe Cadillac de Gregoire, granddaughter of Sieur Antoine de la Mothe Cadillac, Lord of Mount Desert, thus recognizing a portion of an old French grant made to Cadillac by Louis XIV in 1689. Mount Desert was held in common by John Bernard and Madame de Gregoire until 1787, when upon petition of Madame de Gregoire for a division, a north and south line through Somes Sound formed the boundary between the two grants; everything east of this line, including the Cranberry Isles, belonged to de Gregoire, and everything west of it to Bernard. Thus these two grants form the basis of all land titles on Mount Desert Island.<sup>6</sup>

<sup>1</sup> Palfrey, *History of New England*, v. 408 note.

<sup>2</sup> *Massachusetts Province Laws*, v. 966-967.

<sup>3</sup> An interesting account of his last moments will be found in *Hutchinson's Diary and Letters*, ii. 318-319.

<sup>4</sup> *Street, Mount Desert*, p. 127.

<sup>5</sup> *Id.* pp. 128-130.

<sup>6</sup> Advertisements relating to the sale of the portion owned by the de Gregoires, inserted by them and by others, will be found in the following issues of the *Massachusetts Centinel* for 1790: May 19, p. 3/1; May 22, p. 2/1; June 2, p. 3/3; June 2, supplement, p. 4/3; June 5, p. 3/2; June 12, p. 4/3; June 19,



Bernard's persistent and finally successful efforts to obtain a royal confirmation of his grant contributed to one result that could not have been anticipated by him or others.

At one time during the Revolution, when the British were in possession of Castine, a scheme was fostered by the government for separating a portion of Maine from Massachusetts. It was planned to incorporate the territory between the Saco and St. Croix Rivers into the Loyalist province of New Ireland and on August 10, 1780, an order was approved in Council and by the king on the following day, one of its purposes being—

To reward or Indemnify the Loyal Sufferers from the other Province, and at the same time lay the ground of an Aristocratic Power, the Lands to be granted in large Tracts to the most Meritorious and to be by them leased to the lower People in manner as has been practiced in New York, which is the only Province in which there is a Tenantry, and was the least inclined to Rebellion. The poorest Loyal Sufferers should however have Grants from the Crown.<sup>1</sup>

On August 18, 1780, the Privy Council referred to the Committee—

the petition of John Calef, Esq., of Massachusetts Bay, on behalf of James Duncan, Benjamin Herrod, John Wire, Edmund Morse, Peter Parker, David Marsh and other grantees of land between Nova Scotia and the river Sagadahoc, setting forth that they . . . have taken the oath of fidelity and are desirous of being severed from Massachusetts Bay and made a separate province.<sup>2</sup>

In March, 1782, Dr. John Calef, the American agent for the Loyalists, who was then in London, revived the matter of this new province and the Council granted the prayer of petition, but the Attorney-General, evidently with a recollection of the outcome of Sir Francis Bernard's efforts to establish the right of Massachusetts to the territory which it was now proposed to take from her, ruled that the Crown had no right to the soil in question and that any attempt to erect the proposed province would be a violation of the

p. 3/3; July 28, p. 3/4; August 4, p. 4/4; August 11, p. 4/2; August 18, p. 4/4; August 25, p. 4/2; September 1, p. 3/3. The sale was to be at auction on September 2. Mr. Percival Merritt kindly called my attention to these references.

<sup>1</sup> 3 Collections Maine Historical Society, i. 150.

<sup>2</sup> Acts of the Privy Council, Colonial Series, vi. 484.



sacredness of the chartered rights of the Province of Massachusetts Bay. Consequently the Province of New Ireland never came into being.<sup>1</sup>

After the British Parliament in 1782 had acknowledged the independence of the United States, the question of the northeastern boundary between New Brunswick and Massachusetts at once arose. The British members of the peace commission were charged with violating their instructions "in not insisting on the River Penobscot, being the boundary between New Brunswick and the United States." It was contended that by the treaty of Utrecht, 1713, under which the whole of Acadia was ceded to Great Britain, British territory extended as far as the Penobscot; and that Massachusetts had never rightfully exercised jurisdiction east of the Penobscot River. John Adams with Benjamin Franklin and John Jay, the American commissioners, took the contrary view, claiming the St. Croix River as the boundary of Acadia as granted by James I to Sir William Alexander, 1621. In the Diary of John Adams is this entry, under date of November 10, 1782:

Accordingly, at eight this morning I went and waited on the Comte.<sup>2</sup> He asked me how we went on with English. I told him we divided upon two points, — the Tories and Penobscot; two ostensible points; for it was impossible to believe that my Lord Shelburne or the nation cared much about such points. I took out of my pocket and showed him the record of Governor Pownal's solemn act of burying a leaden plate with this inscription:

"May 23. 1759. Province of Massachusetts Bay. Penobscot, dominions of Great Britain. Possession confirmed by Thomas Pownal, Governor."<sup>3</sup>

. . . I showed him also, all the other records, — the laying out of Mount Desert, Machias, and all the other towns to the east of the River Penobscot; and told him that the grant of Nova Scotia by James I. to Sir William Alexander, bound it on the River St. Croix.<sup>4</sup>

In a letter to Arthur Lee dated Jamaica Plain, April 2, 1783, the Rev. Dr. William Gordon said:

<sup>1</sup> Cf. 1 Collections Maine Historical Society, vii. 199-206; 3 Collections Maine Historical Society, i. 147-157; Sprague's Journal of Maine History, ii. 219.

<sup>2</sup> Vergennes.

<sup>3</sup> The inscription is printed in full in 1 Collections Maine Historical Society, vi. 337-338.

<sup>4</sup> Works, iii. 304.



What may have been sent you from France, I know not; but you may DEPEND upon the following information.

The British would not allow the boundaries of Nova Scotia to terminate at the St. Croix, but demanded Kennebec at first, and afterwards insisted upon Penobscot as their ultimatum, until Mr. Adams produced the records of the Massachusetts, and the authorities of Shirley, Pownal, Bernard, and Hutchinson, as well as the original grant of Nova Scotia by James the First to Sir William Alexander, and invited the British minister to state a written claim of Kennebec or Penobscot as the boundary of Nova Scotia, that it might be answered in writing, which brought him to reason.<sup>1</sup>

#### PORTRAITS OF BERNARD<sup>2</sup>

Of Bernard there were at one time three portraits in existence: (1) one, by an unknown artist, representing a young man, in possession of the family in England; (2) another, painted by Copley sometime during Bernard's administration in Massachusetts; and (3) a third, also by an unknown artist, presented by Bernard to Harvard College, now known as the mutilated portrait, which many years ago disappeared. Connected with each portrait is an interesting story.

(1) Of this portrait, owned by Governor Bernard's great-granddaughter, Mrs. Napier Higgins, two photographs were obtained by Dr. Charles E. Banks, an original member of the Club of Odd Volumes of Boston, and these were shown to the members of the Club at their meeting on November 16, 1887, as appears from the Club records:

Dr. Banks showed two very handsome photographs of probably the rarest representation to be had of any of the Govs. of Massachusetts: viz: the portrait of Gov. Francis Bernard. This picture is after one owned by Mrs. Napier Higgins, "Percy Cross House," Fulham, S. W. London from whom these were sent. The only other portrait known here is one which was copied by Mr. J. H. Daniel, an Engraver after one at Christ Church, Oxford, by Copley.<sup>3</sup>

<sup>1</sup> In J. L. Sibley, *History of the Town of Union, Maine* (1851), p. 23 note.

<sup>2</sup> This account is based on data furnished by Mr. Matthews. For further details, see his paper on "The Portraits of Sir Francis Bernard," published by the Club of Odd Volumes (1922).

<sup>3</sup> The words "by Copley" are interlined in pencil. For the extracts from the Club records I am indebted to Mr. Merritt.

Under date of November 21, 1888, there is mention in the records of "an engraving to be made by Wilcox after the portrait in England, a photograph of which, loaned by a former member Dr. C. E. Banks, is now in the hands of



On October 24, 1888, it was decided that an engraving of the photograph owned by Dr. Banks should be made by Mr. Wilcox, and it was duly made and published in 1889 as "the first print of the Club." From the Year Book of the Club the following is copied:

PORTRAIT OF SIR FRANCIS BERNARD [*Governor of Massachusetts, 1760-69*] ENGRAVED BY J. A. J. WILCOX FROM THE PAINTING IN POSSESSION OF THE FAMILY FOR THE CLUB OF ODD VOLUMES, BOSTON, MASS.

*Plate 10 by 6¾ inches, portrait 4½ by 3⅜ inches, Club stamp. 51 unlettered, 100 lettered copies on India paper. 1889.*

Of the two photographs of this Bernard portrait, Dr. Banks evidently kept the one from which this plate was made, the other he presented to the Maine Historical Society, whose librarian, Miss Evelyn L. Gilmore, writes that this photograph is marked: "From the portrait in possession of the Bernard family of Nether Windenon, Aylesbury, Co. Bucks. Photographic copy furnished by his great-granddaughter, Mrs. Napier Higgins, to Dr. Charles E. Banks, 1887, and by him presented to the Maine Historical Society, 1913."

The photogravure facing this page has been reproduced<sup>1</sup> from the photograph presented by Dr. Banks to the Maine Historical Society in 1913.

(2) The portrait by Copley owned by Christ Church, Oxford, shows Bernard as a much older man. On July 2, 1772, Bernard went to Oxford to receive an honorary degree. The record at Christ Church reads: "He received from the University of Oxford the Hon. Degree of D.C.L., and from Christ Church the honour of having his picture by Copley among the other illustrious Students in the Hall of that Society."<sup>2</sup> Since this portrait was presented to Christ Church in 1772 and since Copley did not reach England until July, 1774,<sup>3</sup> it follows that the portrait must have been painted during Bernard's residence in Boston from 1760 to 1769. This portrait was engraved by J. H. Daniels of Boston in 1887 and published by

the Engraver being engraved;" and it was voted that the plate "be cancelled, and hung on the walls of the club room." On February 20, 1889, proofs of the portrait were shown to the members; and on April 24, 1889, it was announced that the plate had been cancelled.

<sup>1</sup> With the permission of the Club of Odd Volumes.

<sup>2</sup> Mrs. Higgins, *The Bernards*, ii. 235.

<sup>3</sup> *Massachusetts Historical Collections*, lxxi. 223.





*Fra Bernard*



him in a copyrighted print. The portrait was reproduced in 1891 by Fiske in his *American Revolution*,<sup>1</sup> in 1896 (from the Daniels print) by Foote in his *Annals of King's Chapel*,<sup>2</sup> and in 1908 by Avery in his *History of the United States and its People*.<sup>3</sup>

Curiously enough, there has long been a doubt among the members of the Club of Odd Volumes as to the authenticity of their print — a doubt which can now be set at rest. Mr. Daniels was a plate-printer who did much work for Dr. Banks; each heard of the existence of a portrait of Bernard in England; there was some rivalry between them about getting photographs; and in 1887 each received a photograph of an alleged portrait of Bernard. As Dr. Banks's came directly from a descendant of Governor Bernard, the authenticity of *that* was beyond dispute. But Mr. Daniels became uneasy about his photograph, sent an inquiry to Oxford, and in reply received the following letter:

BODLEIAN LIBRARY  
OXFORD  
Aug. 10. 1887.

DEAR SIR,

I enclose a receipt for the photograph-account and a certificate from the photographer, in the matter of Governor Bernard's picture. I can add my own testimony to the certainty that your photograph is from that picture. I am glad the matter is so satisfactorily concluded.

I am

Truly Your's

F. MADAN

(sublibrarian)<sup>4</sup>

J. H. Daniels Esq.

In course of time the real facts were lost sight of, there was confusion between the two prints; and in the minds of the members of the Club of Odd Volumes the doubt was transferred from the Daniels

<sup>1</sup> i. 51.

<sup>2</sup> ii. 206. It was perhaps through Dr. Banks that Mr. Daniels learned of the painting at Christ Church. In January, 1888, the Rev. Henry W. Foote spoke of the Daniels print before the Massachusetts Historical Society, and in February presented a copy of the print to the Society. (2 Proceedings, iv. 61, 66.)

<sup>3</sup> v. 31.

<sup>4</sup> As the Daniels print was purely a commercial venture, Mr. Daniels naturally wished to have its authenticity placed beyond the possibility of a doubt. Hence he had the letter facsimiled, and presumably sent a copy of the facsimile with each copy of the print sold. The letter in the text is printed from such a facsimile found by Dr. Banks in a New York print shop in February, 1921.



print, where it belonged, to the Club of Odd Volumes print, where it was out of place.

(3) The story of the third portrait shows to what lengths our patriotic ancestors could go in venting their displeasure even upon the inanimate representation of their cordially hated royal governor, of whom it was said "That a worse cannot be found on this Side —, if there."<sup>1</sup> In the Corporation records of Harvard College is this entry, under date of November 26, 1765.

Whereas Govern<sup>r</sup> Bernard, as we are inform'd by our Treas<sup>r</sup><sup>2</sup> hath offer'd to give his Picture to the College, Thereupon unanimously Voted, That We thankfully accept it.<sup>3</sup>

Accordingly, the portrait was duly sent by the governor and was hung in the College Hall.

Under date of October 6, 1768, a newspaper writer declared:

From Cambridge we learn, that last evening, the picture of —, hanging in the College-Hall, had a piece cut out of the Breast exactly describing a Heart, and a Note,— that it was a most charitable attempt to deprive him of that part, which a Retrospect upon his administration must have rendered exquisitely painful.<sup>4</sup>

The portrait was repaired, and on November 25, 1768, the Corporation voted:

That the Picture of his Excellency Governor Bernard presented by him to the College, be put into an handsome Frame, the Expence to be defrayed out of the College Treasury: and that this, with the other Pictures in the Hall, be placed in the Philosophy Room.<sup>5</sup>

How the repairing was done, we learn from a newspaper extract dated March 14, 1769:

G—r B—d's picture has been lately returned to Harvard-College to be *hung* up in the Library: Our American Limner, Mr. Copely, by

<sup>1</sup> Boston Gazette, August 7, 1769, p. 2/2.

<sup>2</sup> Thomas Hubbard.

<sup>3</sup> College Book, vii. 145. Cf. Donation Book, i. 81; J. Quincy, History of Harvard University, ii. 485.

<sup>4</sup> Boston Evening Post, December 19, 1768, p. 1/1.

<sup>5</sup> College Book, vii. 184. At a meeting of the Overseers on November 25, 1768, "A Vote of the Corporation at their Meeting this day Viz That the Picture of Governor Bernard with the other pictures in the Hall be placed in the Philosophy room . . . read and consented to" (Overseers' Records, iii. 13).



the surprising art of his pencil, has actually restored as *good a heart* as had been taken from it; tho' upon a near and accurate inspection, it will be found no other than a *false one*.—There may it long remain *hanging*, to shew posterity the true picture of the man, who during a weak and w—d Ad—n, was suffered to continue in the S—t of G—m—t, a sore scourge to the people, until he had happily awakened a whole continent to a thorough sense of their own interest, and thereby laid, the foundation of American greatness.<sup>1</sup>

When, how, or why this portrait disappeared has not been ascertained, but it is no longer in the possession of Harvard College.

Three towns—Bernardsville in New Jersey, Barnard in Vermont,<sup>2</sup> and Bernardston<sup>3</sup> in Massachusetts—perpetuate the name of a former governor of those once British provinces; a little village post-office on the western side of Mount Desert, in the town of Tremont, is called Bernard; and quite recently, the western peak of Western Mountain has been designated Mount Bernard.

Ancient prejudices die hard, and though adverse criticism was made when Bernard's name was attached to one of the Mount Desert peaks, documentary evidence bears testimony to Governor Bernard's active interest in the development of what is now Eastern Maine, to his persistent efforts, even in the face of censure, to inform the home government of the true status of the Massachusetts title to the lands between the Penobscot and St. Croix Rivers, a task which involved much study and considerable research,—all of which goes to show that it is not only fitting but eminently appropriate that the name of Bernard should find place on Mount Desert Island.

As the eastern mountain of the Desert group bears the name of Champlain, in honor of the skilful navigator and fearless explorer

<sup>1</sup> Boston Evening Post, May 8, 1769, p. 1/3.

<sup>2</sup> Cf. New Hampshire State Papers, xxvi, 20–22, 627–628.

<sup>3</sup> Lucy C. Kellogg (History of the Town of Bernardston, 1902) says:

"The fact that the place was named for a Tory Governor has, at times, aroused the ire of some of her citizens, but some measure of consolation may be gleaned from the truism that the man could hardly have been held alone responsible for the age in which he lived, nor yet for having been born a British subject. May not the circumstance of his being considered by his king worthy to assume such a position, serve in some degree to mitigate this feeling?" (p. 2).

A search among the printed accounts of Bernardsville, New Jersey, has failed to reveal any criticism of the naming of the town.



who gave the Island of the Desert Mountains its name, so may the western height forever remain a monument to the memory of that scholarly gentleman, royal governor of the province of the Massachusetts Bay, Sir Francis Bernard, who essayed its settlement.



