CHAPTER VI.

RUMFORD NEITHER TOWN NOR DISTRICT.—THE BOW CONTROVERSY AND MATTERS THEREWITH CONNECTED.—COLONIZATION BY CONCORD SETTLERS.

1749–1762.[1]

The story of this chapter is that of the critical period in the history of the town. The Bow controversy, previously referred to, had now reached its acute stage. King George's War was at an end. As a frontier town, Rumford had served as a buffer against Indian attacks for the more southerly settlements of New Hampshire. Relieved of the menace of Indian warfare, the settlers had precipitated upon them a legal controversy affecting the title of their land which threatened to dispossess them of their homes and give to strangers all that they had, through years of toil, reclaimed from the wilderness. Rumford had been settled under a grant from the colony of Massachusetts, but had now become a part of New Hampshire, through a decision of the king in council in drawing a boundary line between the two colonies of Massachusetts and New Hampshire. The control of the New Hampshire government was in the hands of those friendly to the Bow proprietors, who were claimants of the land settled in Rumford. The suits which these Bow proprietors brought to acquire title to this territory were to be tried in the New Hampshire courts, whose judges were in sympathy with these same proprietors. The settlers of Rumford were dependent for authority to direct their local affairs upon the government of New Hampshire, and this government had now refused to renew the act by which, as a district, they levied taxes to support their schools and their minister and maintain their control of municipal affairs. The efforts of the Bow proprietors, through their influence with the colonial government of New Hampshire, were directed to destroying the unity of action of the settlers by depriving them of authority to act as a town or a district at the same time that they harassed them with vexatious suits, purposely brought for so small amounts of damages that no appeal lay beyond the colonial courts. These Rumford settlers, numbering one hundred families, who had come into the wilderness under a grant which they had

[1] 1762. This date marks the second royal decision in favor of Rumford, the critical event in the Bow controversy; but to complete in this chapter the treatment of that controversy to its final settlement will require some anticipation of dates.

every reason to believe valid, now found themselves an isolated colony under a hostile government, bereft of even the countenance of law to act as a community. In view of their situation at this time, the marvel is that the colony was not then and there broken up and its settlers scattered.

How they held together for many years by voluntary association, agreeing to support one another, pledging their all to that end, is an incident of New England settlements probably without parallel. The Bow proprietors were entrenched in the government of New Hampshire, and the leading spirits were men of means and influence. The settlers of Rumford, on the other hand, had no capital but their homes and no outside support save occasional small contributions from the government of Massachusetts; yet they entered upon this unequal contest with undaunted courage, and, when they were cut off from appeal to the courts of England, they fell back upon the sacred right of petition, and through this ultimately triumphed over their antagonists. In the pages of legal documents the story of this litigation is told; but these documents do not picture the anxiety of these years, the self-sacrifice, or the doubts, as they planted, without confidence of harvest, as they harvested, without hopes of eating the fruits thereof, and as they put off permanent improvements which they might not enjoy; nor do they tell of the unity of spirit, which, without legal sanction policed their community and kept it from crime; the willing contributions of each his share to maintain the gospel and the school and the hundred and one acts which each cheerfully performed when there was no assurance that in the end they might not be compelled to abandon all that they had struggled so hard to obtain and held so dear. What they suffered in fears and doubts, with what heaviness of heart they engaged in their daily toil, with what rumors they were frequently dismayed, how the law's delay disturbed their waking and sleeping hours, how often they were on the point of giving up the fight, and with what small solace the days and nights of these long years were cheered, no chronicler of that time records. It is left for the imagination to portray. But it is known from their surroundings that it was a contest of silent suffering, of strong resolution, and of fidelity to one another unshaken. While details are lacking of the daily life of Rumford during the period of this controversy with the Bow proprietors, the history of the legal proceedings in the New Hampshire courts and before the king in council is quite complete and is here given.

As mentioned in the preceding chapter, Rumford had, by 1749, ceased to be either a district or a town. On the 24th of January, 1750, the people, through Benjamin Rolfe, petitioned the governor

and council to be incorporated into a township with their ancient boundaries, and with such privileges as any of the towns in the province enjoyed. In the memorial accompanying the petition, it was declared: "Your memorialists, by power given them by the district acts, . . . for about six years last past, have annually raised money for defraying our ministerial, school and other necessary charges . . . , and taxed the inhabitants accordingly; but the district act expiring some time last summer, there is now no law of this province whereby your memorialists can raise any money for the year current, for the charges aforesaid. And your memorialists have abundant reason to think that the Rev. Mr. Timothy Walker, who has been settled with us as our minister for about twenty years,—unless we can speedily be put into a capacity to make a tax for his salary,—will be necessitated to leave us, which will be to our great loss and inexpressible grief; for he is a gentleman of an unspotted character, and universally beloved by us. Our public school will also, of course, fail, and our youth thereby be deprived, in a great measure, of the means of learning, which we apprehend to be of a very bad consequence; [and] our schoolmaster, who is a gentleman of a liberal education, . . . and lately moved his family from Andover to Rumford, on account of his keeping school for us, will be greatly damaged and disappointed. And your memorialists, under the present circumstances, are deprived of all other privileges which a well regulated town enjoys."[1] But this urgent representation was met by a remonstrance of George Veasey and Abram Tilton, selectmen of Bow, presented on the 7th of February, 1750, and alleging that the bounds mentioned in "the petition of the inhabitants on a tract of land called Penacook to be incorporated with town privileges," made "great infringement on land belonging to the town of Bow." Action favorable to Rumford was thus prevented, for it had become the policy of the New Hampshire government, from motives made apparent in early subsequent narration, to ignore Rumford, even as a district, and to destroy its corporate identity by a complete merger in the township of Bow.

That government had, in May, 1726, sent its committee to Penacook to warn the Massachusetts committee against laying out the lands there, and, a year later, had chartered the township of Bow, out of territory lying on both sides of the Merrimack, in a grant of eighty-one square miles, made without previous survey, and "extremely vague and uncertain as to its bounds,"[2] but stubbornly construed by its supporters to cover three fourths of the plantation of Penacook.

[1] Benjamin Rolfe's Memorial, etc.; Annals of Concord, 85-6 (Appendix).
[2] The Rev. Timothy Walker's Petition to the king in 1753.

In 1728 the Massachusetts government, confident of the validity of its claim as to its northerly boundary line, had, regardless of the New Hampshire caveat, made two grants: in 1728 that of Suncook, lying in large part within the vague limits of Bow; and, a few years later, that of Number Four, or Hopkinton, trenching, at an angle, upon the same grant. This grant of Bow was taken to lie obliquely upon that of Rumford, from southeast to northwest, leaving outside a northeast and a northwest gore, the latter being considerably the larger. The bounds of the township were scantily described in the charter, in the following terms: "Beginning on the southeast side of the town of Chichester, and running nine miles by Chichester and Canterbury, and carrying that breadth of nine miles from each of the aforesaid towns, southwest, until the full complement of eighty-one square miles are fully made up."[1] This tract of land was granted as a town corporate, by the name of Bow, to one hundred and seven proprietors, and thirty-one associates, comprising the governor, the lieutenant-governor, the members of the council, and those of the assembly, with sixteen others to be named by the lieutenant-governor, numbering in all one hundred and fifty-one grantees.[2]

Though Bow was, by the terms of the charter, a town from the 20th of May, 1727, yet not till twenty months later did its proprietors set foot upon its soil by way of entry. Then, by a committee, they surveyed the lands granted, and marked out the bounds.[3] All they did, however, was "to run a chain, and mark some trees, at a a great distance round"[3] the busy settlers of Penacook, who were in occupation, as they had been, for more than two years, and who were there clearing and tilling the virgin soil, building their homes, and finishing their house for the public worship of God. The blazed lines run out by the proprietors of Bow were not, as these held, essential "as to the purpose of giving them the seisin,"[3] or possession of the lands surrounded by them, but were "especially designed, that they might know and distinguish their township from others."[3] For they claimed that "the grantees, by operation of law, were seized immediately upon the execution of their charter."[3] Some clue as to those lines is afforded by the testimony of Walter Bryant, who perambulated them about 1749. "I began," says the surveyor, "at the reputed bound of the town of Chichester, at the head of Nottingham, and from thence run northwest, four miles, to the head of Epsom; then there marked a maple tree with the word Bow and sundry letters; and from said tree, which I called the east corner of said Bow,

[1] See plan and explanations in note at close of chapter.

[2] See names of grantees in note at close of chapter.

[3] From statement drawn up by Judge Pickering, being one of the papers upon which the Bow controversy was decided in 1762. It is able and thorough, and will be frequently quoted from in subsequent pages.

I run northwest, four miles, to the west corner of Chichester; then northeast, one mile, to Canterbury south corner, then northwest, five miles, on said Canterbury; then southwest, nine miles, which runs to northwest of Rattlesnake hill and most of the pond that lies on the northwest side of said hill; and said line crosses Hopkinton road, so called, and takes a part of said town in; then we marked a tree, and run southeast, five miles, and marked a tree; then one mile southwest; then southeast, four miles; then northeast, nine miles, to where we began. P. S. I crossed Merrimack river within two miles of Canterbury line, and found all the inhabitants to the south of Canterbury and east of [the] Merrimack, which are in Rumford to be in Bow."[1]

At best, however, even with this perambulation, the lines of Bow did not lose their uncertainty, and remained too much like the boundaries, once wittily defined by Rufus Choate, in another case, "as beginning at a blue-jay on the bough of a pine tree, thence easterly to a dandelion gone to seed, thence due south to three hundred foxes with firebrands tied between their tails." Especially is it to be noted that the beginning of these lines was marked by a fleeting thing; for "the southeast side of the town of Chichester," which the charter had set for the beginning, became, in the survey, the southwest side of Chichester—the "blue-jay" having flown and alighted four miles away to the westward.

It is probable that the grant of Suncook, made by Massachusetts in 1728, and partially covering the territory of Bow, stimulated the proprietors of the latter to mark their boundary line in 1729. The next year a part of Suncook was divided by its proprietors into lots, which were assigned to grantees, and upon which actual settlement was soon commenced. Without regard to this the Bow proprietors laid out the same and some adjoining territory in an allotment recklessly intersecting and overlapping the other;[2] and while effecting no settlement under the grant of New Hampshire, they would not allow the peaceable effecting of any under that of Massachusetts. Their policy was that of the dog in the manger. About this time, and probably as a part of the same transaction, "a parcel" of the Bow grant, "on the east side of the Merrimack river, by conjecture about three miles square,"[3] was enclosed; but what allotment of Penacook lands, if any, was made at this period by the proprietors of Bow is not known. But at some time lands "were laid out and divided"[4] by them within the limits of Penacook or Rumford; for account was taken of them in the charter of the parish of Concord

[1] Bouton's Concord, 206 (note).
[2] History of Pembroke, 39, 40.
[3] Judge Pickering's Statement.
[4] Charter of Parish of Concord.

in 1765; and in the settlement of the Bow controversy in 1771, "the proprietors of Rumford were to pay ten pounds to the proprietors of Bow, for each hundred acre lot which was laid out by said Bow in said Rumford."[1]

Thus, while Bow—as Lord Chief Justice Mansfield of England remarked in substance years afterwards[2]—claimed the desirable valley of the upper Merrimack, the Massachusetts people went on and settled it. The plantation of Penacook became the town of Rumford with its charter confirmed by the king. Bow was nominally a town, holding meetings of non-resident grantees, and choosing selectmen at Stratham, forty miles away, and with not an inhabitant settled by itself upon the soil which it claimed. Though the settlement of the boundary line in 1740 threw Rumford under the jurisdiction of New Hampshire, yet as this act had been accompanied by the express declaration of the king that a change of jurisdiction should not affect the rights of private property, the proprietors and settlers of Rumford had reason to hope that they should not be molested in their dearly earned possessions. As early, however, as 1742, apprehension was felt by them as to the mischievous designs of the Bow proprietors, and the thought was entertained among them that it would be desirable to choose one or more persons fully authorized to act in their behalf, in using "ways and means to quiet and secure the proprietors in their possessions, and to secure their just right to the premises, either in the Province of New-Hampshire, or in the Court of Great Britain."[3] Though this thought did not ripen into immediate action, yet the same year Capt. Ebenezer Eastman was "appointed . . . to meet the delegates of . . . proprietors of grants made by the General Court of the Province of Massachusetts Bay . . . at a meeting held in Boston, in November, . . . to join with them in consulting . . . [as to] what" might "be necessary for the general good of the said Proprietors."[4] Mischief was threatened; but the outright war of dispossession upon the Rumford settlers was temporarily averted, especially by the French and Indian War, which was scarcely more harassing than the civil contest which was to supervene.

In the course of years those of the grantees specially named in the Bow charter as proprietors had forfeited their rights by non-fulfilment of conditions, and the proprietorship—as it is likely enough was originally intended—had fallen mainly into the hands of the

[1] Petition of Thomas Stickney to New Hampshire Legislature, 1789; Bouton's Concord, 304.
[2] The Rev. Timothy Walker's Letter, 1762.
[3] Proprietors' Records (manuscript), Vol. III, 170.
[4] Proprietors' Records (manuscript), Vol. III.

associates who were the members of the executive and legislative branches of the provincial government, including some who held place in the judicial department. By 1749 the "Proprietors of the common and undivided lands lying and being in the town of Bow" —as they styled themselves—were ready to attempt the actual enforcement of their claim upon the soil of Rumford. To smooth the way for their attempt, the district act had not been renewed; and now through the remonstrance of their so-called "selectmen," the incorporation of Rumford, as a New Hampshire town, was prevented, lest such official recognition of its distinct corporate existence might hinder the purpose. Without any actual seizin—and with only the most illusory constructive one—of the lands claimed, they had the effrontery to assert that they had been disseized for twenty-three years by bona fide settlers, who, all that time and more, had occupied and improved the premises. Hence the claimants in or about the sea-board capital, alias, "the proprietors of the common and undivided lands lying and being in the town of Bow," under the fallacious pretext of only seeking "to recover" that of which they had been "disseized," instituted a course of oppressive litigation.

In 1749 the proprietors of Bow entered at the December term of the court of common pleas, at Portsmouth, an action of ejectment against John Merrill, the early ferryman of Penacook, which was continued to the succeeding March term (1749–'50).[1] Judgment was then rendered for the defendant, and the plaintiff took an appeal to the next superior court, when pleas of abatement were moved, and, by agreement of parties, the case was continued to the September term, 1750.[2] But at this term neither party appeared, and the case was dismissed.

Why the plaintiffs abandoned this action does not appear; but in December, 1750, another action was entered upon the docket of the court of common pleas by the Bow proprietors against the same John Merrill, to oust him from "about eight acres of land, situate in Bow . . . with the buildings and appurtenances thereof,"[3] the whole being a portion of his homestead estate. These cases headed the long line of vexatious suits, all involving the same principle and substantially the same procedure and result in the province courts. But the proprietors of Rumford had been preparing for the tug of war. They had seen to it that the lines of the town should be perambulated and marked.[4] They were united in their purpose to defend, at whatever cost, their rights, and those of their grantees, against intrusion. On

[1] C. P. Records, 1745–1750, *p.* 436.
[2] Sup. Ct. Records, B., *p.* 129.
[3] Statement of Judge Pickering.
[4] Annals of Concord, 29 (note).

the 23d of April, 1750, after the bringing of the Merrill action in 1749,—which as just seen was abandoned,—they voted to "be at the cost of defending John Merrill, in the action brought against" him, by the proprietors of Bow, "provided" he should "pursue and defend said action agreeably to the orders of" his fellow proprietors. It was also voted "That the proprietors will be at the cost and charge of supporting and defending the just right and claim of any of" the "proprietors or their grantees, to any and every part of" the township of Rumford against any person or persons that shall bring a writ of trespass and ejectment for the recovery of any of said lands: provided, the said proprietors or grantees that shall be trespassed upon, or that shall be sued, shall pursue and defend their rights or claims agreeably to the orders of said proprietors of Rumford."[1] These votes were followed by another, appointing Captain John Chandler, Colonel Benjamin Rolfe, Lieutenant Jeremiah Stickney, Mr. Ebenezer Virgin, and Dr. Ezra Carter, a committee "to advise and order Deacon John Merrill how he" should "pursue and defend the action brought against" him "by the proprietors of Bow; also, to advise and order any other person or persons that" should "be sued or" should "sue in order to support and defend their rights or claims, what method they" should "pursue for the purposes aforesaid."[1] Provision was also made for selling "pieces of the common and undivided land in the township," to raise "money to pay the proprietors' debts, and the charge that" had "arisen or" should "arise by defending the suit brought against Deacon John Merrill by the proprietors of Bow." With such a resolute and concordant spirit of preparation did the proprietors and settlers of Rumford meet the issue presented. They appreciated the perils of the contest. They knew, indeed, that their cause was just, but would it prevail? With a fair, impartial trial it would. But such a trial was not to be expected in New Hampshire, since the governor and most of the council were "proprietors of Bow, and by them, not only the judges" were "appointed, but also the officers that" impaneled the jurors from "people generally disaffected to" the defendants, "on account of their deriving their titles from Massachusetts."[2] The defendants might, however, reasonably hope to obtain some justice in the end, could they but get a hearing before the king in council; though this resort the plaintiffs might, as they did, try to prevent by bringing actions for so small values, that, under the laws of the province, there could be no appeal to England. But whatever the cost, it was felt by the defendants that it was better to incur it than to submit to

[1] Proprietors' Records (manuscript), Vol. III.
[2] Petition of Rev. Timothy Walker and Benjamin Rolfe to the king in 1753.

the process of the plaintiffs, instituted to compel, under menace of ouster, acknowledgment of a groundless claim to proprietorship.

The action against John Merrill, entered in the inferior court of common pleas, at the December term, 1750, was, at the request of his counsel, continued to the March term, 1751, that he might "vouch in his warrantor," of whom he had purchased part of the land in question. As the warrantor did not appear at that term, the defendant was obliged to defend himself, or give up the land demanded on which some of his buildings stood. "He, therefore," as his counsel, Judge Pickering, has recorded in his statement of the case, "gave an issuable plea, and thereupon obtained judgment, from which the plaintiffs appealed to the then next superior court, and entered their appeal; and after several continuances, the parties had hearing, and judgment was rendered for the plaintiffs to recover the premises demanded. This judgment the defendant reviewed; but judgment was again rendered for the plaintiffs. From this judgment the defendant would have appealed to the king in council, or to the governor and council here in a court of appeals; but was not permitted to do so, as the premises demanded were not of sufficient value to allow either" recourse, according to the province law in such cases.

This case, with some others like it in principle and result, had, by 1753, passed through the New Hampshire courts. From an elaborate statement of the Merrill case, prepared by the acute and learned counselor in defense, and fortunately preserved, a view of the positions taken by the two parties in the controversy may be gained. A glance at some of them has already been had; but it may be well here to present them briefly in connected form, and partly in Judge Pickering's own words.

The Bow proprietors urged that, inasmuch as "the right to all the lands in the province was originally in the Crown," the charter of Bow, issued under the governor's commission which conferred the power to grant those lands, gave the grantees immediate seizin "by operation of law"; and that marking the bounds, twenty months later, and enclosing, five years afterward, a parcel three miles square, "on the easterly side of Merrimack river," gave them "actual seizin and possession of the whole," with the consequent right to oust "any person who" had "entered and possessed any part within the bounds of their charter, in any other right or claim." They expressly set forth in their declaration that, in "June, 1727, they were seized of the premises . . . in said town of Bow, in fee, taking the profits thereof . . . , and continued to be so seized for one year then next ensuing, and ought now to have quiet and peaceable possession; yet" the defendant, "within twenty-three years last past hath, with-

out judgment of law, entered into the premises demanded," and "disseized the plaintiffs thereof."

To the title thus set up by the plaintiffs the defendant objected, and denied that they had proved their case. "For," as he urged, "it is only by virtue of a seisin in fact that a person takes the profits —never by virtue of a seisin in law only. Now, they never set a foot on the lands contained within the bounds of their charter till twenty months after" the execution of that instrument in June, 1727, so that "it is difficult to conceive how their seisin" at the earlier date "is proved by entry" at the later. Nor could such evidence of entry and possession as was adduced by the plaintiffs prove the charge of disseizin against "the settlers of the plantation, called Penacook," who "had been in possession of it above a year before the date" of the Bow charter, and were vigorously pursuing measures in order to settle a town there. The Penacook settlers "were clearing the land almost two years before any of the proprietors of Bow had seen their land; and all that" the latter "did when they entered was to run a chain and mark some trees, at a great distance, round the laborers; they never so much as saw the land now demanded, where the settlers of Penacook were at work. And, indeed, by the plaintiffs' rule of possessing land by walking round it," the continuous possession of the Penacook settlers might "well be computed" from more than two years, instead of one, before the issuance of the Bow charter. "Upon these facts concerning the manner of entry and possession of these parties, with what propriety" could the Bow proprietors claim this land?

Again, it was argued for the defendant: Supposing "the lands which the plaintiffs claim were the king's at the time their charter was made—which was not the case, in fact—yet the Bow proprietors have not derived that right to themselves; for the authority of the governor of New Hampshire" to grant the king's lands was confined to his jurisdiction, which, by the commission, "was limited to that part of New Hampshire extending from three miles northward of Merrimack river, or any part thereof, to the province of Maine, which was the easterly boundary of the commission; the westerly boundary of which was the line running three miles northward of the Merrimack. Now the land demanded by the plaintiffs in this suit lay on the westerly side of Merrimack river, more than three miles without the governor's jurisdiction, and, consequently, he had no power to grant it; for, if he might grant the king's lands out of his jurisdiction, where should he stop? By what limits could he be restrained? From the reason and necessity of the thing, therefore, it must be allowed that the right of government and of granting lands was limited to the

same territory. And the words of the commission necessarily imply that it did not extend over all that was called New Hampshire." Hence, "if it were conceded that these lands were within the province of New-Hampshire at the date of the plaintiffs' charter, that concession would avail the plaintiffs nothing in this case."

"Another objection"—already mentioned—was made "to the plaintiffs' demand, from the manner of their running out the bounds of their township. By their charter, they were to begin on the southeast side of the township of Chichester. Instead of that they began on the southwest side. Now what could justify such a proceeding? If the land where they were to begin was appropriated before, that could not authorize them to be their own carvers, to take what they were pleased to estimate as an equivalent, without a new grant—which they never had. Nor did they ever make a return to the authority whence they derived their title, for confirmation of what they had thus unwarrantably assumed; for by their running they took in a considerable tract of land, really without their charter, and which belongs to others." They alleged, to be sure, "that they could not begin on the south-east side of Chichester, because it joined Nottingham on that side; but if it was so, what necessity of going four miles on Chichester before they began their measure? They should have taken their land according to their grant." But "it is probable" that "the true motive for making this leap—not in the dark—was to get better land." And "if they had run, as they ought, from the southerly corner of Chichester, they would not have reached the land demanded."

Looking closer to the title claimed by the plaintiffs, "as derived from the Crown," the defendant said that all the lands in question were "long before granted by the council of Plymouth,—in whom the right of the crown to them was vested,—to Captain John Mason," whose "right was always adjudged good. As the said lands were all waste or unimproved" except those occupied by the settlers of Penacook, "they, beyond all question, belonged—agreeably to Queen Anne's orders and the concession of the assembly here—to those who had Mason's right." This being the case, "the governor's grant could be of no effect as to these lands; for the power of the governor extended only to right of the crown, of which the crown was long before divested. Hence the plaintiffs' title under the government" could "not serve them," and of this fact, "the defendant" might "take advantage; for it is a well known rule, that a defendant may plead any man's title against the plaintiff."

But the plaintiffs claimed to have Mason's right, inasmuch as "Mason's heir sold it to Theodore Atkinson and others, by deed

dated the 30th of July, 1746, and that the purchasers, by their deed of release, dated the 31st of July aforesaid, conveyed their right to the plaintiffs, among others." To understand better this position of the plaintiffs, and that of the defendant in denial of it, a brief digressive retrospect is necessary.

In a preceding chapter it was related that Captain John Mason's grant of New Hampshire fell into the hands of his grandsons, John and Robert Tufton, who took the name of Mason. These made ineffectual attempts to obtain recognition of proprietorship. Another pair of brothers, also named John and Robert—sons of Robert—sold their claim to Samuel Allen in 1691. There was a flaw, however, in the transfer. After some years, John, the son of Robert, "conceived hopes of invalidating Allen's purchase,"[1] but died in 1718, without accomplishing his purpose. His eldest son, John Tufton, the fifth in descent from Captain Mason, and born about 1713, "was bred to a mechanical employment in Boston,"[1] and is also sometimes spoken of as a "mariner." He inherited the enterprising spirit of his ancestors,[1] and the controversy as to the lines called his attention to his interests.[1] In 1738, the politicians of Massachusetts, hoping to derive some advantage in the controversy, encouraged him "to assert his pretensions,"[1] and sent him to England to enforce his claim, but they had their expense for their pains. Thomlinson, the vigilant New Hampshire agent, finding Mason detached from the Massachusetts agents, entered into an agreement with him for the release of his whole interest to the assembly of New Hampshire, in consideration of the payment of one thousand pounds, currency of New England.[2] Nothing more was heard of this till after the settlement of the boundary dispute, and the accession of Benning Wentworth to the governorship.

In 1744, "the agreement with Thomlinson was lodged in the hands of the governor, who sent it to the house, for perusal and consideration;" but "the affairs of the war" and other causes prevented anything from being done. It was not until 1746 that "the house came to a resolution 'that they would comply with the agreement, and pay the price; and that the waste lands should be granted by the general assembly, as they should think proper.'" The council demurred at the clause as to the sale of the waste lands; while a greater disappointment befell the tardy assembly, when a committee sent on the 30th of July, "to treat with Mason, about fulfilling his agreement, and to draw the proper instruments of conveyance,"[1] found that he, tired of waiting, "had, on the same day, by deed of sale, for the sum of fifteen hundred pounds currency, con-

[1] Belknap, 252. [2] *Ibid*, 204.

veyed his whole interest to twelve persons, in fifteen shares." One of the twelve was Theodore Atkinson, previously mentioned. These gentlemen, who, with their successors, were ever afterwards styled The Masonian Proprietors, aware that the transaction would raise, as it did, "a great ferment among the people,"[1] prudently took care, the very next day, "to file in the recorder's office a deed of quitclaim,"[1] or release, "to all the towns which had been settled and granted within the limits of their purchase;"[1] thus somewhat allaying popular apprehension, and parrying the first fierce attacks made upon them.

Bow was one of the towns quitclaimed; and so it was that the plaintiff proprietors claimed that by virtue of the Masonian Proprietors' release they had Mason's title in the Rumford lands lying within Bow. This claim involved the acknowledgment that Mason's title was in force and effect in 1727, and that they got no title until 1746—a position wholly inconsistent with their claim of seizin from the former date, and effectually disposed of by the defendant's query: "How a right acquired in 1746 could give an actual seisin of the lands, the right to which was then purchased, so long before the purchase as 1727; that is whether a man by virtue of a deed made to-day, could be in actual possession of the land conveyed by it nineteen years ago." But the defendant denied that "a right was conveyed by this release to the lands demanded"; it being "common learning on this subject that a release operates only to those in possession," while "the plaintiffs' own declaration" showed "that they had been out of possession about twenty years." Moreover, "the release" was "made as much to the defendant as any person whomsoever. For he is an inhabitant of Bow, as the plaintiffs themselves" have styled "him; and since the release" was "made to the inhabitants, as well as to the proprietors, of what they" possessed, he, having been "possessed so long in his own right, must of necessity be quieted by this release, if it has any effect at all." But what was further "objected to the plaintiffs on this head was the well known point of law," that "a chose in action, or a mere right, cannot be transferred, and Mason's title was no more as to all the lands in the possession of those who were not parties at the time of making the said deed to Atkinson and others. The lands demanded, as well as all the plantation of Penacook, had been nearly twenty years in the possession of entire strangers to that transaction. What title, then, could the Bow Proprietors derive to themselves, under this conveyance, to the lands in question?"

Having controverted the plaintiffs' title, the defendant vindicated

[1] Belknap, 296-7.

his own, as derived from Massachusetts, while that province was exercising jurisdiction in fact over the premises, and was holding "the property of the soil" under a deed in fee given, in 1628, by the council of Plymouth—which held the divested right of the crown—to Sir Henry Roswell and others as private persons. The grant was confirmed, in 1629, to the same persons and their associates, by the royal corporate charter of the Massachusetts Bay colony, within the bounds then specified, and afterwards recognized by the king in council in 1677. Those bounds included Rumford, with the consequence, that, in its grantees as private persons, was the right of property in its lands which was in the original grantees under the Roswell deed.

The Bow proprietors, on the contrary, asserted that Massachusetts had never had authority to grant the lands demanded, because "the settlement of the line" did not define "a new boundary," but was "a declaration by his Majesty of what was always the true boundary of" the two provinces; hence, the lands in dispute had always lain in New Hampshire, and, consequently, out of the jurisdiction of Massachusetts. And as "the right of granting lands is limited to the right of jurisdiction," the grant made by the government of that province "was void *ab initio*, and the settlers under" it "could derive no title to themselves, but" were to "be looked upon as disseizors." And "as their entry was recent when Bow was granted, the proprietors might lawfully enter upon" the lands; "especially considering that the government of New Hampshire had 'forewarned' the committee who were on the business of beginning the settlement of Penacook," and forbidden them to proceed. In fine, "there was really nothing in the way of the proprietors of Bow, any more than if there had been nobody there."

In reply, the defendant insisted that when the lands at Penacook were granted, "the government of Massachusetts had the jurisdiction in fact," and "exercised all powers and authorities, both legislative and executive, over all places to the line three miles northward of the Merrimack," and had done so, "till the last settlement"; and that these acts "were never annulled or declared to be void," by the king; "as must have been the case, had the plaintiffs' notion been entertained, that the settlement of the line was only a declaration of what was always the true boundary of the provinces—or that all which Massachusetts had done in this regard was a mere nullity." "And if the King," it was asked, "has not seen it proper to nullify all those acts of government what have the plaintiffs to do in the case?" It seemed "necessary that all should be deemed valid, or all void; for by what rule" could "a distinction be fixed?" Indeed, so

far had the king been from imputing usurpation to Massachusetts in this respect, or annulling its acts, that he had approved and confirmed the important one of chartering the township of Rumford. "Besides, the settlement of the line was," as the king himself had declared, "to settle the jurisdiction, not to affect private property." The acts done by either government within its limits, "before the settlement," were to "be held valid to all intents, to avoid that confusion which the contrary notion would necessarily introduce," by "connecting ideas which have no necessary connection"; namely, "that the rights of government and the rights of property are always united, or that the latter have a necessary dependence on the former";—a notion, "which, with respect to this very line," had, "in fact, stirred a multitude of suits. If this opinion was true, the jurisdiction of a government ought never to be altered, without first hearing all parties having any real estate between the old and the new line. In what case of this nature was this ever done?" And yet, according to this notion, the alteration of a line, "without hearing such parties, and determining their respective rights, would be productive of the greatest mischief to private persons" holding real estate under "the government whose jurisdiction should be contracted, by exposing them" to ruinous litigation, if not to ruin itself. From such considerations, the futility of the plaintiffs' objection to the defendant's title in this respect became apparent, as well as the soundness of the position "that the grants made by Massachusetts before settlement of the" boundary "line, within the jurisdiction" which that province "then had in fact, as well as other acts of government," could not but "be held good—the grant under which the defendant" held "among the rest."

Nor did the defense fail cogently to enforce the fact that the grantees of Penacook had made the most of their title and possession. It was earnestly set forth that, "notwithstanding their distance from other settlements within, and with none without them"; notwithstanding "the hardships and difficulties necessarily" attending "those who first sit down upon land in a perfect wilderness; and especially," notwithstanding "the danger, expense, and fatigue of an Indian war, and other discouragements,—these settlers" had "stood their ground ever since their first entry"; had "persevered in their resolution"; had "planted a fine town, supplied themselves and many others with provisions, afforded other places both defence and sustenance, and" were "likely to be a great advantage to the province of New-Hampshire in general." "Yet these," it was indignantly declared, "are the people whom the proprietors of Bow would eject; would oust, not only of their all, but of that all they have thus dearly

purchased." These proprietors would now "cruelly ravish" from such a people "all of their improvements, after they themselves, with folded arms and indolence, have stood by a long time, and seen the others, with the greatest toil and expense, make these improvements. For to this day, these proprietors of Bow have not settled five families within their whole township. They have not in the run of twenty years done so much toward settling a plantation as they might have done, and as the others did in two years; yet they are so partial to themselves, so blinded by interest, as to think, that, because they once run a line round this land, above twenty years ago, they have an indefeasible right to it, which yet they are unwilling to have brought to the test, and decided fairly in the cheapest way, but endeavor, by piecemeal, to destroy the possessors." For they prosecute "a great number of actions, each for a small parcel of land, that may prevent an appeal home, and that they may have the advantage of the ignorance and prejudice of common juries." Besides, they have "in view to weary out and dishearten the defendants, who live at a great distance from Portsmouth, where all the courts are held, with the expense of charges occasioned them by such a number of suits; whereas they might as well have taken an action for all that lies in common, in the name of the proprietors of Bow, against the proprietors of Rumford, as well as the action against the present defendant, and others of the like kind. In fine, it seems they have set their eyes and hearts upon this vineyard, and *perfas aut nefas*, they must have it."

The case was summed up in the following words: "The defendant has entered, subdued and cultivated the lands demanded; reduced them from the rough condition in which nature left them, to the state of a garden, in which labor he has spent more than twenty years; while the plaintiffs have been looking on, neither asserting their claim nor attempting to settle any other part of their lands. Whether the defendant has any title or not, the plaintiffs ought not to recover, if they do not make out the title they set up. The government of New Hampshire did not extend to the place where these lands lay on the westerly side of Merrimack river, and therefore no right could be derived from" that government; "and if the government had reached so far, the Crown had long before divested itself of all right to the soil, which was afterwards in Sir Henry Roswell" and others, or in those holding by grant from them. If that was not the case, it was Mr. Mason's right, or those who have his right, from whom the plaintiffs have derived no title, because the defendant was in possession at the time of making the deed and release aforesaid. If the release operates as to these lands, it is in favor of the defendant. The de-

fendant has a good right under the government of the Massachusetts Bay, as" that province "had the jurisdiction in fact, and moreover had the right of the soil by the deed and other matters aforesaid. Add to all this, that whoever settles land in the wilderness, which before served only as a shelter and nursery for wild beasts, and a lurking-place for the more savage animals, the Indians, not only purchases it at a dear rate, and has a hard bargain, though it is given to him,—but does public service. In which regard the whole town of Rumford merits the thanks of the government, instead of being turned out of doors. And what may be said in behalf of the defendant in this case may, with the same propriety, be urged in behalf of those other inhabitants of Rumford, with whom these proprietors, or those who derived their right from them, are now contending, and who have actions in the courts under continuance."

Such being the state of the case in the action against John Merrill, and in others like it, one finds the results in the New Hampshire courts fitly characterized by Judge Pickering as having "been against common right, the common known principles of law, and plain common sense," and obtained by the plaintiffs, on verdicts of juries in their interest, and "entire strangers to these things, or under the influence of a principle worse than ignorance." There was no hope of honest treatment for the harassed settlers of Rumford, in the courts of New Hampshire; only in England, if anywhere, could they hope for a fair hearing of their cause. Accordingly, on the 12th of February, 1753, the inhabitants appointed Reverend Timothy Walker and Benjamin Rolfe, Esq., as their agents, to represent to the king their unhappy condition, oppressed as they were by unfair litigation, and deprived of all corporate privileges. It was determined that Mr. Walker should go to England, and there in person urge their appeal for justice. To forward this purpose, the general court of Massachusetts, upon petition, granted one hundred pounds sterling, and also instructed Mr. Bollan, the Massachusetts agent in England, "to use his endeavors to obtain such determination of His Majesty in Council as should quiet the grantees of lands from that province, in their possessions."[1] To this movement not only the proprietors and inhabitants of Rumford contributed, but also the troubled settlers of Suncook. Though the case of the latter differed from that of the former, inasmuch as Suncook's grant was subsequent to that of Bow; yet in the actual preoccupancy of the soil by enterprising settlers, and the harassment of these by the non-resident proprietors of Bow, the two settlements were equally worthy of the royal interposition.

[1] Annals of Concord, 33.

Mr. Walker went to England in the fall of 1753, and, without delay, presented "to the King's Most Excellent Majesty in Council" a petition[1] in behalf of himself and his co-agent Rolfe, and "the other inhabitants of Rumford." The petition, drawn up in effective terms, by the minister himself, described the granting of "the lands contained in Rumford," and "the bringing forward of the settlement" under many difficulties, including "war with the French and Indians," until "a considerable town" had been made, "consisting of more than eighty houses, and as many good farms;" and having, since 1730, the petitioner, as the "regularly ordained minister of the church and parish." It was further represented that the petitioners, though unexpectedly thrown, "by the late determination of the boundary line, within the province of New-Hampshire" and though denied their request to "be restored to the province of the Massachusetts Bay," had yet "dutifully submitted to" the new jurisdiction, "and with so much the greater cheerfulness, because they were well informed that" the king had "been graciously pleased to declare that however the jurisdiction of the two governments might be altered, private property should not be affected thereby. But notwithstanding this most gracious declaration" the "poor petitioners" had "for several years past been grievously harassed by divers persons, under color of a grant made by the governor and council of New-Hampshire, in the year 1727, to sundry persons and their successors, now called the Proprietors of Bow. The said grant of Bow was," however, "not only posterior to that of Rumford, but" was "extremely vague and uncertain as to its bounds." Moreover, "notwithstanding the grant was made so many years ago, there" were "but three or four families settled upon it, and those since the end of the late French war; the proprietors choosing rather to distress" the "petitioners by forcing them out of the valuable improvements they and their predecessors" had "made at the expense of their blood and treasure, than to be at the charge of making any themselves." "But," as was urged, "the petitioners' greatest misfortune" was "that they" could "not have a fair impartial trial," since the province authorities, civil and judicial, were all in the interest of their adversaries. Besides, "all the actions that" had "hitherto been brought" were each designedly "of so small value that no appeals could be taken from the judgments therein, to the King in Council; and if it were otherwise, the charges that would attend such appeals would be greater than the value of the land, or than" what "the party defending his title would be able to pay"; so that "without" the king's "gracious

[1] Bouton's Concord, 214-15.

interposition" the petitioners would be compelled to give up their estates. The further complaint was made that the petitioners, since the expiration of the district act near four years ago, had been without any town privileges, notwithstanding their repeated applications to the governor and council; and they were not able to raise moneys for the support of their minister, and the necessary charges of their school and poor, and other purposes, nor had they had any town officers for upholding government and order. Under these their distresses the petitioners entreated the king's gracious interposition in their behalf, and that he would be pleased to appoint disinterested, judicious persons to hear and determine their cause, and that the expense necessarily attending the multiplied lawsuits as then managed, might be prevented; or, finally, to grant them such other relief as to his great wisdom and goodness should seem meet.

This petition, and Judge Pickering's lucid statement of the case—much of which has already been cited—so clearly setting forth the grievances of Rumford, were well adapted to gain a special hearing in a test case before the king in council, the regular appeal of which thither could not be obtained from the provincial courts. Sanction was given for such a hearing in the case of John Merrill, which was put into the hands of Sir William Murray—soon to become Lord Mansfield—whose services, as counsel, Mr. Walker was fortunate enough to secure. Sir William—at that time forty-eight years of age—stood, in his wide and thorough knowledge of the law, and in his powers of eloquent advocacy, at the head of the bar in England.[1] He had been for eleven years solicitor-general, and as a member of the Pelham administration was one of the most conspicuous figures in the parliamentary history of the time. This accomplished lawyer and statesman took up with zeal the cause of the oppressed farmers of Rumford. In the autumn of 1753 an order for a hearing was procured. But the hearing did not come off immediately, and Mr. Walker returned home with encouragement for his people. The agents of the Bow proprietors made preparation by petitioning the general assembly, in July, 1754, to lend them the sum of one hundred pounds sterling money, to enable them to carry on a suit before His Majesty in Council now depending there between one Merrill and the said proprietors.[2] The prayer was granted. In October, of that year, Mr. Walker was still at home from his first visit, though about to set out upon his second; while Rolfe, his efficient co-worker, was petitioning the general court of Massachusetts for additional pecuniary assistance, which was promptly rendered.

[1] Enc. Brit., Vol. XV, 498-9.
[2] Prov. Papers, Vol. VI, 294; "Bow," in History of Belknap and Merrimack Counties, 269.

Mr. Walker returned to England, and was there in the winter of 1754–'55; and on the 24th of the succeeding June, the Merrill case was decided by the king in council. The decision was a reversal of the judgment that stood against[1] the defendant in New Hampshire, as recovered by the proprietors of Bow, on the first Tuesday of August, 1753. It is the testimony of Lord Mansfield himself, that "the false laying out of Bow" was, in truth, the only point considered in determining the case. "The Lords not being clear as to the other point," namely, "the order of the King respecting private property, laid hold of" the former, "and,—merely out of tenderness to possession and cultivation, which, they said, in America was almost everything,—determined as they did."[1] A royal order confirmed the determination, and its reversal of the New Hampshire judgment, —as in the subsequent case of appeal in 1762; but as it did not, in express terms, extend beyond the premises sued for, the adversaries did not cease from troubling with further litigation. It may be permitted here to add the fact that the mission of Rumford's agent in this case, and the substantial sympathy manifested by Massachusetts, alarmed somewhat the New Hampshire government, so that in February, 1754, Mr. Thomlinson, the agent in London, was "put on the watch" of Mr. Walker, for fear that the latter might, under the instruction of the government of the Massachusetts Bay, "manage the affair" upon which he was sent, so as to "affect the province as such."[2] The alarm thus vaguely expressed in the assembly's vote seems to have resembled not a little that of the persons in the proverb, who flee when no man pursueth.

In 1753 the New Hampshire government renewed the exaction of the province tax, and thus was opened another troublesome controversy for Rumford and Suncook. This act was one step more in a policy of compelling the settlements which Massachusetts had founded to become a part of Bow. On the 30th of May of that year a warrant was issued for the assessment and collection of sixty pounds on all polls and estates ratable by law within the township of Bow. This warrant was followed by another, on the 26th of July, for raising a tax of thirty-one pounds four shillings. These taxes were to be collected and paid into the province treasury by the 25th of December ensuing; and the persons on whom they were to be laid were, with three or four exceptions, inhabitants of Rumford and Suncook.[3] On the 30th of June, between the dates of the warrants,—since hitherto Bow had never had a regular town meeting,—a special act was

[1] Petition of Timothy Walker, Jr., and others, June 26, 1774, to general court of Massachusetts, for an equivalent to Penacook grant, N. H. State Papers, Vol. XXIV, 61-2.

[2] Prov. Papers, Vol. VI, 253.

[3] Bouton's Concord, 211.

passed, appointing Daniel Pierce, the province recorder, and an agent of the Bow proprietors, to call such a meeting. Accordingly, one was held on the 25th of July, at which Moses Foster, John Coffin, Richard Eastman, David Abbot, and William Moor were chosen selectmen. They were all of Suncook, for it is safe to conclude that nobody from Rumford took part in the meeting. To these selectmen fell the task of assessing the taxes ordered. But they found it too hard for them to do, for reasons assigned, on the 26th of October, in their petition to the province authorities, and in the following terms: "We are at a loss as to the boundaries of said Bow, and, consequently, do not know who the inhabitants are that we are to assess said sums upon. The proprietors of Bow, in running out the bounds of said town have, as we conceive, altered their bounds several times; and further, one of those gentlemen that purchased Captain Tufton Mason's right to the lands in said Province has given it as his opinion, that said proprietors have not as yet run out the lands of said town agreeable to their charter, but that their southeast side line should be carried up about three quarters of a mile further toward the northwest; and there is lately—by his order—a fence erected along some miles, near about said place, designed—as we suppose—as a division fence between said Bow and land yet claimed by said purchasers. On the other hand, the inhabitants of Pennycook, formerly erected into a district by a special act of the General Assembly of this Province,—though they object nothing against submitting to order of government,—refuse to give us an invoice of their estates (that is, such of them as we have asked for the same), alleging that they do not lie in Bow, and the said Assembly did as good as declare this in their said district act. So that, upon the whole, we humbly conceive . . . that, should we proceed to assess the aforesaid sums on such as we may have conceived are the inhabitants of said Bow, many would refuse to pay the sums that should be so assessed on them; and, consequently, that we should be thrown into so many lawsuits as would, in all probability, ruin us as to our estates. Therefore, we humbly crave that Your Excellency and Honors would . . . fix the boundaries of Bow, or otherwise give us such directions as, . . . if followed by us, we may obey the commands laid on us . . . without . . . detriment to ourselves."[1]

Nothing came of the petition, or of this attempt at imposing a tax. In 1755 another attempt was made to organize the town of Bow, by merging therein Rumford and Suncook, and taxing their inhabitants as belonging to Bow. On the 24th of January was passed an act enti-

[1] Bouton's Concord, 212, 213.

tled "An act for raising and collecting sundry sums in bills of credit on this Province due from sundry places unto the government, which cannot be raised and collected for want of a law to enable some person or persons to collect the same." [1] To make application of this act to Bow, Jonathan Lovewell was appointed to warn a town-meeting to be held there, on the 22d of April.[2] On the 21st of May he reported to the authorities that he had notified the inhabitants of the town of Bow of the time and place for holding a town-meeting, and that he did attend the same at the time and place appointed, but the inhabitants neglected to attend, except one man.[3] In resentment for this refusal of the men of Rumford and Suncook to appropriate the name, "The inhabitants of Bow," at the expense of former identity, and to the peril of former rights and advantages, an act was passed by the provincial legislature, on the 5th of July, entitled "An act for taxing Bow." This "Bow act," as it was called, after declaring "that in contempt of the law, and in defiance of the government, the said town of Bow refused to meet at the time and place appointed," etc., designated three men—two of Rumford and one of Suncook—as assessors; namely, "Ezra Carter and Moses Foster, Esqs., and John Chandler, Gentleman, all of said Bow." These were to "assess the polls and estates within the said town of Bow, . . . the sum of five hundred and eighty pounds and sixteen shillings, new tenor bills of public credit"; all "to be completed, and returned to the treasurer of the province, within two months after date of the act." They were to require, upon ten days' notice, true lists of polls and ratable estates, and to "doom" all persons refusing to give in such lists. If the assessors should fail or refuse to do their duty, the province treasurer was required "to issue his warrant of distress, directed to the sheriff," to levy the said sum of five hundred and eighty pounds and sixteen shillings "on their goods and chattels and lands"; and, "in want thereof, on their body." Timothy Walker,[4] of Rumford, and John Noyes, of Suncook, were appointed collectors to collect and pay in the sums on their respective lists, "on penalty of forfeiting and paying" the same themselves. The compensation offered for this disagreeable service was as ridiculously inadequate as some of the other provisions of the act were needlessly harsh; the assessors being "entitled to receive each, seven pounds and ten shillings, new tenor," and the collectors, "fifteen pounds, new tenor, each." [5]

It was impracticable for the assessors to meet the requisitions imposed upon them by the act, and hence they became liable to its

[1] Prov. Papers, Vol. VI, 347-8.
[2] Bouton's Concord, 216.
[3] Coun. Jour., Prov. Papers, Vol. VI, 378.
[4] Not the minister or his son.
[5] See act in office of secretary of state; also, Bouton's Concord, 217.

penalties. On the 19th of February, 1756, the house, alleging that they had refused and neglected to make the assessment, ordered "that the treasurer immediately issue out his extent" against them; and "a copy of the order was sent to the treasurer by Clement March, Esq.,"[1] who was doubtless a willing messenger, for he had been prominent in the Bow litigation, and, among other doings, had brought an action against Ebenezer Virgin, which was entered at the same term of court, as that against John Merrill.[2] On the 18th of February, the day before this action was taken by the house against the assessors, a petition from two of them, Ezra Carter and John Chandler, in behalf of themselves and the inhabitants of Rumford, had been presented;[3] but, for some reason, not till the 19th, and after their condemnation, was it read, and laid over for further consideration.[3] The petition showed[3] that one half the time prescribed for completing and returning the assessment was lapsed before the assessors had sight of the act; and it was then the most busy season in the whole year, and the cattle on which part of the tax was to be laid were out in the woods, and it was not known whether they were living, or killed by the enemy, which rendered it almost impracticable to comply with the letter of the act. The assessors, for the remedying of these inconveniences, and also in hopes of obtaining some alterations beneficial to themselves and the people they were to tax, would have addressed the general assembly long before, but their distance was such that they seldom heard of the adjournments and prorogations thereof before it was too late. Several times had been pitched upon for said purpose, but before they arrived the assembly was adjourned. But, at last, having an opportunity to lay the affair before the authorities, they humbly hoped for consideration of their case and compassion for their circumstances. They could uprightly answer for themselves, and had reason to believe that they spoke the united sense of the people of Rumford that they ought to pay their part of the public charges of the government; but they humbly prayed that they might have the privileges of a town or district, in order to raise money for the maintenance of their minister, school, and poor, and the repair of highways, for the want of which, for several years, the inhabitants had been great sufferers. The petitioners continued: "We apprehend we are doomed much beyond our just proportion of the charge, . . . for want of a true list of our polls and estates, which, we believe, was never laid before the Assembly. We have been unavoidably subjected to great loss of time, almost

[1] Prov. Papers, Vol. VI, 476.
[2] Court Records, Dec. 6, 1750, *et seq.*; Rumford Proprietors' Records, Vol. III (manuscript), April 25, 1751.
[3] Prov. Papers, Vol. VI, 475-6-7.

every year, for several years past, by disturbances from the Indians; and particularly for the two last years past about a quarter of our inhabitants have been driven from their settlement during the busy season of the year, and the whole of them obliged to divert from their husbandry, in order to repair their garrisons and provide for the safety of their families. Wherefore your petitioners most humbly pray that their circumstances may be considered, so that they and the inhabitants aforesaid may be relieved against the penalties and rigor of said Act; also, that a proper method may be prescribed to have a true list of polls and estates laid before the General Assembly, so that they may pay no more than their proportion, considering their situation; also that they may be incorporated to all the purposes of a town; and that the assessors may have a further time allowed to perform the business assigned in assessing, and the collectors, in levying, the sum that," it "shall be finally determined, must be paid by said inhabitants."

This petition, doubtless, helped to put off indefinitely the issuance of any warrant of distress against the assessors, and to make the Bow act a failure: but its prayer for a town charter fell on deaf ears, as did also that prayer repeated in another petition presented by Ezra Carter, later in the year.

In course of the year 1756, a committee of the Bow proprietors came to some accommodation and agreement with the proprietors of Suncook. The terms of the compromise are not known further than that the Suncook proprietors were to pay a certain fixed price per acre for the land in dispute.[1] Rumford had no part in this transaction, and Suncook did not thereby avoid future disputes and lawsuits.[1] In 1739, however, the part of Suncook territory lying east of the Merrimack and between the Suncook and Soucook rivers, was, despite the opposition of the Bow proprietors, incorporated as the parish of Pembroke, and thus, in the matter of public taxation, was to have no further trouble with the province authorities. But Rumford was not to be free from that trouble for six years yet, as will be seen in the natural course of narration. Thus, in the spring of 1761, the government of New Hampshire ordered an inventory of the polls and ratable estates in the province to be taken. The order for Bow was delivered to Colonel Jeremiah Stickney of Rumford, who declined to perform, under the incorporation of Bow, the duty thus assigned. Soon after, in April, Ezekiel Morrill and Thomas Clough, selectmen of Canterbury, were assigned the duty, which they performed, returning to the general court an invoice of the polls, stocks, and improved lands in the township of Bow, as they expressed it. But the return pertained

[1] History of Pembroke, 45.

to Rumford, except seven of the one hundred and sixty-four persons rated, a fact denoting how little had been done, in more than the third of a century, towards settling the township of Bow, under its charter. This invoice yielded no taxes to the province treasury.[1]

Meanwhile, in the course of ten years' litigation, the adversaries of Rumford brought, instead of their usual piecemeal suits, an action of ejectment for lands of sufficient value to allow direct appeal to the king in council. Early in November, 1759, Benjamin Rolfe, Daniel Carter, Timothy Simonds, John Evans, John Chandler, Abraham Colby, and Abraham Kimball,[2] all of Rumford, were sued, and their goods and estates were attached by the sheriff of the province, to the value of one thousand pounds, "to answer unto the proprietors of the common and undivided lands lying within the township of Bow," who demanded possession of about one thousand acres of land with appurtenances.[2] The land in question was described as, "beginning at a stake on the southwest of the great river in Bow, one hundred and sixteen rods below John Merrill's ferry; thence running west to Turkey river until it comes to within twenty rods of Nathaniel Smith's grist-mill; thence south to said river; thence on said river to where it empties into the great river; thence up the great river to the first-mentioned bound." This was a second test case, involving the same principles, as the first,—or that of John Merrill,—and was prosecuted and defended with the same allegations and arguments. It was brought to trial in the inferior court of common pleas, on the second day of September, 1760, when the jury, as usual, gave a verdict for the plaintiffs, and judgment was entered up accordingly with costs. From this judgment, the defendants were allowed an appeal to the superior court, where on the second Tuesday of November, 1760, the cause was again tried, and with the same result. Whereupon, the defendants took appeal to His Majesty in council, as, this time, they could not be prevented from doing.

The proprietors of Rumford had all along carefully guarded their own interests and those of their grantees, and had met the expenses of litigation by judicious measures; such as, in 1758, the disposal of "Iron Ore,"[3] and in June, 1759, the sale "of so much of the common and undivided lands as" should "be sufficient to raise a sum of fifteen hundred Spanish Milled Dollars, for the defense of the proprietors' title to their township against any claim" laid "to the same or any part thereof," in any court of the province, "or in forwarding an appeal to His Majesty in Council."[3] Now, in 1761, when the sec-

[1] See invoice of 1761 in note at close of chapter.
[2] Report of Lords of Council, December 29, 1762; Appendix to Annals of Concord, 99.
[3] Proprietors' Records (manuscript), Vol. III.

ond test case had been appealed home, Rev. Timothy Walker and Benjamin Rolfe, Esq., were appointed agents to receive any money granted to enable the proprietors to defend their claims to the lands in Rumford.[1] This agency was a fitting renewal of that which had been conferred eight years before upon the same men, whose abiding faith in the justice of Rumford's cause had since, as before, been amply tested in wise counsel and efficient action, and had been, amid deep popular disheartenment, the light of hope.

In the autumn of 1762 Mr. Walker visited England the third time; for the appealed case was, at last, after not a little of the law's delay, approaching trial. Already he was favorably known in a circle of valuable acquaintances among ministers of religion, members of parliament, and members of His Majesty's council.[2] Sir William Murray, his counselor and advocate in the former case, was now Lord Mansfield, and chief justice of the king's bench. He presided in the special court of the right honorable the lords of the committee of council for hearing appeals from the plantations, to which the king had referred the petition and appeal of Benjamin Rolfe, Esq., and others. The trial came off on the 17th of December, 1762, and resulted favorably to the inhabitants of Rumford.

"The Lords of the Committee of Council for hearing Appeals from the Plantations" made a report, bearing date of the same 17th of December. On the 29th of the same month this report was read at the Court of St. James. The report recited at length the history of the grants of Rumford and Suncook, and their settlement; also, of the establishment of the boundary line, whereby those settlements were excluded from the province of Massachusetts Bay in which they had before been thought and reputed to be, and thrown into the province of New Hampshire. The report continued: "Notwithstanding His Majesty had been pleased at the time of issuing the commission to fix the boundary, to declare the same was not to affect private property, yet certain persons in New-Hampshire, desirous to make the labors of others an advantage to themselves, and possess themselves of the towns of Pennicook,—otherwise Rumford,—and Suncook, as now improved by the industry of the appellants, and the first settlers thereof, whom they seek to despoil of the benefit of all their labors," had brought "ejectment against them." Having described the special action in hand, and its progress from institution to appeal, the lords of the committee concluded their report by recommending the reversal of the judgment rendered against the appellants in the courts of New Hampshire.

[1] Proprietors' Records (manuscript) Vol. III.
[2] Bouton's Concord, 220.

The king, on the same day, took the report into consideration, and was pleased, with the advice of his privy council, to approve thereof, and to issue the following order: "It is hereby ordered that the said judgment of the inferior court of common pleas of the province of New-Hampshire, of the second of September, 1760, and also the judgment of the superior court of judicature, of the second Tuesday in November, affirming the same, be both of them reversed, and that the appellants be restored to what they may have lost by means of the said judgments, whereof the Governor or Commander-in-chief of His Majesty's Province of New-Hampshire, for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly."

"What is done, and what was said in the case," wrote Mr. Walker to Benjamin Rolfe, "if truly represented by anybody whom Bow will believe, will, I am persuaded, effectually discourage from any further attempts, even against Suncook—much more against Rumford; yet I suspect their lawyers will urge them on to further trials —with what success, time must discover." The royal decision marked the crisis of the tedious controversy; not its end, to be sure, but a sure beginning of that end. Indeed, what the faithful agent of Rumford "suspected" seems to have come to pass; for, when, a dozen years later, his son, Timothy Walker, Jr., and more than forty other citizens of Rumford, or Concord, petitioned the Massachusetts legislature for a township in Maine, as an equivalent for the Penacook grant, and in consideration of the expenses incurred in defending their title to the same, they said: "We have been enabled to prosecute two appeals to His Majesty, and although in each we obtained a reversal of the judgment that stood against us here, yet the royal order, extending in express terms no farther than the land sued for, the advantage fell far short of the expense, and our adversaries went on troubling us with suits. Thus exhausted, and seeing no end of our troubles, we have been reduced to the necessity of repurchasing our township of our adversaries at a rate far exceeding its value in its rude state."[1] So it was that the proprietors of Bow, while not succeeding much in their attempts at direct eviction, did, still, by oppressive litigation and compulsory compromise, succeed in getting unjust advantage to themselves. The litigation, however, was not pressed to the point of a third appeal to England; though this result seems to have been imminent in 1766, when, on the 9th of July, the proprietors of Rumford voted to raise four hundred pounds sterling to support and defend their claims and those of their gran-

[1] N. H. State Papers, Vol. XXIV, 61-2. This petition was favorably answered by the grant of the township of Rumford, in Maine, in 1774. See further, Colonization by Concord Settlers, in note at close of chapter.

tees, to said township either in this province or Great Britain; appointing a committee of thirteen to proportion said sum upon said proprietors and their grantees; and, finally, requesting the Reverend Timothy Walker to prepare all papers that he should think necessary for the ends aforesaid.

The proprietors' records, under date of July 29, 1771, show the first provision made for "a final settlement with the proprietors of Bow," by the appointment of "Andrew McMillan, Mr. Abial Chandler, and Captain Thomas Stickney," as a committee to effect that object, and by the vote "that there be six pounds laid on each original right, to defray the charges."[1] For the latter vote was substituted, early in 1773,—by legislative sanction, as it seems,—one raising "six hundred pounds lawful money, by a just and equal assessment on all the lands within the township to complete the said settlement."[1] Assessors and collectors were appointed, and Mr. William Coffin was chosen proprietors' treasurer, with orders "to pay the money as he received it to the committee formerly chosen to make a settlement with the proprietors of Bow, upon his receiving the deeds of them to the value of the money."[1]

The contending parties had, by 1771, come to an agreement that the proprietors of Rumford should have the whole of said township, except one hundred and sixty-two acres of land, which was to be laid out by them in some part of the town; and the proprietors of Rumford were to pay ten pounds to the proprietors of Bow for each hundred-acre lot laid out by said Bow in said Rumford.[2] It was one of the duties of the committee of settlement to receive a quitclaim deed from the proprietors of Bow, and give them a bond upon interest, for the ten pounds for each hundred-acre lot.[2] The assessment of six hundred pounds, in 1773, was supposed to be sufficient to pay the proprietors of Bow, and to give sixty pounds to the Masonian Proprietors for their pretended right to part of said land.[2] The last mentioned claim arose from the fact that the quitclaim of Bow, given by the Masonian Proprietors, in 1746, did not cover the part of Rumford without the limits of Bow. This part, however, came within Mason's Patent, which had an extent of "sixty miles from the sea" on the easterly and southerly side of the province, with "a line to cross over from the end of one line of sixty miles to the end of the other." The proprietors pleaded that this cross line, instead of being straight, "should be a curve, because no other would preserve the distance of sixty miles from the sea, in every

[1] Proprietors' Records (manuscript), Vol. III.

[2] Petition of Thomas Stickney, surviving member of the settlement committee, to the N. H. legislature in 1789; see, also, note at close of chapter.

part of their western boundary."[1] Under this claim, the part of Rumford lying outside the vague boundary line of Bow, came within the Mason Patent; and the proprietors of Rumford quieted their title in that direction by the payment of sixty pounds.[2]

So, at last, the proprietors and occupants of Rumford became quieted in the possession of their twice-bought lands. With painful sacrifice, but with unflinching purpose, wise counsel, and united action, they had held out through the long years of disheartening controversy, and thereby had saved the life itself of New Hampshire's future capital.

NOTES.

Plan of Grant of Bow with Explanations. The annexed Plan of the Township of Bow, which, though not drawn with perfect accuracy, will help to show, with the following explanations, the grounds of controversy:

1. Rumford—laid out by Massachusetts, seven miles square and one hundred rods on the south, is represented by thick black lines.

2. Suncook—laid out also by Massachusetts, south of Rumford, is on both sides of the river.

3. Bow—laid out by New Hampshire, represented by double lines —nine miles square, and apparent on the plan—covering like a wide sheet nearly the whole territory, both of Rumford and Suncook.

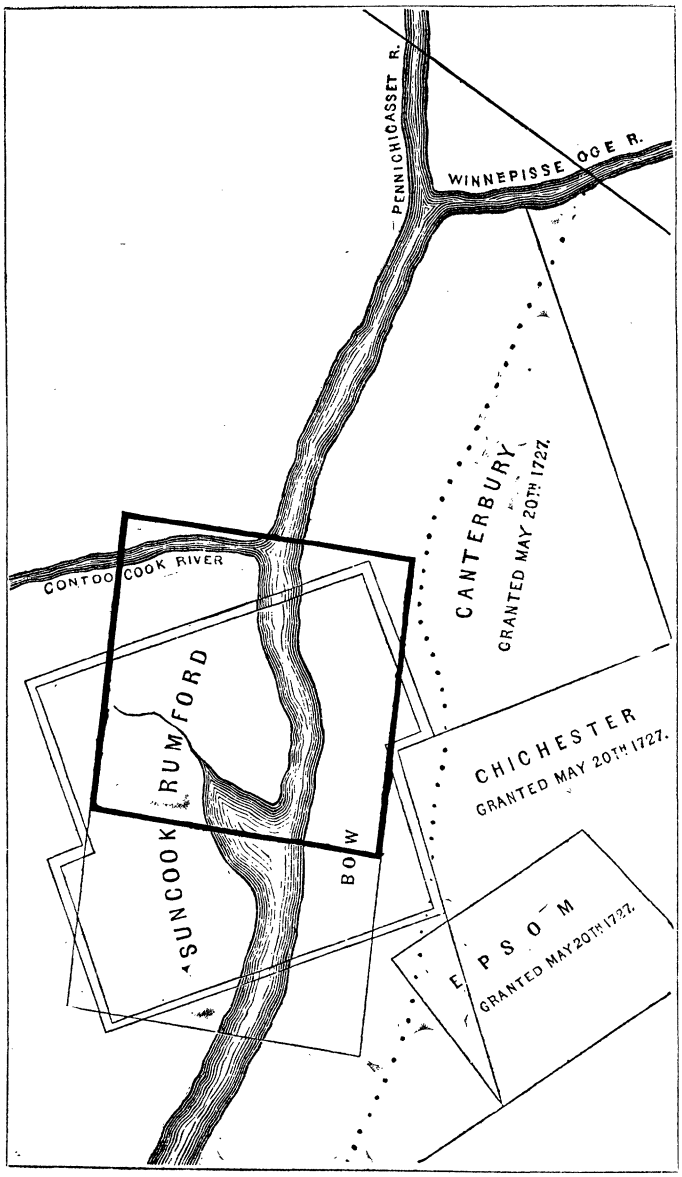
4. The dotted line on the east represents the "three miles north of the Merrimack river" claimed by Massachusetts.

5. Canterbury, Chichester, Epsom, and Bow were all granted by New Hampshire, May 20, 1727, as is believed, without previous actual survey.

The Associate Grantees of Bow. His Excellency and Honorable Samuel Shute, Esq., and John Wentworth, Esq., Lieutenant-Governor—each of them five hundred acres of land and a home lot; Colonel Mark Hunking, Colonel Walton, George Jaffrey, Richard Wibird, Colonel Shad. Westbrook, Archibald McPheadres, John Frost, Jotham Odiorne, Esquires,—members of the Council—each a proprietor's share; Peter Wear, John Plaisted, James Davis, John Gilman, Andrew Wiggin, Captain John Downing, Captain John Gillman, Samuel Tibbets, Paul Gerrish, Ens. Ephraim Dennet, John Sanburn, Theodore Atkinson, Ebenezer Stevens, Richard Jennes, Captain William Fellows, James Jeffery, Joseph Loverin, Daniel Loverin, Zah. Hanahford, Joseph Wiggin, Pierce Long,—members of the Assembly. (Bouton's Concord, 206.)

[1] Belknap, 300. [2] See note at close of chapter.

Plan Illustrating Bow Controversy.



Invoice of 1761. This invoice, mentioned in the text, has historic value, showing, as it does, somewhat the material condition of Rumford when it was taken. The items, as therein set down, were: Polls, 154; Horses, 91; Planting ground, 341 acres; Mowing land, 498 do.; Orcharding, 16 do.; Oxen, 160; Cows, 222; Cattle, three yrs. old, 85; ditto, two yrs. old, 90; ditto, one yr. old, 103; Horses, 77; ditto, three yrs. old, 12; ditto, two yrs. old, 13; ditto, one yr. old, 10; Pasture land, 150 acres; Negroes, 6; Six Mills (yearly income), £125. The valuation for taxing purposes stood as follows: Polls, £2770; Land, £502 10s.; Horses, £231; Oxen, £480; Cows, £444; Cattle, three yrs. old, £145 10s.; ditto, two yrs. old, £103; ditto, one yr. old, £56 10s.; Slaves, £96—making in all £4,828 10s., and with Doomage £1000 added, £5,828 10s.

Thomas Stickney's Petition in 1789. In answer to this petition an act was passed, authorizing "the proprietors of Rumford, *alias* Concord, to collect a certain tax." This tax was a balance of the assessment of 1773, the collection of which was necessary to the full discharge of the bonds given to the Bow proprietors.

The Masonian Line. In 1788 a committee appointed to run the "straight line" of the Masonian claim, reported to the New Hampshire legislature that it crossed "Merrimack river in Concord on Sewall's Falls." [House Journal, February 1, 1788; cited by Otis G. Hammond in paper entitled "Sewall's Falls Historically Considered," published in *Granite Monthly*, February, 1896.] The Masonian proprietors had, thereupon, bought of the state the disputed segment of land between the arc of the "curved line" and its chord, the "straight line."

Colonization by Concord Settlers.

[FURNISHED BY JOSEPH B. WALKER.]

Concord, unlike most New Hampshire towns, was colonized, and not formed by gradual accretions from time to time to its population. Some thirty years after its settlement, when the close of the last French and Indian War had opened northwestern New England to settlement, Concord sent considerable numbers of its people to the Pigwacket country, to assist in founding new towns on the Saco at Fryeburg, Maine, and Conway, New Hampshire.

To the former it sent Moses Ames, James Clemons, Robert Bradley, John Bradley, Samuel A. Bradley, Abraham Bradley, John Evans, David Evans, Philip Eastman, John L. Eastman, Stephen Farrington, Daniel Farrington, Nathaniel Merrill, Samuel Osgood, David Page, John Webster, Nathaniel Smith, Timothy Walker, and Ezekiel Walker.

To the latter it sent Jedediah Spring, Andrew McMillan, Thomas Chadborne, Richard Eastman, Thomas Merrill, Abial Lovejoy, Benjamin Osgood, James Osgood, and a Mr. Dolloff.

Further investigation would doubtless show that these lists are far from complete and might be considerably enlarged.

To these, former members of his parish and more or less of them of his church, the first minister of Concord made pastoral visits from time to time, until they had formed local churches and pastors had been settled. Records of such visits are found in some of his diaries which have been preserved. From these it appears that he visited them in the autumns of 1764 and 1766, partaking of their hospitality, preaching to them on Sundays and baptizing their infant children. In the latter year, according to his record, he administered baptism to no less than eleven. The journey thither was by way of Kennebunk and occupied a little more than three days.

Sometimes his son, Timothy Walker, in the ministry at this time, acted as his substitute. By his diary, it appears that he was with them on similar services in 1765 from the nineteenth day of July to the third day of September, a period of some forty-five days. But, loyal to the principles which they had brought with them from their former homes, they soon organized churches and settled permanent pastors at these new homes of their adoption.

Some sixteen years later, a much larger emigration commenced going out from Concord to found a new town upon the Androscoggin, in Maine. Of this movement authentic records have been preserved which give in detail its origin and early progress. From these it appears that a little before the breaking out of the Revolutionary War (January 26, 1774) Timothy Walker, Jr., of Concord, in behalf of himself and his associates, presented a petition to the government of Massachusetts Bay, setting forth the trials and expense of the settlers of Concord in maintaining their rights against the Bow proprietors, and asking consideration therefor in the grant to them of a township in Maine, to lie on each side of the Androscoggin river, of equal extent to that granted by Massachusetts to the settlers of Concord.

In response to this petition the general court of Massachusetts granted to the original proprietors of Concord, who were sufferers by reason of that township's falling into New Hampshire, a township of seven miles square to be laid out in regular form on both sides of the Androscoggin river, easterly of and adjoining Fullerstown, so called, otherwise Sudbury, Canada, provided the grantees within six years settle thirty families in said township and lay out one full share to the first settled minister, one share for the ministry, one share for the school, and one share for Harvard college, and provided the petition-

ers within one year return a plan thereof to be accepted and confirmed by the general court.

A committee was also appointed to go to Concord (Pennycook) to inquire into and make out a list of the sufferers. November 8, 1774, in compliance with this resolution the committee made a report of the following list of individuals to whom "Rights" and the number thereof should be assigned, and their action was confirmed by the general court:

To Timothy Walker, Jr., 3 rights; George Abbot, 2; Thos. Stickney, 3; John Chandler, 3; William Coffin, 1; Ebenezer Hall, 1; Jno. Merrill, 1; Amos Abbot, 2; Edward Abbot, 2; Ephraim Farnum, Jr., 1; Benjamin Farnum, 2; Joseph Farnum, 1; Timo. Bradley, 1; Rev. Timo. Walker, 2; Joseph Eastman, 1; Aaron Stephens, 2; Moses Hall, 1; Philip Kimball, 1; Ebenezer Eastman, 1; David Hall, 1; Philip Eastman, 2; James Walker, 1; Chas. Walker, 1; Richard Hazeltine, 1; Paul Walker, 1; Jeremiah Bradley, 1; Hannah Osgood, 2; Asa Kimball, 1; Moses Eastman, 1; John Bradley, 1; Jona. Stickney, 1; Reuben Kimball, 1; Benj. Abbot, 1; Joshua Abbot, 1; Abiel Chandler, 5; Timothy Walker, Tertius, 1; Nathaniel Eastman, 2; Heirs of Ebenezer Virgin, 3; Peter Green, 1; Ephraim Carter, 1; Heirs of Jeremiah Dresser, 1; Nath. Rolfe, 1; John Chase, 1; Benja. Thompson, 1; Paul Rolfe, 5; Ebenezer Harnden Goss, 4; Nathan Abbot, 1; Gustavus Adolphus Goss, 1; Robert Davis, 3-4; Anna Stevens, 1-4; Henry Lovejoy, 1-4; Phineas Kimbal, 1-4.

These parties, sixty-six in number, were all of Concord, and the number of rights assigned them was eighty-two and three fourths.

The remaining seventeen and one quarter rights were given to eighteen persons residing in other places. Thus it appears that a little over four fifths were given to residents of Concord.

The distractions of the Revolutionary War prevented a full compliance with the terms of the grant within the time specified therein. This, however, was extended in 1779, after which settlements made such progress that on the 21st of February, 1800, the plantation of New Pennycooke became by incorporation the town of Rumford, named from the parent town from which so many of its people had emigrated.

At this time a second generation had been reared upon the farms of Concord, which greatly outnumbered the original occupants and for which they afforded an inadequate support. In short, "the eagle was stirring up her nest" and pushing out her young to careers elsewhere. Naturally many of them, under the rights assigned to

their fathers or to themselves, sought new homes at New Pennycook, on the Androscoggin.

Strangely like was this locality to the old Pennycook on the Merrimack where they had first seen the light. At both places the river bisected the township and flowed through fertile intervals which lined its banks. Near the northern border of the former the Ellis river entered the Androscoggin to increase its volume, just as at the northern border of the latter the Contoocook joined the Merrimack; while, furthermore, as just over the southern line of the latter the last named river made an important descent of some twenty-five feet, so just within the former's southern boundary, the Androscoggin made a single plunge of forty, and thence hastened down rapids of more than half as much more in the next eighty rods of its course. And to still further enhance the likeness, the flood plains of the Merrimack, rising to terraces of higher ground and backed by hill ranges of granite formation, were almost exactly duplicated on the Androscoggin.

Moreover, as if these topographical similarities were not enough, a parallel equally surprising was to be found, two generations ago, by a visitor from the older town to the new, in a duplication, at the younger, of the surnames of his neighbors at home. Never did a fair daughter more closely resemble a fair mother; never did a hardy son more exactly reflect the characteristics of a stalwart father.

Hard indeed was it for this visitor to realize that he had wandered an hundred and twenty miles from the old Rumford on the Merrimack and found its near facsimile in a new Rumford on the Androscoggin, for, scattered over this new town, were families whose names had been familiar to him from his earliest days: of Abbot, David, Henry, Jacob, Moses, and Philip; of Farnum, Benjamin, David, and Stephen; of Hall, Daniel, Jeremiah, and Joseph; of Hutchins, David and Hezekiah; of Martin, Daniel, John, and Kimball; of Virgin, Daniel, Ebenezer, Peter C., Phineas, Simeon, and William; of Wheeler, Abel and William; of families bearing the surnames of Carter, Colby, Eastman, Eaton, Elliot, Hoyt, Kimball, Knight, Page, Putnam, Rolfe, Sweat, and Walker. This list, partial only, might be much enlarged by the addition of the names of women who, singly or as the wives of settlers, found new homes in this new town in the district of Maine. It suffices, however, accompanied with that before presented of some of the first settlers of Fryeburg and Conway, on the Saco, to establish the proposition at first enunciated,—that Concord, itself originally a colony, became in time a colonizer of new communities.