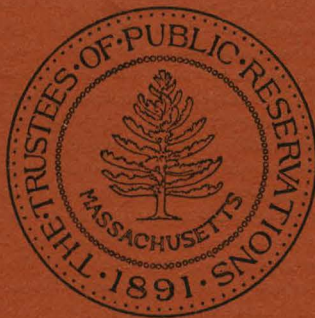


SECOND ANNUAL REPORT
OF THE
TRUSTEES
OF
PUBLIC RESERVATIONS

1892



PRINTED FOR THE TRUSTEES BY
GEO. H. ELLIS, 141 FRANKLIN STREET, BOSTON, MASS.

1893

REPORT.

By chapter 420 of the Acts of 1892, the Trustees of Public Reservations were directed to make a map of the province lands, and to collect information relating thereto. At a meeting of the trustees, held June 15, 1892, the undersigned were appointed a committee to act for the Board in this matter, and accordingly we now respectfully present the following report and the accompanying map :

As to the physical nature of the province lands the facts are these : The highlands of Cape Cod terminate abruptly at High Head in the township of Truro ; north and west of this point the remainder of Truro and the whole of Provincetown is a region of sand dunes bounded by beaches, the curves of which enclose a perfect harbor at the very extremity of Cape Cod. There is evidence that the tides and waves have built one beach after another, each further north than the last, and that the so-called Peaked Hill bar is a new beach now in process of formation. The sand dunes of the old beaches, as they were one by one protected by new beaches to the north, gradually became clothed with the surprisingly beautiful vegetation which adorns them to-day ; while the hollows between the ridges, each of which was in its day a race run, have gradually been filled, as the race run is now filling. Many of these hollows among the sand hills contain fresh-water ponds, the shores of which support a charming growth of tupelo, sweet azalea, clethra, and the like ; and in the shelter of the ridges and even upon their crests grow oaks, maples, beeches, and pitch pines. The layer of surface soil upon the hills is nowhere more than three or four inches deep ; but the underlying sand is wonderfully retentive of moisture, so that this peculiar terminus

of the cape presents in its uninjured parts a more verdurous landscape than the main body of the outer cape can show.

As to the State's title to the Province lands, the facts appear to be as follows: The colony of New Plymouth was granted all the coast from Cohasset to Narragansett by royal patent dated Jan. 13, 1629-30. The colony in turn granted parts of its domain to the several sub-colonies or plantations, but never so granted the extremity of Cape Cod. On the contrary, the governor of Plymouth, under an order of the General Court of 1650, purchased the tip end of the cape from an Indian called Samson, "for the said Colonies' use." There was included in this purchase all the shore of Cape Cod harbor from House or Long Point "easterly until it comes to a little pond next the eastern harbor" and thence "northerly to the back sea."

In 1692 the Province of Massachusetts Bay acquired all the possessions of Plymouth Colony, and the lands at the cape came to be called province lands. In 1714 it was enacted "that henceforth all the province lands on the said cape be a precinct or district," and in 1727 the following important act was passed:

"Be it enacted, etc., that all the lands on said cape — being province lands — be and hereby are constituted a township by the name of Provincetown, and that the inhabitants thereof be invested with the powers, privileges, and immunities that any of the inhabitants of any of the towns within the province by law are or ought to be invested with; saving always the right of this province to said lands, which is to be in no wise prejudiced. And provided that no person or persons be hindered or obstructed in building such wharves, stages, workhouses, and flakes, and other things as shall be necessary for the salting, keeping, and packing their fish, or in cutting down and taking such trees and other materials, growing on said province lands, as shall be needful of bait at the said cape, but that the same be held in common, as heretofore, with all the privileges and advantages thereunto in any wise belonging."

When the provincial government was at an end these lands thus expressly reserved to the province became the property

REPORT ON PROVINCE LANDS.

of the Commonwealth of Massachusetts, which has maintained its title ever since. To be sure the revised statutes of 1836 contained a section (section 12, chapter 119) which would have transferred the title from the Commonwealth to the squatters on its property at the end of twenty years, had not the General Court enacted in 1854, chapter 261, sections 8 and 9, as follows :

“ The title of the Commonwealth as owner in fee to all the province land within the town of Provincetown is hereby asserted and declared, and no adverse possession or occupation thereof by any individual, company, or corporation for any period of time shall be sufficient to defeat or divert the title of the Commonwealth thereto.

“ The provisions of the twelfth section of the Revised Statutes, chapter 119, shall not be held to apply to any of the province lands in said town of Provincetown.”

Nothing has occurred since 1854 to impair the title which was then so vigorously asserted.

As to the management of the province lands by colony, province, and Commonwealth, the main facts are the following: The colony of New Plymouth maintained a “water bailiff” at Cape Cod harbor during fishing seasons, and through him collected a considerable income from the sale of “fishing privileges,” which included the right to use the colony lands for the drying of fish. That this use of the lands by fishermen resulted in injury to the protecting vegetation of the sands, is proved by the fact that the first legislation dealing with the cape lands after the union of Plymouth with Massachusetts was “An Act for preserving the harbor at Cape Cod, and regulating the inhabitants and sojourners there.” (Chapter 3, Acts of 1714.) Here is the instructive preamble of this early act :

“ Whereas, the harbor at Cape Cod, being very useful and commodious for fishing, and the safety of shipping, both inward and outward bound, is in danger of being damnified, if not made wholly unserviceable, by destroying the trees standing on the said cape (if not timely prevented), the trees and bushes being of great service to keep the sand from being driven into the harbor by the wind, — *Be it enacted, etc.*”

In 1727 the town of Provincetown was established by the act already quoted. Again in 1740 there was published "An Act to prevent damage being done to the harbor of Cape Cod by cattle and horse-kind feeding on Provincetown land;" and when this act proved ineffectual it was amended and added to at various times, and finally recast by the General Court of 1780. Nevertheless, a special commission, appointed in 1825 to report upon Cape Cod harbor, found that trees had been cut down on the seaward side of the Cape, and the sand loosened thereby. "The space, where a few years ago were some of the highest lands on the cape, covered with trees and bushes, now presents an extensive waste of undulating sand." This report resulted in an appeal to the national government, and led to the expenditure of twenty-eight thousand dollars between 1826 and 1838, in an endeavor to repair the damage done to the protecting beaches of the harbor by planting beach grass on the loosened sands. In 1833 we find "An Act to prevent the destruction of beach grass in the towns of Provincetown and Truro." In 1837 a second special commission made various recommendations, which were embodied in "An Act for the preservation of the province lands in the town of Provincetown." In 1852 another five thousand dollars was expended on the cape by the national government, and in 1853 and 1854 reports were again addressed to the General Court by special commissions. The report of 1854 was a thorough and comprehensive document, from which much of the foregoing information has been gathered. Influenced by it the General Court passed still another "Act for the protection of the province lands," namely, chapter 261, Acts of 1854, an act which, as modified by chapter 218 of the Acts of 1869, regulates the management of the province lands to-day. The latest act reads as follows :

AN ACT IN ADDITION TO AN ACT FOR THE PROTECTION OF PROVINCE
LANDS IN PROVINCETOWN.

Be it enacted, etc., as follows :

SECTION 1. If any person shall, without the consent in writing of the agent to be appointed as hereinafter mentioned, pull up or destroy any beach-grass, bushes, or trees, or remove sods on or















REPORT ON PROVINCE LANDS.

from the province lands in Provincetown, in the county of Barnstable, or shall use any of the said lands for pasturage without consent as aforesaid, he shall forfeit and pay the sum of five dollars for the first offence, and ten dollars for every subsequent offence, to be recovered on a complaint before any trial justice for said county of Barnstable.

SECT. 2. It shall be the duty of the governor, by and with the advice and consent of the council, immediately after the passage of this act, and in the month of June in each year thereafter, to appoint an agent, who shall be an inhabitant of Provincetown, and who shall be sworn to the faithful discharge of his duty, and who shall prosecute for the penalties mentioned in the preceding section, and the same when recovered shall be for the use of said town; and the said agent may grant written permits to remove trees, sods, and brush from unexposed or low and swampy places, and also for pasturage, when, in his opinion, after he shall have made a personal examination of the premises, such permits may be granted without causing injury to Cape Cod harbor, or to any public or private property. For such permits granted by said agent, he shall receive from the party obtaining the same the sum of one dollar, which shall be paid into the treasury of the aforesaid town. Said agent shall hold his office for one year, unless sooner removed by the governor and council, or until his successor shall be appointed and qualified, and he shall receive three dollars for each day's actual service, from said town.

SECT. 3. The said town of Provincetown shall annually elect a committee of three persons, who shall be sworn to the faithful discharge of their duty; and said town is hereby authorized to enter by said committee, chosen as aforesaid, upon any of the province lands enclosed or unenclosed, for the purpose of setting out pines, bushes, or grass, whenever said committee may deem it necessary for the preservation of said harbor or of any highway in said town.

SECT. 4. Whenever, in the opinion of said committee, it shall become necessary, in consequence of any violation of the provisions of this act, to set out pines or beach-grass on any lot of said lands enclosed, the expense thereof shall be paid by the person or persons in the occupancy of the same; and in case of refusal by any occupant to pay such expense, it may be recovered by said committee in an action of contract in any court proper to try the same.

SECT. 5. The said town of Provincetown is hereby empowered to raise annually such sum of money as may be deemed necessary to defray the expenses of planting pines and setting out beach

HOUSE — NO. 339.

grass on said province lands, and to pay the aforesaid agent and committee for the services by them rendered; and any sums raised for these purposes shall be assessed and collected as other taxes now are.

SECT. 6. So much of chapter two hundred and sixty-one of the acts of the year eighteen hundred and fifty-four, and all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed; but nothing in this act contained shall be construed as repealing sections eight and nine of said chapter two hundred and sixty-one, or any portion of section twelve of chapter one hundred and fifty-four of the General Statutes.

In practice this latest of the long series of enactments intended to preserve the province lands and Cape Cod harbor has not accomplished the purpose expressed in its title. The few squatters who occupied small parcels of the province lands when they were made a township in 1727 have increased, until the whole harbor beach is occupied by commercial buildings, and Provincetown, with five thousand inhabitants, has become the largest town in Barnstable county. With so large a population seated upon open lands defended by only one poorly paid agent of the Commonwealth, it is not surprising that unlawful gathering of firewood and sod should have occasioned much damage in the course of twenty years. The fact is that the law of 1869 has become little more than a farce. In 1891 the State agent was paid by the town for just five days' attention to the defence of the State's property, the agent paid to the town four dollars received by him for the four permits, which were all he issued in that year, and no attempt was made to prosecute for taking material without a permit. Moreover, although the town goes through the form of an annual election of a beach grass committee, nothing whatever has been done by this committee during any recent years.

What manner of destruction is going on meanwhile in the rear of the village of Provincetown the pictures herewith submitted will serve to show. Half of the province land is already a treeless waste. The commissioners of 1825 reported to the General Court that this desert was the result of the stripping of vegetation from the seaward sand hills. We find to-day that, once the mat of plant roots is removed

REPORT ON PROVINCE LANDS.

from a windward slope, the north-west gales cut into the wounded place and proceed to undermine the adjacent plant-covered slopes.* The sands blown out of such places are dumped in the lee, in the nearest hollow, burying the trees and bushes and stifling them to death.† Once rid of the trees, the sands are drifted by the winds like snow. The beach grass planted by the government seems to have stayed the destruction of the old ridges in some measure; but the wheels of carts continually crossing the sand drifts in the direction of the worst gales soon broke the grassed surface so that the wind got hold, "blew out" great areas, and dumped the sand in such steep drifts in the edges of the woods that many cart paths become impassable, so that new routes were sought, where the operation was repeated. Within the province lands the grassy Snake Hills and the wooded ridge called Nigger Head have bravely withstood the gales without serious change since Major Graham surveyed the field in 1833-35; but between these two points the winds have made great havoc. Wooded knolls have been cut in two, ponds filled up, and such woodland buried. East of Nigger Head and towards eastern harbor, beyond the bounds of the province lands, the changes have been even more violent. Several salt creeks have been wholly filled up, and former sand ridges levelled so that the hulls of vessels on the ocean are now visible from the harbor.

In view of all these facts and others elicited at the hearing, a stenographic report of which is herewith submitted, it is obvious that Cape Cod harbor can be preserved from eventual destruction only by the united action of the United States, Massachusetts, and Provincetown. The United States, upon obtaining possession of Long Point in 1864, constructed valuable protective works. Over her own portions of the sand breakwater of the harbor the Commonwealth ought certainly to exercise an effective control. The present arrangement under which the agent of the State is paid by the town, and by the day, is anomalous and absurd. Accordingly, in the draft of an act which is appended to this report, the superintendent of the province lands is made the

* See illustration No. III.

† See illustration No. IV.

servant of the State alone. By wisely directing the routes of travel across the sands, by watching for and attending to the beginnings of wind cuts, and by inducing a gradual re-foresting of the dunes, a capable superintendent could, we believe, successfully check the further progress of destruction. It would remain for the town of Provincetown to assist the superintendent in every possible way, seeing that its interests as a summer resort as well as its continued existence as a town depend alike upon the preservation of the remaining verdure of the province lands.

In conclusion, we would propose that the appointment and oversight of the superintendent of the province lands should rest with the Board of Harbor and Land Commissioners already established. Chapter 19, section 3, of the Public Statutes, decrees that these commissioners "shall have charge of all the lands, flats, shores, and rights in tide-waters belonging to the Commonwealth, except those for which other provision is made, and shall, as far as practicable, ascertain the location, extent, and description of such lands; investigate the title of the Commonwealth thereto; ascertain what parts thereof have been granted by the Commonwealth; the conditions, if any, on which such grants were made, and whether said conditions have been complied with; what portions have been encroached or trespassed on, and the rights and remedies of the Commonwealth in relation thereto; prevent further encroachments and trespasses; ascertain what remaining portions of such lands may be leased, sold, or improved with benefit to the Commonwealth and without injury to navigation or to the rights of riparian owners; and for the purposes aforesaid may, with the approval of the governor and council, require the services and assistance of the attorney-general. They may lease for purposes not injurious to navigation or to the rights of riparian owners any parts of the aforesaid lands of the Commonwealth for periods not exceeding five years."

Section 2 of the same chapter directs them to recommend in their annual reports "such legislation as they deem necessary for the preservation and improvement of the harbors of the Commonwealth, and for the promotion of its interests connected therewith." Section 18 gives them authority to

REPORT ON PROVINCE LANDS.

"apply to Congress for appropriations for protecting and improving any harbor in the Commonwealth."

Chapter 144 of the Acts of 1886 provides that "the board of harbor and land commissioners shall have charge of all the lands and rights in lands belonging to the Commonwealth, wherever the same are situate, except those for which other provision is made by law, and shall have the same powers and duties in respect to such lands that they now have or may hereafter have under general laws in respect to lands, flats, shores, and rights in tide waters belonging to the Commonwealth."

Thus the Harbor and Land Commission is already possessed of ample authority to enable it to care for the province lands after they have once been placed under its charge. Moreover, under section 2, just quoted, the commission might well render a great service to the permanent interests of the State, as well as those of Provincetown, by recommending to the General Court some measure which would result in an amicable adjustment of the private claims upon the province lands. Thus the State might agree with Provincetown to grant to the town the title to the southern or closely occupied part of the lands, on condition that the town would clear of buildings some portion of the harbor beach, and bear the cost of the extinction of the squatter claims on the northern or wild lands.

The above report is respectfully submitted by

PHILIP A. CHASE,
HENRY P. WALCOTT,
C. S. SARGENT,
GEO. WIGGLESWORTH,
CHARLES ELIOT,

Standing Committee of the Trustees of Public Reservations.

AN ACT TO PROVIDE FOR THE BETTER MANAGEMENT OF THE
PROVINCE LANDS.

SECTION 1. The board of harbor and land commissioners shall have general care and supervision of the *province lands* at the extremity of Cape Cod, shall fix and mark the bounds thereof, shall establish regulations for the care thereof, shall annually appoint a superintendent thereof, and, with the approval of the governor and council, shall fix the amount of his compensation, and the amount which may be expended by him in the protection and improvement of said lands.

SECT. 2. Chapter 218 of the acts of 1869, and all other acts or parts of acts inconsistent with this act, are hereby repealed.

SECT. 3. This act shall take effect on the first day of July, eighteen hundred and ninety-three.