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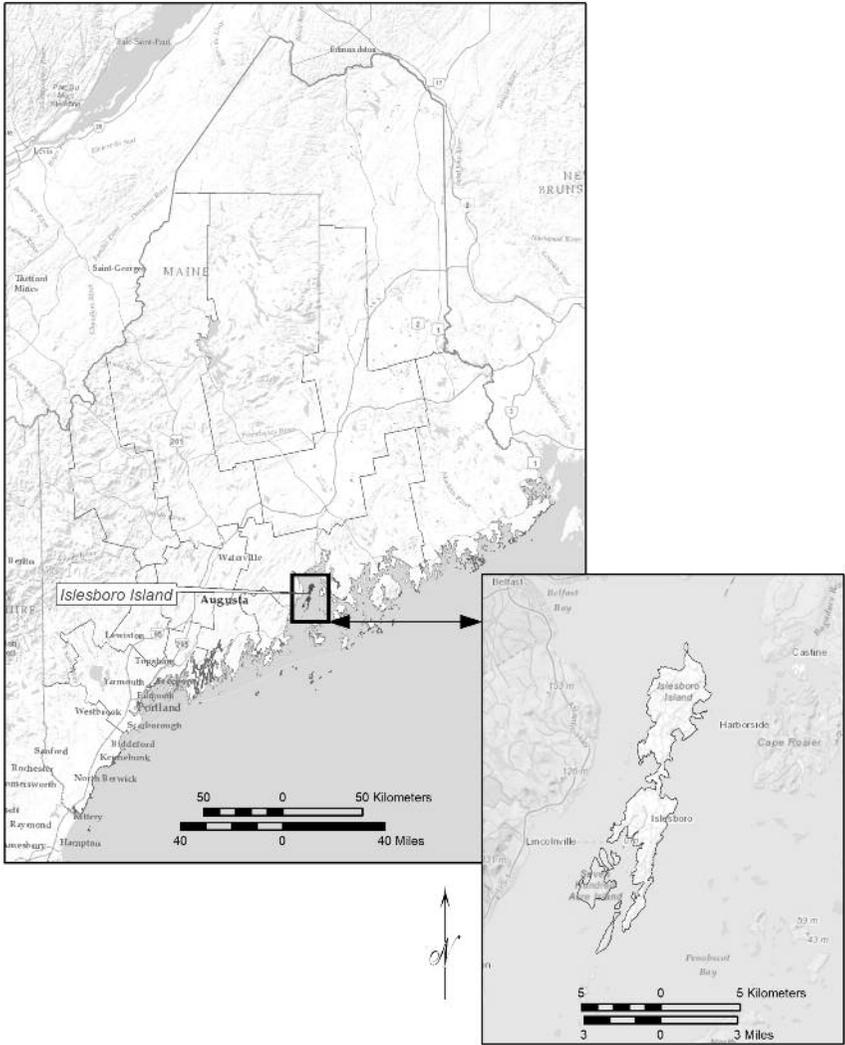
NEIGHBORS AND FENCES: LAND, CONFLICT, AND COMMUNITY ON A MAINE ISLAND DURING THE EIGHTEENTH CENTURY

BY PATRICK W. O'BANNON

*A 1794 court case, *Grimmell v. Williams*, provides a unique insight into the acquisition, division, and protection of land claims in late-eighteenth-century Islesboro, Maine. The remarkable set of depositions associated with the case highlights the significance of family and community norms in the establishment of a Maine island town. Patrick O'Bannon is president of the Islesboro Historical Society. He is Northeast Regional Manager for Gray & Pape, Inc., a historic preservation and heritage management consulting firm, and has more than thirty years of experience in the field. He received his PhD from the University of California at San Diego. Thanks go to the anonymous readers for their helpful suggestions, as well as to Carly Meyer and Ruth Myers at Gray & Pape who prepared the maps and graphics. Special thanks to Amanda for reading multiple drafts.*

Wrangling over land—who owns it, who controls it, how it is used, and how it is transferred between owners—is a recurring theme in the history of the town of Islesboro. This may seem ironic—or perhaps self-evident—given that this lobster-claw-shaped archipelago in the upper reaches of Maine's Penobscot Bay embraces only about nine thousand acres of dry land. The town incorporates fifteen individual islands ranging in size from less than an acre to nearly seven thousand acres. The five largest islands: Islesboro (long known as Long Island), 700 Acre Island, Job Island, Warren Island, and Spruce Island, account for approximately 98 percent of the town's acreage.

The earliest conflicts concerning land on Islesboro were resolved by force of arms. During August of 1692, Benjamin Church, a colonial militia commander who gained fame during King Philip's War in southern New England, sailed from Pemaquid landing on the west shore of 700 Acre Is-



Location map of Islesboro. Image courtesy of Gray & Pape, Inc.

land. Church led an expeditionary force across the island to the east shore, where he seized two Frenchmen, along with their Native American wives and children. They proceeded to interrogate their captives about the location of other Native people. The hostages told Church that “there were a great company of them upon an island just by; and showing him the island, presently discovered several of them.” The island that the hostages pointed out was probably Long Island, located about three-quarters of a mile east of 700 Acre Island across what is now known as Gilkey’s Harbor. Church “placed an ambuscade to take any that should come over” and called for the rest of his force to advance. His attempted ambush failed when the reinforcements sailed into plain view. The Native Americans quickly fled, and Church, “not having boats suitable,” did not pursue. Nevertheless, he seized “considerable quantities of plunder, viz beaver, moose-skins, &c” boarded his vessels, and returned to Pemaquid, shortly departing from there to Boston. It is unclear whether he took his French and Native captives with him.¹

The Frenchmen interrogated by Church likely came from Pentagoet, a fort and trading post located at the present site of Castine, on the east shore of Penobscot Bay. This location changed hands among the English and French on numerous occasions after its establishment as a fishing operation for Plymouth Colony in 1629. The French seized control of Pentagoet in 1670, and their presence on Penobscot Bay, as well as their political and military alliance with local Native peoples, effectively prevented any English settlement on Islesboro—or elsewhere on Penobscot Bay—until the Treaty of Paris (1763) ended the Seven Years’ War (1754–1763) and terminated French claims to all of their mainland North American territories.

The defeat of the French, and the devastation of the Penobscot and other local Native American tribes by disease and war, eliminated the principal roadblocks to English settlement along Penobscot Bay. During the years immediately following the establishment of peace, a stream of settlers flowed out of the cramped cities and towns of southern New England and into newly secured lands that were safe for settlement. Moreover, the Proclamation of 1763—which erected a legal barrier to settlement west of the Appalachians—and the termination of a program of land grants for new settlers in Nova Scotia foreclosed settlement in those regions and made northern New England the most attractive choice to those seeking opportunities to obtain free or cheap land. Within a decade, more than fifteen thousand people lived in forty-three settlements in Lincoln County, the jurisdictional entity encompassing Penobscot Bay and the area to the east.²



Detail of “Coast of Maine Showing Blue Hill Bay, Penobscot Bay, Belfast Bay, Islesboro Island, Deer Island, and other islands” by Joseph F.W. DesBarres, dated 1776. Image courtesy of Gray & Pape, Inc.

According to John Pendleton Farrow’s 1893 town history of Islesboro, English settlement began in 1764 with the arrival of Shubael Williams from Stonington, Connecticut. Williams settled just north of the island’s pinched waist, known as The Narrows, eventually claiming seven hundred acres for himself and his four sons. Prior to the start of the American Revolution, Williams and perhaps a dozen other settlers took up land, cleared

fields, built houses, erected fences, and established holdings on the island without concern for land titles or other legal niceties.³

During the American Revolution, the presence of British forces from 1779 through 1783 at Bagaduce (present-day Castine), located on the east side of Penobscot Bay, exposed these first settlers to raids from British troops and their loyalist allies, as well as from opportunistic American privateers. Oral tradition details some of the abuses and outrages visited upon island residents. Islesboro, and the other settled islands in Penobscot Bay, effectively existed beyond the formal political and military jurisdiction of the government in Massachusetts. They were of little interest to both the Continental Army and British Regulars, except as a source of supplies obtained through trade or pilfer, and therefore these settlements were left entirely on their own. Given such conditions, it is hardly surprising that islanders zealously guarded their property, which they suffered to hold and maintain, and dispensed with such formalities as establishing legal title to their holdings.⁴

After the end of the Revolutionary War, settlement in the Penobscot Bay region boomed. Migration from the densely settled areas of southern New England resumed and thousands relocated to Maine. Between 1775 and 1790, Maine's population tripled to nearly one hundred thousand and the number of incorporated towns in the region increased from eight to thirty-four.⁵

Islesboro and the Proprietors

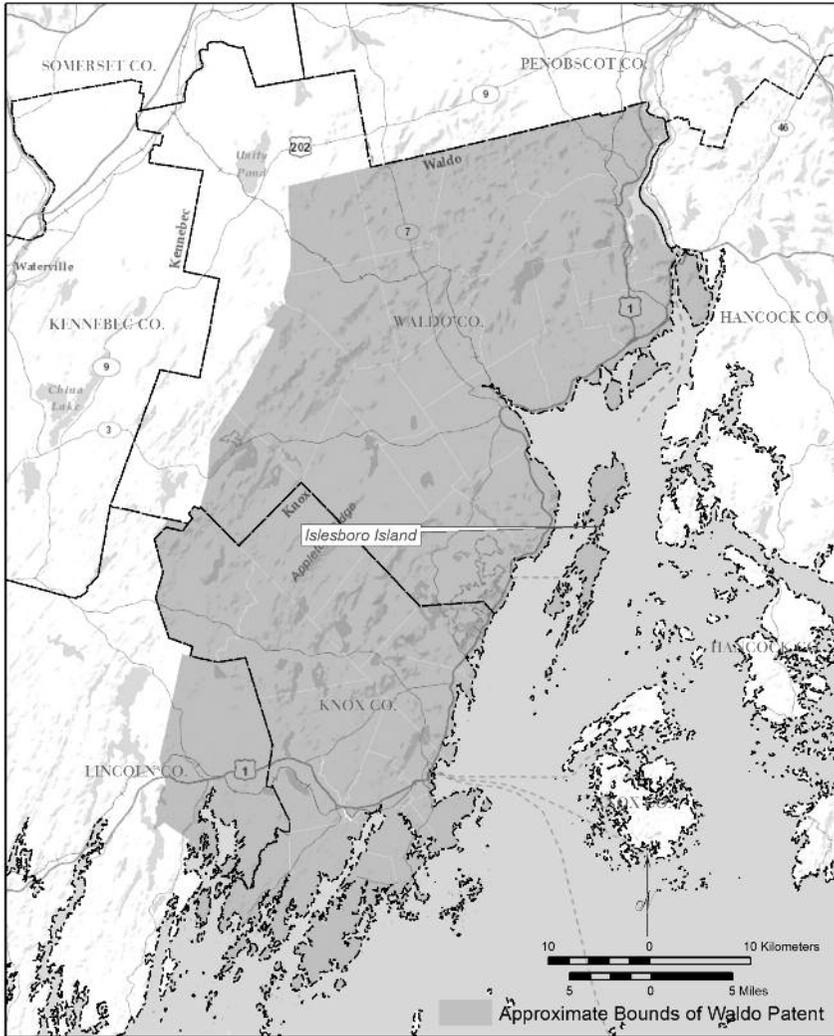
With the cessation of hostilities in 1783 and the departure of British troops and their loyalist allies from Bagaduce, disputes over land on Islesboro moved from the battlefield to the courthouse. According to historian Alan Taylor, the best known of these disputes pitted great proprietors, who claimed vast amounts of property based upon legal titles, against settlers claiming the right to property by virtue of settlement, possession, and improvement.⁶

On Islesboro, this dispute manifested itself in a protracted legal battle during the 1790s between island residents and Henry Knox, owner of the Waldo Patent. Named for Samuel Waldo, the wealthy Boston merchant, land speculator, and soldier who acquired control of the patent in 1729, the Waldo Patent actually dates back to 1630. In that year, the Council of New England issued letters of patent covering large sections of the central coast of the District of Maine. The easternmost, which became the Waldo

Patent, encompassed about one million acres between the Medomak and Penobscot rivers. Drafted in England, these patents were vague and overlapping. This created confusion and uncertainty and, as a result, most proprietors refused to warrant their deeds, selling only quitclaim deeds that offered no legal protections to buyers.⁷

In 1793, following a dizzying series of marriages, inheritances, and somewhat dubious financial maneuvers, Secretary of War Henry Knox, former chief of artillery in the Continental Army, acquired control of the Waldo Patent. While the legislature and courts in Boston declared Knox legal owner of the lands within the Waldo Patent, hundreds of settlers already living on that land disputed this claim. The settlers held no opposition to private property acquired through legal title, but they insisted that proprietorship originated with the person who first improved the property. These contradictory notions of ownership set the stage for a lengthy and sometimes violent conflict between great proprietors, who viewed legal title as basis for their claim to ownership, and local settlers, who rejected the notion of paying absentee proprietors for land they had settled and improved. Proprietors, like Knox, intended to use their legal titles as the basis for land sales to gain immense wealth. In their eyes, settlers who refused to pay for land to which the proprietors held legal title were usurping their property rights, not protecting hard-won homesteads.⁸

Settlers on Islesboro found themselves caught up in the contention over land titles. As early as 1786, a crowd on the island drove away Isaac Winslow, Jr. and Samuel Winslow, two visiting Waldo heirs. Once Knox secured title to the patent and began efforts to secure payments from those living on what he considered his land these tensions increased. One provision of the Waldo Patent stipulated that islands within three miles of the mainland were included within the patent. In the 1790s, after Knox legally secured his property and began insisting on payment for legal titles, Islesboro residents used this provision to argue that they were under no legal obligation to pay Knox or his agents for titles to their holdings as their islands lay beyond the three-mile limit. In August 1799, Knox and island residents agreed to have surveyors determine the distance from the mainland to the center of the island. If the center was found to be more than three miles from the mainland, the settlers would bear the costs of the survey. If not, Knox's surveyor would divide the island into lots, which the settlers would be required to purchase from Knox. The survey found that the center of the island lay between 2.5 and 2.75 miles from the mainland, well within the three-mile limit solidifying Knox's claim to Islesboro



The Waldo Patent. Image courtesy of Gray & Pape, Inc.

through the Waldo Patent. The island's center line, still a prominent feature on Islesboro property maps and referenced in many island deeds, is generally thought to date from this 1799 survey and the effort to establish Knox's legal title to the island.⁹

the first settlers of Islesboro—those who arrived prior to the revolution and who claimed land by right of occupancy and improvement—from post-revolutionary “new arrivals” who sought free access to land. Island residents committed themselves to the protection and preservation of the landholdings of early settlers by delineating and demarcating parcels to be allocated for newcomers. This effort at peaceably dividing land did not always succeed, and a dispute over land boundaries that resulted in legal action demonstrates the primacy island residents placed upon defending their land claims and, more importantly, working within communal norms.

The records of the 1794 court case, *Grinnell v. Williams*, which occurred well before the island settlers’ conflict with Knox over the provisions of the Waldo Patent, included a remarkable collection of depositions, from both pre- and post-revolutionary settlers, that offer insight into how Islesboro residents divided the land among themselves and how settlers who arrived after the revolution sometimes disputed these arrangements. The case is significant because it demonstrates that island residents functioned as a coherent community nearly fifteen years before Knox’s actions united many of them into an organized opposition. It demonstrates the lengths to which early settlers, who suffered through the privations of the revolution, went to defend their land claims from actual or perceived threats, regardless of whether those threats came from great proprietors attempting to exercise their legal title to land, or from newly arriving settlers trying to carve their own farms and homesteads from the rocky soil.

The conflict that developed between William Grinnell and the Williams family exemplifies the tensions that existed between pre-Revolutionary War settlers and those who came to Islesboro after the revolution. Early settlers, like Shubael Williams, generally believed that early arrivals deserved as much land as they could improve and manage, while recent immigrants must accept smaller tracts or move on to another location. This necessarily meant that land was not evenly distributed among all island residents.¹⁰

Williams arrived on Islesboro circa 1764, shortly after the close of the Seven Years’ War and the departure of the French from the region. With four sons—Samuel, Amos, Joseph, and Benjamin—to provide for, Williams claimed a tract of approximately 700 acres and erected fences, thereby demarcating his claim and notifying his neighbors of his intentions. Fencing property constituted a primary claim of ownership in the absence of legal titles or other formal niceties. Settlers fenced land to es-



Approximate location of Shubael Williams’s claim. Image courtesy of Gray & Pape, Inc.

establish the boundaries of their property claims as well as to keep wandering livestock off of their property. Williams subdivided his tract of the island into smaller parcels of between 100 and 150 acres, which Williams assigned to each of his four sons; Joseph, Amos, Samuel, and Benjamin. In the parlance of the times, Williams sought to provide a “competency” for himself and his sons or sufficient land and other resources to provide a comfortable independence, with the prospect of passing on that achievement.¹¹

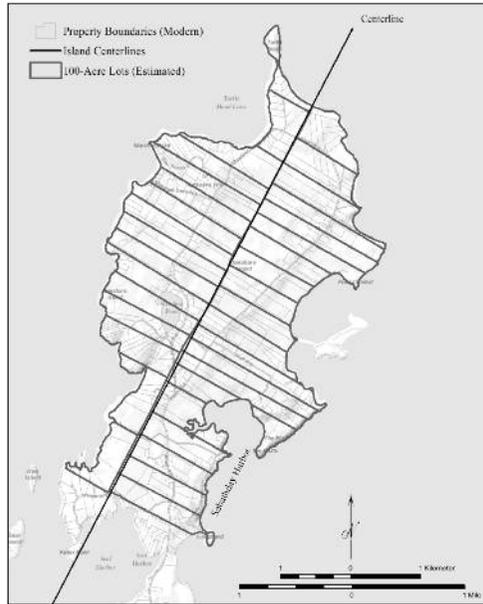
Land Division on Islesboro

During the summer of 1784, about six months after British and loyalist forces abandoned Bagaduce, the residents of the northern portion of Islesboro met and appointed a three-man governmental committee, comprised of William Pendleton, John Gilkey, and Shubael Williams, to “take care of the affairs of the plantation.” The three committee members were among the island’s earliest and most prominent residents, all having settled there prior to 1775, and all having endured the trials of the Revolutionary War. In September 1784, Williams, acting as a member of the committee, arranged for Noah Miller, a surveyor, to audit the northern portion of the island. Miller started his work at a spruce tree at Seal Harbor and extended a line bearing North 42° East to serve as the center line of the island. Having established a center line, Miller then laid out one-hundred-acre lots extending from the shore, inland to the center line. Miller ran the north and south lines of lots located west of the center line on a bearing of North 47° West, while east of the center line these boundary lines ran on a bearing of South 47° East. In order to create one-hundred-acre lots, the width of the lots varied, depending upon the distance from the shore to the center line; the further the distance to the center line, the narrower the lot. Miller completed his work in the spring of 1785. The center line thus formed a spine extending the length of the northern portion of the island.¹²

In July 1784, William Grinnell, a young man in his twenties, hired his two brothers-in-law, Noah and Rathburn Dodge, to fence a parcel located on the west side of the island, north of Williams’s Seal Harbor claim. Grinnell, who hailed from Block Island in Rhode Island, as did the Dodge brothers, did not permanently reside on this land until September 1785. In the meantime, the Dodges felled trees, cut and fixed stakes, and fenced about eighty to ninety acres for Grinnell. Grinnell’s fenced lot, however, crossed the center line, extending into a lot reserved for Shubael Williams’s son, Joseph.¹³

At the time the Dodges fenced the lot claimed by Grinnell, it was apparently being worked by one Laban Allen. The nature of Allen’s “work” is unknown, but it most likely involved cutting timber for sale as cordwood. Allen did not hold title to the property and, in fact, approached Noah Dodge and offered to purchase the fenced lot. Dodge replied that he could not sell the land since it belonged to Grinnell, who had hired the Dodges to work there.¹⁴

How Allen came to be working the lot provides some insight into the



Map showing approximate locations of one-hundred-acre lots. Image courtesy of Gray & Pape, Inc.

rather casual manner in which residents claimed and settled land on the island. Historian Alan Taylor notes that, throughout Maine, original possessors of land frequently cut the timber and moved on, not seeking to become farmers or permanent residents. Allen appears to fit this description. His offer to buy the lot may have represented an effort to extend the amount of timber he could harvest.¹⁵

A number of deponents testified that Allen was working the lot at the time of Noah Miller's 1784–1785 survey, and that Grinnell did not occupy the property until September 1785, after completion of the survey. If this was the case, then Allen's offer to purchase the lot from Noah Dodge suggests that Grinnell's brothers-in-law fenced the property without Allen's knowledge or consent. Noah Miller, the surveyor, testified that, in the fall of 1784, a member of his survey party asked Allen "by whose liberty he was at work on that lot" and Allen replied "by the liberty of Mr. John Gilkey, one of the plantation's committee." According to Hosea Coombs's testimony, Allen did not live on the lot, but boarded elsewhere while he harvested wood on the property. This likely accounts for Allen's ignorance of the Dodges' fence building.¹⁶

Hosea Coombs, who moved his family onto the island in September

1785, testified that he was shown a plan of Miller's survey, with the center line and lot boundaries, about two weeks after his arrival. Coombs added that, at some later date, the plantation committee came to his house and "said some people had come on the Island, they did not know who they were, but wished my brother and myself would go to them, we went, and after some conversation on the subject Mr. William Grinnell agreed to give Mr. John Gilkey thirty dollars for a lot of land which had been improved by Mr. Laban Allen."¹⁷

Coombs's statement makes it clear that the plantation committee used him as an envoy to Grinnell. Apparently, the committee visited Grinnell personally to collect the thirty dollars. Coombs testified that Gilkey accepted the payment on Laban Allen's behalf and then Shubael Williams, a member of the committee, forbid Grinnell "and others that were with him from any further attempts to make a settlement on said lot." On the face of it, this statement appears perplexing, since if Grinnell paid the committee he should have had the right to settle. It is likely, however, that the "lot" Williams referred to was that portion of Grinnell's fenced claim that extended east of the center line into the lot claimed by Joseph Williams.¹⁸

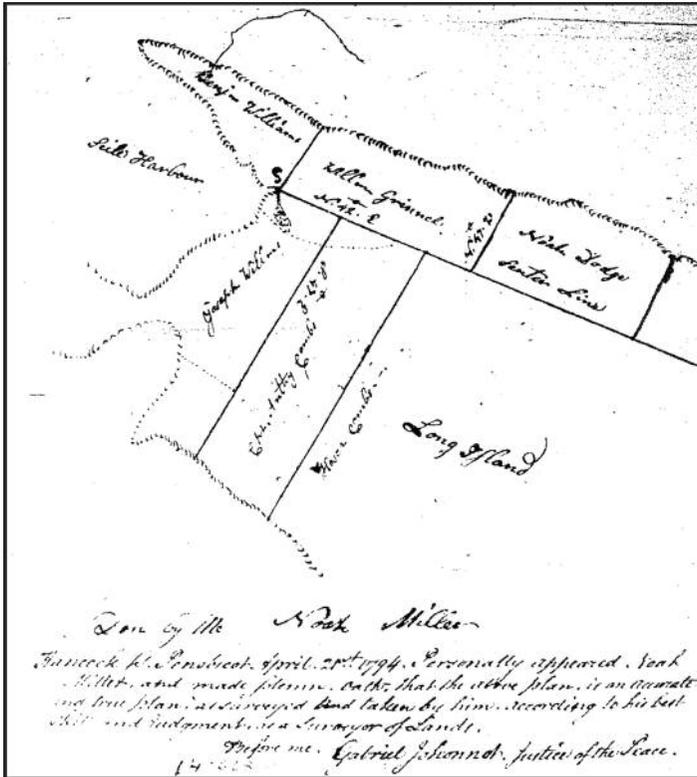
This incident indicates that the committee comprised of William Pendleton, Shubael Williams, and John Gilkey, established during the summer of 1784 "to take care of the affairs of the plantation and to lay out the lands to the settlers," obtained the authority by the residents to assign lots to new settlers. The committee hired Noah Miller to survey the north end of the island and lay out lots in an effort to provide order to this process. It appears that William Grinnell did not consult with the committee regarding his land claim. Perhaps this lack of consultation, or deference to earlier settlers, prompted Shubael Williams's angry remarks to Grinnell as Miller's survey deferred to the claims of long-time residents, most particularly Shubael Williams.¹⁹

During the spring of 1784, prior to Miller's survey, Williams told Anthony Coombs, a relative of Hosea Coombs, that he did not intend to lay claim to any land outside his fence, which "began [at] the northern side of Seal Harbor Cove and ran to a place called Sabbath day Harbor." Samuel Pendleton, a cousin of committee member William Pendleton, and a resident of the island since 1771, helped build Grinnell's fence in the summer of 1784. Prior to agreeing to work for Grinnell, Pendleton asked Shubael Williams whether he laid any claim to the land claimed by Grinnell, as "he did not wish to bring himself into any difficulty" with Williams. According to Pendleton, Williams answered, "you know where my fence is, if I can hold all that I have within that fence it will be enough for me and mine."

Noah and Simon Dodge both attended this conversation, and both testified that Williams replied that “if he could hold what land he had enclosed it was enough for him and his children.”²⁰

Grinnell v. Williams

As noted, the lot Grinnell’s brothers-in-law fenced during the summer of 1784 extended east, across the center line surveyed that autumn by Noah Miller, into a lot laid out for Shubael Williams’s son, Joseph. Grinnell’s actions placed him squarely at odds with the island committee, with his neighbors, with the broader island community, and with the prominent Williams family, upon whose land he was encroaching. During the winter of 1785, after Grinnell took up residence on the island, Shubael Williams



Survey map (used in trial) by Noah Miller showing Grinnell and Williams parcels. Image courtesy of Gray & Pape, Inc.

asked him “if he was content with what land he had within his fence.” Grinnell replied that he was, at which point Williams turned to Simon Dodge and desired he “take notice what Mr. Grinnell said.” The matter appeared settled. But tensions between the Williams family and Grinnell clearly remained unresolved and, eight years later in 1792, came to a boil.²¹

During the autumn of 1791, Grinnell repaired his fence, but the spark that reignited the dispute occurred in 1793, when Grinnell began cutting timber on the disputed portion of the lot east of the center line. Timber represented a significant cash crop for early settlers throughout Maine. On Islesboro, timber largely entered the market as cordwood, which residents in the more populated and deforested areas of southern New England needed for fuel. Grinnell’s actions, cutting trees on disputed land, directly and negatively impacted Joseph Williams’s ability to make money from his property, as he claimed those portions of Grinnell’s lot that lay east of the center line.²²

In March 1794, Grinnell sued Shubael and Joseph Williams in the Court of Common Pleas for trespass. Grinnell claimed that, in September 1793, the Williamses “with force of arms broke and entered the close of the plaintiff [Grinnell], tore down and destroyed his fence, and with a sled and oxen tore up the [unreadable] and . . . took, carried away, and destroyed thirty cords of wood . . . of the value of ten pounds.” In April 1794, the Court ruled in favor of the Williamses, and ordered court costs paid by Grinnell of sixteen pounds, eighteen shillings, six pence. Grinnell appealed this ruling to the Supreme Judicial Court. In anticipation of this appeal, authorities recorded during April and July 1794 from nineteen island residents and surveyor Noah Miller. The case appeared to revolve around whether or not Grinnell’s fence constituted a legal fence—legally defined as one sufficient to keep cattle, hogs, and sheep from the lot—and whether or not Grinnell previously harvested timber from the property.²³

Exactly when Grinnell began logging the disputed lot is unclear, but Ellison Lassell, an island resident since 1786, testified that in the fall of 1792 “some dispute” arose regarding the center line and lot lines run by Noah Miller. This dispute may have resulted from Grinnell’s logging. In April 1793, in an effort to mediate the issue, the residents of the north end of the island agreed to hire Miller to resurvey, and they signed a bond “to abide by the centre and side lines of the lots as they had been run off by Mr. Miller.” Anthony Coombs’s April 1794 deposition described the process:

[I]n the last Summer in consequence of great uneasiness on the minds of the people relating to their lands, a meeting was called, at which meet-

ing all the settlers except Mr. Grinnell and Mr. Noah Dodge were present, that it was moved in said Meeting whether they would abide by the centre line of the Island, and the side lines of the lots as they had been laid down and butted and bounded agreeable to the old [1784] plan or whether they would have them altered, that it was then unanimously agreed to and voted in said meeting to abide by the lines as they had been run by the old plan, at the same time chose a committee of two persons to send for Mr. Miller, to run out and butt and bound each lot as laid down on the plan, that Mr. Miller came and did run and lay out the lots agreeable to the plan, and agreeable to the desires of the Inhabitants. A few instances to the contrary.²⁴

Grinnell was one of the few contrarians, placing himself in opposition to these efforts and in opposition to the community's efforts to resolve the growing dispute. He and a handful of other north-end residents, including Noah Dodge, did not sign the bond. He objected to the location of the center line, which passed through his fenced lot and, according to Noah Dodge, forbade Miller "from running any line within his fence." Miller agreed that he "would not run without Mr. Grinnell's consent."²⁵

Grinnell continued to cut timber on the disputed property, bringing the issue to a head during the spring of 1793. In March, Joseph Williams encountered Michael Shays, a laborer employed by Grinnell, cutting wood within the fenced lot. In the presence of two witnesses, Williams ordered Shays to stop and forbade him from harvesting any more timber in the area, stating: "as it is my land." One of the witnesses, Joseph's brother Benjamin Williams, later testified that Joseph told Shays that, if he continued to cut wood, "he should prosecute him for trespass." Shays responded that "he knew nothing about the land where it was, he was directed to cut there by Mr. Grinnell, but that he [Shays] should desist and go away."²⁶

In April, Miller resurveyed the northern portion of the island, essentially duplicating his 1784–1785 efforts. Most of the settlers on the northern end of the island agreed to accept the results of this survey. However, Grinnell, whose fenced lot straddled the center line, had not signed the bond and had forbidden Miller from running the center line through his lot. Perhaps fearing that his neighbors would force his compliance with Miller's survey, Grinnell, assisted by his brother-in-law Noah Dodge, resumed cutting timber on the lot. Dodge estimated that Grinnell cut approximately thirty cords, worth six shillings a cord "at the landing."²⁷

Joseph Williams did not take kindly to Grinnell's renewed logging, though he seemed to wait to take action until the fall. In September 1793, Williams and Andrew Webber, a hired man in the service of Williams's father, Shubael Williams, took down a section of Grinnell's fence; brought a

yoke of oxen and a sled onto the lot; and proceeded, over the course of three or four days, to haul most of the wood cut by Grinnell to the landing, where they offered it for sale. According to Rathburn Dodge, Grinnell forbid Williams and Webber from hauling wood off the lot, but Williams replied, "he meant to haul it, and he might help himself as well as he could." It was this action that led to Grinnell filing suit against Shubael and Joseph Williams.²⁸

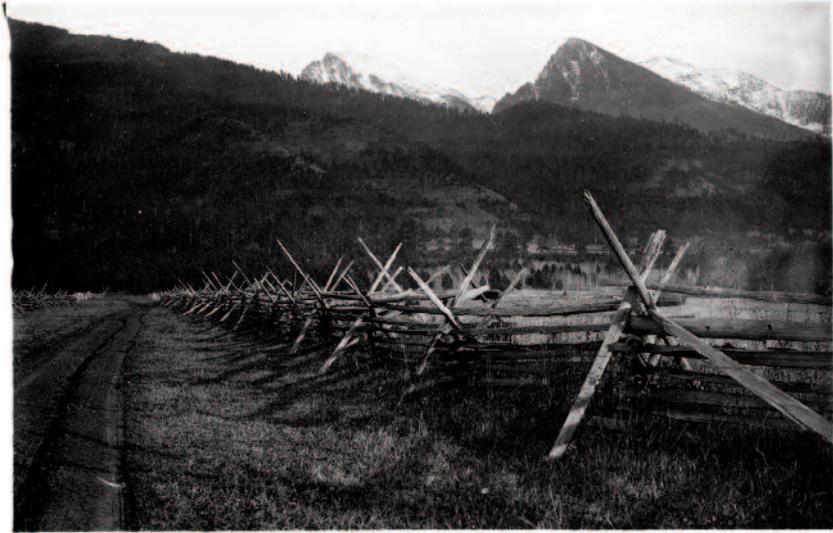
Andrew Webber provided a detailed account of the work he performed on the disputed property. According to Webber, Shubael Williams directed him to go with Joseph Williams and "haul out some cord wood [and] did not know what wood it was, until after [he] had got the oxen yok[e]d, when [he] was informed it was wood cut by one Michael Shays on the land now in dispute." Webber and Joseph Williams went to work and "on the first day of hauling there was not any fence up in the road, [they] hauled the wood to the landing on said lot."²⁹

During the course of Webber's deposition, Grinnell's attorney asked Joseph Williams whether his father, Shubael Williams, specifically directed Webber to haul the wood cut by Shays. Webber said he did not, but that, as he yoked the oxen, Mr. Gammon, another of Shubael Williams's hired hands, told Webber to "prepare for a brush with Mr. Grinnell." Grinnell did indeed confront Williams and Webber, forbidding them from removing the wood from the lot.³⁰

It is interesting to note that the principals in the case employed hired hands to help work their property. William Grinnell hired Noah and Rathburn Dodge and Samuel Pendleton, all permanent island residents and land owners, to fence his claim in 1784. Michael Shays, a laborer in Grinnell's employ, cut timber on the disputed lot in 1793. Shubael Williams employed at least two hired hands, Andrew Webber and a Mr. Gammon. The use of hired labor seems to distinguish Islesboro, or at least Grinnell and Williams, from regional norms. According to historian Alan Taylor, little labor was available for hire and few could afford to purchase hired hands. But this was not the case for Grinnell and Williams.³¹

The presence or absence of a proper legal fence, one sufficient to keep livestock out of the parcel, proved a critical element in the case. In the absence of legal titles, fences served to delineate property. But a legal fence had to be substantial, such as the stake-and-rider fence that the Dodges built for Grinnell in 1784. Nearly a decade of Maine weather took its toll on this fence, and despite the fact that Grinnell repaired it in 1791, its condition appears to have been somewhat dilapidated by 1793.

In an effort to demonstrate that he substantially fenced the property, Grinnell asked Webber, during the course of his deposition, whether he



Photograph, entitled “Rail Fence,” by M.S. Wilson, dated 29 March 1905. Montana State University. (Also called a stake-and-rider fence.) https://commons.wikimedia.org/wiki/File:Rail_fence_in_Missoula_county,_Montana.jpg

found a fence on the lot. Webber testified that there was a “sham fence which Mr. Benjamin Williams said he supposed was made by Mr. Grinnell.” Webber claimed he traversed over the land many times and never saw a fence “until [he] was shown brush fallen, which was supposed to be for the purpose of a fence.” Nevertheless, Webber declared that Joseph Williams took down “one or two poles” to gain access to the lot, which suggests something more than brush.³²

Samuel Pendleton, a hand hired by Grinnell to help fence the lot in 1784, testified that the original fence “would turn or stop any creature whatever.” John Sprague testified that when he assisted Grinnell in repairing the fence during the fall of 1791, only portions of it remained sufficient to keep out cattle, hogs, and sheep. Hosea Coombs testified that there was no fence present when he inspected the lot in July 1794, rather, only “some bushes laying scattering and one birch tree laying, the butt of which lay three feet from the ground and nothing under it.” Taken at face value, this testimony suggests that Grinnell constructed a well-made, legal fence in 1784 but that, by 1794, it had fallen into disrepair.³³

Further complicating matters, however, Amos Williams, another of Shubael Williams’s sons, testified that he helped his father fence the land in dispute circa 1775, more than ten years before Grinnell’s original fence-

building campaign. Amos Williams denied that Grinnell lived on the land, stating: "I never knew you did live on it and know you do not according to the line that was run." This statement seems to suggest that, in Amos Williams's view, although Grinnell lived on the island, he never occupied the land in dispute, since according to Noah Miller's survey, that land (being east of the center line) belonged to Williams's brother Joseph. The Williams family relied upon Noah Miller's survey as the basis and justification for their actions.³⁴

Grinnell's response to the Williamses' defense relied heavily upon the traditional argument that ownership of land resulted from occupation and improvement, not possession of some variant of a legal title. Grinnell sought to demonstrate that the land remained unimproved by the Williamses, and thus available to others, like himself, willing to improve the land. Pressed by Grinnell, Amos Williams admitted that he did not witness his father working on the disputed land during the past nineteen years, stating: "but I believe he has." Amos Williams's brother, Benjamin, testified that he inspected the lot in July 1794 and found "that great improvements [had] been made" by Shubael and Joseph Williams and persons in their employ. Benjamin Williams testified that the Williamses expended a great deal of labor cutting and felling trees and clearing the ground—a claim no other deponent made—and that, on the location of the improvements, the land had been "got into good English grass." Williams claimed that most of the work looked as much as twenty years old, which corresponded with his brother Amos's testimony that Amos and Shubael Williams fenced the lot sometime around 1775. Grinnell again pressed for details, asking Williams whether he ever witnessed his father and brother work on the particular part of the lot in dispute. Williams replied, "I never saw my father labor on that particular spot, but I have seen him labor on the lot. I have seen my brother Joseph work and labor on that particular spot within this twelve months [since July 1793], but not before to my recollection."³⁵

Amos and Benjamin Williams's depositions included claims that support the position of their father and brother. They argued that Grinnell's fence did not constitute a legal fence capable of excluding livestock from the lot and, regardless of the efficacy of Grinnell's fence, that their father and brother both fenced and improved the property more than ten years prior to Grinnell's arrival on Islesboro.

In an effort to obtain information from individuals with less of a vested interest in the case, several members of the island community examined the lot. Additional depositions recorded their impressions. An-

thony Coombs, Jr. testified that, when he inspected the lot in July 1794, he saw stumps outside Grinnell's fence, stating: "which I suppose was cut by Hingham shingle makers about twenty years ago [1774]." Simon Dodge testified that the only cleared land on the lot was around Grinnell's house, which lay about a quarter mile from the scene of the wood cutting. Dodge testified that there was a spot on the lot "where some hard wood [had] been cut, but that [was] not cleared, as the bushes are not burnt upon it." Dodge also said that Michael Shays claimed that he [Shays] harvested the wood for Grinnell. Similarly, Godfrey Trim examined the lot and found it uncleared but estimated that someone cut about twenty cords of wood on the property, based upon the size and number of the stumps. He estimated that someone harvested the wood twelve to fifteen months prior to his inspection in July 1794. Trim also testified that he saw no English grass on the lot, except for a few spears in a road that appeared to be only a few months old. Joseph Woodward also examined the lot in July 1794. He stated that it appeared that about thirty cords of wood had been cut and hauled away, based upon the number of remaining stumps, and that ten to twenty cords remained on the lot. According to Woodward, the lot contained no grass on that spot and the harvested timber consisted of hardwood hemlocks, worth more on the cord-wood market than spruce, pine or other softwoods.³⁶

As a whole, the various depositions collected for the case suggest that Grinnell indeed constructed a legal fence on the land in the summer of 1784, just prior to the community-authorized survey and delineation of lots undertaken by Noah Miller. The lot fenced by Grinnell extended beyond the center line surveyed by Miller into a parcel claimed by Joseph Williams. Despite repairs made in 1791, Grinnell's fence greatly deteriorated by 1794. By that date, it did not appear to constitute a legal fence capable of keeping livestock out of the lot.

The Williams family claimed they had worked the lot since 1775, though whether they worked the disputed portion of the property seems doubtful. There is no doubt, however, that Grinnell harvested trees on the land, likely in 1793, twelve to eighteen months prior to the depositions. Anthony Coombs, Jr. thought some of the stumps appeared to have been cut as early as 1775, but noted that these stumps were outside Grinnell's fence. Deponents consistently claimed that the evidence of the surviving stumps suggested that Grinnell had harvested hardwood hemlocks in 1793. This logging, in the view of the times, constituted some type of improvement to the land. However, deponents remained consistent in asserting that Grinnell made little, if any, effort to clear the undergrowth or otherwise

improve the property beyond the logging of valuable hardwoods. Michael Shays's statements, attested to by others, offer the clearest evidence as to when logging took place. Shays was not deposed, but several deponents testified that he claimed to have cut trees on the property in 1793, while employed by Grinnell.

The case hinged on two questions: Had Grinnell properly and appropriately demarcated his claimed land with a fence, and had the Williams family fenced and improved that land prior to Grinnell's arrival? During the first period of settlement, prior to the American Revolution, the answers to these two questions would likely have resolved the issue of ownership. However, the survey of the north end of the island from 1784 to 1785 complicated the issue. Grinnell's claim clearly crossed the center line endorsed by the community and impinged upon Joseph Williams's lot. The fact that Grinnell fenced his lot carried less weight than his flaunting of the community-endorsed survey. Similarly, the dubious claims of the Williamses that they improved the land prior to 1793 seemed less influential than the fact that Joseph Williams's claim conformed to the bounds surveyed by Noah Miller. The deteriorated condition of Grinnell's fence in 1793 provided additional weight to the arguments of those who supported the center line.

Unfortunately, the court records do not include any information regarding a judgment in the case. Grinnell continued to reside on the island until about 1806, when he moved to Belfast, a mainland town on the western shore of Penobscot Bay, where he died in 1842. Both the 1798 Federal Direct Tax and the 1800 population census enumerated Grinnell as an Islesboro resident. In 1798 he owned seventy-five acres of land valued at \$300, and a house valued at \$285. His land holdings of ninety-six acres, valued at \$305, fell slightly below the average for the seventy island residents enumerated on the tax rolls. His house, however, was worth significantly more than the \$101 average island residence. The 1800 population census lists him as the head of a household of eleven.³⁷

While Grinnell left Islesboro, the Williams family remained a prominent presence on the island. Shubael Williams died on Islesboro in 1804. His sons all lived on the island until their deaths and were buried on the family property. Samuel, who apparently never married, died in 1820. His brothers—Amos, Benjamin, and Joseph—all died during the 1840s. All three raised large families on the land they received from their father, who clearly succeeded in providing a competency for his sons.³⁸

Conclusion

This obscure court case, with its remarkable collection of depositions, provides insight into both the process of land acquisition and distribution as well as community development on a Maine island. Settlers on Islesboro banded together to act in a manner that promoted civility and comity among their community. The committee they formed in 1785 to manage the affairs of the northern end of the island represented an effort to establish a means for the equitable distribution of land and the resolution of conflicts over property lines and boundaries. This committee, comprised of long-time residents, also likely represented an effort by established settlers to regulate and control the opportunities of new arrivals to acquire land. While settlers who arrived prior to the revolution claimed as much land as they thought they could control to provide a competency for themselves and their children, they sought, through the committee, to channel and bound the efforts of latter settlers to secure their own land. Noah Miller's 1785 survey laid out one-hundred-acre lots, sufficient in the eyes of the island's older residents to provide a basic competency for newcomers. By restricting newcomers to defined, bounded, and controlled tracts, older residents protected their own land claims and, in theory, reduced conflict and contention over property boundaries.

The island's earliest settlers, many of whom, in the late 1790s, vigorously opposed the efforts of Henry Knox and his agents to define land ownership based upon possession of a legal title, claimed that the right to real property stemmed from physical improvement of the land. Despite the vehemence with which they argued this position against Knox, fifteen years earlier they chose to create a legal patina of surveyed and mapped lots to protect their own holdings and regulate new settlement. If Henry Knox held legal title to the island, as proved the case, then Noah Miller's committee-sanctioned division of the north end of the island into one-hundred-acre lots had no legal basis. But, in the absence of legal certainty regarding ownership, long-time residents simply acted, creating an overlay of boundary lines to regulate future settlement.

William Grinnell, in refusing to abide by Miller's survey, placed himself in opposition to both the committee appointed to manage the settlement and the broader community that authorized the committee. Ironically, Grinnell acted in accordance with the same principles as the island's first settlers, seizing as much land as he thought necessary to secure a competency for himself and his family. However, and unfortunately for Grinnell,

the time for such aggressive methods had passed. In the twenty years between the arrival of the first settlers and Grinnell's arrival, the Islesboro community greatly grew and matured to the point where early residents sought to regulate and control the actions of newcomers by requiring them to abide by Miller's survey lines. Grinnell rejected this constraint on his own efforts, sued one of the island's oldest and most powerful families for trespass, lost, and eventually moved off the island.

The claim to ownership by virtue of improvement is found in the confrontations between Grinnell and the Williams family and between island residents and Henry Knox. Grinnell's actions, though firmly rooted in the belief that ownership depended upon occupancy and improvement, placed him in opposition to the broader island community that sought to channel and control newcomers. Ironically, fifteen years later, many in this island community took up Grinnell's argument when confronted by Knox's legal titles and demands for payment. In both instances, those arguing for title based upon occupancy and improvement lost.

Early efforts among Islesboro's settlers to act communally, as exemplified by Miller's survey, remain evident on the island today. The center line laid out by his survey continues to serve as the legal spine of properties on the northern end of the island, dividing this portion of the island into east- and west-side lots. Similarly, many of the east-west property lines that divide lots closely follow the bearings laid out by Miller in 1784. Clearly, over the intervening 230 years, island residents divided and subdivided Miller's one-hundred-acre lots into smaller parcels, but the basic pattern of land division laid down in 1784 remains evident today. Residents of Islesboro have long thought the patterns to date from the late-1790s dispute with Henry Knox and the efforts to establish the distance from the island's center line to the mainland. This conflict with Knox has served the Islesboro community as an important and early example of their communal strength in the face of perceived threats to the community.

But, as evidenced in the *Grinnell v. Williams* depositions, Islesboro residents established the center line and platted the north end of the island in 1784, fifteen years prior to their confrontation with Henry Knox. Well before Knox represented a threat, island residents acted as a community to avoid conflict between themselves and newly arriving settlers seeking land. They did so by imposing order on the landscape through survey and the platting of lots. This effort speaks to their ability to come together and bind themselves as a community; to their commitment to the rule of law, albeit a law based upon community consensus rather than courts and governments; and to the primacy of property rights. By the time Knox chal-

lenged the settlers' claimed rights to their holdings during the late 1790s, Islesboro residents already functioned as a community, fully capable of coming together to protect their interests and regulate their affairs.

NOTES

1. Thomas Church and Samuel G. Drake, *The History of King Philip's War; Also of Expeditions Against the French and Indians in the Eastern Parts of New England, in the Years 1689, 1690, 1692, 1696, and 1704* (Boston: Howe & Norton, 1825), 173–182.
2. Charles E. Clark, *The Eastern Frontier: The Settlement of Northern New England, 1660–1763* (New York: Alfred A. Knopf, 1970), 352–354.
3. John Pendleton Farrow, *History of Islesborough, Maine* (Bangor, ME: Thomas W. Burr, 1893), 9–10.
4. James S. Leamon, *Revolution Downeast: The War for American Independence in Maine* (Amherst: University of Massachusetts Press, 1993), 104–127.
5. Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760–1820* (Chapel Hill: University of North Carolina Press, 1990), 15.
6. Taylor, *Liberty Men*, 15.
7. In a warranty deed, the grantor guarantees, or warrants, that they hold clear title to the property being sold. In a quitclaim deed, the grantor transfers, or quits, their right or claim to the property, without any warranty as to the status of the property title. There is no guarantee, with a quitclaim deed, that the grantee actually owns the property or that the title is free and clear; Taylor, *Liberty Men*, 12–13.
8. Taylor, *Liberty Men*, 28; 32–45.
9. Taylor, *Liberty Men*, 264; Farrow, *History of Islesborough*, 5–7.
10. Taylor, *Liberty Men*, 25; 28.
11. Daniel Vickers, *Farmers & Fishermen: Two Centuries of Work in Essex County, Massachusetts, 1630–1850* (Chapel Hill, University of North Carolina Press, 1994), 14–23; David Jaffee, *People of the Wachusett: Greater New England in History and Memory, 1630–1860* (Ithaca, NY: Cornell University Press, 1999), 13.
12. Historically, the term plantation referred to any new colony or settlement. Anthony Coombs Deposition (19 April 1794), *Grinnell v. Williams*. Suffolk County Courthouse, Clerk of the Supreme Court, Boston, Massachusetts. County Court Files—Lincoln, Hancock, and Washington Counties 1794. LDS Microfilm Rolls 0930918 and 0930919 (quote); Noah Miller Deposition (19 April 1794), *Grinnell v. Williams*.
13. The Dodges' description of their work suggests that they built a stake-and-rider fence, with stacked rails laid in a zig-zag pattern and held in place by crossed stakes. A heavy top rider, laid in the crotches of the stakes, secured the crossed

stakes, without the need of postholes. See Allen G. Noble, *Wood, Brick, and Stone: The North American Settlement Landscape, Volume 2: Barns and Farm Structures* (Amherst: University of Massachusetts Press, 1984), 122.

14. Noah Dodge Deposition (1 July 1794), *Grinnell v. Williams*; Rathburn Dodge Deposition (1 July 1794), *Grinnell v. Williams*.

15. Taylor, *Liberty Men*, 29.

16. Fields Coombs Deposition (19 April 1794), *Grinnell v. Williams*; Hosea Coombs Deposition (19 April 1794), *Grinnell v. Williams*; John Gilkey Deposition (19 April 1794), *Grinnell v. Williams*; Noah Miller Deposition (19 April 1794), *Grinnell v. Williams*.

17. Hosea Coombs Deposition (19 April 1794), *Grinnell v. Williams*.

18. *Ibid.*

19. Fields Coombs Deposition (19 April 1794), *Grinnell v. Williams* (quote); Noah Dodge Deposition (1 July 1794), *Grinnell v. Williams*; Samuel Pendleton Deposition (illegible date), *Grinnell v. Williams*. Several deponents testified that Williams had 600–700 acres fenced; however, a comparison of current land maps with the maps prepared by Noah Miller that show the holdings of Shubael, Joseph, and Benjamin Williams suggests that the Williamses' holdings totaled only about 500 acres. This discrepancy raises issues regarding the accuracy of other estimates of acreage and distances provided by deponents. The difficulty of accurately estimating distances and acreage in the wooded island environment may explain these discrepancies, but it is also important to note that both Pendleton and Dodge worked for Grinnell and may have had an incentive to exaggerate the size of Williams's holdings.

20. Anthony Coombs Deposition (19 April 1794), *Grinnell v. Williams* (first quote); Samuel Pendleton Deposition (date illegible), *Grinnell v. Williams* (second and third quotes); Noah Dodge Deposition (1 July 1794), *Grinnell v. Williams* (fourth quote).

21. Simon Dodge Deposition (1 July 1794), *Grinnell v. Williams*.

22. John Sprague Deposition (1 July 1794), *Grinnell v. Williams*.

23. Order to Constable of Islesborough (March 18, 1794) *Grinnell v. Williams*. In this order to attach goods of Shubael and Joseph Williams to the value of 20 pounds, Shubael Williams is styled a gentleman. Joseph Williams and William Grinnell are both styled yeomen. Jonathan Coombs, the constable, attached a chair belonging to Shubael Williams and a log owned by Joseph Williams.

24. Hosea Coombs Deposition (19 April 1794), *Grinnell v. Williams*; Ellison Lassell Deposition (19 April 1794), *Grinnell v. Williams* (first and second quote); Anthony Coombs Deposition (19 April 1794), *Grinnell v. Williams* (third quote).

25. Anthony Coombs Deposition (19 April 1794), *Grinnell v. Williams*.

26. Noah Dodge Deposition (1 July 1794), *Grinnell v. Williams*; Andrew Webber Deposition (7 April 1794), *Grinnell v. Williams*; Benjamin Williams Deposition (no date), *Grinnell v. Williams*.

27. Noah Dodge Deposition (1 July 1794), *Grinnell v. Williams*. The location of the landing is not known, but Dodge testified that two men, with four oxen, could

haul fifteen cords to the landing in a day.

28. Andrew Webber Deposition (7 April 1794), *Grinnell v. Williams*; John Sprague Deposition (1 July 1794), *Grinnell v. Williams*; Noah Dodge Deposition (1 July 1794), *Grinnell v. Williams*; Rathborn Dodge Deposition (1 July 1794), *Grinnell v. Williams*.

29. Andrew Webber Deposition (7 April 1794), *Grinnell v. Williams*.

30. Ibid.

31. Taylor, *Liberty Men*, 84.

32. Andrew Webber Deposition (7 April 1794), *Grinnell v. Williams*.

33. Samuel Pendleton Deposition (date illegible), *Grinnell v. Williams* (first quote); John Sprague Deposition (1 July 1794), *Grinnell v. Williams*; Hosea Coombs Deposition (4 July 1794); *Grinnell v. Williams* (second quote).

34. Amos Williams Deposition (25 June 1794), *Grinnell v. Williams*.

35. Amos Williams Deposition (25 June 1794), *Grinnell v. Williams* (first quote); Benjamin Williams Deposition (4 July 1794), *Grinnell v. Williams* (second, third, and fourth quotes).

36. Anthony Coombs, Jr. Deposition (7 July 1794), *Grinnell v. Williams* (first quote). Coombs's deposition suggests that non-residents exploited the island's timber resources frequently enough that their presence on the island required no explanation; Rathborn Dodge Deposition (1 July 1794), *Grinnell v. Williams* (second quote); Godfrey Trim Deposition (7 July 1794), *Grinnell v. Williams*; Joseph Woodward Deposition (7 July 1794), *Grinnell v. Williams*.

37. Farrow, *History of Islesborough*, 215–216; The full 1798 Direct Tax roll for Islesborough was compiled from the online records of the New England Historic Genealogical Society and is available from americanancestors.org; U.S. Census, Population Census, Islesborough, Hancock County, Maine; Roll 7; Family History Library Film 218677, available via subscription from ancestry.com.

38. Farrow, *History of Islesborough*, 298–300.