

CHAPTER V.

FRENCH AND INDIAN WAR - REV. DANIEL WILKINS – HUMPHREY HOBBS – STEPHEN PEABODY - HILLSBOROUGH COUNTY – LAWYERS IN THE COUNTY BEFORE THE REVOLUTION – CONDITION OF THE LAW IN 1771 - BENEFIT OF CLERGY – POOR DEBTORS - SHERIFF WHITING.

During most of the time from the opening of the contest between England and France in 1744, until the war ended in the conquest of Canada by the English, the towns in this vicinity were upon an exposed frontier and could not furnish any considerable number of soldiers for the regularly organized force. Each settler had his own castle to defend, and did more or less scouting duty in his own neighborhood. As in former wars, the Canada and Eastern Indians took sides with the French, who, coming in large numbers from Canada, prowled around our defenceless settlements, waylaying, murdering, and scalping, or taking captive to Canada, the settlers in the frontier towns, some of which, no farther off than Peterborough, Lyndeborough, and New Boston, were wholly deserted.

As a portion of our territory during the time of this war was a part of Amherst, we cannot well make allusion to this contest without quoting from the records of that town. The leading figure in the town of Amherst during its early history was Rev. Daniel Wilkins, who was settled over the church September 3, 1741, and was the minister of the parish more than forty years. His daughter, Abigail, was the wife of William Peabody, Jr., and there are today many descendants of this worthy clergyman living in the town of Milford. He died at the age of 72. The town of Amherst placed a monument at his grave in the cemetery in the rear of the town-house, with the following inscription:

“ ‘ ECCE ADDISCE VIVERE.’
E R E C T E D
By the Town of Amherst
To the Memory of
REV. DANIEL WILKINS,
WHO DEPARTED THIS LIFE FEB. 11, 1783, IN THE 73d YEAR
OF HIS AGE, AND 42d OF HIS MINISTRY.

“He was a Gentleman of good, natural, and acquired abilities; he received the honors of Harvard University at Cambridge, in 1736, and was separated to ye work of ye ministry in 1741, at which time his church consisted of only five male members and his Charge of fourteen Families. As a Minister he was laborious; his Public Discourses were liberal and Sentimental, pathetic, solemn, and persuasive. He was endowed with a venerable presence and Commanding Voice and an Emphatic Delivery.

“He had a tender Feeling for his Charge, and was a Partner with them in all their Joys and Sorrows; his conversation with them was Enlightening, Edifying, and Comforting.

“He was an Example of Patience and Meekness, and always endeavored to promote Peace. His natural Temper was remarkably Sweet and pleasant. He had a high relish for ye refined pleasures of Friendship. His behaviour was not ceremonious, but grave, Yet Sprightly and agreeable. In a word, he was a Devoted Minister and Faithful Christian, a good companion, a tender Husband, and an indulgent Parent.

“The Sweet Remembrance of the Just
Shall flourish when he sleeps in dust.’ ”

Rev. Dr. Davis, in his address at the one hundredth anniversary of the dedication of the Congregational meeting-house in Amherst, January 19, 1874, thus speaks of Pastor Wilkins:

REV. DANIEL WILKINS.

“The town of Amherst owed much to the ministry of Rev. Mr. Wilkins. We have no statistics from which to deduce exact statements respecting the results of his ministry. From all that I can gather, he was a man of great simplicity and purity of character. Having an intelligent and well balanced mind, he made himself the guardian and friend of his people. In their perils and discouragements he shared in their distresses, and bade them take heart. Twice,

probably, in the history of the plantation, his counsels prevented their abandoning the territory. He must have been patient, and of a scholarly turn of mind; he must have been diligent in pastoral labors, teaching them by families, or he would not have instructed the people so thoroughly. He was evidently wise and kind, or he would not have held so large a place in their affections. In person, he was a thickset but well-formed man of ruddy countenance and genial speech. At the age of sixty-three his mental faculties became impaired, and he was unequal to the duties of the ministry; but the people cared for him thoughtfully, seeking his presence and services in their families as long as he could venture abroad. When he died the town assumed the whole expense of his burial, and honored his grave by a monument on which they inscribed in glowing words their admiration of his virtues and their grateful remembrance of his laborious services as their minister.”

Mr. Wilkins by general consent seems to have been the spokesman of the town, addressing many petitions to the governor and assembly in the name of the whole community. As early as 1744, we find him at Portsmouth, seeking aid for his exposed townsmen, whose trials and defenseless position he set forth in a most pathetic appeal. This appeal, with those of later date, had much influence in securing scouts for his parish and vicinity. To the presence of the scouts thus furnished we must refer the immunity which this region has from Indian depredations during the years immediately following 1744.

In the sketch of Monson we have given the names of several persons who are known to have served under the authority of the state as scouts or soldiers in the French and Indian wars. It is impossible, with imperfect records, at this late day to obtain the names of all the worthy and courageous men then living upon territory now within the limits of Milford, who in those dark days did the state good service, but among them stands out conspicuously the name of

CAPTAIN HUMPHREY HOBBS.

Mr. Hobbs came to Amherst from Middleton as early as 1740, and was one of the original members of the church in Souhegan West, serving for a short time as deacon. Upon the breaking out of the French and Indian War in 1744 he surrendered the office, and entered the service of the state of Massachusetts as a ranger. He afterwards settled in the Mile Slip, which was his home at the time of his decease in 1756. His daughter Susannah was the wife of Aaron Peabody. The late Deacon Humphrey Peabody was his grandson, and Addison Peabody, now resident in town, is his great-grandson. The location of his dwelling near the Wilton line on the Joel H. Gutterson farm in the southwest part of the town, is still pointed out.

For several years after the settlement of the state line, Massachusetts continued to garrison the forts on the Connecticut river as far north as No. 4, now Charlestown, N. H.; and Massachusetts soldiers, in common with those of other states, were occupying an extensive territory, in endeavors to prevent an invasion of New England by the French and Indians.

Hobbs had a most honorable career as a captain in this service. The list of men making up one of his companies, as well as other papers relating to his campaigns, are still in possession of his descendants in town.

The following account of one of Dea. Hobbs's encounters with the Indians is taken from Hall's History of Eastern Vermont, published in 1858:

“In the month of February, 1748, the Massachusetts general court directed the number of men at Fort Massachusetts, now Adams, Mass., and Number Four, now Charlestown, N. H., to be increased to one hundred in each place. Of these, a suitable force was to be employed to intercept the French and Indian enemy in their marches from Wood creek and Otter creek to the frontiers. As an incentive to vigilance, a reward of one hundred pounds was ordered to be divided in equal parts among the officers and soldiers of any scouting party that might capture an Indian or produce the scalp of one they had killed. Capt. Stevens was again appointed commander at Number Four, and Capt. Hobbs was ordered to the same post as second in command. On the twenty-fifth of June, Capt. Hobbs, with forty men, was ordered from Number Four to Fort Shirley, in Heath, one of the forts of the Massachusetts cordon extending from Fort Massachusetts to Number Four. On Sunday, June 26, having proceeded about six miles, they halted at a place about twelve miles northwest of Fort Dummer, in the precincts of what is now the town of Marlborough, Vt. A large body of Indians, who had discovered Hobbs's trail, had made a rapid march in order to cut

him off. They were commanded by a resolute chief named Sackett, said to have been a half blood, a descendant of a captive taken at Westfield, Mass.

“Although Hobbs was not aware of the pursuit of the enemy, he had posted a guard on his trail, and his men, having spread themselves over a low piece of ground covered with alders intermixed with large trees, and watered by a rivulet, had prepared their dinner, and were regaling themselves at their packs. While in this situation, the rear guards were driven in from their posts, which was the first intimation given of the presence of the enemy.

“Without knowing the strength of his adversaries, Capt. Hobbs instantly formed his men for action, each one by his advice selecting a tree as a cover.

“Trusting in the superiority of their numbers, and confident of success, the enemy rushed forward with shouts; but Hobbs’s well-directed fire, by which several were killed, checked their impetuosity, and caused them to retreat for shelter behind the trees and brush. The action now became warm, and a severe conflict followed between the sharpshooters. The two commanders had been known to each other in times of peace, and both bore the character of fearless men. Sackett, who could speak English, frequently called upon Hobbs in the tones of a stentor to surrender, and threatened in case of refusal to destroy his men with the tomahawk. Hobbs, with a voice equally sonorous, returned the defiance, and urged his antagonist to pit his threat into execution.

“The action continued for four hours, Hobbs’s party displaying throughout the most consummate skill and prudence, and neither side withdrawing an inch from its original position. The Indians not unfrequently approached the line of their adversaries, but were as often driven back to their first position by the well-directed fire of the sharp-sighted marksmen. Finding Hobbs determined on resistance, and that his own men had suffered severely in the struggle, Sackett finally ordered a retreat, and left his opponent master of a well fought field.

“Hobbs’s men were so well protected that only three, Ebenezer Mitchel, Eli Scott, and Samuel Gunn, were killed in the conflict. Of the remainder, Daniel McKinney, of Wrentham, had his thigh broken by a ball from the enemy, and was thereby disabled for life. Samuel Graves, Jr., of Sunderland, a lad seventeen years of age, received a ball near the middle of the forehead, which went through part of his head, and came out on the left side, almost over his ear, bringing with it almost two spoonfuls of his brains; he, however, recovered. Nathan Walker, of Sudbury, received a wound in the arm, and Ralph Rice was injured.

“Many of the enemy were seen to fall, but their actual loss was never certainly known, as they took effectual measures to conceal it.

“After the Indians had left, Hobbs and his men remained concealed until dark, fearing another attack, but there being no signs of the enemy, they gathered their packs, took up the dead and wounded, and, after burying the former under some old logs about half a mile from the scene of action, and conducting the latter - two of whom they were obliged to carry - to a place about two miles distant, they encamped for the night. They arrived at Fort Dummer in Brattleborough on the 27th at four o’clock in the afternoon, and sent the wounded men to Northfield where they could receive proper medical attention.

“The number of Sackett’s force, though not certainly known, was estimated at four times that of the English, and it is probable that had he known his superiority, he would have adopted a different method of warfare. The battle was regarded by the people in the vicinity as a masterpiece of persevering bravery, and served to a certain extent to remove the unfavorable impression produced by the defeat of Melvin’s scouts a short time before. ‘If Hobbs’s men had been Romans,’ says one writer, ‘they would have been crowned with laurel, and their names would have been transmitted with perpetual honors to succeeding generations.’ ”

In 1758, a regiment of New Hampshire troops was raised, commanded by Colonel John Hart, of Portsmouth, a part of which was ordered to join a second expedition against Louisburg, and the remainder to serve on the western

frontier under Lieutenant-Colonel John Goff of Bedford. In this regiment Stephen Peabody,¹ son of William Peabody, Sr., enlisted at the age of fifteen years and seven months, under Captain Nehemiah Lovewell, of Dunstable, and served eight months.

HILLSBOROUGH COUNTY.

The political history of New Hampshire to the middle of the eighteenth century is simply the history of the southeastern portion of the state, Portsmouth, Exeter, and Dover being the towns of consequence at that time. Previous to the year 1770, the entire state, for all financial and judicial purposes, was a single county. All business of a public nature was transacted at one of the three towns named, and most of it at Portsmouth. All the royal executive officers resided there. Portsmouth then had a population of more than four thousand, and was practically the capital of the province. As the province increased in population the people demanded other and smaller political divisions, in which ordinary business could be transacted.

In 1767, John Wentworth, the second of that name, was appointed governor of New Hampshire, and one of the measures brought forward at the opening of his administration comprehended the division of the province into counties, and the erection of a judicial system to meet the wants of the entire state. It was opposed by the residents of what is now Rockingham county, on the ground that it would increase the expense of the province without corresponding advantages. The governor favored the measure as one likely to develop the province, an end to which he devoted his entire energies, penetrating the wilderness so far as to lay out an estate and erect an elegant mansion at Wolfborough upon Lake Winnepesaukee.

The matter was debated in several sessions of the Assembly before all points of difference could be reconciled. The number of counties and lines of division were not easily agreed upon. It was finally settled that the province should be divided into five counties, with an ample judiciary system. The act took effect in the spring of 1771.

Governor Wentworth named the counties after his friends in England - Rockingham, Stafford, Hillsborough, Cheshire, and Grafton. Sullivan has since been taken off Cheshire, Coös from Grafton, Merrimack from Rockingham, and Hillsborough, Carroll, and Belknap from Stafford.

Hillsborough county, upon its organization, included all the territory of the present county, excepting the town of Pelham which for a time formed part of Rockingham county. It also included all of the present county of Merrimack west of the Merrimack river, excepting the town of Bow, the city of Concord, and portions of other towns whose lines have been changed within a few years. The territory thus set off for the county of Hillsborough was not all incorporated into towns. Some of it was not even settled, and some lands then settled remained unincorporated for several years. The population of the county at the time of its organization was not far from fifteen thousand. There were eighteen incorporated towns within the present limits of the county, ranking as follows in point of population

¹ Before the breaking out of the War of the Revolution, Stephen Peabody held the office of coroner of Hillsborough county. He was an ardent patriot, and before the commencement of hostilities made himself peculiarly obnoxious to the royal government. The last official act of the last royal governor of New Hampshire, John Wentworth, was to issue a long precept or proclamation, called a writ of *supersedeas*, removing Peabody from the office of coroner, and denouncing him as a man dangerous to good government. This interesting document bore date, March 15, 1775.

Peabody was adjutant of Reid's regiment at Bunker Hill, and afterwards was major of the regiment under Colonel Wyman sent to reinforce the army in Canada in 1776; was a volunteer as captain in the alarm as to Ticonderoga in June, 1777; later an aid to General Stark at the Battle of Bennington, and in 1778 was in command of a regiment, (lieutenant-colonel) in General Wyman's brigade for the defence of Rhode Island.

His earlier service was performed while he resided with his father on the old Peabody farm, but before the Revolution he had married, and established himself in what is now Mont Vernon, a little northeast of Purgatory falls, where he erected a substantial residence. He died in the year 1779, not being permitted to see the close of the war in the earlier part of which he had taken such an active part. His remains rest in the cemetery in the village of Mont Vernon.

and valuation: Amherst, Hollis, New Ipswich, Dunstable (now Nashua), Merrimack, Nottingham West (now Hudson), Peterborough, Litchfield, Bedford, Goffstown, Derryfield (now Manchester), Wilton, New Boston, Mason, Weare, Lyndeborough, Temple, and Hillsborough. More than half the population of the county at this time resided in the six towns, Amherst, Hollis, New Ipswich, Dunstable, Merrimack, and Hudson.

New Hampshire was settled by immigration coming in through four different channels, the Portsmouth and Piscataqua colonies, the Londonderry colony, the settlers coming into the state by way of Dunstable, and the line of immigration coming up the valley of the Connecticut river. The county of Hillsborough was peopled from the second and third of these sources, and very largely from the Londonderry settlement.

No sooner was the demand for the division of the state into counties in a fair way to be answered affirmatively, than the question of the selection of the shire-town began to be agitated. Three towns were named in this connection—Amherst, Hollis, and Merrimack. Amherst was soon agreed upon, it being the most populous town, and located near what was then the center of population and near the present geographical centre of the county. Amherst then had as large a population as to-day, but it must be remembered that its territorial limits have been contracted, the towns of Milford and Mont Vernon having been taken from it. For a long time it was a place of business and social consequence; many people of culture and distinction have there resided. A lack of water-power and railroad facilities have cost the town the prominence it once had, and it has receded from the first to the tenth place in rank among the towns of the county in the matter of population and valuation. It was the sole shire-town for the present county limits until 1846, when a term of court was established at Manchester, and another term at Nashua in 1857. In 1864 a jail was legally established at Manchester, and the old stone building at Amherst was discontinued. In 1866 the records for so long time at Amherst, by vote of the county were removed to Nashua, where they are now kept in substantial buildings and vaults. In 1879 the only term of court then held at Amherst was abolished, and the town, after an honorable record of one hundred and eight years, ceased, in the language of Parson Wilkins, to entertain the courts.

There were but three lawyers resident in the county before the Revolution, Atherton at Amherst, Champney at New Ipswich, and Claggett at Litchfield; but prominent attorneys from other parts of the state attended all the sessions of the court.

It would be useful, and perhaps not uninteresting, to examine into the condition of the statute and common law at the time of the organization of the county. Our limits will not permit anything like an exhaustive enumeration of the laws then in force, and allusion only will be made to some most at variance with the present code.

In 1771, Lord Mansfield was chief-justice of the court of King's Bench in England, and for nearly half a century had devoted his entire energies to perfecting the common law of that realm; neither before, nor since, has any one man done so much towards making secure the reciprocal rights of the government and governed, judged by the standard of the civilization of that day. The common law of England was brought over and became a part of the law of the colonies by the settlers of this continent; various modifications were made in the statutes to conform to the necessities of a new country, but in the main the inhabitants of the state were amenable to the same legal conditions as the inhabitants of England one hundred and twenty two years ago. There were eight capital crimes in the province at that time, now but one; severe penalties were meted out for small offences; matters which are now left to the tribunal of the individual conscience were then made subjects of statute law, the violations of which were punishable in courts; the whipping-post, the pillory, and the stocks were recognized as suitable appliances to have a place in the machinery of a Christian government, and all existed in connection with the jail and courthouse until the commencement of the present century. In punishment of crime, distinctions were made founded upon the color or condition of the party to suffer the penalty.

Benefit of clergy, or the exemption of the clergy from penalties imposed by the law for certain crimes, was in existence in, England and not abolished until the reign of George IV. The history of this exemption is long, and was thoroughly woven into the texture of English criminal law; its practical working was to exempt the clergy from the punishment affixed to most crimes; it, was no inconvenient thing to be able to plead benefit of clergy, and, at one time, not only those regularly in orders, but all retainers of the church and some others, claimed the privilege. To make certain who were entitled to this plea, before the time of Henry VII a statute was passed extending the exemption to such only as could read.

A single instance is found where this plea was made in this county in colonial times. Israel Wilkins, of Hollis, was indicted at the September term, 1773, of the supreme court, for the murder of his father; he was found guilty of manslaughter; he then prayed the benefit of clergy, which was granted; the court branded the brawny part of his thumb with the letter T, confiscated his personal estate, and let him go.

A creditor: until the passage of the Revised Statutes in 1842, upon any debt could seize his debtor, and, in default of payment, throw the victim into prison and keep him there until he had paid the last farthing.

One of the chief-justices of the court of King's Bench was imprisoned early in life for debt, and during his confinement of five years entered upon and completed his legal studies, and became one of the best of English pleaders.

Defendants held for this purpose at first were confined as closely as prisoners awaiting trial or serving out a sentence, but as the minds of men became liberalized they were allowed some privileges not common to the average criminal. Jail limits were established in time, and the debtor allowed the privilege of going a certain number of rods from the jail. Within the present century men have been confined at Amherst for debt, one, two, three, and even four years, and in several instances carried on extensive mercantile business while prisoners at the suits of creditors.

A lawyer by the name of Shattuck, held for debt, established his family within the jail limits, built a house, and practiced law with considerable success for several years.

The law is now so lenient that it has become difficult to collect honest debts. It is not an uncommon thing to find the wife owning the homestead-and a pretty large one sometimes-and the husband owing all the debts.

At the October term, 1771, the first grand jury ever empanelled in the county was called. General John Stark was one of the jury. One indictment made up the sum total of the findings of the grand jury. The unfortunate individual by them presented answered to the name of Jonas Stepleton. He was brought to the bar, and being arraigned, pleaded guilty, and threw himself upon the mercy of the court. The mercy of the court was dealt out as follows:

“It is ordered that the said Stepleton be whipped twenty stripes on the naked back at the public whipping-post, between the hours of one and two of the afternoon of this 3d day of October, and that he pay Nathan Baldwin, the owner of the goods stolen, forty-four pounds lawful money, being tenfold the value of the goods stolen (the goods stolen being returned) and that in default of the payment of said tenfold damages and costs of prosecution, the said Nathan Baldwin be authorized to dispose of the said Jonas in servitude to any of His Majesties' subjects for the space of seven years, to commence from this day.”

In the superior court, a little later, one Keef was convicted of arson, and received the following sentence:

“ It is therefore considered by the court that the said Michael Keef is guilty, and it is ordered and adjudged that he sit one hour on the gallows with a rope round his neck, and be whipped thirty stripes on his naked back, on Thursday, the tenth day of June next, between the hours of ten and twelve o'clock in the forenoon; that he be imprisoned six months from the said tenth day of June, and give bonds for his good behaviour in the sum of one hundred pounds, with two sureties in the sum of fifty pounds each, for the space of two years from the expiration of said six months, and pay the costs of prosecution, taxed at nine pounds, seven shillings and ten pence, and stand committed till sentence be performed.”

Benjamin Whiting, a resident of Hollis, was sheriff of the county at the time of its organization. He adhered to the king, quitted the country on the breaking out of hostilities, was proscribed and forbidden to return, and his estate was confiscated. He was a zealous officer of the king, and a representative man among the Tories of his time.

Among the depositions used on the trial of Whiting was the following made by Thompson Maxwell, of whom more will be said upon another page.

“Thompson Maxwell testified and said that in the month of May last past, I was riding from Hollis to Amherst, in New Hampshire government, in company with Benjamin Whiting, Esq., who asked me what I thought of Major Sullivan's taking away the guns and powder from Castle William and Mary? I answered that I looked upon it as a

piece of good conduct. Then said Whiting answered and said Sullivan was a d--d hog and villain for so doing, and a d--d rebel, and deserved to be hanged, that this spring the King's standard would be set up in America, and proclamation made that those that would come in and enter their names would have a pardon, and those that would not would be deemed rebels and suffer death jointly, and that within three months said Sullivan and John Hancock would be hanged. The said Whiting also said he hoped I would come in and enter my name.

“ Sworn to before
“Jonas Dix, Jus. Peace.

“July 6, 1775.”