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THE FEOFFEES: THE ESSENTIALS OF THE STORY

The land the Feoffees own at Little Neck was bequeathed to the Town of Ipswich by William Paine in 1660 for the benefit of the "free scoole of Ipswich" forever. The text of his will is attached. The town put the land in the care of a four-member board of trustees - then and thereafter known as the Feoffees - who would find their own successors if anyone dropped out.

Disputes arose between the town, the Feoffees, and their tenants regarding their respective responsibilities. In 1756 the Great and General Court in Boston passed a temporary statute, effective for ten years, confirming the Feoffees' responsibilities. It declared that the property they held in trust was "for the use of school-learning [in Ipswich] forever". The governance of the trust was amended to include the three most senior selectmen as members of a joint committee with the Feoffees. The text of the statute is attached.

When the 1756 statute expired in 1766 the General Court passed another using almost the same language, effective for the next twenty-one years (copy attached). When this one expired in 1787, after the Revolution, the Massachusetts House and Senate made the 1766 statute permanent (text attached). The 1766 statute remains the last word on the management of the trust.

Currently the four Feoffees descending from the original four are Donald Whiston, James Foley, Peter Foote, and Alexander Mulholland. Recently only the chairman of the Board of Selectmen (last May it was Jim Engel) has sat with the Feoffees at their annual meeting.

The Feoffees continue to hold the land at Little Neck. It is currently assessed \$13,354,500. Over the years the Feoffees have allowed tenants to build houses on the land, owned by the tenants, not the Feoffees. The houses are assessed at \$9,200,000 (more or less). Both the land and the houses are taxed by the Town (as they would be if they were in other hands). The Feoffees collect the taxes for the Town.

How much does this charitable trust for the benefit of the Ipswich schools pay over for that purpose? \$25,000 in 1994-95. At their annual meeting in May the Feoffees talked of contributing \$20,000 in 1996.

\$25,000 is only 0.19 percent of \$13,354,500. If you were the private beneficiary of a trust which paid you so little you would take the trustees to court.

The Feoffees have forgotten their obligation to the schools and have concerned themselves more with the welfare of their tenants. There are 150 houses at Little Neck. The plots they stand on are assessed at \$12,431,000,

which averages out to \$82,873 per house. The Feoffees charge a rent of \$800 to tenants who live at the Neck all year, \$600 to those who are there only for the summer. Assume an average rent of \$650 (because the year-rounders are in a minority). This is only 0.8 percent of the value of the average plot. (This is not considering the value of the unbuilt land at Little Neck, which the tenants enjoy in common). What other landlord would charge so little for the privilege of using his land - especially land in such a beautiful location?

What are the possibilities, even the remote possibilities? If the value of the land at Little Neck were invested in financial securities even a conservative board of trustees would expect a 5 percent net return. 5 percent of \$13,354, 500 is \$667,725. We may never be able to get that much for the schools out of William Paine's bequest, but there is clearly a lot of room for improvement.

Mr. Paine died Oct. 10, 1660. In his will, signed Oct. 2 1660, he made generous remembrance of the school.

"I give unto the free scoole of Ipswitch the little neck of land at Ipswitch commonly knowne by the name of Jesery's neck. The which is to bee and remaine to the benifitt of the said scoole of Ipswitch forever as I have formerly Intended and therefore the sayd land not to be sould nor wasted. I give unto the college at Cambridge the some of Twenty pounds not to be expended but to remain as a stock to the College aforesayd forever."

Suffolk Reg. of Probate, 1:346.

PROVINCE LAWS.—1755-56. [CHAP. 26.]

CHAPTER 26.

AN ACT FOR REGULATING THE GRAMMAR SCHOOL IN IPSWICH, AND FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE SAME.

WHEREAS divers piously disposed persons in the first settlement of ^{Preamble} the town of Ipswich, within the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in said town forever; of which feoffees the honourable Thomas Berry, Esq^r., Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, are the only survivors; and whereas the town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same use, give and grant to certain persons in said grant mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, in the same town, with some other lands adjoining; all which farm and lands were soon after leased out for the space of one thousand years, the rents to be applied to the uses of learning in said town as aforesaid; but as is apprehended by some, no power was given by the said town to their trustees to appoint successors in that trust for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, considerable disputes have already arisen between the said town and the feoffees; and not only so, but some doubts are started whether it is in the power of said town or feoffees to compel the payment of the rents of the farm and adjoining land before mentioned; and inasmuch as the said town of Ipswich, by their vote of the twenty-second day of January, one thousand seven hundred and fifty-six, by and with the consent of the aforesaid feoffees, have agreed to apply to this court for aid in the manner in said vote mentioned; wherefore,—

Be it enacted by the Governour, Council and House of Representatives,
[SECT. 1.] That from and after the first day of March next, for and during the space of ten years, the aforesaid Thomas Berry, Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, the present surviving feoffees on the part of the private persons granting lands as aforesayd, together with Francis Choate, Esq^r., Capt. Nathaniel Tredwell and Mr. John Patch, Junr., three of the present selectmen of said town, shall be and they are hereby incorporated a

Feoffees of Ipswich School appointed.

Their power.

joint committee or seofees in trust, with full power and authority by a majority of them to grant necessary leases of any of said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities, and, if need be, to sue for and recover the same; to appoint grammar-school masters from year to year and time to time, and agree for his salary; to apply the rents and annuities for the paym[en]t of his salary and other necessary charges arising by said school; to appoint a clerk and treasurer, and if found necessary, to impose some moderate sum and sums of money to be paid by such scholars as may attend said school, for making up and supplying any deficiency that may happen in the yearly income and annuities of said lands; for defr[a][e]lying the necessary charges that may arise by said school, and enforce the payment; to inspect said school and schoolmaster, and in general to transact and order all matters and things relative to such school, so as may best answer the original intent and design thereof.

Account of
seofees' pro-
ceedings to be
laid before the
town annually.

[SECT. 2.] And the said committee or seofees and their successors shall, at the anniversary meeting of said town in March, yearly, during the continuance of this act, lay before said town a fair account of their proceedings relating to said school for the year then last past.

And for the continuance of the succession of the before-named committee or seofees,—

Be it enacted,

[SECT. 3.] That if either the said Thomas Berry, Daniel Appleton, Samuel Rogers or Benjamin Crocker, shall decease, or remove out of said town of Ipswich, or otherwise become uncapable or unfit to discharge said trust, it shall and may be lawful for the surviving and qualified remainder of those four gentlemen to appoint some other suitable person or persons in his or their room so deceasing, removing or otherwise unqualified, according to the original intention of their first appointm[en]t, so as to keep up the same number of four seofees thus constituted, and no more; and no person to be appointed a seofee but an inhabitant of the town of Ipswich: and the aforementioned selectmen shall, from year to year, be succeeded by the three oldest in that office of the selectmen of said town for the time being, other than such of them as may be also one of the aforesaid four seofees; and in case it should at any time happen that there is not three selectmen chosen by said town that may have served the town before in that office, the deficiency shall be supplied by those first named in the choice of the town.

Provision for the
succession of
said seofees, &c.

And for rend[e]ring the whole more effectual,—

Be it further enacted,

[SECT. 4.] That the afores[ai]d committee or seofees in trust may, in all matters relative to s[ai]d grammar school, in which they may by force of this act be concerned, sue or be sued by the name or character of the seofees of the grammar school of the town of Ipswich, in the county of Essex; and in this power their successors shall be included with respect to the transactions of those that may have preceded them in said office.

[SECT. 5.] This act to continue and be in force for the space of ten years, and no longer. [Passed February 17; published February 26.] 1756.

1766

PROVINCE LAWS.—1765-66.

CHAPTER 5.

AN ACT FOR REGULATING THE GRAMMAR SCHOOL IN IPSWICH, IN THE COUNTY OF ESSEX, AND FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE SAME.

Preamble.

Met. 584, 594.

WHEREAS divers piously disposed persons, in the first settlement of the town of Ipswich, in the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint, to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in the said town forever; of which feoffees John Choate, Samuel Rogers, Aaron Potter and Francis Choate, Esqrs., are the only survivors; and whereas the said town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same uses, give and grant to certain persons in their grants mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, in the said Ipswich, with some other lands, the rents of which to be applied to the use of learning in said town as aforesaid; but, as is apprehended, no power was given by the said town, to their trustees, to appoint successors, in that trust, for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, disputes have heretofore arisen between the said town and the said feoffees; and also some doubts have arisen whether, by the constitution of those grants as aforesaid, it is in the power, either of the said town or feoffees, to compel the payment of the rents of said farm and other lands granted by said town, as before mentioned; and whereas, for the removal of the aforesaid difficulties, on the joint application of both said town and the then feoffees, this court did, in the twenty-ninth year of his late majesty King George the Second, by one act then passed, intituled "An Act for regulating the grammar school in Ipswich, and for incorporating certain persons to manage and direct the same," empower the then surviving feoffees, with three successors, together with part of the selectmen of said town, for the time being, as an incorporate body, to manage and direct the affairs of said school for ten years then next coming, in manner as in said act is expressed, which ten years will expire on the first day of March next; and whereas it has been found by experience that the said act has been of great advantage to the interest of learning in said town, and that all doubts and disputes aforesaid, from the passing of said act, have ceased, and the parties concerned have desired the continuance of the aid of this court touching the premisses; wherefore,—

Be it enacted by the Governor, Council and House of Representatives,

[SECT. 1.] That from and after the first day of March next, the aforesaid John Choate, Samuel Rogers, Aaron Potter and Francis Choate, Esqrs., the present surviving feoffees on the part of the private persons granting lands as aforesaid, together with Michael Farlow, Samuel Burnham and Samuel Lord the third, three of the present selectmen of the said town of Ipswich, shall be and they are hereby incorporated a joint committee or feoffees in trust, with full power and authority by the whole, or the major part of them, to pass necessary leases of any of said lands, not prejudicial to any lease already made and not exceeding the term of twenty-one years at any one time; also to demand and receive all rents and annuities, on such other grants or leases relative to said school, that now is or that hereafter may be, and, if need be, to sue for and recover the same, either by themselves or by their attorney; also to appoint a clerk and treasurer, also a grammar-school master, from year to year; and, from time to time, to agree with him and them for his and their salaries; and to apply the said rents, grants and annuities for the payment of his and their salaries, and for the discharge of other necessary expences attending this affair, so far as those rents, grants and annuities will go; with a like power

Feoffees of
Ipswich school
appointed.

Their power.

1766

eral, to transact and order all matters and things relative to said school, and to all the lands, grants, rents and annuities that do now, or that may hereafter, belong to said school, arising from the donations aforesaid, so as best to answer the general design and intent thereof; annually laying an account of their proceedings in this trust before the said town, at their March meeting, for their inspection.

And for the continuance of the succession of the aforesigned committee or feoffees,—

Be it further enacted,

[SECT. 2.] That if either the said John Choate, Samuel Rogers, Aaron Potter or Francis Choate, shall decease, or move out of the said town of Ipswich, or otherwise become incapable or unfit to discharge said trust, or unreasonably neglect to do it, it shall and may be lawful for the surviving and qualified remainder of those four persons, from time to time, to appoint some other suitable and qualified person or persons in his or their room so deceasing, removing or otherwise unqualified, or neglecting his or their duty as aforesaid; which power of appointment shall descend to those so appointed, so as always to have four of said feoffees constituted in this way, and no more; no person at

Vacancies
among the
feoffees, how to
be filled up.

any time to be appointed that is not an inhabitant of the said town of Ipswich: and the selectmen aforesaid, by this act incorporated as aforesaid, shall, from year to year, be succeeded by the three eldest, in that office, of the selectmen of that town, other than such of them as be also one of the feoffees constituted as aforesaid; and in case it shall so happen, at any time, that there are not three selectmen chosen by the said town who have served in that office before, then those first named in such choice shall succeed as aforesaid.

And, for rendering the whole more effectual,—

Be it further enacted,—

[SECT. 3.] That the aforesaid committee, or feoffees in trust, may, in all matters relative to said grammar school, in which they may by force of this act be concerned, sue or be sued by the name of Feoffees of the Grammar School in the town of Ipswich, in the county of Essex; and in this power their successors shall, from time to time, be included, with respect to the transactions of those who may have succeeded them in that trust.

Feoffees may
sue or be sued,
as such.

Limitation.

[SECT. 4.] This act to continue and be in force for the term of twenty-one years from the first day of March next, and no longer.

[Passed June 21; published June 25.

1766

1786.—Chapter 54.

[January Session, ch. 4.]

Chap. 54 AN ACT MAKING PERPETUAL, AN ACT RESPECTING THE GRAMMAR SCHOOL, IN IPSWICH, IN THE COUNTY OF ESSEX.

Preamble.

Whereas a Law respecting the said School, was enacted in the year one thousand seven hundred and sixty five,

be in force for the term of twenty one years, from the first day of March, One thousand seven hundred and sixty six, which Law has been found beneficial, and to answer the purposes for which it was enacted:

Be it therefore Enacted, by the Senate, and House of Representatives, in General Court assembled, and by the authority of the same, That the said Law, entitled, "An Act Enacting clause. for regulating the grammar School in Ipswich, in the county of Essex, and for incorporating certain persons to manage and direct the same," Be and hereby is made perpetual.

February 14, 1787.

1787

CIRCULATED AT FEOFFEES
MAY MEETING, 1996.

FEOFFEES OF THE GRAMMAR SCHOOL
Ipswich, Massachusetts

Balance, July 1, 1994	\$ 16,519.17
Cash Received	422,643.50
Expenditures	411,872.63
Balance, June 30, 1995	27,290.04

Little Neck Valuation	\$ 22,683,000.00
Buildings and Land	27,290.04
Cash in First National Bank of Ipswich	23,000.00
Reserve for Erosion Account	20,000.00
Reserve for Title 5 Account	<u>22,352.30</u>
Reserve for Ipswich Schools Account	\$ 22,775,642.34

SCHEDULE I
Cash Receipts
July 1, 1994 - June 30, 1995

Buildings and Land Taxes	\$303,809.05
Rents	<u>118,834.45</u>
	\$422,643.50

SCHEDULE A

Balance, July 1, 1994	\$ 16,519.17
Cash Receipts	<u>422,643.50</u>
	\$439,162.67
Expenditures - Schedule II	<u>411,872.63</u>
	\$ 27,290.04

SCHEDULE II
Expenditures
July 1, 1994 - June 30, 1995

Taxes \$303,809.05

*Town of Ipswich

Repairs and Upkeep

*Community Center	7,980.86
*Docks	1,200.00
*Split Rail Fence	4,751.80
*Playgrounds	1,865.00
*Tree and Brush Cutting	16,815.19
*Road Paving and Repair	8,448.88
*Maintenance	2,056.97

Other Expenses

*Salaries	5,500.00
*Transportation	500.00
*Police	5,037.01
*Office Expense	902.36
*Insurance	20,100.00
*Meetings	515.89
*Legal	1,046.40
*Gift to Ipswich Schools	25,000.00
Abated Taxes Returned	843.22
*Transfer Funds to Title 5 Account	<u>5,500.00</u>
	\$411,872.63

2

HOW DID THE FEOFFEES GET STARTED?

The Feoffees are one of the oldest institutions in town, nearly as old as the Board of Selectmen, or the Whipple House. They owe their origin to a worry about education which was as acute in the town's early days as it is today.

One of the concerns of the early settlers is still with us – that young people acquire the skills needed to support a growing economy. The settlers found that there were not enough skilled craftsmen among them to help produce the things they needed, or to produce goods which they could export in return for manufactured goods from Europe – such craftsmen as carpenters, wheelwrights, blacksmiths, ands shipbuilders. A second concern was that the colony continue to find learned pastors like those who had come over with the settlers.

Then as now educational mandates came from Boston. Responding in 1642 to what it saw as "the great neglect in many parents & masters [of apprentices] in bring up their children in learning and ..employments which may be profitable to the common wealth", the General Court ordered every town to redress "this evil" by making sure that children were suitably employed and that they were taught to "read & understand the principles of religion and the capital laws of the country". It threatened with fines parents and masters of apprentices who failed to comply.¹

Five years later the Court addressed again the importance of children learning to read and turned also to the importance of providing an education that would start bright boys on the road to becoming ministers. Already in 1636 it had founded Harvard as a college for ministers. The issue now was to have students prepared to go there.

Declaring that it was "a chief project of that old deluder Satan to keep men from knowledge of the Scriptures" and expressing its concern "that learning not be buried in the grave of our fathers", the Court ordered all towns with 50 households to appoint someone "to teach all children as shall resort to him to write and read", and ordered all towns with 100 households to set up a grammar school with a school master capable to preparing youth "for the university". The Court left it open whether parents or taxpayers paid the wages of the reading and writing teacher, so long as parents were not required to pay more than in other towns. It said nothing about who should bear the cost of setting up the grammar school and paying the grammar school master.²

Although there are references in the Ipswich town records to other orders coming down from Boston there is no mention of either of these regarding education. However, in 1642, within three months of the first Court order, Town Meeting anticipated the second order by voting "that there shall be a free school"

¹ Records of the Governor and Company of Massachusetts Bay in New England, June, 1642

² Massachusetts Bay Records, November, 1647.

and that a committee should plan for it.³ The following year it agreed that there should be an annual appropriation to support the school - unfortunately the amount approved is illegible – and that there should be up to seven “free scholars”.⁴

Was this a proposal for a school to teach children “to read and understand the principles of religion” or, as is more likely, was the aim to set up a grammar school as Boston, Cambridge, and Roxbury had recently done in founding their “Latin” schools - schools still familiar to us? If this was the aim, a person the town may have had in mind for the position of master was one Lionel Chute, who came to Ipswich in 1639. When his estate was inventoried after his death in 1645 his occupation was listed as school master. But there is no record of his appointment, or of his having the qualifications of the school masters appointed in Boston and Cambridge. Preparing candidates for Harvard was a tall order, for both students and teachers. In the words of a pamphlet put out by Harvard in 1643, a candidate had to be able to read and understand Cicero “or such like classical author *ex tempore* , and make and speak true Latin in verse and prose...and decline perfectly the paradigms of nouns and verbs in the Greek tongue.” Only then was he admissible, “and not before”.⁵

No record survives of yearly appropriations by the town, still less of a school building. Whatever the town was doing to support a school, it recognized in a few years that it needed to do more. Two prominent town citizens appear to have pushed the case, Robert Paine and his older brother, William. In November, 1650, the town granted to the two brothers “and such others as the Town shall appoint” a large tract of land beyond the “Chebaco river” - land in what is now Essex – to provide an income “for the use of the School”.⁶ In January, 1651, the committee found a tenant willing to rent for 14 pounds a year, and with extraordinary faith in the stability of the English pound and Essex county land values, and perhaps with millennial visions of the durability of the commonwealth under God’s protection, gave him a thousand-year lease. (Their successors no longer own the land. Its sale was authorized by statute in 1906).

In 1652 the town took another step “for the ordering of the Schools” (the plural suggests that it had more than one school in mind) by appointing a nine-member committee “to receive all such sums of money as have, and shall be given towards the building or maintaining of a Grammar School and Schoolmaster, and to disburse...such sums as are given to provide a school house and schoolmaster’s house...with all convenient speed.” They were also authorized to choose the schoolmaster and to increase his income as they saw fit by levying tuition. Further, they were directed “to consider the best way to make provision for teaching to write, and cast accounts.” Whether it was intended that

³ Records of the Town of Ipswich from its Incorporation in 1634 to 1674, Copied by order of the Selectmen by Nathaniel R. Farley, 1890, p. 103. Handwritten bound volume in the Town Clerk’s office, Ipswich Town Hall

⁴ *Ibid*, p. 111.

⁵ *New England’s First Fruits*, 1643, p.13, reprinted in Samuel Eliot Morison, *The Founding of Harvard College*, Cambridge, MA , 1963, p. 433.

⁶ Records of the Town of Ipswich, etc., p. 165.

this teaching should be offered in the Grammar School or in a separate "writing school", as was the practice in the next century, is not clear.⁷

In the same year Robert Paine spent his own money to buy a house, with "two acres belonging to it", for the use of the schoolmaster. The next year, 1653, he paid to have "an edifice for a Grammar School" built on the property. (The present Payne Street intersects the site). About the same time another donor, John Cross, the owner of a farm towards Rowley, gave ten shillings a year to be paid out of the farm "to the use of the school for ever."⁸

Already the most famous schoolmaster in New England, Ezekiel Cheever, had been persuaded to come to Ipswich. Ten years younger than John Harvard, he had attended the same college at Cambridge in England. His first teaching job in New England was that of master of the grammar school in New Haven. He found himself having differences with the authorities in Connecticut and resigned his position not "to make shipwreck of a good conscience". He moved here in 1650. Whether it was his coming that stirred the two Paines and their fellow committee members to action, or they went after him, promising him that they would do everything to set him up properly here, would be worth knowing. He taught here until 1671, when he moved to Charlestown. From 1671 until his death in 1708 he was master of the Boston Latin School. Cotton Mather said of him that "he held the rod for 70 years". He wrote a Latin grammar that was in use in New England schools for two centuries. Thomas Franklin Waters, in his history of Ipswich, celebrates the many Ipswich students he prepared for Harvard.⁹

Cheever was still in Ipswich when Robert Paine's brother, William, died in 1660, leaving an estate valued at 4,239 pounds. He left most of it to his family and friends but did not forget his interest in education. He gave "unto the free scoole of Ipswich the little neck of land at Ipswich knowne as Jeferry's neck, the which is to be and remaine to the benefitt of the said scoole of Ipswitch for ever as I have formerly intended and therefore for the sayd land not to be sould nor wasted". He gave "unto the College at Cambridge the some of Twenty pounds ..the sayd Twenty pounds not to be expended but to remaine as a stock to the Colledge aforesaid for ever."¹⁰

⁷ *Ibid.*, p. 170. It was a distinguished committee. One member, Samuel Symonds had served as Deputy Governor of the colony and held that position again later; another, Daniel Denison, was commander of the Essex county militia and, later, major-general in charge of the colony's militia; a third member, Nathaniel Rogers, was pastor of the church in Ipswich, "an able disputant, whose mouth the Lord was pleased to fill with many arguments for the defence of his truth". His son John, who graduated from Harvard in 1648, was elected president of Harvard in 1681. Denison and Rogers were both graduates of Cambridge University in England. Morison, *supra*, pp. 375, 398.

⁸ The Original Records of Ye Grammar School or by Some Termed Ye Free School of Ipswich, bound hand-written book in the Town Clerk's office, Ipswich Town Hall.

⁹ Thomas Franklin Waters, *Ipswich in the Massachusetts Bay Colony, 1633 – 1700*, Ipswich, 1905, pp. 148, 151; Samuel Eliot Morison, *supra*, p. 371.

¹⁰ Suffolk Registry of Probate, 1:346. A complete copy of the will is at the Massachusetts State Archives. Besides owning 600 acres in Ipswich he had a stake in a variety of businesses including a timber mill in Exeter, New Hampshire, and the Saugus iron works. In 1659 he was one of

Paine clearly wanted both bequests to serve as endowments. He had acquired Little Neck in 1649 when the town, to settle a dispute, voted that he should "have 30 pounds payd him for his farme lying beyond Gravely Brook ...or else he is to have the Little Neck".¹¹ Although he does not say so, he no doubt had in mind that the committee appointed by the town in 1652 to receive and manage such gifts to the school would manage his bequest. After all, he and his brother had been founding members and his brother was still a member. In any case, his bequest was given to the committee to take care of.

The town records from this time do not yet refer to the committee as the "Feoffees". For example a vote of the town in 1661 giving Robert Paine the authority to choose two new members to fill vacancies and keep the membership at nine still refers simply to "the committee".¹²

Robert Paine uses the term, but just once, in a deed he signed and sealed in 1683, a year before his death, settling some outstanding issues. He begins by saying that he paid for the building of a school house for the grammar school on the understanding that it would be "put in the hands of discreet and faithful persons" to be managed by them and their successors "as Feoffees in trust for that end ... for ever".¹³ He uses the term in the same way as a donor to Harvard in 1643 who stipulated that her gift of 100 pounds be used by "the feoffees of Harvard College" to provide funds for a scholarship for ever. By the "feoffees of Harvard College" she meant the president and fellows of Harvard, Harvard's governing board, in their role as trustees.¹⁴ In Ipswich's case, "Feoffees" has stuck as the name of the committee.

Robert Paine goes on in his deed to confirm his making over to the committee and their successors for ever all his rights and interests in the premises he bought and built for the school. He also declares that the remaining members shall choose new members, "as any shall be taken away by death". The Feoffees continue to choose their successors to this day.

William Paine's gift of Little Neck remains the one gift to Ipswich's free school which is still managed by the Feoffees. The framers of the Massachusetts

eleven men who were granted a plantation "ten mile square" in western Massachusetts from which they hoped to develop a trade with the Dutch on the Hudson river. Edward S. Perzel, *The First Generation of Settlement in Colonial Ipswich, Massachusetts: 1633 – 1660*, unpublished PhD thesis, 1967, Rutgers, gives the size of his land holdings. His involvement in the timber mill is described at length in Ipswich Quarterly Court Records, 1653, pp.296-299. His stake in the Saugus iron works is described by E. N. Hartley, *Iron Works on the Saugus*, Oklahoma University Press, 1957. The grant of the plantation is in Massachusetts Bay Records, 1659, pp. 374, 395. The inventory of his estate is in George Francis Dow, *Everyday life in the Massachusetts Bay Colony*, Dover Publications, 1988, pp.258-261.

¹¹ Records of the Town of Ipswich, etc., p. 158.

¹² *Ibid.*, p. 240.

¹³ The Original Records of Ye Grammar School, etc., 1683; the deed is also quoted in full in *Feoffees of the Grammar School in the Town of Ipswich vs. Elias Andrews*, Essex County, November Term, 1844, pp. 587,588.

¹⁴ Morison, *supra*, p. 309.

constitution in 1780 included an article (Ch...V, sect. 1, article 2) declaring that all gifts, grants, legacies and the like conveyed to Harvard College in past times, or to the president and fellows of Harvard College, or the said college "by some other description," are "forever confirmed unto the president and fellows of Harvard College ...according to the true intent and meaning of the donor or donors". By the same principle should not William Paine's bequest to the free school of Ipswich be confirmed according to his intent?

ROBERT K. WEATHERALL
Ipswich, March, 2001

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RECORDS OF THE TOWN OF IPSWICH FROM ITS INCORPORATION
IN 1634 TO 1674

Copied by order of the Selectmen of the Town of Ipswich
By Nathaniel R. Farley, 1890

"It is granted that there shalbe a free schole. The Committee chosen for preparing for the next meeting of the Freemen what they shall think meet for the yearly maintenance, and for the way of raysing it, are th e 2 Magistrates, the Elders, Mr. Giles Firmin and George Giddings."

Sept. 1642

"Whereas the Towne hath formerly granted that there shalbe a free Schoole established in this Towne, it is now declared that there shall be [illegible] per annum raised as the Committee in that case [illegible] shall determine. And that there shalbe seven free Schollars or soe many as the Feoffees (to be chosen) from tyme to tyme shall order, so as the number exceed not seven".

Oct. 3, 1643

"Granted to Mr. Robert Payne and Mr. William Payne, and such others as the Towne shall apoynt, for the use of the Scoole all that neck beyond Chebaco River, and the rest of the ground (up to Gloster lyne) adjoyneing to it. Major Denison and Mr. Bartholomew chosen by the Towne and added to the two Mr. Paynes."

Town Meeting, Nov. 14, 1650 p. 165

"For the better ordering of the Schools, and the affairs thereof, Mr. Simons, Mr. Rogers, Mr. Norton, Major Denision, Mr. Robert Payne, Mr. William Payne, Mr. Hubbard, Deacon Whipple, Mr. Bartholomew, were chosen a Committee to receive all such sums of money as have, and shall be given towards the building or maintaininge of a Grammar School and Schoolmaster, and to disburse and dispose such sums as are given to provide a school house and schoolmaster's house, either in a building or purchasing the said house with all convenient speed. And such sums of money, parcells of land, rents, or annuities as are or shall be given towards the maintenance of a schoolmaster they shall receive and dispose of to the schoolmaster that they shall call and choose to that office from time to time, toward his maintenance which they shall have power to enlarge by appointing from year to year what each scholar shall yearly or quarterly pay or proportionally: Who shall also have full power to regulate all matters concerning the schoolmaster and scholars as in their wisdom they think meet from time to time, who shall also consider the best way to make provision for teaching to write, and cast accounts." Town meeting, Jan. 26, 1652 p. 170.

[Samuel Symonds was deputy governor of the colony and *ex officio* a Harvard overseer; John Rogers and William Hubbard were both ministers and Harvard graduates – Rogers was later to be elected president of Harvard; John Norton,

another minister, was a graduate of Cambridge University in England, and later a Harvard overseer; Daniel Denison, major of the Essex Regiment and a future major-general, was also a Cambridge University graduate. Robert Paine's son, Robert Jr., was shortly to enter Harvard].

"Voted by the Towne to give 8 pounds a yeare for the space of seaven yeares, to the use of the Coledge for a fellowship." 1654 p. 187

"The repair of the scoole for the floore boards, and making of seatts, is ordered, the charge of it to be defrayed by the Towne."

Meeting of the Selectmen Sept. 11, 1656 p. 203

"Voted by the Towne, for the ordering of the scoole, according to the former order, added to those that remayne, namely Mr. Thomas Cobbitt, Mr. William Hubbard, and Mr. John Rogers, added to our honoured Magistrates and two ruling elders, which are those that remayne of the former commitye. Also voted, that Mr. Robert Paine have liberty to name two men to make up nyne in all."

Town Meeting, Feb. 18, 1661 p. 240

"Voted to invite Mr. Andrews to come to the Towne and keepe the publique free scoole." Town meeting, March 15, 1663 p. 252

"To the Coledge 7 pnds 6s. 7d. "
- a line in the County's charge levied on the town in 1664 p. 255

TOWN RECORDS, VOL. 5 1774 – 1800

"Voted that Messrs. John Heard, Joseph Swasey, John Ingersoll, Ebenezer Caldwell, Ephraim Kendall, Asa Baker, John Manning Be a committee to visit the schools.

Voted that the sum of seven hundred sixty-six dollars and two-thirds of one Dollar be granted to be raised and assessed upon the Polls and Estates of the Town of Ipswich for the purpose of defraying the Expense of reading and writing Schools in said Town and that it be appropriated as last year.

Voted that the person who shall be appointed by the Feoffees to keep the Grammar School shall be grammar school master for the town the present year.

Voted that the Feoffees draw out of the Town Treasury so much money as shall be wanted in addition to the Donation to the Grammar School, to pay the Grammar School Master the year ensuing."

Town Meeting, March 12, 1799 p. 507

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THE ORIGINAL RECORDS OF YE GRAMMAR SCHOOL OR BY SOME
TERMED YE FREE SCHOOL OF IPSWICH

[Title of a record book in the Town Clerk's office at Town Hall. Judging from the handwriting, the book was the Feoffees' official minute book from the late 1600s to the early 1800s. Entered on the first pages are copies of earlier, damaged, records. The book is not paginated.]

"To All Christian People to whom this present writing shall come, Robert Payne
Senr. of Ipswich in New England, sendeth Greeting:

Whereas after severall overtures and endeavours among the inhabitants of
said Ipswich for setling a Grammar School in that place, it was Profered by the
said Robert that he would erect an Edifice for such a purpose, Provided it might
be put into the hands of certain discreet and faithful persons of ye said Towne
and theire successors which himselfe should nominate, to be ordered and
managed by them as Feoffees in trust for that end and their successors for ever,
Provided also that ye Towne or any particular inhabitants of the towne would
devote set apart and give any land or other Annuity for the yearly maintenance
of such an one as should be fit to keep a Grammar schoole ... And the said Robert
did in the year following, viz. 1652 purchase an house with two acres of land
belonging to it, more or less, for the use of the schoole master, And did likewise
in the succeeding year 1653 at his own proper cost and charge build an edifice for
a Grammar School which was erected upon part of the land so purchased ...

Now know yee that the said Robert Payne for several good causes and
considerations for the increase of learning in the next generation ...doth hereby
ratify and confirme [his] making over, enfeoffing, and confirming his whole
Right and interest in all ye Premises ...to the committee yet remaining, or lately
chosen, to them and their heirs and successors ... which successors shall be
chosen by themselves as any shall be taken away by death or any other way ...

In Witness whereof the said Robert hath hereunto set an hand and seal
this fourth day of October in ye year of our Lord 1683."

Witnessed by Daniell Epps, Robert Payne Jnr., John Denison, Daniel
Rogers.

"At a meeting of the Feoffees of the Grammar School in Ipswich held May 4th,
A.D. 1802, Voted that the said Grammar School be opened for all the Grammar
Scholars in this town, and that the master be permitted to receive other scholars
that may offer themselves to be instructed in town and out of town, untill the
number amount to forty, at such price as the master and parents of such children
shall agree upon."

The above language is repeated in following years.

Vote of July 24th, 1819, to hire Mr. George Choate to keep the "Latin" school.

Voted on April 9, 1819, "that the Master be directed to cause the Scholars to
apply wholly to the study of the Latin and Greek languages, except two half days

in each week which may be applied to writing and arithmetic – excepting **also** any scholar who may be fully prepared in those languages to enter any university or college, and is under the necessity of studying arithmetic to be enabled to enter such college – and that the boys supply themselves with such suitable books as their several standings require."

Repeatedly in the 18th century the Feoffees' minutes refer to letting out the land at Little Neck "to the highest bidder". The land was let out year by year and the rent received varied according to the bidding. In the mid 1700s the Feoffees were paying the school master about twice as much as they received in rent. For example, in 1756 their rent receipts came to 15 pounds 4 shillings and the salary they offered was 26 pounds 13 shillings and 4 pence. In 1832 the minutes refer to letting out the land "at auction".

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66 Labor-in-Vain Road,
Ipswich, MA 01938
September 2, 2003

Dear Dave:

Thanks so much for all the documents you shared with me yesterday – the Cogswell deed, the Cogswell/Burnham map, the 1872 map of Essex, and the text of Barbara Holden's article on the Feoffees. They are all very illuminating and have greatly expanded what I know about the School Farm. You were great to bring me copies.

I went back to the archives in the Ipswich library this morning to check my pencil copy of the Feoffees' minutes of December 21, 1911, recording their decision to sell to the tenants for \$1300. I had it right but I couldn't xerox the text in pencil, so here it is in readable type. You may be interested to have the names of the negotiators from Essex. Also enclosed is a copy of my article. I am flattered that you think it should be published in the TEG.

Looking again at the Feoffees' first book of minutes I realized that I had overlooked a historical note on the first page of the book. I am guessing that it was written when the Feoffees started compiling a record of their meetings. The first minute in the book covering their ongoing activities records a meeting on February 10, 1664, so I assume the historical note dates from 1664, or later. It reads: "In the first place it is to be Remembered, that there was a Grammar School set up in Ipswich in ye year 1636. But some of ye more prudent & publick spirited inhabitants, perceiving; That such children, as were usually sent to be trained up in Grammar [?] Learning were not like to Afford maintenance sufficient for ...[illegible] Encouragement of one to Attend such School....[illegible] ...Town some yeares after to give...[illegible] their..[illegible] Empowered..." and here the text goes on to record the appointment of the Feoffees in 1650 and the grant to them of land in Chebacco to fund a school. Whoever wrote the note may have relied on what he heard from old-timers in town, and didn't check the available written records, because the date 1636 doesn't jibe with the date 1642 when the Selectmen's records say they voted to set up a "free Schoole". What one learns from the note, perhaps, is that there was

) every intention at an early date to set up a grammar school that parents could afford, but it wasn't workable until the town gave the land in Chebacco as an endowment.

Coming out of the library this morning I bumped into Pat Tyler Turner from the Historical Society, who said she knew you well. She was full of praise for your research.

Mary and I very much enjoyed meeting you. We must stay in touch.

) Best regards,

P.S. The 19th century map of Ipswich I mentiond dates from 1832 and was produced by a guy called Philander Anderson. Waters, who reproduces part of his map, doesn't list him as an Ipswich resident in his history of Ipswich. I am guessing he was a professional map maker who mapped a number of towns, getting paid by selling copies. It's possible he also did a map of Essex.

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The court are of opinion, that this statute provision was applicable to the present case. It was a fence which had been standing more than 20 years, and so, by force of the statute rule, established the line of the highway, and showed that the place where the plaintiff's wood was lying was within it. It tended to establish the defendant's justification, unless he could show an adverse right, as against the public, to use the soil of the highway.

The plaintiff requested the judge to instruct the jury, that although the defendant was justified in removing the wood, yet his subsequent notice to the plaintiff, by which he informed him where the wood was, and that he could have it, paying the defendant for removing it, was a conversion.

We are far from intending to intimate that a public officer, removing a nuisance, may not charge the party who created it, with the reasonable cost of its removal. The Rev. Sts. c. 24, § 63, provide that when any fence or other incumbrance, erected or continued on any town way or highway, shall be adjudged a nuisance, and ordered to be abated, the materials of such incumbrance may be sold to pay the costs and charges of prosecution ; and, if insufficient, the party convicted of erecting or continuing it shall be chargeable for the balance. But, without giving any opinion on this point, it is sufficient for this case to say, that even a demand and refusal are only evidence of conversion ; that here is no demand and no refusal ; and that the case was left to the jury with right instructions on this point.

Exceptions overruled.

FEOFFEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH vs. ELIAS ANDREWS.

The grant made by the town of Ipswich, in 1650, in trust for the use of a school in that town, conveyed a fee, although it contained no words of limitation.

The feoffees of the grammar school in Ipswich are owners in fee of the reversion expectant on the expiration of the long lease of the school lands, to John Cogswell and his assigns, made in 1650 ; and their title thereto was confirmed by a statute for

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regulating said school, which was passed in 1765, and was made perpetual by *St 1786, c. 54.*

The present tenants of the lands belonging to said feoffees are not entitled, by virtue of the provision in said lease to John Cogswell, to deduct their town taxes from the rent reserved in that lease.

DEBT for rent of part of the School Farm, so called, in the town of Essex, from March 1838 to March 1839. The first count was on the lease hereinafter mentioned, and the second was for use and occupation

The case was submitted to the court upon the statement of facts which follows: On the 14th of November 1650, the town of Ipswich, "at a general town meeting, granted to Mr. Robert Payne and Mr. William Payne, and such others as the town shall appoint, for the use of the school, all that neck of land beyond Chebacco River, and the rest of the ground (up to Gloucester line) adjoining to it. Major Denison and Mr. Bartholomew chosen by the town and added to the two Mr Paynes."

The lease mentioned in the plaintiffs' first count was in these terms: "This indenture made the 16th day of January in the year of our Lord 1650, [1651,] between Daniell Denison, Robert Payne, William Payne and William Bartholomew, all of Ipswich, in the county of Essex, in New England, on the one part, and John Cogswell jr., of Ipswich aforesaid, in the county aforesaid, of the other part, witnesseth, that the said Daniell Denison, Robert Payne, William Payne and William Bartholomew have demised, granted and to farm letten, all that parcel of land commonly called the Neck, beyond Chebacco River, bounded;" [here the boundaries were given;] "which said land, situate and being in Ipswich aforesaid, was granted to Daniell Denison, Robert Payne, William Payne and William Bartholomew, by the town of Ipswich, for the use of a free school in Ipswich forever, to the said John Cogswell, jr. his heirs, executors and assigns, for and during the space of one thousand years next ensuing the date hereof to be fully complete and ended; yielding and paying therefor yearly, during the said term, the yearly sum of fourteen pounds, in manner fol' ing; that is to say, four pounds in butter and cheese, five

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pounds in beef and pork, and five pounds in corn, at the current price they shall bear at the days of payment, which shall be yearly, the one half at or before the fifteenth day of November, and the other half on the fifteenth day of March after. All which payment shall be made to the said Daniell Denison, Robert Payne, William Payne and William Bartholomew, their heirs or assigns, at the days aforesaid, at the meeting-house in Ipswich, provided it shall be always lawful for the said John Cogswell to discount so much of the yearly rent as shall be at any time (if any be) charged upon the said lands, for town's rates, but not for country rates or ministry maintenance; and if it shall happen the said yearly rent, or any part thereof, to be behind and unpaid, after any of the days of payment aforesaid, by the space of one month, then it shall be lawful for the said Daniell Denison, Robert Payne, William Payne and William Bartholomew, or any of them, or their heirs or assigns, to enter and distrain, and the distress, therefor taken, lawfully to bear, lead, drive and carry away, and to retain the same until the yearly rent and arrearages be lawfully paid and satisfied; and if sufficient distress be not there to be found, then, at all times after, it shall be lawful for the said Daniell Denison, Robert Payne, William Payne and William Bartholomew, or any of them, their heirs or assigns, upon the said lands and appurtenances to reenter, and the same to have again and possess, and the said John Cogswell, his heirs, executors or assigns, to expel and put out, any thing in this indenture contained to the contrary notwithstanding. In witness whereof, the parties aforesaid have to this indenture interchangeably set their hands and seals the day and year above written." (Signed and sealed by the parties.)

On the 19th of December 1651, the aforesaid lessors, Daniell Denison, Robert Payne, William Payne and William Bartholomew, gave to said John Cogswell an additional or explanatory deed, wherein they declared that it was their intent, in the aforesaid indenture, that said Cogswell, his heirs or assigns, should have and enjoy the said demised premises during the whole term, and improve the timber thereupon growing and being, at his own liberty and pleasure. And they also therein

declared that said Cogswell should "have and hold the premises, to him, his heirs, executors and assigns, during the whole term, with all and singular the appurtenances, without any impeachment of or for waste, or to be in any way liable to be called to account for any strip or waste in respect of house or houses, or timber now or hereafter to be in or upon the premises, or any part thereof."

In the year 1683, Robert Payne made the deed of confirmation, which is copied in the margin.*

* To all Christian People, to whom this present writing shall come, Robert Payne, sen. of Ipswich, in New England, sendeth greeting. Whereas, after several overtures and endeavours, among the inhabitants of said Ipswich, for setleing a grammar school in that place, it was proffered by the said Robert that he would erect an edifice for such a purpose; provided it might be putt into the hands of certain discreet and faithfull persons of the said towne, and their successors which himself should nominate, to be ordered and managed by them as feoffees in trust for that end, and their successors forever; provided also, that the towne, or any particular inhabitants of the towne, would devote and set apart and give any land or other annuity for the yearly maintenance of such a one as should be fit to keep a grammar school: And whereas, the towne of Ipswich, att a publick meeting of the inhabitants, November 14th 1650, did give all the neck of land beyound Chebacco River, and the rest of the ground up to Gloucester line adjoining to it, to the said Robert Payne, and William Payne, to whom, by the desire and consent of the said towne, att the same time, were added Major Dennison and William Bartholomew, for the use of such a school: And that the forementioned Major Dennison, Robert Payne, William Payne and William Bartholomew, did for themselves, their heirs and assigns, immediately after make a lease of all the said neck of land to John Cogswell jr. for *one thousand years*, he, his heirs or assigns, paying a yearly rent for the same, for fourteen pound per annum, for the use of the school, with the power and liberty of a reentry reserved to themselves, their heirs and assigns, in case of non-payment of said rent; as may more largely appear by an indenture betwixt the said John Cogswell, on the one partie, and Major Dennison, Robert Payne, William Payne and William Bartholomew, on the other partie, bearing date January 16th 1650: And that also the inhabitants of said Ipswich, att a publick meeting, January 26th 1650, did add five more, (viz.) Mr. Symonds, Mr. Nathaniel Rogers, Mr. John Norton, Mr. William Hubbard and Deacon John Whipple, to the forementioned Major Dennison, Robert Payne, William Payne and William Bartholomew, according to the desire of the said Robert Payne, all of whom they constituted and ordained as a committee, to have full power to regulate all matters of and concerning the said school's maintenance and schollars, as they shall see meet from time to time; and that the said Robert did, in the year following, (viz.) 1652, purchase an house with two acres of ground belonging to it, more or less, of Richard Coy, as attorney

Feoffees of Grammar School in Ipswich v. Andrews.

In the year 1710, an instrument was executed by tenants of said school lands, by which they expressly agreed to pay town taxes: [See this instrument at large, in the opinion of the court, *post*. p. 595.]

The defendant purchased a part of the premises described in the aforesaid indenture of lease, subject to the rent therein reserved, but without any express words respecting the deduction of taxes; and he holds a part of said premises by descent.

to Samuel Heifer, the proper and rightful owner thereof, for the use of the school master, and likewise did, in the succeeding year, 1653, att his own proper cost and charges, build an edifice for a grammar school, which was erected on part of the land so purchased: And whereas, likewise, some of the first committee being deceased, and some living remote, the inhabitants of said towne, at a meeting, February 18th 1661, did nominate the reverend Mr. Cabott, Mr. William Hubbard, Mr. John Rogers, leaveing the said Robert Payne liberty to nominate two more, who hath since nominated Captain John Appleton and Mr. John Payne, eldest son of the said Robert, to be added to the former committee, which persons the former committee did approve and accept, as being ready to join with them according to the trust first committed to them, and that as any other of the said committee have deceased, they have continually made up the first number by some meet person or persons chosen by themselves, to be the succeeding members thereof: Whereas, lastly, the gift of the said house and land, with the edifice erected for the school upon part thereof, was never yet recorded in any publick register:

Now know ye, that the said Robert Payne, for several good causes and considerations him thereunto moveing, especially for the increase of learning in the next generation, hath seen cause, by this publick instrument, to signify and declare, that as he did, in the year 1652 and 1653, make the said purchase of a house and parcel of land, and erect an edifice att his own cost and charges, for that use of a grammar school in said Ipswich, so he doth hereby ratify and confirm the same for the aforesaid intent and purpose forever. Hereby also making over, enfeoffing his whole right and interest in all the premises, (viz.) in the neck of land beyond Chebacco River, given him, with three others, (which are all besides himself deceased,) for the use of the school, and in the said house and land purchased and the edifice erected thereon, to the rest of the committee lately chosen or yet remaining, to them, and their heirs and successors, or assigns, forever, which successors shall be chosen by themselves, as any shall be taken away by death, or any other way removed, so as to be incapable to act in and about the premises; hereby also debarring any of his other natural heirs hereafter from making any claim, challenge or demand, to any of the premises aforesaid, or any part thereof whatsoever.

In witness whereof, the said Robert hath hereunto set his hand and seal, this fourth day of October, in the year of our Lord sixteen hundred and eighty three.

Robert Payne. (Seal.)

In February 1819, the town of Essex, within which said leased premises are situate, was set off from Ipswich, and incorporated by *St. 1818, c. 85.* (5 Special Laws, 294.) By this statute, "the grammar school house, with the lands, hereditaments, rents and profits heretofore received, and belonging to the said grammar school," were reserved to the town of Ipswich.

The defendant has paid rent to the plaintiffs up to the year 1838, and for many years past has been their agent for collecting rents from the other tenants of said School Farm, and paying over the same, which have been paid up to March 1838; said tenants having previously paid their rents directly to the plaintiffs.

The defendant's town tax in Essex, for the municipal year 1838, was \$8.02; his county tax \$2.30; and his proportion of the rent reserved by said lease was \$6.67, for the same time; but he has never paid any town tax in Ipswich, since the incorporation of the town of Essex; nor has he, since said incorporation, been taxed by the town of Ipswich for the leased lands held by him.

The votes and records of the town of Ipswich, and of the plaintiffs, so far as they are competent evidence, are made part of this case; also the statutes empowering the plaintiffs to act as trustees of the grammar school in Ipswich, viz. the statute passed in 1765, and the previous statute therein mentioned; (3 Special Laws, Appx. 1, 2;) and *St. 1786, c. 54.* (1 Special Laws, 145.)

The parties agreed that judgment should be rendered for the plaintiffs, if they were entitled to recover; otherwise, that the plaintiffs should become nonsuit.

This case was argued and decided at a former term. Various votes, &c. were referred to, which it is unnecessary to set forth at large, as they sufficiently appear in the arguments, and in the opinion of the court.

N. J. Lord & O. P. Lord, for the plaintiffs. The authority of the original lessors was derived from the vote of the town of Ipswich, passed November 14th 1650. This vote might, per-

Feoffees of Grammar School in Ipswich *v.* Andrews.

haps, have passed a fee, if it had been so intended. But the intention, as is to be inferred from the subsequent action of the town, was merely to grant the charge and oversight of the land to Robert Payne and others. See the statutes referred to in the statement of facts.

Immediately upon the death of the last of the feoffees, the town claimed the land, and the right to lease it, and to take the rents, till the year 1765. This claim of the town, and the acquiescence of the lessees, operated as a surrender of the lease; and the lessees, having paid rent to the town yearly, became tenants from year to year. *Watt v. Maydewell*, Hut. 103. *Ive's case*, 5 Co. 11 b.

From these and other proceedings, it appears that the original lessors had no authority to demise for a thousand years, and that their lease was therefore void. They had, at most, only a life estate.

The lessees have not, for a long time, paid rent in specific articles, according to the original lease. They hold under different lessors, on a different rent, and under different liabilities for rent.

The legislature, in 1765, on the request of all parties, and in compromise of the dispute, vested the estate in the lands in the town and feoffees, by incorporating, as feoffees, the three oldest selectmen, with the power of perpetuating the corporation by election. This statute did not establish the lease, but fixed the title to the estate; and the lessees still remain tenants from year to year, and as such have always paid rent. The plaintiffs are therefore entitled to recover on the count for use and occupation.

If, however, the grant by the town was of the fee, the lease is still subsisting, and the right to deduct taxes was a personal privilege to John Cogswell, and not to his heirs and assigns. In other parts of the lease, where the covenants are meant to extend to heirs and assigns, they are carefully expressed. Besides; the taxes to be deducted are only taxes assessed by the town of Ipswich.

Again; John Cogswell and others, (doubtless all the tenants,)

in 1710, released their right to deduct taxes. [See this release, *post. p. 595.*]

Huntington & Perkins, for the defendant. The deed of confirmation, given by Robert Payne, in 1651, and the whole course of subsequent proceedings show that the grant of the town was intended and treated as a grant in fee. And the statute of 1765 established the title and confirmed the lease

The defendant is tenant under the lease, with the right to discount town taxes. The purpose of the lease was to bring the land to public use; and it was therefore immaterial whether the town received the rent, as such, or in the form of taxes and there was no reason why the right to deduct taxes should be confined to John Cogswell. The provision was a mode of paying rent, and runs with the land. *Spencer's case*, 5 Co. 16. *Bally v. Wells*, 3 Wils. 29. *Tatem v. Chaplin*, 2 H. B. 133. *Webb v. Russell*, 3 T. R. 402. *Morse v. Aldrich*, 19 Pick. 449. It was at the option of Cogswell to discount his taxes, or not; and therefore, though rent has been paid without discounting taxes, yet the tenants may insist on such discount, when they please.

WILDE, J. On the facts agreed, several questions of law have been submitted to the determination of the court, in the discussion of which other facts have been assumed by counsel, which are not stated in the statement of facts, and which cannot be ascertained by the records of the town of Ipswich, and the deeds and documents which are referred to and made a part of the case. Whether, if these facts could be ascertained, they would materially affect the rights of the parties, is very doubtful. But, however this may be, we understand the parties do not wish the case to be further delayed for the purpose of ascertaining these doubtful facts. It must, therefore, now be decided on the facts agreed.

The first question to be considered is, whether the plaintiffs have made out a good title to the land, for the occupation of which, by the defendant, rent is claimed. And this depends on the construction to be given to the grant of the town of Ipswich to Robert Payne and others, in the year 1650, and the

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statute of 1765 in relation to that grant. The plaintiffs' counsel contend that, as the grant contained no words of limitation a life estate only passed to the grantees. And if this had been a more recent conveyance, such would have been its construction. But in construing conveyances made early after the settlement of the country, when conveyancing was little understood, the intention of the parties is to govern, without regarding the rigid rules of construction which would be applicable to recent conveyances, and which might defeat the intention of the parties, however clearly that might be made to appear. So it was decided in *Adams v. Frothingham*, 3 Mass. 352. And the same rule of construction was adopted in *Springfield v. Miller*, 12 Mass. 415, and has been recognized in other cases. This rule of construing ancient conveyances was adopted to uphold the titles derived therefrom, which otherwise might be subverted in very many instances, and would be attended with manifest injustice, so extensively as to require, for the public good, the adoption of a rule adapted to the transactions which took place soon after the first settlement of the country. Conforming to this rule of construction, we can have no doubt that, by the grant in question, an estate in fee passed to the grantees. That a fee was intended to be conveyed, will not admit of a doubt. The grantees, immediately after the grant, leased the premises for one thousand years, and, undoubtedly, without objection of the town. In 1683, Robert Payne, having alone survived the other grantees, undertook to perpetuate the trust, and did convey in fee the whole premises, which he held in trust, to certain persons, being a committee for the management of the school, three of whom were nominated and chosen by the town, and two by the said Robert Payne. In this conveyance, provision is made for the choice of successors, whenever any of the trustees should die, or in any other way be removed, so as to be incapable to act in and about the premises. These latter trustees, or their successors, continued to act in the performance of their trust, without objection from the town or any inhabitant, so far as appears by the records of the town, until 1720, when some difficulties arose, and the town, for the first time, laid claim

to the land, as having reverted to them after the death of the original feoffees; and a suit was instituted, by the town, against one of the tenants under the lease to Cogswell, to recover possession of a part of the premises. In the court of common pleas, the tenant recovered judgment, and the town appealed to the superior court, and, having afterwards failed to enter their appeal, they petitioned the general court to enter their appeal; but how the case terminated does not appear.

Against these proceedings of the town, the reverend John Rogers and the reverend Jabez Fitch presented a memorial which was allowed to be entered in the records of the town. In this memorial, the town are requested to reconsider a former vote, and to stop the suit, "lest," as it is said, "by going on in the town's name, it should bring a general odium and guilt of public injustice, and consequently that wrath which is revealed against all injustice and unrighteousness of men, more particularly the judgments threatened and executed on the violating and breaking in upon any ancient contracts and covenants with any people or persons, a famous instance whereof is recorded, for our warning, in 2 Samuel, xxi. 1." "That the gentlemen, to whom the farm was granted, had the consent of the town to lease the premises," the memorialists say, "is evident. 1st, in that the said farm was granted for the use of a school." "Now, it was usual," they say, "in ancient grants of the town, to say no more than 'we grant such a parcel of land to such a man,' designing thereby, not a temporary grant, but that was granted to them forever. 2d. Those gentlemen that made the lease (who were men of undoubted veracity) said that the grant was for the use of the school forever. 3d. They have been assured, by living witnesses, that the town were pleased with the doings of the feoffees."

Taking into consideration these proceedings of the town, and of the feoffees and their successors, we think there can be no doubt that the town intended to convey the land granted in fee simple, and that their grant is to be construed accordingly.

But, if there were any doubt of the construction of the grant, at doubt is removed, and the plaintiffs' title is confirmed, by

Feoffees of Grammar School in Ipswich *v.* Andrews.

the statute of 1765. That act passed on the application of all parties interested. It is therefore perfectly clear that the plaintiffs have a good title to the reversion in the premises, after the expiration of the lease for one thousand years, and in the mean time they are entitled to the rents reserved, unless that lease has been surrendered; and if it has, then they are entitled to a present estate in fee, and may recover on the count for use and occupation.

The plaintiffs' counsel contend that the lease has been surrendered, as the defendant, or those under whom he claims, have taken a new lease or leases of the same land for a shorter time, which would operate as a surrender by implication. But no such lease has been proved, nor can it be inferred, from the records of the town, that any lease was ever given to the person under whom the defendant claims, or to any one of the tenants. It is true that the town, from time to time, chose committees to lease the lands and to collect the rents; but whether any leases were given does not appear. But if the tenants had received leases from the town, while the title was in dispute, this would not operate as a surrender of the former lease, without the consent of the feoffees. And all such liabilities to pay rents to the town, if any there were, would cease, when the plaintiffs' title was established by the statute of 1765.

The only remaining question is, whether, by the facts agreed, the plaintiffs have a title to the rent demanded under the lease to John Cogswell. The defendant's counsel contend that nothing is due, because it is provided in the lease that John Cogswell should have the right to deduct from the yearly rents any such town taxes as may be assessed on the lands leased; and therefore, if the defendant is liable for rent, he is entitled to the benefit of the deduction of the town taxes assessed on the land held by him under the lease. The plaintiffs' counsel contend that this privilege of deduction did not extend to his assigns, and that he had no right to deduct from the yearly rent any tax on the land, except such as might be assessed by the town of Ipswich. However this may be, we think the defendant is bound to pay his portion of the rent, without any deduction.

tion for taxes; because he has not traced his title so as to show himself entitled to any such deduction. And there are strong reasons to presume that this right of deducting taxes has been relinquished by the tenants. In the year 1710, there was an express relinquishment of this right, as follows: "We, whose names are subscribed, the tenants upon the lands granted for support of the free school in Ipswich, and thereupon were freed from town rates, and being now entered to have rights in the three fifths of the dividable lands, with others now admitted, provided we will oblige ourselves respectively, and our respective heirs and successors, to pay all town rates proportionably as other inhabitants are by law obliged, which thing we hereby oblige ourselves, heirs and successors, for the future, to attend and discharge." This agreement is signed by John Cogswell, for himself and his two sons, (to whom he had given lands,) by Gifford Cogswell and four other tenants. It cannot be presumed that any of these tenants would afterwards convey any part of their lands, with the privilege of deducting the taxes of the grantee; and the only deed produced by the defendant has a clause obligating him to pay a yearly rent, without mentioning any right of deduction for taxes, contrary to the terms of their agreement. If the defendant would maintain his right to deduct his taxes from his yearly rent, he must prove that he derives his title from some one of the tenants, who had not relinquished this right. This he has failed to show. On the contrary, the only title deed produced by him has a clause obligating him to pay a yearly rent, without mentioning any right to deduct his taxes. And he has paid his rent to the plaintiffs up to the year 1838; and for many years before that time, he was the plaintiffs' agent, to collect and pay over the rents due from the other tenants of the premises. We are of opinion, therefore, if the tenant derives his title from John Cogswell, he is liable on his covenant in the lease. A covenant to pay rent, runs with the land, and where the land is assigned in severa portions, the rent is to be apportioned.

It does not appear, by the statement of facts, whether the defendant does derive his title from John Cogswell, the original

Foster v. Abbot & others

lessee, or not; but in the argument, the affirmative was assumed by the counsel for both parties. This question, however, is not material; for if the defendant does not hold under a title derived from the original lessee, the plaintiffs are entitled to recover on the count for use and occupation. By the payment of rent previously to 1838, and up to that time, the relation of landlord and tenant was admitted, and the defendant continued responsible for rent, not having given notice that he intended to hold under another title.

Judgment for the plaintiffs.

ENOCH FOSTER vs. PASCHAL ABBOT & others.

A. filed a petition for partition of certain land, alleging that he was seized of one half thereof, as tenant in common with persons unknown: Notice to all persons interested was ordered by the court, and was published in a newspaper, but no person appeared: The court appointed commissioners to make partition, who set off to the petitioner one half of said land, to hold in severalty; and this partition was established by a judgment: Other claimants of the land afterwards entered upon that part of it which was thus set off to A., and there delivered a deed thereof to B., who brought a writ of entry against A.'s devisees. *Held*, that B.'s grantors were disseized, and had no right of entry, when they delivered their deed to him, and that nothing passed by that deed. *Held also*, that B. could not be permitted to impugn the judgment establishing the partition, by showing that A. knew, when he filed his petition, that B.'s grantors were parties interested in said land, and that the proceedings on said petition were therefore erroneous; but that the judgment, establishing the partition, whether erroneous or not, was conclusive, while it remained unreversed.

WRIT OF ENTRY to recover an undivided half of a parcel of woodland in Andover.

The defendant, at the trial, introduced a deed of warranty from Simeon Kittredge to Joseph Mears, dated January 18th 1825, and a deed of warranty from Joseph Mears to William Ferguson, dated March 28th 1825, both recorded on the 31st of March 1825: Also, a deed of quitclaim from William Ferguson to Levi Davis, acknowledged September 4th, and recorded November 27th, 1840: Also, a quitclaim deed from said Mears, Ferguson and Davis, to the defendant, dated October 23d 1813. All these deeds purported to convey an undivided half of a tract of land which included the premises demanded

7

GRAM. SCHOOL IN IPSWICH

April 1, 1835

CHAP. CVI.

An Act concerning the Grammar School in Ipswich.

SEC. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Feoffees of the Grammar School in Ipswich, are authorized and empowered to sell, and pass deeds of the following parcels of real estate, namely: the "school house orchard," the "school marsh," and all their right and interest in the "Cross Farm," severally so called, to any person or persons, his, her or their heirs and assigns, for such consideration as shall be agreed on, which deed and deeds, duly executed, acknowledged and recorded, shall pass good titles to the purchaser or purchasers, his, her or their heirs and assigns, so that neither the said feoffees, nor their successors, nor the legal representatives of the donors of said lands, shall ever have, claim or demand the same, or any part thereof.

SEC. 2. Be it further enacted, That the said feoffees shall invest the net proceeds of said lands, in the stock or stocks of some incorporated bank or banks, or put the same out upon interest on mortgage on real estate, or loan the same to any incorporated town or city in this Commonwealth; and that they be authorized to collect, and again to invest the same, as aforesaid, when and so often as the said feoffees, or a major part of them, shall deem it to be most advantageous for said school, and they shall apply the income thereof, exclusively to the uses appointed by the original donors, and agreeably to an act incorporating certain persons as feoffees of said school, and for regulating the same, passed in the year of our Lord one thousand seven hundred and sixty-five, and which was made perpetual by an act passed on the fourteenth day of February, in the year of our Lord one thousand seven hundred and eighty-seven.

[Approved by the Lieut. Governor, April 1, 1835.]

8

Acts, 1892 ----- CHAPTER 66.

AN ACT TO AUTHORIZE THE FEOFFEES OF THE GRAMMAR SCHOOL
IN THE TOWN OF IPSWICH TO SELL AND CONVEY CERTAIN
REAL ESTATE.

Be it enacted, etc., as follows:

SECTION 1. The feoffees of the grammar school in the town of Ipswich may sell and convey by deed executed by their treasurer, all their rights and interest in Jeffreys Neck pasture in said Ipswich.

SECTION 2. Said feoffees may deposit the net proceeds of such sale in any savings bank in this Commonwealth, or may invest the same in any securities in which such savings banks are now or may hereafter be authorized to invest their deposits, the income thereof to be used for the support of said grammar school, agreeable to an act incorporating certain persons as feoffees of said school and for regulating the same, passed in the year seventeen hundred and sixty-five and made perpetual by an act passed on the fourteenth day of February in the year seventeen hundred and eighty-seven.

SECTION 3. This act shall take effect upon its passage.

9

AN ACT TO AUTHORIZE THE FEOFFEES OF THE GRAMMAR SCHOOL IN
THE TOWN OF IPSWICH TO SELL CERTAIN LAND IN THE TOWN
OF ESSEX AND TO INVEST THE PROCEEDS OF SUCH SALE.

Be it enacted, etc., as follows:

SECTION 1. The Feoffees of the Grammar School in the Town of Ipswich may sell and convey, by deed executed by their treasurer, all their rights and interests in land owned by their fund in the town of Essex.

SECTION 2. Said feoffees may deposit the net proceeds of such sale in any savings bank in this Commonwealth, or may invest the same in any securities in which such savings banks are now or may hereafter be authorized to invest their deposits, the income thereof to be used for the support of said grammar school, agreeably to an act incorporating certain persons as feoffees of said school and for regulating the same, passed in the year seventeen hundred and sixty-five and made perpetual by an act passed on the fourteenth day of February in the year seventeen hundred and eighty-seven.

SECTION 3. This act shall take effect upon its passage.

Approved June 21, 1906.

10

ACTS, 1911 - - CHAPTER 515.

AN ACT TO AUTHORIZE THE TOWN OF ESSEX TO PURCHASE A
RELEASE OF LAND HELD BY THE FEOFFEES OF THE
GRAMMAR SCHOOL IN THE TOWN OF IPSWICH.

Be it enacted, etc., as follows:

SECTION 1. The town of Essex is hereby authorized to raise by taxation and to pay a sum of money not exceeding five hundred dollars for the purchase from the Feoffees of the Grammar School in the Town of Ipswich of a release and discharge of the lease called The Grammar School Farm Lease, in order that the town of Essex may have a clear title to certain land in the town owned by the town and subject to the said lease; this being the same right or interest in land which the said feoffees were authorized to sell and convey by chapter five hundred and six of the acts of the year nineteen hundred and six.

SECTION 2. This act shall take effect upon its passage.

11

"The Feoffees of the Grammar School of Ipswich - submit the following report -
March 1885.

The fund of the Feoffees is invested as follows.

One, 5 per cent Water bond of the city of Lynn	\$4,000.00
Two House lots in Revere - value	1,000.00
26 2/3 Old Rights in Jeffries Neck - value	933.33
Little Neck (so called) Valued	2,000.00
School Farm in Essex (so called) - value	1,000.00
Notes of the Town of Ipswich	1,500.00
On deposit in the Ipswich Savings Bank	<u>520.72</u>
	<u>10,954.05</u>

The income received during the year, has been as follows.

Received from the rent of Neck Rights	208.95
" " " " land under houses on Little Neck	97.00
Recd from interest on Lynn City bonds	200.00
" " " " Town notes	75.00
" " rent of School Farm in Essex	<u>46.67</u>
	<u>627.62</u>

The expenses and payments during the year, are as follows.

Paid A. M. Osgood for services as master of the Grammar School	350.00
Paid John N. Nourse for surveying and for a Plan of Little Neck	25.00
Paid sundry bills for labor and repairs at Little Neck	10.66
Deposited in the Ipswich Sav Bank	<u>241.96</u>
	<u>627.62</u>

Theo. T. Cogswell - Treasurer"

Handwritten "Report of the Feoffees of Grammar School Fund -1885- Accepted"
in a file of Feoffees' reports in the Town Clerk's office.

12

JEFFFEY'S NECK AND THE WAY LEADING THERETO.

building a large wharf. This was referred to a Committee, which reported at the Town Meeting, May 10, 1763. Their report states, that "they have laid out a convenient place on the Little Neck for the purpose of building a wharf and warehouse and have sett off the same by Meets and bounds as follows, viz:"

"Beginning at a stake at Low water mark near the Neck Cove, thence running N.E. to high water mark to a stake and stones, thence running S. E. by high water mark 100 ft. to a stake and stones.....thence running N. W. by low water mark 100 ft. to first, and that sd. Petitioners have two years from the date of their petition to complete the sd. wharf and warehouse, and to be to the use and benefit of the Petitioners and their heirs and assigns for so long a time as they or any of them shall maintain and keep the same in good repair and no longer."

Abraham Choate conveyed to John Patch, all his right and title in a sixth part of a wharf with the appurtenances at Little Neck, Jan. 9, 1792 (167:83), and Robert Farley conveyed to Richard Lakeman half a warehouse and wharf at "Jeffries or Little Neck" 1808. Ips. Deeds, 5:398.

The heavy timbers and the great stones which remain from one of these old wharves show that a very strong structure was built here, and suggest that the trade in fish, which warranted the building of such a wharf, must have been large and important.

All business of this kind ceased many years since. Fifty years ago, a solitary building used for the storage of porgies was the only frame structure on the Neck. The white tents of occasional camping parties skirted the slope of the hill near Stony Point and about the well, and as the great natural beauty of the spot and its easy access by the river came to be appreciated, a few cheap houses were built near the rocky beach at the foot of the Hill. Larger and more convenient cottages began to be erected. The Feoffees granted the lease of lots at moderate rates and the popularity of the spot grew rapidly. Within a few years the Town water has been introduced, permitting and encouraging the building of summer homes, with all modern conveniences, and the village has now covered the slight slope to the very summit and is rapidly occupying every available spot. William Paine's generous gift to the free school of ancient Ipswich has already netted results far beyond what that shrewd merchant ever dreamed, and the prospect of greatly increased financial return is sure and gratifying.

T. Frank Waters,

1912

Publications of the I.H.S.

XVIII

13

FEOFFES OF THE GRAMMAR SCHOOL IN IPSWICH

The 339th Annual Meeting of the Feoffees of the Grammar School in Ipswich was called to order in the Court Room at the Town Hall at 5:10 p.m. on Wednesday, February 26, 1986 by Donald F. Whiston, who attested that the notice of the meeting had been properly posted and distributed.

Those in attendance were:

Donald F. Whiston
George H. W. Hayes, II
Lawrence Pszenny, Selectman
Charles Wayne, Selectman
William George, Selectman
David Player, Selectman
George E. Howe, Town Manager
George Mourikas, Town Treasurer
Richard Thompson, Superintendent of Schools.

On motion duly made by William George, and seconded, it was

VOTED: To elect the following officers for the ensuing year:

Chairman:	Donald F. Whiston
Vice Chairman:	Vacant
Clerk:	George H. W. Hayes, II
Manager and	
Treasurer:	Donald F. Whiston

On motion duly made by Mr. George, and seconded, it was

VOTED: That the life members of the Feoffees be the Committee on Affairs.

Mr. Whiston reported that he had transmitted to the Town of Ipswich the sum of \$183,000 for the fiscal year 1985 and prior year delinquents real estate taxes on the land and buildings at Little Neck, which again made the Feoffees the largest single tax payer in the Town.

In addition to paying the foregoing taxes to the Town the Feoffees have employed a general contractor to correct and improve the existing domestic water service system on the Neck, by changing all the surface water pipe lines to deep water pipe lines; and that the expense up to the present has cost the Feoffees \$67,000.00. However, as Mr. Whiston pointed out we now have 80% of the Neck on deep water service, with 8" mains

where appropriate and a number of new and up-to-date fire hydrants. There remains a very small area left to loop the whole system. He reiterated the Feoffees' policy with respect to summer residences not being allowed to use their cottages on a year-round basis, as some of the tenants have the misconception that deep water would allow them to become year-round residences. One of the final steps to be taken by the Feoffees is the preparation of a new deep water service plan, which Mr. Henry Chouinard is preparing.

After the change from shallow to deep water service, the Feoffees undertook a major road improvement by resurfacing the roads with a new bituminous concrete surface. The final coat of bituminous will not be placed on the road surface until after the extensive rehabilitation of the telephone line system on the Neck being conducted by the New England Telephone Co. There will however, be a one-time charge of \$300 per house for the hottopping noted above, which will be included in the second half bill for fiscal year 1986 real estate taxes.

There still appears to be a rather serious erosion problem along River Road, which will necessitate some immediate action. But, that should be our last major expense for the near future.

From all concerned, it appeared as though last summer's activities were well attended by the residents and that we enjoyed the continued cooperation from the Town of Ipswich Police Department, and particularly that of Officer Ed Kauscher.

Mr. Whiston also noted that the value of houses on the Neck had escalated by a SUBSTANTIAL percentage in the last year, with some summer residences being sold for over \$125,000.

He also noted the attendance in the audience of Vera Cutler and Josephine McFaun, to view the proceedings.

On a motion by the Chairman, and seconded, it was

VOTED: To direct and authorize the Treasurer to forward to the Town the sum of two thousand five hundred (\$2,500) Dollars as our contribution to the Town of Ipswich School Budget.

On a motion made by Mr. George, and seconded it was

VOTED: To change the land rent charge to \$300 for summer residences and \$500 for year-round residences.

Finally, on a Motion duly made and seconded, it was

VOTED: To adjourn at 5:45 p.m.

Respectfully submitted,

George H. W. Hayes, II
George H. W. Hayes, II

14

Heard of the Feoffees? They

By RUTH TAYLOR

Almost anyone who has spent time in Ipswich has heard of them. Most folks know they have been around for a long, long time. Few people can pronounce their name. And fewer still can tell you much about them. They are the Feoffees of the Grammar School.

Feoffees — or feff-eeze, as it is pronounced — is an old English word that means holders of land in trust. The Feoffees of the Grammar School are believed to be the oldest self-perpetuating land trust in the country. They were officially formed in 1650 to collect rent to pay for a public grammar school in Ipswich.

Originally that land encompassed "all the Neck beyond Chebacco River and the rest of the ground up to Gloucester line." Today the land in trust has shrunk to include only Little Neck. That tiny spit of land, however, generates one of the largest, single tax bills in town. This year the land and homes were valued at nearly \$14 million in total.

The Feoffees, who own the land but not the homes on Little Neck, receive a single tax bill from the town. It is up to them to collect the taxes from their tenants.

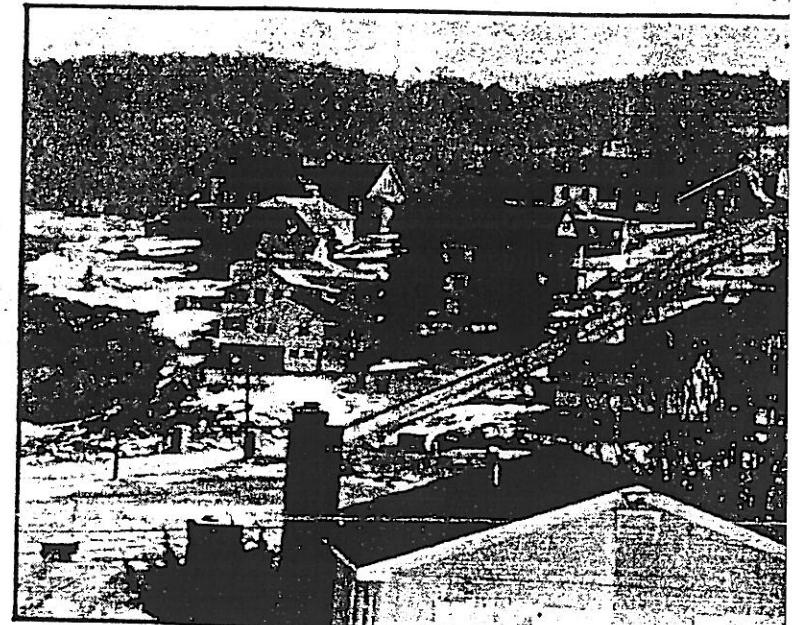
Today's Feoffees, who are appointed for life, are Chairman Donald Whiston, 2 Jeffreys Neck Road; Alexander B.C. Mulholland, Jr., 79 East St.; and Attorney George H.W. Hayes, Candlewood Road. The late Jerome Richardson has not been replaced yet, and Whiston told the Chronicle it will be up to the remaining Feoffees themselves to nominate a new member.

Lest anyone think the Feoffees sit down once a year and get reacquainted, Whiston says their job is much like that of any property caretaker.

The Feoffees met Feb. 26 for the 339th time. They gathered in Town Hall to meet the requirements of law for an annual corporate meeting. Joining them was William George, who as chairman of the Board of Selectmen is an ex officio member of the trust.

Donation to schools

Among the items of business taken up annually by the Feoffees is their contribution to the Ipswich public schools. This year the amount was set at \$2,500, the same as last year. Although there is some grumbling among residents from time to time about the size of the contribution, Whiston says the Feoffees pay property taxes in addition to their annual increment, a portion of which, like everyone else's, goes to the schools. He also pointed out that most tenants at Lit-



THESE CHOICE water-front homes on Little Neck make the property in demand in Ipswich.

send no children to the schools.

Whiston explains that money collected in rent from the Little Neck tenants — \$500 for 12-month residents, \$300 for summer residents — is used for a variety of improvements and maintenance projects. A great deal has been spent recently to prevent beach-front erosion.

"What we're trying to do," he says, "is build a reserve because we're going to be faced with the erosion problems again in the not-too-distant future."

At their recent meeting, the Feoffees agreed to allow the New England Telephone Co. to install a new phone system estimated to cost \$350,000. The cables will be underground, as are all services on Little Neck. Whiston says when that project is complete, it may finally be possible to allow repaving of the streets.

The history of the Feoffees is also the early history of schools in Ipswich. Thomas Franklin Waters, the Ipswich historian most quoted, says town records show the first school was in 1636, "but it failed."

However, by the summer of 1642, Waters reports, one Ipswich resident, William Hubbard, 21, was "one of that remarkable group of nine young men whom Harvard College sent forth...as the first specimens of high culture achieved in the woods of America."

Waters goes on to say, "It may have been that the honor that came to Ipswich of having one of her sons in the first class that graduated from their beloved college, impelled her to resolve to have a free

The seeds of the Feoffees land trust were sown several years before they finally organized. According to town records, "The first third day of the 9th 1642, it is granted that there shall be a free schole."

That preliminary vote was followed by another on Oct. 3, 1643, that "11 pounds per year shall be raised as the committee shall determine...and there shall be seven free Schollars, or soe many as the Feoffees (to be chosen) from tyme to tyme shall order..."

School flourished

Waters reports that Lionel Chute may have been the school's first teacher, but he also says, "The Ipswich Grammar School became a pride to the Town, but no record exists of its master."

There seems to be a major gap in activity, or what was recorded, for the next seven years. But the school must have flourished, for by 1650 the townspeople called Ezekiel Cheever to be the school master.

Cheever was an eminent Latin scholar. His primer was in use in this country, Waters reports, until the end of the 18th century. He came to Ipswich that same year and "the Town was moved at once to generous provision for the school." And so it was in 1650 that the land beyond Chebacco River to the Gloucester line was "given to the school." (At that time Essex was part of Ipswich.)

Town records say on Jan. 11, 1651, "They chose five Trustees of this donation." It is not clear from some available research material who those trustees were.



Property among the highest asses-
(Ruth Taylor photo)

town records show, "This land is leased forever to John Cogswell, jr. and his heirs and assigns for ever for 14 pounds a year, four pounds in butter and cheese, five pounds in pork and beef and five pounds in corn at the current price."

According to Elizabeth Newton, who is caretaker of the Whipple House and has studied the Feoffees extensively, a portion of land between Ipswich and Essex is still known as Cogswell's grant.

It is not until Jan. 26, 1652, that nine men are "appointed for the better aiding of the schoole and the affaires thereof." They are listed as Deacon John Whipple, Major Daniel Dennison, and Messrs. Samuel Symonds, Nathaniel Rogers, Jonathan Norton, Robert Paine, William Paine, William Hubbard and William Bartholomew.

It is not clear where the Grammar School's first classes were conducted, but in 1653, a school was built by Robert Paine at the corner of County Road and Linden Street facing School House Green. Paine also gave the use of a dwelling-house and two acres of land to the school master. It was not until 1704 that the town decided it needed a new school building. It was determined by the frugal Ipswich residents that the building would be a Town House (for public town meetings) with a school house under it.

Cheever fulfilled townspeople's expectations, sending many more students to Harvard College during his lengthy tenure.

Following Cheever, the next school master of record was Daniel Rogers, who taught here from 1686 until 1715. During his 29 years, relations between the town and the Feoffees became strained. The Paine bequest of Little Neck to the Feoffees in 1660 and other Paine property not described by Waters, were not producing enough money to cover the cost of running the school. And the Feoffees also began claiming a greater voice in school affairs.

By 1720 more trouble brewed for the school. Tenants of the "school farm," as some of the property was called, withheld their rents, saying no legal provision had been made for collecting them.

The town appointed a committee to make new leases (21 years). And the town then voted that the selectmen would hire the school master.

And so it was in 1720 that the town assumed complete control of the Grammar School, Waters reports. The town voted to appoint three men as Trustees for the use of the Grammar School, empowering and appointing them to eject all or any persons in possession of school land. They were for all intents and purposes the town's first publicly-named school committee. And for 27 years there is no recorded act of the Feoffees.

Meanwhile, the court suit over the land in trust continued, ending with Gifford Cogswell paying 100 pounds to the town in 1729.

By this time residents of the outlying districts — Linebrook and Chebacco — began agitating for schooling for their children. In 1730 a suit was filed on their behalf, and several neighborhood schools were established using the Cogswell money.

Today the town's public schools are run by a publicly-elected school committee, but the Feoffees continue their tradition as well. The donation to the schools has differed over the years. In 1936 it was \$1,500; in 1955 it was \$5,000; it was \$5,000 in 1963. For the past two years, the Feoffees have contributed \$2,500 to the schools. The amount depends on what other community projects are pressing on Little Neck, such as water main repairs. The Feoffees submit an accounting of their trust to the town. It is printed in the Annual Town Report which is published at the time of the Annual Town Meeting.

SPRING,
at the
King's Grant Inn
in Danvers, MA



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TICE

Trustees of the Ipswich Rowley Office, located at 133 on Tuesday, April 8,

Lawrence R. Gardner,
Clerk of the Corporation

orporators of the Ipswich Rowley Office, located at 133 on Tuesday, April 8.

Lawrence R. Gardner,
Clerk of the Corporation

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FEOFFEES OF THE GRAMMAR SCHOOL IN IPSWICH

THE 346TH ANNUAL MEETING OF THE FEOFFEES OF THE GRAMMAR SCHOOL IN IPSWICH WAS CALLED TO ORDER IN THE THIRD DISTRICT COURT ROOM AT IPSWICH TOWN HALL AT 5:10 P.M. ON THURSDAY, MAY 7, 1996, BY MR. DONALD F. WHISTON, WHO ATTESTED THAT THE NOTICE OF THE MEETING HAD BEEN PROPERLY POSTED AND DISTRIBUTED.

THOSE IN ATTENDANCE WERE:

DONALD F. WHISTON
ALEXANDER B.C. MULHOLLAND JR.
JAMES W. FOLEY
PETER A. FOOTE
JAMES R. ENGEL, SELECTMAN
EUGENE A. HAILSON, SELECTMAN
PATRICK J. MCNALLY, SELECTMAN
WILLIAM E. GEORGE, SELECTMAN
EDWARD B. RAUCHER, SELECTMAN
GEORGE E. HOWE, TOWN MANAGER
RICHARD F. THOMPSON, SUPERINTENDENT OF SCHOOLS
DONALD M. GREENOUGH, LEGAL COUNSEL FOR THE FEOFFEES

ON A MOTION MADE BY MR. ENGLE AND SECONDED BY MR. FOOTE, IT WAS VOTED:

TO ELECT THE FOLLOWING OFFICERS FOR THE ENSUING YEAR:

CHAIRMAN:	DONALD F. WHISTON
VICE CHAIRMAN:	ALEXANDER B.C. MULHOLLAND, JR.
CLERK:	JAMES W. FOLEY
TREASURER:	DONALD F. WHISTON
MANAGER:	DONALD F. WHISTON

ON A MOTION MADE BY MR. MCNALLY AND SECONDED BY MR. MULHOLLAND, IT WAS VOTED:

THAT THE LIFE MEMBERS OF THE FEOFFEES BE THE COMMITTEE ON AFFAIRS.

IN HIS REPORT AS TREASURER AND MANAGER, MR. WHISTON REPORTED THE FOLLOWING:

THE ANNUAL TREE MAINTENANCE AND BRUSH CONTROL PROGRAM HAS CONTINUED DURING 1995 AND WILL CONTINUE IN THE FUTURE.

THE ROADWAY PAVING PROJECT HAS BEEN COMPLETED BY A PRIVATE CONSTRUCTION CO.

AS A RESULT OF REVALUATION, THE VALUE OF LAND (30 ACRES) AT LITTLE NECK WAS SET AT TWENTY TWO MILLION, SIX HUNDRED EIGHTY THREE THOUSAND, FIVE HUNDRED DOLLARS BY THE ASSESSING DEPARTMENT OF THE TOWN OF IPSWICH MASSACHUSETTS. THIS INCLUDES A NUMBER OF SMALL LOTS AS SHOWN ON THE TOWN ASSESSORS PLATES.

THE FEOFFES PAID TO THE TOWN OF IPSWICH A TOTAL OF \$314,160.04 IN LAND AND BUILDING TAXES. MR. WHISTON NOTED THE PROBLEM OF COLLECTING TAX FUNDS FROM VARIOUS COTTAGE OWNERS, WHO FAIL TO PAY THEIR RENT AND TAX BILLS IN A TIMELY MANNER.

MR. WHISTON REPORTED THAT PRIVATE DUTY DETAIL, IPSWICH POLICE OFFICERS WERE HIRED DURING THE SUMMER MONTHS FOR BOTH THE MAIN GATE AND THE RIVER ROAD PARKING AREA. MR. WHISTON ALSO OFFERED HIS THANKS AND SUPPORT TO THE IPSWICH POLICE DEPT. FOR THEIR CONTINUED ASSISTANCE TO THE FEOFFES.

MR. WHISTON ADVISED THAT THE LIABILITY INSURANCE POLICY IS IN EFFECT BY A PRIVATE INSURANCE COMPANY FOR AREAS SUCH AS THE BALLFIELD, WHARF AND DOCK, SANDY BEACH AND THE ROADWAY SYSTEM.

SNOW REMOVAL WAS COMPLETED BY A PRIVATE CONTRACTOR AND THE IPSWICH DEPT. OF PUBLIC WORKS. A PRIVATE CONTRACTOR WAS ALSO HIRED DURING THE EARLY SPRING FOR ROADWAY DEBRIS SWEEPING. MR. WHISTON THANKED DIRECTOR OF PUBLIC WORKS ARMAND T. MICHAUD AND HIS DEPT. FOR THEIR ASSISTANCE DURING THE YEAR.

MR. WHISTON ADVISED THAT TWO CAPITAL PROJECTS WOULD BE EXAMINED IN THE NEAR FUTURE. THE FIRST, REBUILDING OR THE NEW CONSTRUCTION OF A DOCK AND WHARF SYSTEM OFF OF RIVER ROAD WILL BE DISCUSSED. THE SECOND, THE POSSIBLE RECONSTRUCTION OF RIVER ROAD FROM THE SAUNDERS HOUSE AREA TO THE CHILDRENS PLAYGROUND AREA.

MR. WHISTON ALSO ADVISED THAT OVER THE YEARS THE FEOFFES HAVE CONTINUED EROSION CONTROL ON BOTH THE PLUM ISLAND SOUND SIDE AND THE RIVER ROAD SIDE OF THE ISLAND. A CONTINUED EFFORT WITH PERMISSION OF THE IPSWICH CONSERVATION COMMISSION WILL ATTEMPT TO HALT EROSION TO LITTLE NECK IN VARIOUS LOCATIONS.

MR. WHISTON ALSO ADVISED ON THE NEW SET OF RULES AND REGU-

LATIONS THAT WERE SENT TO ALL HOME OWNERS AT LITTLE NECK DURING THE 1995 SUMMER SEASON. HE ALSO SPOKE ON THE LIABILITY INSURANCE POLICY THAT ALL HOME OWNERS MUST PROVIDE DURING 1995.

THE IPSWICH BOARD OF HEALTH REGULATIONS AND THE NEW COMMONWEALTH OF MASSACHUSETTS TITLE V PROGRAM WAS REVIEWED BY ATTORNEY GREENOUGH IN REGARDS TO BOTH SUMMER AND WINTER RESIDENTS AT LITTLE NECK. MR. WHISTON ADVISED THAT THE FEOFFEES WILL CONTINUE TO MEET AND DISCUSS THIS ISSUE THROUGHOUT THE YEAR. THE ISSUE OF HOUSE SALES AND ALL YEAR ROUND RESIDENTS WILL ALSO BE ADDRESSED BY THE COMMITTEE ON AFFAIRS.

ON A MOTION BY MR. FOLEY, AND SECONDED BY MR. WHISTON IT WAS VOTED:

TO DIRECT THE TREASURER TO FORWARD TO THE TOWN OF IPSWICH SCHOOLS THE SUM OF TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS FOR SPECIFIC PROJECTS AGREED UPON AND VOTED ON BY THE IPSWICH SCHOOL COMMITTEE ON A RECOMMENDATION BY THE SUPERINTENDENT OF SCHOOLS.

ON A MOTION BY MR. FOOTE, AND SECONDED BY MR. FOLEY, IT WAS VOTED:

THAT LAND RENT CHARGE BE PLACED AT \$600.00 FOR SUMMER RESIDENTS AND \$800.00 FOR YEAR ROUND RESIDENTS.

MR. WHISTON REQUESTED THAT ANYONE PRESENT MAY REQUEST NEW BUSINESS TO THE FEOFFEES OF THE GRAMMAR SCHOOL.

MR. ROBERT K. WEATHERALL 66 LABOR IN VAIN ROAD, IPSWICH MA. ADVISED THAT HE WOULD LIKE TO SPEAK ON THE FOLLOWING ISSUES.

- 1) THE DONATION FROM THE FEOFFEES TO THE IPSWICH SCHOOL COMMITTEE ON A YEARLY BASIS. DUE TO THE ASSESSED VALUE OF \$13,354.500 THE CONTRIBUTION OF \$25,000.00 IS ONLY 0.19 PERCENT AND IS TOO SMALL.
- 2) THE ASSESSED VALUE OF THE LAND BE INVESTED IN A WELL RUN BOND FUND WITH A HIGHER INCOME AND APPRECIATION.
- 3) THE FEOFFEES REPORT IN THE ANNUAL TOWN OF IPSWICH REPORT IS NOT SIGNED.
- 4) THE LACK OF THE INVESTIGATION BY THE IPSWICH SCHOOL

COMMITTEE INTO THE FEOFFEES TRUST.

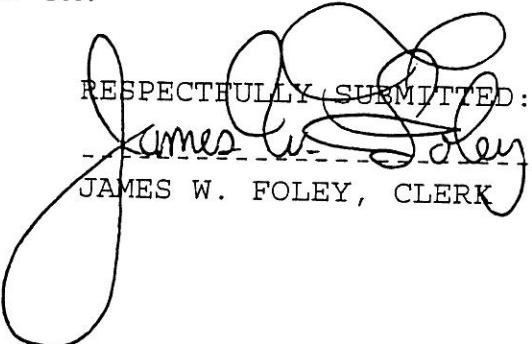
- 5) THE RESIDENTS OF LITTLE NECK ARE PAYING LOW RENTS WHILE THE IPSWICH SCHOOLS SUFFER WITH BUDGET CUTBACKS.
- 6) THE MEMBERSHIP OF THE FEOFFEES BE CHANGED FROM FOUR LIFE MEMBERS AND ONE MEMBER OF THE BOARD OF SELECTMEN, TO FOUR LIFE MEMBERS AND THREE SELECTMEN AS CALLED FOR IN THE TRUST.

MR. WHISTON THEN EXPLAINED THE HISTORY OF BOTH LITTLE NECK AND THE FEOFFEES OF THE GRAMMAR SCHOOL. MR. WEATHERALL WAS ADVISED OF THE EXPANDING CONTRIBUTION MADE TO THE SCHOOL DEPT. BY THE FEOFFEES OVER THE YEARS. MR. WHISTON ALSO ADVISED OF THE POSSIBILITY OF THE SALE OF THE LAND AND HOW THAT WOULD EFFECT THE TOWN OF IPSWICH MA..

A DISCUSSION WAS CONDUCTED BY THE BOARD OF SELECTMEN, THE LIFE MEMBERS OF THE FEOFFEES, SUPT. OF SCHOOLS THOMPSON, MR. GREENOUGH AND MR. WEATHERALL. IT WAS CONCLUDED THAT DURING THE YEAR A GROUP OF THE ABOVE WOULD MET AND DISCUSS THE ISSUE IN DETAIL AND ISSUE A REPORT SOMETIME IN THE NEAR FUTURE.

ON A MOTION BY MR. ENGEL, AND SECONDED BY MR. FOLEY IT WAS VOTED:

TO ADJOURN THE MEETING AT 6:20 PM.

RESPECTFULLY SUBMITTED:

JAMES W. FOLEY, CLERK

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letters

Here's a challenge to the Feoffees

To the Editor:

I enjoyed Ruth Taylor's article about the Feoffees in last week's Chronicle (page 12), but I think she was much too respectful of the Feoffee's 17th century origins when she asked the chairman, Donald Whiston, about their support of the Ipswich schools. She should have pressed him harder to explain why property as valuable as the land at Little Neck could not generate a larger income than \$2,500 for the purpose for which the Feoffees were formed. An elected body which did so little with the assets with which it was entrusted for the public good would be hanged, drawn and quartered!

According to the assessors' office, the value of the land the Feoffees own at Little Neck is \$5,462,060. Government-backed mortgage securities are currently paying close to 10 percent. If the Feoffees sold the land and invested the proceeds they could earn conservatively \$500,000 and they could contribute all of it to the Ipswich schools. They would not have to pay anything, as they do now, for all the benefits they paid out while the pasture they owned, like Little Neck, became covered with houses and the value of the property increased from year to year, and century to

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expenses at Little Neck which Whiston mentioned to Taylor—improvements and maintenance, winter main repairs and prevention of beach erosion. These would be the responsibility of whoever bought the land.

Whiston told Taylor that the Feoffees paid much more than \$2,500 to the schools because a portion of the property taxes at Little Neck, like everyone else's, went to the schools. But this, of course, is a red herring. The purchasers of the land would still pay the taxes. The vastly increased income of the Feoffees would be all gain.

This idea may sound radical and insensitive. How can anyone knock an institution as old as the Whipple House? But many ancient trusts have forfeited their purpose in the same way and have had to be shaken up. Anthony Trollope's famous novel, "The Warden," is about an even older board of trustees, who did not increase the benefits they paid out while the pasture they owned, like Little Neck, became covered with houses and the value of the property increased from year to year, and century to

Robert K. Weatherall

50 Labor-in-Vain Road

IHA member slams writers, article

To the Editor:

The town of Ipswich, on any given Wednesday at approximately 10 p.m., enters into a new phase in government business and politics for the upcoming week. This is the time those big and powerful printing presses at the Ipswich Chronicle start to hum in order that the

are fair, and they are human; they have all the virtues and frailties of humanity.

Take for instance, the information passed on in the March 20 Chronicle concerning housing sites. This was relative to the four-inch stack of papers IHA Sara O'Connor reportedly carried into the select-

In the first instance, the four-inch stack of paper, in reality was only one eighth of an inch. The remaining inches were repeats (you know the red tape when you ask for money; everyone wants a copy for their desk).

In the second instance, O'Connor's surprised reaction to the

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50 Labor-in-Vain Road,
Ipswich, MA 01938

September 8, 1989

Mr. Jeffrey A. Simon,
Chairman,
Ipswich School Committee,
Ipswich, MA 01938

Dear Jeffrey:

I would be interested in knowing whether the the School Committee has given any more thought to the question of the Feoffees' contribution to the schools.

In your letter of May 10 you mentioned that the trust was 300 years old and that it's being "unwritten" posed problems. The Feoffees may very well have a copy of the original will, but in case they don't I have gone to the State House to look up an 18th century statute mentioned by Waters which was enacted to settle some differences which had arisen back then between the Town and the Feoffees. It is Chapter 26 of the Laws of 1755-56, passed in January 1756 (copy enclosed). Clarification of the Feoffees' powers had been sought both by the Town and the Feoffees. In the very first sentence the statute declares categorically that the property held by the Feoffees is "for the use of school-learning in said town forever". There are no ifs, ands, or buts.

The statute was voted to continue in effect for 10 years, but in 1766 the Town and the Feoffees asked to have it continued for another 21 years (Ch. 5 of the Laws of 1765-66) and in 1786 (after Independence) it was enacted in perpetuity (Ch. 54 of the Laws of 1786).

It seems to me that there can be no doubt about the Feoffees' responsibility to the schools in Ipswich. Whatever was in the original documents, the responsibility is mandated by statute.

One other thing the history teaches is that the Town should not be shy of raising the question of the Feoffees' responsibility. If 18th century selectmen were prepared to raise the question, so should the School Committee. Who has a greater interest in ensuring that the Feoffees do their job? Without monitoring by the Town, who else is there to hold the Feoffees' feet to the fire? "Quis custodiet custodes" has always been a good question to ask of unelected public bodies.

I hope the School Committee puts the matter on its agenda. At a time when the school system is increasingly strapped for funds, the \$2,500 annual contribution from the Feoffees is a scandal.

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TOWN OF IPSWICH

IPSWICH, MASSACHUSETTS 01938

TOWN COUNSEL
(508) 356-0106

March 11, 1991
F2257
CONFIDENTIAL
ATTORNEY/CLIENT PRIVILEGE

TO: Jeffrey Simon, Chairman, School Committee
James R. Engel, Chairman, Board of Selectmen

FROM: Charles C. Dalton, Town Counsel

RE: Feoffees of the the Grammar School

I have spent a considerable amount of time trying to trace the legal history of the "Feoffees of the Grammar School in the Town of Ipswich" (herein "Feoffees") from the early 1600s to date in regard to potential changes in its structure or financial consequences during the present era, at the request of Jeff Simon.

After discussing this with several knowledgeable people, researching this subject extensively at the State House Law Library, the Assessors' office, the Town Clerk's office, the Social Law Library, and contacting the Attorney General's Office, I have summarized the results of my historical research, limited primarily to legal elements and implications, on the attached Schedules and in the following discussion.

Feoffees, Feoffment

The concept and terminology surrounding "Feoffee" originated in the Common Law of England centuries ago, subsequently transplanted by British immigrants to the United States in the 1500s to 1700s. The following definitions give the flavor of this arcane field of law, no longer relevant to real estate law, municipal law, nor educational law.

Feoffee. He to whom a fee is conveyed.

Feoffee to uses. A person to whom land was conveyed for the use of a third party. (The latter was called "cestui que use.") One holding the same position with reference to a use that a trustee does to a trust. He answers to the *hoeres fiduciarius* of the Roman law.

Feoffment. The gift of any corporeal hereditament to another, operating by transmutation of possession, and requiring, as

essential to its completion, the the seisin be passed, which might be accomplished either by investiture or by livery of seisin. A gift of a freehold interest in land accompanied by livery of seisin. Also the deed for conveyance by which such corporeal hereditament is passed.

A feoffment originally meant the grant of a feud or fee; that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffer. By custom it came afterwards to signify also a grant (with livery of seisin) of a fee inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. (Black's Law Dictionary, Fifth Edition, West Publishing Co (1979, pronunciations omitted)

"Feoffees of the Grammar School" - a committee that was set up in the earliest days of the Town to provide support for the schools. In 1650, the Town Meeting voted to give up "all the Neck beyond the Chebacco River and the rest of the ground up to the Gloucester line" to support the Grammar School. Five Trustees to be known as Feoffees of the Grammar School are chosen to administer the Grant. (This one was called Cogswell's Grant because it was rented for years to John Cogswell). About 1660 William Paine (sometimes "Payne") made a bequest of Little Neck to the Feoffees, and the income derived from it was used for the support of the schools. During the early years the income came from rents for fishing shacks and for stages where the fishermen dried their fish. (Mary Conley, personal notes)

I suggest that in 1991 the Town not focus on the esoteric aspects of 16th and 17th Century real property law, accepting all of the historical data and background as given, addressing possible solutions in 20th Century legal terms.

In my opinion, applying late 20th century legal terminology to the Feoffees, the Feoffees come closest to being a public trust or public charity, with perhaps "quasi-public trust" being a more accurate term. In passing, the two Boards should note that evolving concepts of Massachusetts and Federal Constitutional law in the 20th Century have rendered it most unlikely that the (essentially) 1650 agreement which resulted in the present Feoffees would be lawful if instituted today. In the same vein, if contested litigation results from the Town's current interest in

this area, it is likely in my opinion that a Massachusetts Court will at some point find the Feoffees' arrangement illegal on state constitutional grounds. Please note that this is my opinion; other attorneys may disagree; the legal issues involved are extremely archaic and obtuse.

I am summarizing the economic aspects of the Feoffees' present management of their only remaining real asset - Little Neck - as follows:

1. There are 170 cottages on Little Neck; 150 summer houses; 20 year-round houses.

2. Each cottage owner ("Tenant") pays \$700 annual rent ("ground rent") to the Feoffees, and all real estate taxes assessed by the Town to the Feoffees, who pay the Town. The Feoffees provide only one year leases to all Tenants, with an annual renewal for one year to the Tenant (almost without exception), or the successor in interest of the Tenant (i.e. the buyer of the cottage).

3. Little Neck is operated as an essentially "break-even" economic enterprise with the house/cottage owner ("Tenants") being charged sufficient ground rent to allow the Feoffees to maintain roads and utilities and to make token annual cash contributions for the support of the public schools.

4. The average "lot" (a misnomer in the traditional legal sense) is assessed for \$105,000.; each cottage and lot combined is assessed for \$158,000.

5. In regard to total assessed valuation (FY '91):

\$ 18,358,700	all land
8,836,500	all cottages
27,195,200	total assessed valuation
216,202	total tax revenue to Town

6. The tax revenue to the Town is not earmarked for the School System (or any other municipal function), all being utilized as general tax revenue.

7. Approximately 90% of the tenants are non-Ipswich residents.

8. There appears to be an active market in the sale of cottages for considerable sums, apparently reflecting the fair

market value (or close to it) of fee simple ownership. To what extent the cottage owner is, in effect, enjoying the value and/or appreciation which belongs to the landowner (Feoffees or the Town) is an interesting question, worth pursuing, in my judgement.

Legal Aspects

In my opinion, the seminal legal event from Schedule A in 1991 relative to the questions posed is Ch 5, Acts of 1765-66, termed "Province Laws", since the United States was not a separate nation in 1765. Ch. 54, Acts of 1786, made the 1765 "act" permanent with a simple one line extension. To the best of my knowledge, the 1765 Act has been the legal instrument governing the Town, the Feoffees, Little Neck, etc. for more than 230 years. I have attached a copy of the entire text of #5 to my opinion, Schedule B.

It is interesting to note that the disputes between the Town (i.e. Town Meeting and Selectmen), Feoffees, and Tenants during the 15th and 16th centuries seem to be similar in nature to the questions arising the last 20 years of the 20th century.

I suggest that all privy to this Opinion read carefully Schedule B (Ch. 5, Province Laws - 1765-66), weighing my legal and quasi-legal observations. I have tried to summarize in readily understandable language the functional powers and duties of the seven Feoffees and their replacements under #5 in Schedule C to my Opinion.

In essence the 1765 Feoffees were that era's school committee, with legal power to raise money, hire personnel, pay salaries and expenses, maintain a capital plant, and to do anything else necessary to keep the school functioning, reporting to the Town (evidently at Town Meeting) annually (cf. Sect. 1.). With the passage of time, the arrival of the 20th century, public education as a national right, and elected school committees, virtually all of the 16th to 19th century functions of the Feoffees have been given by the General Court to the Ipswich School Committee; the notable exception today being the independent power (i.e. separate from Town Meeting) to raise funds, conceptually for the support of the school system. Perhaps the recently (1980) abandoned fiscal autonomy of School Committees was the last Massachusetts vestige of the Feoffees' 1650 power to obtain funding for the public schools?

In my opinion, there are at least three broad legal approaches available to the Town, assuming arguendo that the Town leadership regards the present financial or institutional Feoffee structure as unacceptable, now or in future years and decades:

1. Induce one or more (preferably all) of the "Private Feoffees" to resign, replacing them by majority vote of the

remaining Feoffees with Feoffees whose exclusive loyalty and obedience is to the Town. Whatever policy changes are desired could then be voted and implemented by the new, all public Feoffees in accordance with the 1765 Act. You should note (Schedule C) that there is no specific provision in the 1765 Act for the resignation of Private Trustees, an obstacle which I believe can be overcome. The "new" Feoffees then should, perhaps must, institute one of the following legal actions to, in effect, lawfully ratify the Town's peaceful takeover of the Feoffees (actually only the private Feoffees).

2. Petition the General Court to, in effect, amend the 1756 Special Act to staff the Feoffees with complete public membership; new Feoffees then have the legal authority to operate Little Neck in the "public interest", as determined by publicly responsible officials at the local level.

3. Utilize the broad equitable jurisdiction of the Probate Court or Superior Court to amend the Feoffees "Charter", as constituted by the 1756 Act, to eliminate non-public members, rendering the "new" Feoffees a completely public body. The Attorney General may well participate, perhaps has a statutory duty to participate, in any law suit (as opposed to #1 and #2, supra) regarding the Feoffees.

In my opinion, all of the above courses of action are legal; I recommend #1 as most fast, cheap and likely to be successful, if available.

Random thoughts worthy of consideration

1. The Tenants must at some point receive notice of any judicial proceedings the Town decides to institute and will almost certainly be allowed to participate. Assuming they, approximately 350 strong, retain legal counsel and participate, their interests will probably be adverse to the ultimate goals of the Town. This possibility can't be avoided but should be borne in mind.

2. The Town, or the local public, should in my opinion be represented by one, and only one, body - logically either the Board of Selectmen or the School Committee. If the Town approaches this situation seriously, there will be several important value judgments to be made, many with social, political, equitable, and publicly-related factors. The larger the group(s) making these decisions, the more cumbersome, time-consuming, and expensive the project will be. I express no opinion as to whether the Board of Selectmen, the School Committee, or some other Committee is the most suitable single representative of the public interest, but request that you recognize the inevitability of future problems and complexity and the desirability of addressing this "procedural",

but extremely important, factor very early. It is conceivable that if the School Committee and the Selectmen come to loggerheads on how to deal with the Feoffee situation, each may require separate legal counsel and each may proceed as adverse parties in litigation against each other and the Feoffees. This possibility should be avoided if humanly possible - for obvious reasons.

3. The Historical Society, and those interested in local history, may at some point become involved in this situation (i.e. potential disputes, litigation). What their positions will be, and whether they prove to be an asset or a liability to the Town's ultimate position and wishes, I am unable to speculate on.

4. In my discussions of the Feoffee situation with the Attorney General's office, I received the distinct impression that the Attorney General was sympathetic to any reasonable public policy change in the status quo the Town decided to attempt, and that the Attorney General would probably support the Town's litigation position, if reviewed and approved in advance. I agreed to keep the lines of communication open, awaiting your determination of the Town's position.

5. Bringing this project to this point has been very labor-intensive, time consuming, and reasonably expensive. Once the Town has decided on its goals, adequate provision should be made for legal fees and other necessary expert assistance (i.e. real estate appraisals and/or advisors). At some point Town Meeting action may be desirable or necessary to legally effectuate whatever changes the Town leadership desires. I recommend that any presentation to Town Meeting be delayed until the School Committee and Selectmen have agreed in principle and decided how to proceed.

6. Assuming the "Town" owned Little Neck in fee simple, i.e. that there were no Feoffees whomsoever to deal with in any legal arena, what would the "Town" then do in 1991 with Little Neck? For example:

A) Operate the property like the Feoffees, changing rents and providing services, with the "net income" being utilized for some general or specific public purpose(s)?

B) Sell individual lots off in the reasonably near future (two to ten years ?) for whatever fair market values the current real estate market will sustain; then, let the new lot owners (formerly Tenants) deal with the Town, just as any homeowner does in the similar Great Neck area, using the net proceeds or real estate tax revenue for any specific or general public purpose(s)?

C) Should the present Tenants be shown any preference by the "new" municipal owner - whether as Tenants or purchasers?

D) Should the net revenue (whether the future Town Management chooses sales, rentals, or a combination) be dedicated exclusively to the School Budget, exclusively to the General Government Budget, or some combination of both?

Reasonable answers to some of the above questions may well require expert opinion - real estate appraisors to advise the Town of various permutations of possible net income(s) to calculate potential financial benefits to the public.

There may be other aspects of the Feoffee structure I am unaware of, and other questions I haven't thought of. I welcome anyone's raising any broad, policy questions concerning this subject at an early stage so that all of us are made aware of them, and hopefully arrive at a consensus before reaching the courtroom.

By way of an additional procedural comments:

I am not providing George Howe with a copy of this opinion, departing from my usual administrative procedure. I am not providing Dick Thompson a copy at Dick's specific request (to Jeff Simon and myself). Dick rents one of the 170 cottages on Little Neck and is apprehensive that there is or may be perceived a conflict between his financial interest as a Tenant and his public responsibility as Superintendant of Schools. I have, of course, honored his request that he not be informed of the status of my Opinion concerning the Feoffee situation. I leave it to Jeff and the School Committee to deal with the Dick Thompson - Feoffee - Tenant - Little Neck - aspects of this situation in future months. I have no objections to the Selectmen providing a copy of this Opinion to George Howe, but strongly suggest that you exercise discretion in distributing copies for the time being.

A great deal of work went into this project - trying to reconstruct 350 years of very narrow, tightly focused Town history and to determine what the 1990s legal options and applicable law are. The following people were kind and generous in helping me to locate very old documents and in helping me comprehend ancient law and society, to bring this project to this point. Therefore, I am very grateful to Mary Conley, Fran Richards, and Bette Siegel, Documents Librarian at the State House Law Library and an Ipswich resident.

I shall await further guidance from the School Committee and the Board of Selectmen in regard to the Feoffees before taking any additional actions.

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66 Labor-in-Vain Road,
Ipswich, MA 01938

April 1, 1996

To the Editor of the Ipswich Chronicle

I always like to read John Dolan's warm-hearted articles about the town's history, but he was overly warm-hearted in his reference to the Feoffees in his article last week.

What the Feoffees contribute to the town is in fact a scandal. The land they own at Little Neck was put in their care in the 17th century to provide an income forever to the town's "free scoole". That was, and is, the Feoffees' only reason for being. The land is now assessed at over \$13 million (\$13,354,500 to be exact). How much income do the Feoffees make over to the Ipswich school system from that enormous asset? Only \$25,000, according to the Town Report - a measly 0.19 percent.

Imagine if you were the beneficiary of a trust fund worth over \$13 million and the trust managers, year after year, paid you less than a fifth of one percent. You would take them to court. Yes, the Feoffees pay the town much more in taxes, but taxes would be owed to the town anyway, whoever owned the land.

Unlike other boards in town, the Feoffees decline to list their names in the Town Report. No doubt they are ashamed. Certainly they ought to be. If \$13 million were invested in a well-run bond fund it could be yielding over 8 percent in income and appreciation. Imagine 3 percent ploughed back into the fund and 5 percent paid to the Ipswich schools. That would be \$650,000 a year to help the schools do a better job.

It is also scandalous, of course, that the School Committee do nothing about it. Presumably they understand percentages. It would be a worthwhile project for a social studies class at the high school to do a study of the Feoffees, one of the oldest institutions in town, and present it to the School Committee and the Feoffees. I think readers of the Chronicle would also be interested. The most important documents are not hard to find. The bequest which started it all is recorded in Waters' History. The Massachusetts statutes which confirmed the purpose of the trust in the 18th century and still prescribe its management are to be found in the statute books.

Sincerely,

Robert K. Weatherall

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7/11/96
C.2
FEOFFees

IPSWICH PUBLIC SCHOOLS

Office of the Superintendent

To: School Committee
From: ~~Dick Thompson~~
Date: May 8, 1996
Re: Little Neck

*Sent to
S.C. previously*

Last night at 5:00 o'clock, the FEOFFees held a business meeting regarding Little Neck. What is normally a five-minute meeting, turned into an hour-and-a-half meeting with the prime focus being the contribution of the FEOFFees as Trustees of Little Neck to the schools of Ipswich.

Mr. Robert Weatherall, who put the article in the newspaper a couple of weeks ago regarding the Trustees' "shameful" treatment of the schools, was there to articulate his position. Essentially, he feels that any change from the current practice of an annual donation of approximately \$12,000 to the schools toward a reasonable percentage of the value of that trust would be appropriate. He argued, that if he took the total value of the property and invested it, it would make in excess of \$800,000, a large amount of money. After arguments that the Trustees were not implementing their responsibilities, which were solely to the Ipswich schools rather than to the inhabitants of Little Neck, members of the audience joined in.

Mr. Weatherall also raised the argument that they are not following the state laws on Little Neck (copy attached) which indicate that there should be three selectmen representatives to the FEOFFees rather than the one which is the current practice. Some of the selectmen present then gave varying opinions:

Pat McNally wanted to spend town money to get to the bottom of the issue of how many selectmen are part of the FEOFFees each year;

Jim Engel felt we shouldn't spend town money and answer all the unanswered questions unless they are critical to the needs of the town;

Bill George said this issue surfaces every five to seven years after some "foofarah" that goes away with no change;

and back to Jim Engel, who argued that there are really three sets of players --

- (a) the FEOFFees
- (b) the selectmen who are minor players, because even though they were appointed originally as members of the FEOFFees, the funds go to specifically for school use and, therefore
- (c) the school committee as a responsible agent for dealing with this issue

Jim also commented that the selectmen and school committee had some legal work done on the history of the FEOFFees some time ago and the selectmen cannot locate the opinion. After considerable discussion and some polite "heat" it became apparent that no solution was to be found at this meeting, but that there were people there who were not willing to let the issue go.

Mr. Weatherall approached me at the end of the meeting and requested that this issue be placed on a school committee agenda. He would provide historic information to the school committee on the FEOFFEES and his recommendation for raising more funds for the students of Ipswich.

I spoke to George Jewell who will contact Mr. Weatherall and George will attempt to place him on the agenda for the ~~June 20~~ meeting. My recommendation is that you listen to Mr. Weatherall and then have a discussion regarding future actions on your part.

RFT/tph
Enclosure

P.S. I want to remind everyone that when this issue surfaced the last time, I lived on Little Neck. At that time I made sure everyone on the board and the press understood that I had a possible conflict of interest and I filed a paper with the Town Clerk and school committee. That possible conflict of interest may still exist in that I hold a mortgage on Little Neck property. Given this possibility, I will appoint Steve Fortado as the administrator responsible for working with the school committee on this issue.

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THE FEOFFEES: THE ESSENTIALS OF THE STORY

*NA a mystery
NA are not much
NA only grammar S. Dr.*

The land the Feoffees own at Little Neck was bequeathed to the Town of Ipswich by William Paine in 1660 for the benefit of the "free scoole of Ipswitch" forever. The text of his will is attached. The town put the land in the care of a four-member board of trustees - then and thereafter known as the Feoffees - who would find their own successors if anyone dropped out.

*we elected
or appointed*

Disputes arose between the town, the Feoffees, and their tenants regarding their respective responsibilities. In 1756 the Great and General Court in Boston passed a temporary statute, effective for ten years, confirming the Feoffees' responsibilities. It declared that the property they held in trust was "for the use of school-learning [in Ipswich] forever". The governance of the trust was amended to include the three most senior selectmen as members of a joint committee with the Feoffees. The text of the statute is attached.

When the 1756 statute expired in 1766 the General Court passed another using almost the same language, effective for the next twenty-one years (copy attached). When this one expired in 1787, after the Revolution, the Massachusetts House and Senate made the 1766 statute permanent (text attached). The 1766 statute remains the last word on the management of the trust.

Currently the four Feoffees descending from the original four are Donald Whiston, James Foley, Peter Foote, and Alexander Mulholland. Recently only the chairman of the Board of Selectmen (last May it was Jim Engel) has sat with the Feoffees at their annual meeting.

The Feoffees continue to hold the land at Little Neck. It is currently assessed \$13,354,500. Over the years the Feoffees have allowed tenants to build houses on the land, owned by the tenants, not the Feoffees. The houses are assessed at \$9,200,000 (more or less). Both the land and the houses are taxed by the Town (as they would be if they were in other hands). The Feoffees collect the taxes for the Town.

How much does this charitable trust for the benefit of the Ipswich schools pay over for that purpose? \$25,000 in 1994-95. At their annual meeting in May the Feoffees talked of contributing \$20,000 in 1996.

\$25,000 is only 0.19 percent of \$13,354,500. If you were the private beneficiary of a trust which paid you so little you would take the trustees to court.

The Feoffees have forgotten their obligation to the schools and have concerned themselves more with the welfare of their tenants. There are 150 houses at Little Neck. The plots they stand on are assessed at \$12,431,000,

which averages out to \$82,873 per house. The Feoffees charge a rent of \$800 to tenants who live at the Neck all year, \$600 to those who are there only for the summer. Assume an average rent of \$650 (because the year-rounders are in a minority). This is only 0.8 percent of the value of the average plot. (This is not considering the value of the unbuilt land at Little Neck, which the tenants enjoy in common). What other landlord would charge so little for the privilege of using his land - especially land in such a beautiful location?

What are the possibilities, even the remote possibilities? If the value of the land at Little Neck were invested in financial securities even a conservative board of trustees would expect a 5 percent net return. 5 percent of \$13,354,500 is \$667,725. We may never be able to get that much for the schools out of William Paine's bequest, but there is clearly a lot of room for improvement.

Twelve million offering at 13 million.

Mr. Paine died Oct. 10, 1660. In his will, signed Oct. 2 1660, he made generous remembrance of the school.

"I give unto the free scoole of Ipswitch the little neck of land at Ipswitch commonly knowne by the name of Jefery's neck. The which is to bee and remaine to the benifitt of the said scoole of Ipswitch forever as I have formerly Intended and therefore the sayd land not to be sould nor wasted. I give unto the college at Cambridge the some of Twenty pounds not to be expended but to remain as a stock to the College aforesayd forever."

Suffolk Reg. of Probate, 1:346.

PROVINCE LAWS.—1755-56. [CHAP. 26.]

CHAPTER 26.

AN ACT FOR REGULATING THE GRAMMAR SCHOOL IN IPSWICH, AND FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE SAME.

WHEREAS divers piously disposed persons in the first settlement of ~~Preamble~~ the town of Ipswich, within the county of Essex, granted and conveyed to seofees in trust, and to such their successors in the same trust as those seofees should appoint to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in said town forever; of which seofees the honourable Thomas Berry, Esq^r., Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, are the only survivors; and whereas the town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same use, give and grant to certain persons in said grant mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, in the same town, with some other lands adjoining; all which farm and lands were soon after leased out for the space of one thousand years, the rents to be applied to the uses of learning in said town as aforesaid; but as is apprehended by some, no power was given by the said town to their trustees to appoint successors in that trust for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, considerable disputes have already arisen between the said town and the seofees; and not only so, but some doubts are started whether it is in the power of said town or seofees to compel the payment of the rents of the farm and adjoining land before mentioned; and inasmuch as the said town of Ipswich, by their vote of the twenty-second day of January, one thousand seven hundred and fifty-six, by and with the consent of the aforementioned seofees, have agreed to apply to this court for aid in the manner in said vote mentioned; wherefore,—

Be it enacted by the Governour, Council and House of Representatives,
[SECT. 1.] That from and after the first day of March next, for and during the space of ten years, the aforesnamed Thomas Berry, Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, the present surviving seofees on the part of the private persons granting lands as afores[ai]d, together with Francis Choate, Esq^r., Capt. Nathaniel Tredwell and Mr. John Patch, Junr., three of the present selectmen of said town, shall be and they are hereby incorporated a

Seofees of Ipswich school appointed.

Their power. joint committee or seofees in trust, with full power and authority by a majority of them to grant necessary leases of any of said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities, and, if need be, to sue for and recover the same; to appoint grammar-school masters from year to year and time to time, and agree for his salary; to apply the rents and annuities for the paym[en]t of his salary and other necessary charges arising by said school; to appoint a clerk and treasurer, and if found necessary, to impose some moderate sum and sums of money to be paid by such scholars as may attend said school, for making up and supplying any deficiency that may happen in the yearly income and annuities of said lands; for defr[a][e]ying the necessary charges that may arise by said school, and enforce the payment; to inspect said school and schoolmaster, and in general to transact and order all matters and things relative to such school, so as may best answer the original intent and design thereof.

**Account of seofees pro-
ceedings to be
held before the
town annually.**

[SECT. 2.] And the said committee or seofees and their successors shall, at the anniversary meeting of said town in March, yearly, during the continuance of this act, lay before said town a fair account of their proceedings relating to said school for the year then last past.

And for the continuance of the succession of the before-named committee or seofees,—

Be it enacted,

[SECT. 3.] That if either the said Thomas Berry, Daniel Appleton, Samuel Rogers or Benjamin Crocker, shall decease, or remove out of said town of Ipswich, or otherwise become incapable or unfit to discharge said trust, it shall and may be lawful for the surviving and qualified remainder of those four gentlemen to appoint some other suitable person or persons in his or their room so deceasing, removing or otherwise unqualified, according to the original intention of their first appointm[en]t, so as to keep up the same number of four seofees thus constituted, and no more; and no person to be appointed a seofee but an inhabitant of the town of Ipswich: and the aforementioned selectmen shall, from year to year, be succeeded by the three oldest in that office of the selectmen of said town for the time being, other than such of them as may be also one of the aforesaid four seofees; and in case it should at any time happen that there is not three selectmen chosen by said town that may have served the town before in that office, the deficiency shall be supplied by those first named in the choice of the town.

And for rend[e]ring the whole more effectual,—

Be it further enacted,

[SECT. 4.] That the afores[ai]d committee or seofees in trust may, in all matters relative to s[ai]d grammar school, in which they may by force of this act be concerned, sue or be sued by the name or char-e[a]cter of the seofees of the grammar school of the town of Ipswich, in the county of Essex; and in this power their successors shall be included with respect to the transactions of those that may have pre-ceeded them in said office.

[SECT. 5.] This act to continue and be in force for the space of limitation.
ten years, and no longer. [Passed February 17; published February
26.] 1756.

Provision for the
succession of
said seofees, &c.

Seofees, or
committee, to
sue and be sued.

1766

PROVINCE LAWS.—1765-66.

CHAPTER 5.

AN ACT FOR REGULATING THE GRAMMAR SCHOOL IN IPSWICH, IN THE COUNTY OF ESSEX, AND FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE SAME.

Preamble.

² Met. 584, 594.

WHEREAS divers piously disposed persons, in the first settlement of the town of Ipswich, in the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint, to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in the said town forever; of which feoffees John Choate, Samuel Rogers, Aaron Potter and Francis Choate, Esqrs., are the only survivors; and whereas the said town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same uses, give and grant to certain persons in their grants mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, in the said Ipswich, with some other lands, the rents of which to be applied to the use of learning in said town as aforesaid; but, as is apprehended, no power was given by the said town, to their trustees, to appoint successors, in that trust, for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, disputes have heretofore arisen between the said town and the said feoffees; and also some doubts have arisen whether, by the constitution of those grants as aforesaid, it is in the power, either of the said town or feoffees, to compel the payment of the rents of said farm and other lands granted by said town, as before mentioned; and whereas, for the removal of the aforesaid difficulties, on the joint application of both said town and the then feoffees, this court did, in the twenty-ninth year of his late majesty King George the Second, by one act then passed, intituled "An Act for regulating the grammar school in Ipswich, and for incorporating certain persons to manage and direct the same," empower the then surviving feoffees, with three successors, together with part of the selectmen of said town, for the time being, as an incorporate body, to manage and direct the affairs of said school for ten years then next coming, in manner as in said act is expressed, which ten years will expire on the first day of March next; and whereas it has been found by experience that the said act has been of great advantage to the interest of learning in said town, and that all doubts and disputes aforesaid, from the passing of said act, have ceased, and the parties concerned have desired the continuance of the aid of this court touching the premisses; wherefore,—

Be it enacted by the Governor, Council and House of Representatives,

[SECT. 1.] That from and after the first day of March next, the aforesaid John Choate, Samuel Rogers, Aaron Potter and Francis Choate, Esqrs., the present surviving feoffees on the part of the private persons granting lands as aforesaid, together with Michael Farlow, Samuel Burnham and Samuel Lord the third, three of the present selectmen of the said town of Ipswich, shall be and they are hereby incorporated a joint committee or feoffees in trust, with full power and authority by the whole, or the major part of them, to pass necessary leases of any of said lands, not prejudicial to any lease already made and not exceeding the term of twenty-one years at any one time; also to demand and receive all rents and annuities, on such other grants or leases relative to said school, that now is or that hereafter may be, and, if need be, to sue for and recover the same, either by themselves or by their attorney; also to appoint a clerk and treasurer, also a grammar-school master, from year to year; and, from time to time, to agree with him and them for his and their salaries; and to apply the said rents, grants and annuities for the payment of his and their salaries, and for the discharge of other necessary expences attending this affair, so far as those rents, grants and annuities will go; with a like power from time to time to inspect the said school and master, and in open-

1765-66, chap
26.

Feoffees of
Ipswich school
appointed.

Their power.

1766

eral, to transact and order all matters and things relative to said school, and to all the lands, grants, rents and annuities that do now, or that may hereafter, belong to said school, arising from the donations aforesaid, so as best to answer the general design and intent thereof; annually laying an account of their proceedings in this trust before the said town, at their March meeting, for their inspection.

And for the continuance of the succession of the aforesigned committee or feoffees,—

Be it further enacted,

[SECT. 2.] That if either the said John Choate, Samuel Rogers, Aaron Potter or Francis Choate, shall decease, or move out of the said town of Ipswich, or otherwise become incapable or unfit to discharge said trust, or unreasonably neglect to do it, it shall and may be lawful for the surviving and qualified remainder of those four persons, from time to time, to appoint some other suitable and qualified person or persons in his or their room so deceasing, removing or otherwise unqualified, or neglecting his or their duty as aforesaid; which power of appointment shall descend to those so appointed, so as always to have four of said feoffees constituted in this way, and no more; no person at

Vacancies
among the
feoffees, how to
be filled up.

any time to be appointed that is not an inhabitant of the said town of Ipswich: and the selectmen aforesaid, by this act incorporated as aforesaid, shall, from year to year, be succeeded by the three eldest, in that office, of the selectmen of that town, other than such of them as be also one of the feoffees constituted as aforesaid; and in case it shall so happen, at any time, that there are not three selectmen chosen by the said town who have served in that office before, then those first named in such choice shall succeed as aforesaid.

And, for rendering the whole more effectual,—

Be it further enacted,—

[SECT. 3.] That the aforesaid committee, or feoffees in trust, may, in all matters relative to said grammar school, in which they may by force of this act be concerned, sue or be sued by the name of Feoffees of the Grammar School in the town of Ipswich, in the county of Essex; and in this power their successors shall, from time to time, be included, with respect to the transactions of those who may have preceeded them in that trust.

[SECT. 4.] This act to continue and be in force for the term of twenty-one years from the first day of March next, and no longer.
[Passed June 21; published June 25.]

1766

Limitation.

Feoffees may
sue or be sued,
as such.

1787

1786.—Chapter 54.

[January Session, ch. 4.]

Chap. 54 AN ACT MAKING PERPETUAL, AN ACT RESPECTING THE GRAMMAR SCHOOL, IN IPSWICH, IN THE COUNTY OF ESSEX.

Preamble.

Whereas a Law respecting the said School, was enacted in the year one thousand seven hundred and sixty five,

be in force for the term of twenty one years, from the first day of March, One thousand seven hundred and sixty six, which Law has been found beneficial, and to answer the purposes for which it was enacted:

Be it therefore Enacted, by the Senate, and House of Representatives, in General Court assembled, and by the authority of the same, That the said Law, entitled, "An Act for regulating the grammar School in Ipswich, in the county of Essex, and for incorporating certain persons to manage and direct the same," Be and hereby is made perpetual.

February 14, 1787.

CIRCULATED AT FEOFFEES
MAY MEETING, 1996.

FEOFFEES OF THE GRAMMAR SCHOOL
Ipswich, Massachusetts

Balance, July 1, 1994	\$ 16,519.17
Cash Received	422,643.50
Expenditures	411,872.63
Balance, June 30, 1995	27,290.04

Little Neck Valuation	\$ 22,683,000.00
Buildings and Land	27,290.04
Cash in First National Bank of Ipswich	23,000.00
Reserve for Erosion Account	20,000.00
Reserve for Title 5 Account	22,352.30
Reserve for Ipswich Schools Account	\$ 22,775,642.34

SCHEDULE I
Cash Receipts
July 1, 1994 - June 30, 1995

Buildings and Land Taxes	\$303,809.05
Rents	118,834.45
	\$422,643.50

SCHEDULE A

Balance, July 1, 1994	\$ 16,519.17
Cash Receipts	422,643.50
Expenditures - Schedule II	\$439,162.67
	411,872.63
	\$ 27,290.04

SCHEDULE II
Expenditures
July 1, 1994 - June 30, 1995

Taxes	\$303,809.05
*Town of Ipswich	
Repairs and Upkeep	
*Community Center	7,980.86
*Docks	1,200.00
*Split Rail Fence	4,751.80
*Playgrounds	1,865.00
*Tree and Brush Cutting	16,815.19
*Road Paving and Repair	8,448.88
*Maintenance	2,056.97
Other Expenses	
*Salaries	5,500.00
*Transportation	500.00
*Police	5,037.01
*Office Expense	902.36
*Insurance	20,100.00
*Meetings	515.89
*Legal	1,046.40
*Gift to Ipswich Schools	25,000.00
Abated Taxes Returned	843.22
*Transfer Funds to Title 5 Account	5,500.00
	\$411,872.63

22

MANAGEMENT ISSUES OF FEOFFES FROM THE MINUTES

- Jan. 16, 1969 - Officer salaries and expenses
 Wharf repairs and extension of wharf
- Jan. 28, 1970 - Officer salaries and expenses
 Erection of dolphin for ice damage protection
 Road work
- Jan. 20, 1971 - Erosion prevention
- Jan. 20, 1972 - Brush and tree removal
 Erosion prevention (\$46,000 spent from 1912-1945)
 Road work
- Jan. 24, 1973 - Rebuild float
 Road repairs
 Erosion prevention
 Contribution to First Church Building Fund in honor of Mr. Goodhue
- Jan. 30, 1975 - New ramp to the float
 Repairs to wharf
- Feb. 7, 1985 - Water pipe conversion to deep water system
 Tree maintenance
 Erosion prevention program
- Feb. 26, 1986 - Water service system improvements
 Resurfacing of roads
 Erosion prevention
- Mar. 25, 1987 - Deep water system paid in part by \$300 assessment to each cottage
 Tree removal/brush clearing
- Mar. 9, 1988 - Liability insurance
- Mar. 9, 1989 - Tree damage
- Mar. 15, 1990 - Liability insurance (\$18,000)
 Water project costs (\$300,000)
- Mar. 20, 1991 - Police

- May 12, 1994 - Trees, roadways and seawall damage
 Tree maintenance and brush control program
 Snow removal and debris sweeping
 Repairs to Community Center and wharf
 Paving program
- May 11, 1995 - Tree and brush program
 Police detail
 Insurance policy
- May 7, 1996 - Tree and brush program
 Roadway paving
 Police detail
 Liability insurance
 Snow removal
 Debris removal
 Erosion control