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**Windsor's Importance in  
Vermont's History  
Prior to the Establishment  
of the  
Vermont Constitution**

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**A PAPER  
READ BEFORE THE  
VERMONT HISTORICAL SOCIETY  
AT WINDSOR  
IN THE  
OLD CONSTITUTION HOUSE**

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**SEPTEMBER 4, 1822**

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*By Henry Steele Wardner*

## Windsor's Importance in Vermont's History

To be invited to address you in this, my native town and still my home, and in this, the most notable of Vermont's historic buildings, gives me real pleasure. That pleasure is the greater because of my belief that through the neglect of some of Vermont's historians as well as through the enterprise of others who, like myself, have had their own towns or group of individuals to serve and honor, the place of Windsor in Vermont's written history is not what the town deserves and because your invitation gives me an opportunity to show some forgotten parts of Windsor's claim to historic importance.

Today I shall not describe the three celebrated conventions held in this town in 1777, the first of which gave to the State its name, while the second and third created the State and gave to it its corporate existence and its first constitution; nor shall I touch upon the first session of Vermont's legislature held here in 1778, although upon these several events mainly hangs Windsor's fame as far as printed history is concerned. Nor shall I dwell upon Windsor as the first town of Vermont in culture and social life through the last decade of the eighteenth century and the first quarter of the nineteenth, nor yet upon the extraordinary influence which the early artisans and inventors of this town have had upon industries in various parts of the world. Any of these topics is worthy of discussion before this Society and some of them form the subject of addresses at today's meeting. My paper, however, will be limited to Windsor's importance in Vermont History in the days before the establishment of State government.

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All readers of Vermont history know that one of the treasured grievances of the settlers upon the New Hampshire Grants west of the Connecticut River and one of the potent

causes of secession from New York was the action of the Supreme Court of the Province of New York, sitting at Albany in June 1770, in declaring that titles to real estate granted by New York were valid as against titles for the same property derived under charters granted by Benning Wentworth as the Royal Governor of New Hampshire, and in holding that the Benning Wentworth charters were actually void. It was from that tribunal that Ethan Allen, as defeated counsel for the New Hampshire grantees, bowed himself out with the oracular observation that "the gods of the valleys are not the gods of the hills."

The court proceedings were actions of ejectment brought by several men who claimed title under New York grants against settlers who claimed title under New Hampshire grants. The property in question was in and about Shaftsbury and Bennington and the townships just northward, the region in which an eminent Vermont historian and former honored President of this Society, the Honorable Hiland Hall, took special interest. He devoted a large part of the eleventh chapter of his "Early History of Vermont" to these ejectment cases and yet, with all his diligence in research, he never once intimated that these cases were of Windsor origin.

We must go back several years to get the posture of affairs on the New Hampshire Grants at the time these ejectment suits were brought. From the winter of 1749-50 down to the year 1764 Benning Wentworth, as the Royal Governor of the Province of New Hampshire, had been issuing township charters in the region we now call Vermont. In the year 1764 the King in Council declared the west bank of the Connecticut River to be the boundary between the Provinces of New York and New Hampshire. Thereupon, in the spring of 1765, the Province of New York, which before Wentworth's day had made several somewhat indefinite grants extending perhaps into the disputed territory, proceeded to issue new land grants for acreage clearly included within that

already granted by Wentworth. One of these New York Grants was significant in date, in extent, in locality and in the names of the grantees. It was made on May 1, 1765; it embraced twenty-six thousand acres; it covered parts of Arlington, Sunderland and Manchester already granted by Benning Wentworth and already partially settled by grantees under Wentworth's charters; and it was issued in favor of James Duane, John Taber Kempe and Walter Rutherford. Of these three grantees Duane was the leader of the New York Bar: Kempe was the Attorney General of the Province: Rutherford was a member of one of New York's distinguished, respected and influential families. Yet with a grant of such vast area in the hands of men of such strength and standing no proceeding whatever was pressed by the grantees against the New Hampshire settlers or claimants for more than four years. Why was it that in the autumn of 1769 we hear for the first time of ejectment cases? Why should they have been brought and pressed at that particular time?

There had come to Windsor on the New Hampshire Grants from Plainfield in the Colony of Connecticut in the year 1766 Captain William Dean. He brought with him his wife Elizabeth, his sons, William Dean junior and Willard, and perhaps several other members of the family. A year or two later we find Phineas Dean as a considerable land owner in Windsor and a year or two later still we find Reuben Dean a resident on Windsor's town street and afterwards known as the maker of the first seal of the State of Vermont. But the largest land owner of the family was Captain William Dean himself whose holdings though scattered through the township were largest in the district a mile or so south of the Mill Brook and along the Connecticut River on what was called from the beginning "The Lower Meadow." I speak of him as a land owner: to be more exact or to avoid a debatable point I should say that he claimed title to many acres under the Benning Wentworth charter for the town of Windsor.

Of Captain William Dean's character and education I know but little. He does not appear to have been a Church member or a contributor to the establishment of the first Congregational Church in Windsor. No particular scrap of writing of his other than an occasional signature has come to my sight. There were people in Windsor who believed him not strictly honest. He came to Windsor to make money by husbandry and by lumbering, an adventurer of the stuff of which real American progressives are made, the sort that advanced by work rather than by words. He does not seem to have been a hypocrite. He had or thought he had some enemies in town. At least, he said that his neighbors, Israel Curtis and Benjamin Wait—two substantial Windsor settlers—were angered because he had been quick to secure a deed of certain Windsor lands which they had contemplated buying and that they, out of spite, had lodged with the Surveyor General of the King's Woods in North America a complaint charging Captain Dean with felling white pine trees that had been reserved for masts for the Royal Navy.

It was a serious offence, punishable by fine and imprisonment, under the Statutes of Queen Anne and of King George I and King George II to cut white pines without the consent of the proper Crown officers. More than that, the New Hampshire charter of the town of Windsor, like all other New Hampshire grants, expressly forbade the felling of white pines under penalty of forfeiture of the lands of any offender. There is no doubt that Captain William Dean was fairly familiar with the timber law and there is also no doubt that he took chances in the matter of violating it. The result was that in the month of January, 1769, he and his sons William Dean junior and Willard Dean were caught practically red-handed in their Windsor forest by the Surveyor General of the King's Woods.

The Surveyor General was that delightful and upright gentlemen, John Wentworth, who in the year 1767, under a

commission issued the previous year, had succeeded his uncle Benning Wentworth as Governor of the Province of New Hampshire. With him came to Windsor Benjamin Whiting who was a deputy surveyor and William Ham a professional mastliner from the Portsmouth shipyards. What they saw on the spot coupled with stories told by some of Captain Dean's neighbors and one of his customers satisfied Governor Wentworth that there had been a plain infraction of the law.

On his return to Portsmouth, Governor Wentworth prepared a complaint against the Deans and forwarded it to Jared Ingersoll, Judge of the Court of Vice Admiralty, at New Haven. Judge Ingersoll, perceiving that the case had arisen outside his jurisdiction, passed the complaint to Judge Richard Morris of the Court of Vice Admiralty for the Province of New York who promptly caused the same to be filed. Judge Morris also notified the Attorney General of the Province, John Taber Kempe, to enter an appearance as Crown Prosecutor or Advocate General and as Proctor and Advocate for the libellant, the Surveyor General.

The alacrity with which John Taber Kempe engaged upon this prosecution of the Deans indicates that he never thought of its ultimate possibilities or how a victory over the Deans might react upon his own title and that of his friends Duane and Rutherford to their twenty-six thousand acres.

Kempe in due time procured the arrest of the three unfortunate Windsor respondents, had them brought to New York and lodged in jail in default of bail. In the meantime he was carrying on a lively correspondence with Governor Wentworth as to the details of the necessary evidence.

The first jolt to Kempe's serenity came in midsummer on the receipt of a letter from Governor Wentworth on the subject of Captain Dean's rumored conveyance of his Windsor real estate. Kempe knew perfectly well that, under the statutes of Anne and the two Georges, in case of the conviction of Captain Dean, only the goods and chattels, i. e. the personal or movable property, of the Captain could be taken

on execution. Why, then, was Governor Wentworth bothering himself and the Advocate General over what Captain Dean was doing or attempting to do in conveying land? The Governor did not permit him to remain in doubt. "You'll please not withstand to pursue the prosecution to try at least the validity of his conveyances," wrote the Governor.

What the Governor had in mind by this was clear enough to a lawyer of John Taber Kempe's understanding. It was the Governor's first hint of a purpose, soon to be unmistakably declared, of seeking the forfeiture of Captain Dean's land by virtue of the terms of the Benning Wentworth charter of Windsor. To Kempe, as a one-third owner in twenty-six thousand acres of land, the title to which depended on the total invalidity of the prior Benning Wentworth town charters, this hint must have been illuminating as well as startling. If the Benning Wentworth charter of Windsor was valid enough to support forfeiture proceedings for its violation it was valid enough to support a title to real estate. If this charter founded a valid title to real estate, then the Wentworth charters for Arlington, Sunderland and Manchester did likewise. If there was a valid New Hampshire title in Arlington, Sunderland and Manchester where Kempe, Duane and Rutherford had later been given their twenty-six thousand acre grant by New York, their New York title amounted to nothing.

Many of the details of this prosecution which are entertainingly set forth in John Wentworth's correspondence, in the papers of the Court of Vice Admiralty, in the Documentary History of New York and in B. H. Hall's History of Eastern Vermont, I must pass over for want of time; but I ought not to omit to say that not long after the arrival of Captain Dean and his two sons in the "New Gaol" in New York City they engaged as their counsel no less eminent a practitioner than James Duane. How it was that these three poor strangers from the backwoods of the New Hampshire Grants, lodged in jail, unable even to secure bail and quite

without funds should succeed in retaining the leader of the New York Bar and one of the foremost lawyers in the American Colonies, no paper that I have found relates. True, Duane said afterwards that he thought it a hard case and deserving of his sympathy. That, however, does not explain how he happened first to hear of it. One wonders if John Taber Kempe, having become acquainted with Governor Wentworth's ultimate purpose, did not deem it prudent that his professional and personal friend, his partner in land speculations on the New Hampshire Grants, should represent the unhappy culprits in this case of such peculiar possibilities.

Whatever the hidden thoughts of John Taber Kempe and however it was that James Duane came to represent the Deans it should be recorded to the honor of Kempe that in the trial of the case he was true to his office and his client. He prepared the case thoroughly, tried it well, proved overwhelmingly the guilt and secured the conviction of all three of the prisoners. They were heavily fined by the Court and re-committed to prison.

During the trial Benjamin Whiting, the deputy surveyor who had accompanied Governor Wentworth to Windsor, was in New York and testified as one of the witnesses for the prosecution. While in New York he heard gossip regarding the case and on his return to Portsmouth imparted it to the Governor. The latter incorporated much of it in his letters to England. In one of them he wrote as follows: "Mr. Duane, an eminent, patriotic Lawyer, was engaged for the Trespassers \* \* \* and in a few days it was insinuated to great numbers of rich men in New York that the successful execution of these laws would be more injurious to land owners than the Stamp Act \* \* \*. Almost every man that heard it became alarmed, and without further enquiring took part with the prisoners—supposing, if they were convicted, that it would be a precedent for the future; \* \* \*." Here the Governor adds that the large land owners feared that they would lose the right to cut timber; but in this conclusion

he quite misses the point. Captain Dean knew what it meant for others if his New Hampshire title under the Windsor charter should be found sufficiently valid to support a forfeiture on his conviction. Duane saw the point and so did John Taber Kempe and Walter Rutherford. There was no need for Captain Dean to worry about Mr. Duane's fee, for James Duane and his friends had more at stake than the Captain had. They appreciated indeed the chance that the conviction of the Deans "would be a precedent for the future."

It is amusing to see how Governor Wentworth went on—quite avoiding the real political significance of the case—to berate Captain Dean. This is what the Governor wrote to Judge Morris: "Through the arts of Mr. Dean," he writes, "this prosecution has been represented as ruinous to every land owner in the Province of New York many of whom are becoming thereby to his defence. It is therefore my indispensable duty to carry the prosecution thro' the whole course of the law, that his Majesty may be informed whether and wherein all the Acts of Parliament and *reservations in the patents* are ineffectual to the preservations of the Royal woods." If, as seems probable, Judge Morris exhibited to Kempe this last letter with its reference to the *reservations in the patents*—of course referring to the reservation of the white pine trees in the Windsor charter—Kempe had another shock.

Even a layman can appreciate the feelings of John Taber Kempe and James Duane. It must have occurred to them that they had better be prompt in securing from a court of competent jurisdiction a judicial decision upholding the validity of their New York grant in Arlington, Sunderland and Manchester. Thus it was, beyond doubt, that they now bestirred themselves to institute in the Supreme Court of the Province of New York at Albany those famous ejection suits in which both of them personally appeared as counsel for the holders of the New York land titles. They realized

full well that in that forum they had a good chance of victory, while if Governor Wentworth should be an antagonist as Surveyor General of the King's Woods in forfeiture proceedings under a New Hampshire charter with the fact of violation fully proved, they might expect a litigation carried through to the House of Lords by an adversary of power and influence far beyond their own and with a hostile interest on the part of the Crown to boot. Obviously it was better, from the lawyer's standpoint, to get the first blood in a title suit and they wisely figured that the impecunious New Hampshire settlers were far less formidable factors to oppose than the Surveyor General of the King's Woods and Royal Governor of a Province with a titled Wentworth patron<sup>1</sup> in England.

Such, then, was the time and such were the circumstances under which James Duane and John Taber Kempe started the famous ejectment cases against the settlers on the New Hampshire Grants. Can there be any reasonable doubt that the immediate occasion for their launching that litigation was the uncomfortable purpose of Governor John Wentworth who, in turn, had been stirred to action by a small local feud in the town of Windsor between Israel Curtis, Benjamin Wait and Captain William Dean?

Governor Wentworth, early in the year 1770, made formal application to the New York Council for the forfeiture of Captain Dean's land. No action was taken by the Council until after the decision in the ejectment cases. On the strength of that decision the Council were able to inform Governor Wentworth that the Windsor charter by virtue of which he had sought the forfeiture of Captain Dean's lands was void. Here ended that particular episode, but the decision of the Supreme Court of the Province of New York stood unreversed as a continuing menace to the settlers on the New Hampshire Grants and constituted one of the prime causes which led to the revolt which brought forth the State of

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<sup>1</sup>Charles Watson-Wentworth, Marquess of Rockingham.

Vermont. For your entertainment today I have traced to its source on the Lower Meadow in the town of Windsor an important causal stream.

By the way of footnote I may add that after their prison terms Captain Dean and his sons returned to Windsor, where, after a few years, the Captain attained a leading position. He presided at Windsor's town meeting which on June 23 chose delegates to the immortal convention of July 2, 1777, which held its closing sessions in this very house and to that convention he was elected Windsor's first delegate. His son, William Dean junior, became a substantial citizen of Weathersfield, while his other son, Willard, became one of the largest land owners and one of the richest men in Windsor. Willard's son, James, graduated at Dartmouth College, held professorships in the University of Vermont and at Dartmouth and gave us that pleasant little book called Dean's "Alphabetical Atlas or Gazetteer of Vermont." I draw no moral from these historical items: it is not the duty of the historian to do so.

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The following part of my address, like that which precedes, dates from Governor Wentworth's visit to Windsor in 1769. He seems on that occasion to have established relations with Nathan Stone, a Windsor settler, who then and thereafter was known as Colonel Nathan Stone by reason of a commission as second colonel or lieutenant colonel of militia issued to him in 1766 by Governor Sir Henry Moore of the Province of New York. Colonel Stone was as near as anybody to being a leader of the people of Windsor in the pre-Revolutionary days. He had education beyond that of most of his neighbors, wrote a better hand than any other Windsor man except Thomas Cooper and could compose a readable letter. To him, directly or indirectly, Governor Wentworth imparted some important suggestions.

Up to the date of his visit to Windsor Governor Wentworth seems to have acquiesced fully in the decision of the

King in Council fixing the west bank of the Connecticut River as the boundary between New Hampshire and New York, but within a month from the date of that visit he wrote his friend Colonel William Bayard of New York, saying that in his opinion the region of the New Hampshire Grants "will very shortly be re-annexed to New Hampshire." Also, very peculiarly for one in his official position, he advised the settlers "to regulate themselves according to their grants from New Hampshire." Exactly what the Governor meant by this may be open to doubt, but we find that within a few weeks the town of Windsor which hitherto seems not to have organized a town government did then organize with a full set of town officers—not in accordance with the town laws of New York but in accordance with the laws of New Hampshire. This took place on the second Tuesday of March, 1769, in strict conformity to the New Hampshire practice which survives in that state to the present day. Another suggestion which Colonel Stone received from Governor Wentworth was that it would be advisable for the settlers to petition to be set off from New York and be annexed to New Hampshire.

In the circulating of the petition or petitions up and down the Connecticut Valley in 1769 Colonel Stone was a more active promoter than anybody else. In itself it was a peaceable performance, but the occupation apparently worked upon his feelings. Up to this time there had been, so far as I have ascertained, no serious clashes and no serious hardships resulting from the boundary decision in 1764. It is true that there were said to have been some distressing evictions in the town of Springfield, but all of them antedated the boundary decision. In Pownal, alleged New Hampshire officials and some claimants under New Hampshire titles had evicted some old Dutch settlers who held title under the ancient New York Hoosick Grant and thereupon the evictors were lodged in Albany Jail. In October 1769, at Bennington, some commissioners who were running lines for claimants under the New York Walloomschaak Grant had been

frightened or pretended to have been frightened by New Hampshire settlers. But in no case had there been any serious outbreak against New York's authority.

The mind of Colonel Stone, however, had become inflamed. He confided to his friend Judge Samuel Wells of Brattleboro that since the latter part of 1769 he had been resolved that no processes out of the New York courts should be served in Windsor, that "while he had life he would oppose the Sheriff" and that the people of Windsor and some other places "would join and stand by him to the last drop of their blood." Even Ethan Allen could hardly have blustered and boasted with more ferocity. Judge Wells reasoned with Colonel Stone without avail.

In the month of May, 1770, three or four Windsor men, who on some warrant or precept had been arrested by the Sheriff of Cumberland County, were rescued by a body of armed men. To retake these prisoners the Sheriff gathered together a posse of upwards of a dozen followers and proceeded to Windsor. The story of the clash between the Sheriff's posse and Colonel Stone's band of Windsor's followers is found in the Documentary History of New York and in B. H. Hall's History of Eastern Vermont. A remarkable feature of the encounter was that the approach of the Sheriff's posse found Colonel Stone's band of Windsor farmers in battle array. Colonel Stone was in command, in the lead and armed with a sword. Behind him were his brothers Samuel and David, Joseph Wait, Benjamin Wait, Ebenezer Hoisington, senior and junior, Elisha Hawley, Steel Smith, Solomon Emmons, John Benjamin, Ebenezer Curtis and many others whose names are set forth in the records. Several of these men, as anybody acquainted with Windsor history and Windsor names will recognize, were the founders of Windsor families. The Sheriff and his posse were quickly overpowered, he and several of the deputies were taken as prisoners to the house of Joseph Wait and there they were held under orders that they could obtain their release only

on the Sheriff and others giving bond to cease all prosecution of Windsor's citizens at the ensuing session of the court and to make return that those whose arrest was sought could not be found in the jurisdiction. As a matter of fact the men for whom the Sheriff held a warrant were Nathan Stone, Samuel Stone, Joseph Wait, and Benjamin Wait—all of them present within the bailiwick, all confronting the Sheriff, and all demanding that he make return of his inability to find them. How that preposterous scene ended our records do not disclose other than to say that the Sheriff and his followers were released after several hours of captivity.

This singular exhibition of lawlessness took place in Windsor in the month of May, 1770. In his Early History of Vermont Governor Hiland Hall, after admirably describing the successful resistance encountered by the Sheriff of Albany County in attempting to execute writs of possession on the Breakenridge farm in Bennington in the month of July, 1771, thus concludes: "Here, in fact, on the farm of James Breakenridge, was born the future State of Vermont \* \* \* ." In view of what happened in Windsor fourteen months earlier I am obliged on the mere point of time to dissent from Governor Hall's award of any such distinction to the Breakenridge farm or to Bennington; for the resistance of the Sheriff of Cumberland County by the men of Windsor on the road from Joseph Wait's to Benjamin Wait's in the town of Windsor was actually the first violent blow in that long and bitter fight between the settlers on the New Hampshire Grants and the Government of the Province of New York. But at neither spot nor at either moment was born the future State of Vermont. In spite of protracted labor pains and the early cries or declarations of independence that State did not have its birth until the month of July, 1777, and the place was not in Bennington but in a house on the town street in Windsor—the house in which we meet today.

Colonel Stone and his band of rioters in the month following their Windsor affray pushed their victory by mak-

ing an attack on the court at Chester. They descended the Connecticut by boats as far as a point opposite Charlestown in New Hampshire, tramped west through the woods to Chester and appeared in a body in the court-room at the opening of the June session of 1770. Their behavior so intimidated the judges that an adjournment was ordered. Court had no sooner taken its recess than some of Colonel Stone's men seized John Grout, the only practicing lawyer in the neighborhood, and violently carried him off. The entire band of Windsor men with Grout as their prisoner now made their way to the bank of the Connecticut. It was a distance of some twelve miles. Grout told the story of this tedious and painful journey with such plaintiveness that, had he not been a most unpleasant character, we might be moved to sympathy. His description of the behavior of his kidnappers contains one item that especially interests me. He says that the mob were armed with "sticks" and that all the way from Chester to the river they kept pulling, shaking and twitching him. He mentions twice this cruel twitching process and in the copy of his affidavit the word is spelled with a capital T. Unfortunately Grout's original manuscript is lost, so that it is impossible for us to determine if the word "twitching" has been correctly transcribed and if the word was not really intended to be "switching." Grout certainly mentions the "sticks" in the hands of his captors. If they applied these weapons to his person we have record of the first use of the "twigs of the wilderness" of which Ira Allen wrote with such satisfaction.

I have sketched very briefly what I have found in the records as to this seizure of John Grout and I cannot in the time at my disposal recount in detail his sufferings. He was a prisoner overnight at Charlestown. Next day his captors took him to Windsor. There they kept him a prisoner several days. Apparently the chief purpose of Stone's party, aside from preventing the only lawyer from being in court, was to get Grout to agree not to practice as a member of the New

York Bar. They were perfectly willing that he become a New Hampshire lawyer and permanently live with them as such. Theirs was a clumsy way of attempting to bully Grout into becoming a partisan of the New Hampshire side.

Grout is unkind enough not to tell us how he made his escape and nobody else has told the story.

This organization of Colonel Stone's Windsor insurrectionists did not long continue. It was mentioned by Ira Allen very briefly. Governor Hiland Hall also mentions it, but not in its chronological place. Both assign, as the cause of its disbanding, the seduction or winning over of its ring-leaders by the New York authorities. There may be something in that; but there was probably more in the growing disposition of Cumberland County settlers to apply for New York town charters as a means of ending difficulties, and in the fact that Governor John Wentworth soon decided that the task of getting the region of the Grants transferred from New York's jurisdiction to New Hampshire's was hopeless.

The point I wish to make in connection with Colonel Stone's rebellion is that though by itself it was a comparatively small affair it was the beginning of the forcible and organized resistance that produced the State of Vermont. If, as Ira Allen truthfully says, it was "a bold stroke of a hundred men" to unite by resolution at Bennington to resist the Governor and Council of New York by force, it was equally bold for Colonel Nathan Stone and his Windsor followers, well in advance of the Bennington movement, to be the pioneers in the conflict and become the first band of "Green Mountain Boys." Colonel Nathan Stone and the men of Windsor, although overlooked in the popular histories of Vermont, struck the first blow and set the pattern and the precedent for those who won the glory and who received the applause of posterity.

On such records as the foregoing, showing first, that on Windsor soil arose the immediate reason for bringing the famous Albany ejection suits and, second, that in Windsor

under a Windsor leader and mainly of Windsor men was formed the first organized band of Green Mountain insurrectionists, and then to have our beloved State choose its name, form its constitution and establish its provisional and permanent government in this town, I have thought that Windsor was well within the facts in calling itself the birth-place of Vermont.