

# Possession of the Summit

## “A Prolific Subject of Contention”

Jeffrey Leich

In April of 1894, the Mount Washington Summit Road Company, owners of the summit of Mount Washington, sold to the Mt. Washington Railway Company the 49 acre circular tract that constitutes the summit of the mountain and the bulk of today's Mount Washington State Park. More than twenty years and thousands of dollars had gone into the Road Company's efforts to acquire clear title to the summit; they had been paid \$67,850 in rent over those years, and ownership of the mountain top destination was a valuable asset to the proprietors of the carriage road. The principals of the company, Ebenezer Coe and David Pingree, owners of vast tracts of timberland in Maine and New Hampshire, had no desire to sell and fought hard to retain the summit; yet after three years of struggle in the legislature, the state and federal courts, they accepted \$56,000 for the property. The tale of the competition and manipulation that led up to the sale is a forgotten chapter in the history of the mountain, and provides a few compelling glimpses of life in the 19th century summit colony.

David Pingree of Salem, Massachusetts, had an interest in Mount Washington ever since he bought the township of Sargent's Purchase in 1846 for \$140.26. He was also the force behind the completion of the carriage road in 1861. Title to the summit was disputed by the owners of the grant to the north, Thompson and Meserve's Purchase, but the validity of Pingree's claim was reinforced by John R. Hitchcock, operator of the Tip-Top and Summit Houses, who paid an annual rental of \$2,000 to Pingree. Steep as this may seem, Hitchcock reputedly earned \$18,000 per year during the eleven years that he was tenant. (1) With the death of David Pingree in 1863, control of his holdings passed to the trustees of his estate, among them his friend Ebenezer Coe, engineer and lumberman from

Bangor, Maine, and his son, also named David Pingree. These people moved to consolidate control of the summit in 1867 by purchasing the interest of Aurin Chase of Whitefield to all ungranted land within a three mile radius of the summit, which Chase had acquired through an act of the legislature.

The Mount Washington Railway Company came into existence on June 25, 1858, when the legislature granted to Sylvester Marsh a charter to build a railroad up Mount Washington or Mount Lafayette. Delays in patents and a lack of investors stalled the project and necessitated two extensions of the charter. After getting the support of several New England railroads, including \$5,000, or 25% of the financing from John E. Lyon, president of the Boston, Concord, and Montreal Railroad, Marsh was able to begin construction in 1866. The right of way was acquired in the manner of other railroads in the state — by right of eminent domain. New Hampshire legislatures had been reluctant to grant these rights in the 1830's and early 1840's, but by 1844 had passed a law that enabled railroads to condemn land for rights of way. The 99-foot wide location of the Mount Washington Railway was duly recorded in the office of the Secretary of State, approved by the New Hampshire Railroad Commissioners, and compensation totaling \$91.50 was awarded the landowners, the Jackson Iron Manufacturing Company. This company was controlled by the Pingree trustees.

Life on Mount Washington changed forever in 1869 with the completion of the railway. The easy accessibility which it afforded brought multitudes of visitors, as well as a certain disgruntlement among some who had known the mountain before:

*“Never again by the new rail can he have the sensation that he enjoyed in*

*the ascent of Mount Washington by the old bridle path from Crawford's, when, climbing out of the woods and advancing upon that marvelous backbone of rock, the whole world opened upon his awed vision, and the pyramid of the summit stood up in majesty against the sky. Nothing, indeed, is valuable that is easily obtained."* (2)

In the days before the railroad, the Tip-Top and Summit Houses, operated as one hotel, had often been inadequate for the demand. Now, it quickly became apparent that the increasing traffic brought by the railroad made essential the construction of a larger building for the accommodation of visitors in the notoriously changeable

weather. Financially stretched after the completion of the three-mile trestle, the railway was not in a position to build a hotel. Another problem was landed; the original location taken from the Pingree trustees narrowed from 99-feet on the slope of the mountain to 75-feet on the summit. Construction of a hotel would necessitate construction of engine and car barns on the summit, since it would be most efficient to leave trains on the summit overnight for passengers spending the night and descending in the morning. However, the Railway Company's tract on the summit was not large enough to build both hotel and barns.

Walter Aiken, manager of the railroad, suggested to Ebenezer Coe that the Pingree heirs undertake the building of a hotel.



New Summit House under construction, 1873.

[Kilburn Brothers stereographs]

Perhaps underestimating the amount of travel the new railroad would generate, Coe declined. Aiken and Lyon of the BC&M, as individuals, then made a verbal agreement with the Railway Company to finance a hotel on the railway's summit land. Sylvester Marsh, President of the Cog Railway at this time, later maintained in his brief memoir that the Cog Railway was never paid by Aiken and Lyon for the 250 trips required to freight the material needed to build the hotel. Construction of the second Summit House was begun in the fall of 1871 by a large crew of men working with a derrick to level the rocky site as much as possible and begin the foundation. The mason who laid the foundation, whose name is lost to history, would, as a member of the legislature in 1891, vote to decide the fate of the hotel. It was so large — 220 feet in length — that it occupied almost the entire summit location of the railway. To gain space for their engine and car barns, and for that section of the hotel that would extend slightly off railway land (the bar), the railway was compelled to lease additional land from the Pingree trustees. It was this lease that set the stage for the legal wrangles for the summit in years to come.

The terms of the lease were made out by Coe and Pingree. It was signed July 1, 1872, and covered a five year period beginning November 1, 1872. The Jackson Iron Manufacturing Company agreed to lease to the Railway Company a circular tract of land 100 rods (1,650 feet) in radius for \$2,000 per year in rent. At the expiration, the Pingree heirs had the right to purchase from the railway any buildings not required for railroad purposes — in effect, the soon-to-be completed hotel. Should the hotel be sold to the trustees, at a price specified in the lease as the "original real cost", they would have five years in which to operate it where it stood, then would be compelled to remove it to their own premises.

While the idea of moving such a large structure around on the gusty summit seems fraught with difficulty and risk, Coe had undertaken other implausible projects

in the past. In the early 1840's he had engineered a system of locks and dams on lakes in northern Maine that diverted water from the Allagash watershed to that of the Penobscot. David Pingree stated in the 1893 trial that their idea, when the lease was written, was to move the hotel to the site where the Railway Company later built their engine and car houses — approximately where the TV and Yankee buildings now stand. The vacant hotel site could then be used by the railway for a new depot. The impression given by the terms of the lease is that the Pingree heirs were doubtful enough of the success of the railway to decline to invest in a large hotel themselves, but hedged their bet by insisting on the right to buy it should it prove profitable.

Construction was completed in 1872, and the hotel sublet to Captain John Dodge, who paid \$12,000 per annum to Aiken and Lyon. Throughout its history, the hotel would be leased to operators.

The new house was magnificent. The capacity would grow to be 200 people in 91 bedrooms, although at least once 250 guests were accommodated<sup>(3)</sup>. Public rooms on the first floor included the parlor, carpeted and furnished with walnut marble-topped tables and a piano; the bar room, with a twelve-foot bar, 8 chairs and 2 spittoons; a reading and writing room; and the office, or lobby, which had 17 wicker armchairs, a large coal stove, and one cigar case. In the dining room were 14 twelve-foot tables, 168 chairs, and 12 gas chandeliers.<sup>(4)</sup>

Meals were served that prompted one traveller to write: "As far as profusion and variety go, you couldn't get a better or more carefully selected meal at the Continental in Paris."<sup>(5)</sup> On the staff were waitresses, cooks, porters, and clerks drawn from New England colleges and farms. Hotel guests arrived on the railroad for the most part, from the surrounding resorts where many from the cities spent their entire summer. Entertainment on the summit included viewing the scenery when visible, hiking to nearby points of interest (rolling rocks down the Huntington Ravine Headwall



A busy day on the Summit.

[Kilburn Brothers stereograph]

was one dramatic diversion), socializing, and observing fellow excursionists: "There is more human nature exhibited on Mount Washington to the square inch than in any other habitable place on this globe," wrote one resident.<sup>(\*)</sup> The tall coal stove in the office and the large parlor with its piano, around which guests and staff would gather to sing, gave the place the feel of home to many who came.

Shortly after the beginning of the lease period, the Jackson Iron Manufacturing Company obtained a clear title to the summit by purchasing the township to the north, Thompson and Meserve's Purchase. Three days later, the company transferred

the title to the trustees of the Pingree estate.

As the lease was due to expire, the Pingree party sought to exercise their right to buy the hotel from Aiken and Lyon. The hotel's owners replied with a statement of cost to build and furnish the hotel totaling close to \$70,000. Not believing this to be an honest figure, the trustees felt compelled to renew the lease for a second five year period beginning November 1, 1877. The terms of this lease were similar to the first, with the addition of a mechanism for the appraisal of the hotel's value by three independent appraisers and the stipulation that the Summit Road Company be allowed to build a stage office within the leased

area. This building seems to have been required because the hotel operator felt that the Glen House stage drivers were a disruptive influence in the affairs of the Summit House. As the trustees now owned a clear title to the summit, the annual rental was raised to \$3,000, a figure that Aiken thought "extortionate".

In negotiations in 1882 as the second lease drew to a close, Aiken offered to renew the lease at \$1,000 per year, maintaining that the second lease had been \$1,000 per year too much. At \$3,000 per year, he could not make 4% a year on his investment in the hotel. Coe, the negotiator for the trustees, declined; Aiken raised his offer to \$1,500, then \$2,000 several days later. Still, the trustees refused, and asked Aiken's price for the hotel; his earlier price of \$70,000 was forgotten, and he came down to \$41,250, but talks stalled there. The decision was made to appraise the hotel, and on September 22, 1882 the two parties met on the summit with three impartial appraisers to determine the value of the property.

The hotel was appraised and inventoried as planned, but during the meeting (called "exciting at times" by a participant) Aiken frustrated Coe and Pingree's plans once more by objecting that while he and John Lyon (now deceased, his interest taken over by the BC&M) owned the hotel, the lease was signed only by the Railway Company; therefore, the terms of the lease could not be enforced against Aiken and the BC&M.

Coe and Pingree conceded the point, and a third lease was signed for another five year period. Yearly rental again was set at \$3,000, the railway was prohibited from erecting more buildings on the summit, and Walter Aiken and John Vose of the BC&M became signatories to the lease.

Matters continued to deteriorate between the two parties at the end of the third lease. On November 1, 1887, the trustees notified the railroad that they desired to purchase all buildings on the summit not required for railroad purposes; the railway replied that all its buildings there were

needed to operate the railroad, and on January 3, 1888, it filed with the Secretary of State its intention to take additional land on the summit to build shops and engine houses. The trustees appealed the filing with the Railroad Commissioners, and a hearing was held in the Summit House in the summer of 1889. On September 11, 1889, the commissioners made their decision and reduced the amount of land condemned from 5½ acres to less than two acres; damages of \$2,750 were awarded the trustees.

Over the years, railroads' powers of eminent domain had steadily increased. In 1871, they had been granted the right to condemn land for car and engine houses, depots, and turntables. In 1878, their rights expanded to include the right to take gravel from pits adjacent to their rights of way. Now, it appeared, this railroad might be able to take land with the claim that the hotel was essential to their operation.

The trustees appealed the award in state Supreme Court in Lancaster, and proceedings there began October 3, 1890. Counter-attacking, the Railway Company filed a bill in the the state legislature to affirm by law what the commissioners had given them by fiat. The Bill To Amend The Charter of The Mount Washington Railway Company was introduced to the Senate on January 21, 1891, sent to the Railroad Committee, reported back favorably to the full Senate, which then voted to override its rules to allow a vote by the body on the same day; the bill passed. The next day the bill went to the House, was reported out of committee in a few days, and was about to come up for a vote when Coe read about it in a newspaper and requested the committee reconvene.

Contentious rhetoric flowed on both sides in the House Railroad Committee hearing. A lawyer for the Railway opined that "men from Maine and Massachusetts were trying to steal Mount Washington away from New Hampshire people." (?) Opening his testimony, the Hon. William L. Foster for the Pingree trustees thun-

dered: "The bill which you are requested to recommend to enactment is a most extraordinary production. It is the offspring of deception and fraud. It was conceived in sin, and brought forth in iniquity."(\*)

Before the bill could be voted on by the House, it was recalled to the Senate for a further hearing before the Senate Committee on Railroads, which again approved it and passed it again to the full Senate.

In discussions before the Senate, Senator Henry M. Baker of Bow spoke against the bill in a speech regarded as the best of the legislative session, and offered the following amendment:

*"The governor and council are hereby requested and directed to take all necessary action to secure the immediate condemnation of the entire Presidential Range of the White Mountains to the distance of one-half mile on each side of the top of each mountain of said range, and the necessary approaches thereto, and connections with the highways of that section, and that the land so taken shall be and forever remain a public park for the use of the people."*(\*)

Hotelmen and visitors had become increasingly apprehensive of the logging ac-



Summit House dining room with waiters in attendance.

[From F.G. Weller stereograph]

tivities in the White Mountains in the 1880's and by 1890 suggestions that the state protect the forests had become common. These sentiments were widely shared and Irving Drew, lawyer for the railway, also suggested that the state take back the peaks from the Pingree interests. His call for a mountain preserve was combined with a perceptive prediction.

*"Now, I submit that this state has the right to take, and it ought to take, those mountain tops back, and cherish them as one of its great, undying, and inexhaustible resources. I believe that it is of more account — the industry of the summer travel in this state is of more account — to the people of New Hampshire, and will be for the next century, than all the cotton manufacturers and the woolen manufactories within our borders. I believe that the development of that business is going to cause all our deserted farms to be reinhabited. . . and in a hundred years, gentlemen, those then living will see every farm up there a garden. . ."*<sup>(10)</sup>

The Baker Amendment failed by a vote of 16-6, and the bill was finally defeated in the House on April 9, 1891, when a motion to indefinitely postpone consideration passed by a margin of 170-110.

In the summer of 1891, Coe and Pingree dropped their suit in State Court and refiled it in Federal Court. They requested that the court order the railway to sell the hotel, assign the hotel site to the plaintiffs, and set aside some or all of the additional condemnation.

Coe and Pingree, Trustees v. Aiken et al was tried in the Circuit Court of the United States, District of New Hampshire in Portsmouth in 1893. Many Mount Washington notables gave evidence in the trial. Walter Aiken, Ebenezer Coe, and David Pingree commented on the negotiations among themselves. Oscar Barron of Barron and Merrill, which leased the Summit House, talked about the terms of his lease; among other provisions, Barron was

responsible for boarding railroad employees in the hotel, while the railroad transported wood, employees, and water (when the summit springs failed) for the Summit House. Henry Burt, publisher of *Among the Clouds*, Thomas Culhane, Mount Washington guide in the Tip-Top era, and John Horne, veteran railroad conductor were among those testifying.

On August 26, 1893, noting that the courts were inclined to liberality to the railroads, Circuit Judge W. L. Putnam held in an interim ruling that the additional location was laid out by the proper body, and that the fact the railway wanted some of this land for hotel purposes did not invalidate their legal right to condemn land for railroad purposes; therefore, the additional location was upheld. However, he saw no reason that the lease signed between the two parties could not stand and ruled that the sale of the hotel to Coe and Pingree be carried out. The details of the final decision about rent due the trustees and the practicality of moving the hotel to a new site, now that the railway would own the summit, he left to be worked out by a court master to be appointed by him.

In the summer and fall of 1893, however, events occurred that changes the situation. In July of that year the Glen House burned, and Walter Aiken was killed in a duck hunting accident in Maryland in the fall. The road company, deprived of the business of the Glen House stages, and the railway, lacking the driving force of Aiken, agreed to settle the case out of court. Accordingly, on April 30, 1894, a deed was given to the Mount Washington Railway Company by the Pingree heirs to a 49-acre circular tract of land on the summit for the sum of \$56,000. The Summit Road Company retained the right to operate its road over the property, to maintain and renew its buildings on the summit, to turn its stages in the customary locations, to pass over any portion of the summit open to the public, and to use the three springs on the summit to water their horses.

It is interesting, if idle, to speculate on

the shape of the present on the summit if events had unfolded differently in the 1890's. Would the summit be in private ownership now if the power of the railroads to condemn land had not peaked in the 1890's? Would Coe and Pingree have gone on to sell the Summit Road Company to the Libby Company if they had retained the summit and acquired the Summit House? Would the hotel have burned in 1908? If Senator Baker's amendment had become law, and the Presidential Range had become a state park, might that have muted some of the pressure that led to the passage of the Weeks Act that created the White Mountain National Forest? One ironic fact remains. The expansion of eminent domain that allowed the Railway Company to buy the summit led, by a circuitous and unforeseeable route, to the acquisition of the summit by the state in 1964 and to the result envisioned by Baker and Drew in 1891: a state park on Mount Washington. □

NOTES

- (1) Hearing Before the Railroad Committee of the House of Representatives on the Bill to Amend the Charter of the Mount Washington Railway Company. *Arguments by Harry G. Sargent, William L. Foster, and Oliver E. Branch*, Concord, 1891, page 18.
- (2) Charles Dudley Warner, "Their Pilgrimage", *Harper's New Monthly Magazine*, Volume 73, November 1886, page 942.
- (3) *Among the Clouds*, August 24, 1878.
- (4) Circuit Court of the United States, District of N.H., Ebenezer S. Coe and David Pingree, Trustees, v. Walter Aiken, The Boston, Concord, and Montreal Railroad Company, The Mount Washington Railway Company, and the Concord and Montreal Railroad Company, *Pleadings and Evidence*, Manchester, 1893, pages 172-174.
- (5) Grant Allen, "A Wonderful Hotel", *Longman's Magazine*, reprinted in *The White Mountain Echo*, Volume X, No. 4, July 23, 1887.
- (6) "News and Notes", *Among the Clouds*, August 17, 1880.
- (7) Sargent, Foster, Branch, page 43.
- (8) Sargent, Foster, Branch, page 23.
- (9) Journals of the Senate and House of Representatives of the State of New Hampshire, January Session, 1891, page 182.
- (10) Committee on Railroads of the Senate, *Argument of Hon. Irving W. Drew*, Concord, 1891, page 20.

