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The New England Historic Genealogical Society
advances genealogical scholarship and develops the capa-
bilities of both new and experienced researchers of family
history by collecting, preserving, interpreting, and commu-
nicating — in a variety of accessible formats — reliable
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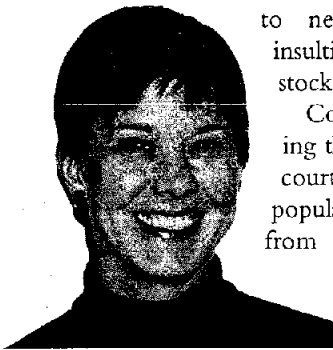
Lynn Betlock

TALES FROM THE COURTHOUSE

Captain Barefoot Goes to Court

by Diane Rapaport

FEW MODERN-DAY AMERICANS SPEND MUCH TIME in court. Despite the "litigation explosion" that supposedly plagues our society, most of us never enter a courthouse, and our trial experience may be limited to "Court TV." In seventeenth-century New England, however, courts and judges played a central role in everyday life. "Going to law" was the common remedy for disputes large and small — from the complicated business transactions of Atlantic shippers, to neighborhood squabbles about insulting remarks or wandering livestock.



Diane Rapaport

Court day was a major event, turning the local tavern into a temporary courthouse, doubling a community's population overnight as people arrived from distant towns and frontier outposts. Wealthy gentlemen mingled with petitioners and witnesses of modest means — farmers, sailors, blacksmiths, goodwives, servants, Indians — and

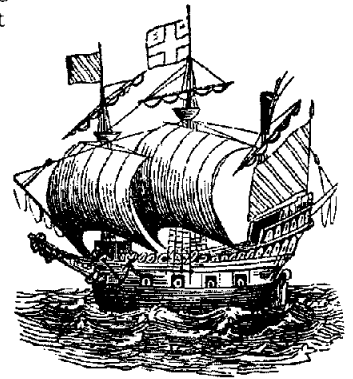
jurors took their seats on benches in the tavern's best parlor. Judges in rich clothing (beaver-skin hats with feather plumes, gold-laced collars, perhaps a scarlet cloak) peered down from a long table on a specially-prepared platform, as the clerk dipped his quill pen into the ink pot and called out cases from a docket list.

One name appears repeatedly on those old dockets — Captain Walter Barefoot — a former high-seas privateer who arrived in New England by the mid 1600s and settled in Dover, New Hampshire. Like most seventeenth-century gentlemen, the versatile Barefoot plied a variety of trades — merchant, doctor/surgeon, ship owner, sawmill speculator, and Indian trader — and his business affairs inevitably embroiled him in disputes. During the 1660s and 1670s, Captain Barefoot showed up at virtually every court session in Maine, New Hampshire, and northern Massachusetts, suing or being sued. The published court records detail nearly one hundred and fifty cases involving Barefoot in those decades.

Since few people hired attorneys in the seventeenth century, Captain Barefoot generally represented himself, shuttling from one court jurisdiction to another, spring through fall, up and down the New England seacoast. His court travel from fall 1662 to 1663 was typical. In October 1662, Barefoot filed several lawsuits at the

county court in Hampton, New Hampshire — suing former patients for unpaid medical bills, and complaining that shipwright Walter Tayler failed to "build . . . a vessell . . . according to dimensions specified." Barefoot did not win any cases at Hampton, but undaunted, he argued an appeal of the shipwright suit in Boston the following March. Again he lost. Traveling next to court in Ipswich, Massachusetts, the Captain posted a bond to ensure the future good behavior of his friend and fellow doctor, Henry Greenland (in trouble for "soliciting Mary, wife of John Roffe, to adultery"). April brought Barefoot to court in Salisbury, Massachusetts, then to Dover in June, where he won sizeable verdicts against debtors for £25 in "money or beaver." Two days after the Dover court session, Barefoot was in York, Maine, with suits "for unjustly molesting his person & estate," and for debt, netting judgments of more than £91. He returned to Ipswich in September to testify for Henry Greenland, accused again of "attempting" Goodwife Roffe's "chastity in a foul manner." By late November, Captain Barefoot came to Greenland's aid a third time, serving as his attorney in a Salem slander suit for calling someone "a lying knave."

Despite Barefoot's well-practiced courtroom skills, collecting debts from Indians proved particularly difficult. In the summer of 1664, Captain Barefoot sued an Indian named Sesegenaway "for about one hundred skins," but the case went unresolved (probably because Sesegenaway eluded the constable's attempts to serve a court summons). Barefoot finally tracked the Indian down at a tavern in Newbury, Massachusetts. While pal Henry Greenland restrained the Indian and sent for a constable, Barefoot sat at a table in the back room, filling out a blank attachment form that he claimed was already signed by New Hampshire court authorities. A tavern bystander questioned the legality of this procedure, but Barefoot told him to mind his own business — "sirrah get ye out of ye roome" or "I will heave the pott att thy head" — and a violent melee erupted. Barefoot responded in



swashbuckling style, "his sword drawne, and with highe threatenings." Greenland leaped to Barefoot's defense, punching and kicking people, and stamping upon the "breast and face" of one tavern patron until he "was all bloody, except his eyes." What happened to the Indian is not clear, but Greenland and Barefoot both ended up in the Ipswich court the next September, fined £5 each for their "great misdemeanor, endangering . . . lives" at the Newbury tavern, and for resisting arrest.

After the Newbury incident, Captain Barefoot's personal and business relations deteriorated. Barefoot began a long-running feud with Mr. Andrew Wiggin, a young man of powerful family connections¹ (son of an influential New Hampshire founder and son-in-law to Massachusetts' Simon Bradstreet). In 1667, Barefoot filed a lawsuit alleging that Wiggin "had abused him by blowes & had robbed him of a pistoll & severall writings" during a scuffle in a roadside gully. Despite substantial evidence, the court let Wiggin go with a small fine for disturbing the peace. Wiggin followed up with a claim against Barefoot for "high defamation," which he lost and appealed, while Barefoot countersued for "molestation" and £1000 in damages. During a 1668 court session in Hampton, when Barefoot sued Wiggin for debts due in "pine or oak boards," and Wiggin sought possession of Barefoot's sawmill, their enmity degenerated to farce. Approaching Barefoot in the courtroom under pretence of reconciliation, Wiggin "bit him on the face."

Even worse than Wiggin's bite, a series of lawsuits initiated by millwright Robert Wadleigh in 1668 pushed Captain Barefoot to the brink of financial ruin. Barefoot sold Wadleigh a piece of prime sawmill property at New Hampshire's Lamprey River, but other claimants emerged to contest the sale, and Wadleigh demanded that Barefoot make things right. When Barefoot could not clear the title, Wadleigh petitioned the Massachusetts General Court (where Andrew Wiggin's father-in-law Bradstreet sat as an Assistant). Boston authorities ordered Barefoot to give Wadleigh a "legal conveyance" with a warranty against all claims by others, or else to pay Wadleigh the enormous sum of £400.

Captain Barefoot made strenuous efforts to comply with the General Court ruling and save his fortune — suing the previous owner of the Lamprey River property,

while stepping up collection efforts against everyone who owed him money. Word of the Captain's financial problems must have spread, however, for Barefoot's creditors

filed a flurry of lawsuits and began attaching his assets. After a nasty confrontation with a Boston marshal who seized the Captain's ship, the "Pinke Lenham," Barefoot found himself in even more serious trouble.

The Boston Court of Assistants decided that New England had seen enough of Captain Barefoot. On March 5, 1672, after fining Barefoot "for His prophaine & Horrid Oathes," the court raised new allegations — that he had abandoned a wife and two children in England — and "sentence[d] him forthwith to Return to England by the first ship." In the meantime, they barred Captain Barefoot from practicing "Chiurgery or physicke," and as a final slap, they ordered Barefoot to "Abstaine from [Mris] Hiltons House att Exeter [New Hampshire] especially her Company." Captain Barefoot, of course, ignored these orders. He returned to New Hampshire, continuing his usual round of lawsuits in the county courts, until marshals from Boston apprehended him again and threw him into prison.

For the next several years, in and out of prison, Barefoot fought back the way he knew best — litigating up and down the coast — until fortune finally smiled upon the plucky captain once more. Massachusetts lost control over New Hampshire in 1679, and the Boston authorities no longer ruled Captain Barefoot's future. By 1680, he openly practiced medicine again, and soon he found a way to parlay his trial experience into a more prestigious job. On October 5, 1686, when the New Hampshire County Court of Pleas and Sessions convened at Great Island, six men took seats at the judges platform. One of them was Captain Walter Barefoot. ♦

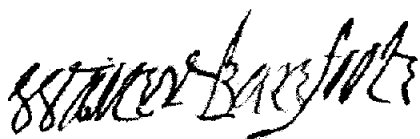
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Note

¹ Barefoot also had his own family connection with Andrew Wiggin: Walter's sister Sarah was married to Andrew's brother, Thomas Wiggin.

DIANE RAPAPORT, an attorney and historian from Lexington, Massachusetts, is writing a book to be published by NEHGS, *New England Court Records: A Research Guide for Genealogists and Historians*. Her email address is rapaports@aol.com.



Walter Barefoot's signature, from court papers at New Hampshire State Archives.