A BRIEF STATEMENT OF THE RIGHTS: OF THE SENECA INDIANS IN THE STATE OF NEW YORK

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649232963

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Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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BRIEF STATEMENT OF THE RIGHTS

OF THE

SENECA INDIANS

IN THE

STATE OF NEW YORK,

TO THEIR LANDS IN THAT STATE,

WITH

Decisions relative thereto by the State and United States Courts,

AND

EXTRACTS FROM UNITED STATES LAWS, &c.

PHILADELPHIA:
W. H. PILE, PRINTER, 422 WALNUT STREET.
1877.

PREFACE.

THE principal design of the Committee of the Society of Friends in preparing the annexed statement, is to show the Seneca Indians in the State of New York, the character of the title to the lands they occupy under the decisions of the Courts of the United States, and the Courts of the State of New York. It is known to them that the Government considers all Indians its wards, and as such, under its special protection and oversight. It has charge of their funds, and the annuities they are entitled to are annually paid to them by its officers appointed for the purpose.

The history of the origin of the right which certain citizens of the United States have to extinguish, by purchase, the title of the Seneca Indians to their reservations, *when they are willing to sell them*, has been derived from authentic sources, and is printed, with the legal decisions respecting it, in order to give them a clear understanding of that right. It appears from the decisions of the Courts, as well as the articles of the treaty of 1794, quoted therein, that the Indian occupants cannot be deprived of their lands without their consent. They are "*to remain theirs until they choose to sell them*," and they are not subject to taxation of any kind. The extracts from laws and decisions of Courts, which are added, contain information respecting their rights, which should also be understood.

PHILADELPHIA, Eighth mo. 14, 1872.

In printing a new edition of this pamphlet, a portion of the former edition has been omitted, and some other matter has been added.

PHILADELPHIA, Ninth month 21, 1877.

BRIEF STATEMENT, &c.

THE RIGHT OF THE INDIANS TO THE LANDS THEY OCCUPY, AND THE CHARACTER OF THE TITLE BY WHICH THEY HOLD THEM.

On the discovery of this continent the Europeans were eager to appropriate as much of it for their own use as they could acquire. While they respected the right of the natives, as occupants, they asserted the ultimate right to be in themselves. As a consequence, the Indians, the natives, were deemed to have had only the usufruct or possessory title. The ultimate fee was claimed to be in the sovereign whose subjects discovered the country. In accordance with that principle, grants were made by Great Britain to its colonies in America. By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government, but to the proprietary and territorial rights which it had acquired in the limits of the United States. By this treaty, the powers of government, and the right to the soil which had previously been in Great Britain passed definitely to the United States. United States Statutes at Large, vol. 7, page 1 to 11.

Chancellor Kent in his Commentaries, vol. 1, page 280, says: "The title of the European nations, and which passed to the United States, to this immense territorial empire was founded on discovery and conquest, and by the European customary law of nations, prior discovery gave the title to the soil, subject to the possessory right of the natives, and which occupancy was all the right that European conquerors and discoverers, and which the United States as succeeding to their title, would admit to reside in the native Indians. The principle is, that the Indians

are to be considered merely as occupants, to be protected while in peace in the possession of their lands; but to be deemed incapable of transferring the absolute title to any other than the sovereign of the country." "The Constitution gives to Congress the power to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States, and to admit new States into the Union."

In the case of the *Cherokee Nation* vs. *The State of Georgia*, in the Supreme Court of the United States, it was decided that "Indians have rights of occupancy to their lands *as sacred as the fee simple, absolute title of the whites*, but they are only rights of occupancy, incapable of alienation or being held by any other than common right without permission from the government." 8 Wheaton, page 592.

"The nature of the Indian title to land on this continent, throughout its whole extent," it is said, "was most ably and elaborately considered in the case of *Johnson* vs. *McIntosh*, leading to conclusions satisfactory to every jurist, clearly establishing that from the time of discovery under the royal government, the Colonies, the States, the Confederacy and this Union, their tenure was occupancy, their rights occupancy and nothing more; that the ultimate absolute fee, jurisdiction and sovereignty was in the government, subject only to such rights—that grants vested soil and dominion and the powers of government, whether the land granted was vacant or occupied by Indians." 8 Wheaton, pages 543, 571. In *Goodell* vs. *Jackson*, 20 Johnson, New York Reports, page 694, the Chancellor said: "In my view of the subject they, the Indians, have never been regarded as citizens or members of our body politic within the contemplation of the Constitution. They have always been, and are still considered by our law as dependent tribes, governed by their own usages and chiefs, but placed under our protection and subject to our coercion, so far as the public safety required it, and no further."

THE ORIGIN OF THE PRE-EMPTION RIGHT TO THE CATTARAUGUS AND ALLEGHENY RESERVATIONS, NOW HELD BY THE OGDEN LAND COMPANY.

Soon after peace was declared in 1783, a controversy arose between the States of Massachusetts and New York respecting the title to the western part of the latter State, comprising what was called the Genesee country. Massachusetts claimed this territory under the grant of King James the 1st to the Plymouth Company. New York claimed it under the grant of Charles the 2nd, to the Duke of York, in 1663. The controversy was brought under the cognizance of Congress in pursuance of the articles of confederation, and a court was instituted to decide it, but the dispute was finally settled by a convention between the two States, concluded at Hartford, Connecticut, on the 16th of the 12th month, 1786. It was agreed by the convention that New York should have the right of government and jurisdiction, and Massachusetts the right of property in the disputed territory, which right was mutually granted and released by each State to the other by an agreement signed by ten commissioners, four of whom were appointed by Massachusetts and six by New York.*

By virtue of this agreement two tracts were ceded to Massachusetts; one tract comprehended all that part of the State lying west of a line drawn through Great Sodus Bay on the south side of Lake Ontario, and running thence southerly to the northern boundary of Pennsylvania, except a strip one mile wide on the east side of the river Niagara, and the islands in that stream. Its length on the south side was about 140 miles, and on the north about 100 miles. Its breadth on the east from Lake Ontario to Pennsylvania was about 87 miles. The breadth was nearly uniform westwardly as far as Niagara River, and the northeastern extremity of Lake Erie. This tract was estimated to contain about 6,144,000 acres. The whole tract was formerly

* See Journal of Congress, edition of 1823, vol. 4, page 787.

called Genesee. The other tract, called the Boston Ten Towns contained 230,400 acres, and is situated between Chenango River and Owego Creek, being in the counties of Broome and Tioga. The area of these cessions is said to have been nearly one-fourth of that of the State. By the first article of the agreement or compact, the Commonwealth of Massachusetts ceded to the State of New York all her claim, right and title to the government, sovereignty and jurisdiction of the lands and territories therein particularly specified, which included the two tracts of land now occupied by the Seneca nation of Indians as well as several other reservations which have since been disposed of. By the 2nd article, New York "ceded, granted, released, and confirmed to Massachusetts, and to the use of the Commonwealth, their grantees and the heirs and assigns of such grantees forever, the *right of pre-emption of the soil* from the native Indians, and all other the estate, right, title and property (the right and title of government, sovereignty and jurisdiction excepted) which the State of New York hath of and in or to *the described lands.*" By the 3rd article Massachusetts "ceded, granted, released and confirmed to the State of New York and their grantees and the heirs and assigns of such grantees forever, the right of pre-emption of the soil from the native Indians, and all other the estate, right, title and property which the Commonwealth of Massachusetts hath of in or to *the residue of the lands and territory* so claimed by the State of New York as herein before stated and particularly specified." The 10th article is as follows: "The Commonwealth of Massachusetts *may grant the right of pre-emption* of the whole or any part of the said lands and territories to any person or persons, who by virtue of such grant shall have good right to extinguish by purchase the claims of the native Indians. Provided, however, that no purchase, from the native Indians by any such grantee shall be valid, unless the same shall be made in the presence of and approved by a superintendent to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts." The convention authorized