CHAPTER 22
NEW YORK INDIANS

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There are more Indians in the State of New York than there are in Wyoming, Colorado, and Utah combined. Because of the persistence of traditional forms of tribal organization, and because of treaty arrangements with New York which preceded the Federal Constitution and special dealings with the state since that time, the various New York tribes have a peculiar status, which has had the subject of a series of cases, federal and state, and at least two excellent legal studies. While the complexity of the subject and limitations of space and time preclude an exhaustive analysis of the status of the New York tribes in this work, two aspects of the subject may be briefly treated: the history of federal and state relations: and the present status of these tribes with respect to local government.

1 As of January 1, 1936, the Indian population of these states was, according to the Indian Office: New York, 6,910; Wyoming, 2,528; Colorado, 856; Utah, 2,194.
3 Fellow v. Blacksmith, 19 How. 366 (1856) (denying right of action of ultimate fee to Seneca lands to dispossess Indians); New York ex rel. Butler v. Dibble, 21 How. 596 (1858) (a statute of the State of New York making it unlawful for any other than Indians to settle upon tribal lands in New York is not contrary to the Constitution or a usurpation of federal power. It is exercise of state power to make police regulations); New York Indians in 5 Wall. 761 (1866) (stating power of New York to tax land of New York Indians); Seneca Nation v. Christy, 162 U. S. 283 (1896) (Seneca Indians barred by statute of limitation in the suit, under New York statutes, to invalidate conveyance of land to private individuals); New York Indians v. United States, 170 U. S. 1 (1898) (under Treaty of Buffalo Creek, January 15, 1838, 7 Stat. 550, the New York Indians were held entitled to value of certain lands in Kansas, not part for these Indians and later sold by the United States, as well as for payment of amounts agreed to be paid upon their removal); Oneida Indians of Wisconsin v. United States, 39 C. Cae. 116 (1903) (Oneida Indians of Wisconsin claim to share in fund under decision of Supreme Court in 170 U. S. 1); New York Indians v. United States, 40 C. Cae. 446 (1905) (claiming arising out of alleged unexecuted stipulations of the Treaty of Buffalo Creek of January 15, 1838, 7 Stat. 550); New York Indians v. United States, 41 C. Cae. 492 (1906) (claims of New York Indians excluded from the membership rolls to share in judgment rendered in suit reported in 40 C. Cae. 446); Kennedy v. Becker, 241 U. S. 556 (1916) (busting and fishing rights of Seneca Indians on ceded lands); United States v. Tyler, 259 U. S. 13 (1922) (State court jurisdictiion over lands and members of the Seneca Tribe); Speirs v. United States, 64 C. Cae. 894 (1928) (claim of New York Indians not considered in the absence of jurisdictional act). See also, on power of state and federal government over New York Indians, note, Ann. Cas. 1914B, 652, 653-654; note, Ann. Cas. 1915D, 371, 372.
4 See Patterson v. Council of Seneca Nation, 245 N. Y. 433, 157 N. E. 724 (1927), and cases cited.
5 Rice, The Position of the American Indian in the Law of the United States (1924), 16 J. Comp. Legis. 78; Pound, Nationale without a Nation (1922), 72 Colum. L. Rev. 97.

SECTION 1. HISTORICAL BACKGROUND

The Iroquois Indian Confederacy, sometimes called the Five Nations or the Six Nations, consisted of the Seneca, Cayuga, Onondaga, Oneida and Mohawk tribes of Indians and, during the latter period of its existence, the Tuscarora tribe. They occupied all of what is now northern and western New York, and their league is acknowledged by historians as being the triumph of
Indian legislation. Not only did the Iroquois outstrip all other Indians north of Mexico in their political institutions, but they were likewise the most powerful. Their territory at one time extended from the hills of New England to the Mississippi River and from upper Canada into North Carolina. Other tribes occupying this expanse were either annihilated, expelled, subjugated, aligned with, or absorbed by the Iroquois. The Iroquois possession of the strategic water routes (the natural gateway in the interior), along with their power and control over the important western fur trade, gave to these Indians a position in history which has profoundly influenced the present day status of all American Indians.

The controlling object and interest of the Dutch who settled New York, was to trade with the Indians. Their meager needs for land did not affect the Iroquois who were situated to the north and west of Albany (Fort Orange) and in their desire for trade they took particular pains to cultivate the friendship of the Iroquois and accordingly afforded them the status of independent nations which they demanded.

When the English took over the Dutch colony in 1664, they were careful to continue a trade which was to make Albany the fur capital of North America during the latter part of the seventeenth and the early part of the eighteenth centuries.

A. RESISTANCE BY IROQUOIS TO FRENCH

The French fully appreciated the importance of the Iroquois. The Iroquois and Dutch (later the English) possession of New York made necessary for the French a chain of forts some 2,000 miles in length, and it was ever the purpose of the French to reduce the length of forts to about 300 miles by taking possession of New York.

Diversions of fur trade from the English was effected by the Iroquois from as far as what is now Illinois and Wisconsin, and along with the Iroquois occupation of northern and western New York was an obstacle to the trade and territorial interests and ambitions of France.

The official French attitude toward these Indians might well be considered as summed up in a letter written by Du Chesnay in 1681: "There is no doubt, and it is the universal opinion, that if the Iroquois are allowed to proceed they will subdue the Illinois, and in a short time render themselves masters of all the Outaws tribes, and divert the trade to the English, so that it is absolutely necessary to make them our friends or to destroy them.

Failing to cultivate a friendship which was detrimental to the Iroquois" independence and trading interests, the French spent about a hundred years in trying to destroy the Iroquois.

In this they failed.

The Iroquois resisted every attempt upon their territories and independence with unparalleled ferocity and with very little or no aid from their allies, the English, until quite late in the struggle, when the English, at the request of the Iroquois, established one or two under-manned forts in their territory.

New York was cognizant of the importance of the Iroquois, both from the standpoint of trade and colonial defense.

The friendship of these Indians was a highly important, if not a decisive, factor in the struggle of France and England for this Continent. The history of this struggle, as enacted in America, is largely the history of these Indians, who in defending their own lands, played an international role which brought them recognition in treaties between France and England. It is no wonder that the Iroquois were "courted and conciliated" by England and that their national character was scrupulously observed and recognized.

*Broedhead, Documents Relative to the Colonial History of the State of New York (1846) (Edited by E. B. O'Callaghan), vol. 9, p. 165.
* Lieutenant Governor Clark, in an address to the Assembly on April 15, 1741, said: "The house at Oswego being of highest Importance to the fur-trade, ought by all means to be preserved from falling into the hands of the French. If you suffer Oswego to fall into the hands of the French, I much fear you will loose the Six Nations, an event which will expel the whole country to the merciless spoliation and barbarous cruelty of a savage enemy." (New York Assembly Journal 1691-1743 (1861 ed.), 22d Assembly, 6th Sessions, p. 769)

*This is illustrated by the following excerpt from a memorandum of the Lands Division of the Department of Justice:

In 1783, acting under a Commission of the British Crown, Sir William Johnson entered into a treaty with the Six Nations by the terms of which the boundaries of the Iroquois Confederacy were defined and located, and the territory of these Nations defined apart from the lands of the Colonies of New York. By this treaty, the Indians sold and granted to the King "all that Tract of Land situate in North America at the Back of
B. AFFAIRS OF IROQUOIS AS AFFECTING ALL
COLONIES

With their territory, dominion, and influence extending into many of the colonies, intercourse with these Indians invariably affected the interests of the colonies as well as the Crown.

The intercolonial aspect of the Iroquois resulting from the extent of their territory and influence, made relations with them of serious concern to all of the northern and central colonies, and more than one treaty with these Indians was negotiated by several of the colonies acting together. Such was the Treaty of 1745 between the Iroquois and New York, Massachusetts, Connecticut, and Pennsylvania. Franklin's famous Plan of Union of the colonies was proposed at one of the joint congresses held in June 1754, at Albany, by the states of New York, Massachusetts, Connecticut, Pennsylvania, New Hampshire, Rhode Island, and Maryland "for the purpose of treating with the Six Nations and concerting a scheme of federal union of the British American Colonies."

Another factor favoring control by the central authority of the Crown was the conflict of land settlements and trade. More than one self-seeking colony would act in such a manner (or sanction the actions of its settlers or traders) as to embroil the entire frontier in an Indian war—the consequences of which often would be borne by all of the colonies.

C. SHIFT OF CONTROL OF IROQUOIS AFFAIRS FROM ALBANY TO COLONY TO CROWN

Relations with the Iroquois were in the beginning for the most part a matter of trade and nominally conducted in the name of the King of England. In fact, the actual management of affairs with the Iroquois was with the city of Albany. The charter of this city of 1660 gave to Albany the Sole & only Management of the Trade with the Indians as well within this whole County as without the same to the Eastward Northward and Westward thereof so far as his Majesty Dominions here do or may extend.

Though Albany was the fur capital of North America during colonial days, the regulation of affairs with these Indians was not a municipal matter as is readily seen from the foregoing, and accordingly the colony assumed an ever increasing control until the charter was finally revoked. But regulation of the relations with the Iroquois was no more a colonial matter than it was a municipal proposition and therefore the Crown of England abandoned its nominal control in favor of an active and actual supervision.

D. NATIONAL AND INTERNATIONAL ASPECT OF IROQUOIS AS AFFECTING FEDERAL CONSTITUTION

1. Iroquois in Revolutionary War.—At the beginning of the Revolutionary War the Confederated Government took immediate steps to secure the neutrality of the Iroquois, and though the League remained neutral, the several tribes took sides, some with the colonies, some with their traditional ally, the Crown, and some fought on both sides." The Senecas participated throughout the war with England.

Sullivan's campaign against the hostile tribes of the Iroquois was one of the major military operations of the Revolutionary War against Indians. The long years of incessant warfare with the French and the havoc wrought by Sullivan's expedition had broken the power of the Iroquois, and they were left by England at the end of the war to make their separate peace with the newly created Union.

2. Importance of Union of Peace negotiations with Iroquois.—

The treaty of peace between the United States and the Iroquois was considered of considerable importance to the Central Government. Washington, in 1793, made a personal trip to the lands of the Iroquois to familiarize himself with conditions. The negotiations of peace in 1784 were closely followed by Washington in Virginia and Jefferson in Paris, and such personalities as James Madison, James Monroe, Lafayette, and General Butler were present as negotiators or observers.

The Iroquois insisted on acting in their collective capacity and, though they had been harried by Sullivan's expedition, any effort to expel the hostile tribes of the Iroquois from their ancient lands or any attempt to break up the League into its several tribes, would have been attended by a prolonged frontier war which the new Union was not prepared to prosecute.

The controlling purpose of the Central Government was to make peace with the Iroquois and to drive a wedge between them and the western tribes—to separate the Iroquois from the submerged western tribes and to undermine the influence of the League over them.

New York on the other hand was more than anxious to rid the state of the hostile Senecas, Cayugas, Onondagas, and Mohawks and to move the friendly Onondagas and Tuscaroras to a small part of the lands of the Senecas in western New York. She considered herself as supreme (under the Articles of Confederation) in dealing with the New York Indians and intended to separate the different tribes of the Iroquois. In her futile attempt to carry out these purposes she stopped at nothing, even arresting agents of the Confederated Government who were trying to negotiate the treaty of peace.¹¹

Had New York's attempts in obstructing the peace treaty prevailed over the efforts of the Central Government in this respect, New York would have probably consolidated the Iroquois instead of dividing them, and this might well have resulted in a United League serving as the spear head of a cruel, prolonged, and costly Indian war of all of the western Indians (more than 35 tribes) under the influence and leadership of the Iroquois.

Though under the Articles of Confederation there was a question of whether the Confederated Government was invading the rights of the State of New York relative to the Iroquois, the necessity of the times and the importance of these Indians in relation to all of the states made it imperative that the Central Government take definite action.

¹¹"When the Revolution came, the Six Nations as a whole determined on neutrality, but left the constituent tribes to side with either party, which they did." McCandless v. United States, 26 F. 2d 71, 72 (C. C. A. 3, 1928).

¹² Richard Henry Lee, later President of the Continental Congress, in writing to George Washington concerning the efforts of New York to obstruct the treaty, said:

"I understand, from Mr. Wolcott, that the commissioners of the United States met many difficulties, thrown in their way by New York, which they overcame, at last, by much fluency and perseverance. It is unfortunate when private views obstruct public measures, and more especially when a state becomes opposed to the States; because, it seems to confirm the predictions of those who warned us not well, and who cherish hopes from a discord arising from different interests." (Dalling, James Curtis, The Letters of Richard Henry Lee (1911), Vol. 2, p. 266.)
The ensuing treaty was in effect three treaties: (a) A treaty of peace and general amnesty between the Iroquois and the United States, with provisions for prisoners of war and a relinquishment of their claim to roughly all lands west and south of what is now New York; (b) a treaty with Pennsylvania relinquishing all lands in that state; and (c) a treaty between New York and the Onondagas and Tuscaroras, relinquishing certain of their lands.

In the drafting of the Federal Constitution, Madison, who had attended the Treaty of 1784 and realized the importance of placing the management of affairs of the Iroquois Indians in the hands of the proposed United States Government, introduced a resolution on August 18, 1787, intend to give Congress the power:

To regulate affairs with the Indians, as well within as without the limits of the United States.¹⁰

The principles of this resolution are embodied in the Constitution of the United States.

E. EFFECT OF TREATIES OF 1789 AND 1794

The United States entered into the treaties of 1789 and 1794 with the Iroquois (Six Nations) Indians, recognizing the Indians as distinct and separate political communities capable of managing their internal affairs as they had always done. These treaties were entered into for the purpose of meeting a serious situation confronting the United States. Great Britain still retained possession of certain forts in New York and the Northwest Territory in violation of the treaty of peace, and was, apparently encouraging and provoking the western Indians and the Iroquois to hostilities against the United States—even providing them with arms with which to resist encroachments upon their lands.

The settlement of the Northwest Territory brought the usual friction between the Indians and the settlers which broke out into frontier wars. The Iroquois felt a responsibility toward these western tribes since they believed that part of the difficulties of these tribes, which were once dependent on the Iroquois, was due to the sale by the Iroquois of all of their western lands. The problem confronting the Federal Government was to make peace with the Iroquois, and particularly the Senecas, before the almost inevitable strife began and thus prevent the Iroquois from acting as a spear head in a united general offensive by the scores of western Indian tribes (once subjects of the Iroquois) under their leadership and directing influence.

The Treaty of 1786 granted to the Iroquois a substantial annuity and they in turn agreed to continue at peace. Thereafter certain of the influential Seneca chiefs were induced to go to the West on behalf of the peace efforts of the United States. These western Indian wars, nevertheless, created a decided unrest, particularly among the Senecas, and the United States prudently entered into a third treaty with the Iroquois (Six Nations) in 1794, of mutual peace, and restoring certain of the Seneca’s lands to them within the State of New York west of a line drawn due south from Buffalo to the Pennsylvania line.

These several treaties guaranteed to the Iroquois (Six Nations) the right of occupancy of their well-defined territories and had the effect of placing the tribes and their reservations beyond the operation and effect of general state laws.

F. FEDERAL MANAGEMENT OF NEW YORK INDIAN AFFAIRS

1. Education and civilization.⁴⁴ Some of the first efforts and experiments of the United States Government in educating Indians were with the New York Indians. For a number of years the only effort to educate these Indians was by the aid rendered by the Federal Government and private philanthropy. By about 1800, the state had been making slight efforts to educate the Indians in the state but such efforts were admitted by the state to have done probably as much harm as good.

Aside from the sporadic aid the state gave to the Indians mainly in the way of education, the state left the Indians to manage their own internal affairs as they saw fit, as had been implicitly guaranteed by federal treaty. Such activities merely confer a privilege on the Indians and are not an attempt to regulate their internal affairs or tribal matters.

2. Restrictions on alienation of lands.⁴⁵—Pursuant to the specific delegation of authority by the Constitution to regulate Indian commerce, Congress immediately imposed restrictions upon the alienation of Indian lands. Where the states claimed the fee title subject to Indian occupancy as claimed by Georgia, or the “preemption right” as claimed by New York, all purchases were prohibited except at treaties under supervision of the United States.

Many, but not all, purchases from the Seneca Nation of Indians (with the exception of one very small tract of a few acres), whether by the State of New York or its grantees of the “preemption right,” were made by treaties under the supervision of United States agents appointed for that purpose pursuant to the restrictive act of Congress. Approximately four million acres

¹⁰Treaties of October 22, 1784, January 9, 1789, and November 11, 1794, supra.
⁴⁴For a further discussion see Chapter 12, sec. 2.
⁴⁵See Chapter 15, sec. 18.

For a further discussion see Chapter 12, sec. 2.
of land from time to time were thus purchased from the Seneca Indians under federal authority."

9. Removal to the West—Treaties of 1838 and 1842.—In 1815, and perhaps before, Governor Tompkins of New York was agitating for the removal of the New York Indians to the United States to the west. The question of removal was obviously a function which could be executed only by the Federal Government. Whether the Indians were to be removed at all, and if so, where to, could only be determined by the Federal Government.

On February 12, 1816, the Secretary of War, by authority of the President, gave the New York Indians permission to negotiate with the western tribes, at their own expense, for the purchase of lands. In 1820 and 1821, the Government aided some 10 Indians, representing certain New York Indian tribes, in exploring Wisconsin with a view of selecting lands and making arrangements with the Indians residing there for a portion of their country.

On August 15, 1821, the Menominee Indians ceded to the Stockbridge, Oneida, Tuscarora, St. Regis, and Munsee Nations lands in Wisconsin for a consideration paid by these tribes. All but the lands named of these tribes were New York Indians. The settlement of members of these tribes on the lands was one of the first removals in the Federal Government's policy of removal of Indian tribes to the West. The uncertain right of the New York Indians in these western lands was in dispute. On February 8, 1831, the United States, to settle conflicting claims, negotiated a treaty with the Menomonees and Winnebagos for the benefit of the New York Indians. The lands in which they were previously entitled to share with the other tribes were reduced to exclusive possession and two parcels, one of 500,000 acres and one of 89,120 acres, were purchased for a consideration of $29,000 paid by the United States, and set aside for the New York Indians.

These lands were set apart in Wisconsin for the future home of the New York Indians provided they removed thereto within 3 years. However, most of the New York Indians caring to migrate had already moved to the West.

In the meantime, Wisconsin was being settled by whites and this Indian reserve was needed for expansion. Accordingly, a treaty was negotiated with the New York Indians to exchange these lands in Wisconsin for lands in Kansas and by treaty of January 15, 1838, this exchange was made. Those of the New York Indians who had already migrated to Wisconsin were secured in the possession of their lands. The first allotment of lands in vicinity in the United States was to these Indians, an action which anticipated by almost 40 years the general policy of the Federal Government as embodied in the general allotment act of 1862.

The treaty negotiated by the Federal Government with the New York Indians made an exchange of 1,824,000 acres of land in fee simple in Kansas for 435,000 acres at Green Bay, Wisconsin.

...in addition, Congress was to appropriate the sum of $400,000 for the use of the Indians in emigrating from New York to Kansas and in establishing themselves after arriving in Kansas.

All of the New York tribes of Indians assented to this treaty. However, the St. Regis Indians, with their reservation lying in New York and Canada, entered into a supplemental article to the effect that they would not be compelled to remove unless they chose to do so. No difficulties were encountered in the negotiation of the treaty except with the Seneca Indians. With these Indians, there was also a deed to the Ogden Land Co., so called (grantee of New York's preemption right), of all of the Seneca's lands, consisting of the valuable Buffalo Creek Reservation of 49,920 acres, some of which land comprises the site of the city of Buffalo, as well as the Tonawanda Reservation of 12,800 acres at that time, and the Cattaraugus (2,680 acres) and Allegany (30,469 acres) as they now exist.

This deed to the Ogden Land Co., so called, was denounced by the Indians on the ground that it had not been signed by a majority of the chiefs of the Seneca Nation, and that bribes, liquor, and fraud had been used and practiced by the Ogden Land Co. in securing many of the signatures of the chiefs to the deed. The treaty was nevertheless recognized as binding by the Federal Government.

The Seneca Nation refused to move to the West or leave its reservations and the Federal Government was not inclined to repeat in respect to the New York Indians any such forced removal as was experienced by the southern Indians a decade before. The Ogden Land Co. accordingly negotiated the compromise Treaty of May 20, 1842, whereby the company released to the Senecas the Allegany and Cattaraugus Reservations and the Senecas released the Buffalo Creek and Tonawanda Reservations. The original consideration was proportionately reduced. The value of the improvements of the individual Indians was to be determined by appraisers appointed by the Secretary of War and the Ogden Land Co.

The Senecas on the Buffalo Creek Reservation gradually withdrew to the Cattaraugus and Allegany Reservations.

In 1845, the United States appointed a special agent for the removal of such of the New York Indians as desired to move to their western lands. He enrolled 271 Indians, of whom 73 did not leave New York with the party. He arrived in Kansas on June 15, 1846, with 191 and 17 arrived later. Of this number, 17 returned to New York. Only 32 received patents or certificates of allotment in accordance with the terms of the treaty, and of these, some settled permanently in Kansas. A council was called by the Indian Commissioner June 2, 1846, to determine the final disposition of the Indians on emigration. Only 7 persons requested to be enrolled.

4. State encroachment on ceded reservations.—The Legislature of the State of New York, expecting the Indians to remove from the ceded reservations, in 1840 and 1841, enacted laws for the assessment and collection of taxes and for the surveying of the lands, laying out roads and the construction of bridges on the ceded reservations. The Act of May 9, 1840, was declared void by the state courts on the theory that the state could not tax the lands of the Indians, and the Supreme Court of the United States, in The New York Indians, in considering the "saving clause" of the Act of May 4, 1841, said:

* * * "But no sale for the purpose of collecting said taxes shall in any manner affect the right of the Indians to occupy said lands." It is true that this clause undertakes
to save this right, which the act of 1840 did not; but the
rights of the Indians do not depend on this or any other
statutes of the State, but upon treaties, which are the
supreme law of the land; it is to these treaties we must
look to ascertain the nature of these rights, and the extent
of them. (P. 708.)

5. Federal recognition of Seneca constitution.—In 1843 a con-
vention of the Seneca Nation was called which promulgated a
complete constitution, which provided for the abolition of the
chiefs, the establishment of an elective council and courts, and
in general altered and modified the entire tribal form of
government, though not abolishing it.

There was some question of whether this constitution repre-
sented the wishes of the majority of the Indians, and the United
States investigated the matter and decided to recognize the new
form of government as it might apply to the Indians on the
Allegany and Cattaraugus Reservations. William Medill,
Commissioner of Indian Affairs, by letter of February 2, 1849,
directed the United States Indian agent for New York as
follows:

The new form of Government of the Indians on the
\textit{Cattaraugus} and \textit{Allegany} Reservation having been
adopted by a majority, will be recognized by the Gov-
ernment, and so far as may be necessary, the relations
of the Government with those Indians will be made to
conform thereto.

6. Separation from Seneca Nation of Tonawanda band.—As
to the Tonawanda Reservation, the compromise Treaty of
1842 \textsuperscript{4} did not assist the Ogden Land Co. in gaining possession.
The Indians on that reservation protested that they had not
been a party to the treaty of either 1838 \textsuperscript{5} or 1842 and refused to
move. In fact none of the chiefs of this band of the Seneca
Nation had signed either treaty and the other bands of the
Seneca Nation (Cattaraugus, Allegany, and Buffalo Creek),
by “selling out” the Tonawanda Reservation, had caused the
latter band to split off from the Seneca Nation, an action which
was recognized by the Federal Government when the Seneca
Nation (Allegany and Cattaraugus) adopted their constitution.

The appraisers appointed by the Government and the Ogden
Land Co. had attempted to appraise the lands and improve-
ments of the Tonawanda Reservation pursuant to the treaty
stipulations:

\*\*\* but had been prevented from so doing by the
Indians in possession, and had been removed and led
off the land, the Indians not even delaying to procure
legal process.\textsuperscript{6}

The Ogden Land Co., however, paid into the United States
Treasury the whole amount awarded by the arbitrators, and “by
force attempted to eject some of the Indians from possession.”
The Indians brought the matter into the courts by the action of
\textit{Blacksmith v. Follans}, \textsuperscript{7} which reached the United States
Supreme Court in 1856 as \textit{Follans v. Blacksmith}. \textsuperscript{8}

\textsuperscript{4} Treaty of November 5, 1857, 11 Stat. 725.
\textsuperscript{5} N. Y. Sess. Laws, 1875, 48th sess., p. 819.
\textsuperscript{7} 76 Stat. 558 (Seneca Nation).
\textsuperscript{8} 81 Stat. 819 (Seneca Nation). Also applicable to Oil Springs Reservation.

\textsuperscript{4} 7 Stat. 556, supra.
\textsuperscript{5} 7 Stat. 555, supra.
\textsuperscript{6} N. Y. State Assembly, Doc. 51, vol. 8, 1880, p. 30.
\textsuperscript{7} N. Y. R. 401 (1852).
\textsuperscript{8} 19 How. 360 (1856).

SECTION 2. THE PRESENT STATUS OF TRIBAL GOVERNMENT \textsuperscript{9}

The Indian reservations now occupied by the New York Indians are the Allegany, Cattaraugus, Oil Springs, Corn-
planter, \textit{Tonawanda, St. Regis, Tuscarora, Onondaga}. \textsuperscript{10} Shinne-
cock, and Poosapatuck. All save the Shinnecock and Poos-
apatuck, which are on Long Island, are inhabited by descend-
ants of the famous Iroquois League of Six Nations (origi-
nally Five Nations, the sixth, the Tuscarora, joining the League
in 1722). The Tuscarora and Onondaga Reservations are held
by the Tuscarora and Onondaga Nations. The St. Regis Reser-

\textsuperscript{9} Material in this section is based, except where otherwise noted,
on a report of Paul Gordon on New York Indians (Indian Office Files, 1925).

\textsuperscript{10} The Cornplanter Reservation is actually in Pennsylvania, but
residents are recognized by Senecas of the Allegany and Cattaraugus
Reservations.

\textsuperscript{2} For a discussion of the Onondaga Reservation, see Memo. by C. E.
A. SENECA NATION

The government of the Seneca Indians is covered by Articles 4 and 5 of the New York Indian Code. The constitution, now in force among these Indians provides for three departments of government: executive, legislative, and judiciary. The legislative power is vested in a council of 16 members elected biennially, from the Cattaraugus Reservation and 8 from the Allegany Reservation. The executive power is vested in a president who presides, fills vacancies, and has a casting vote. The judiciary power is vested in peacemakers' and surrogate's courts. The peacemakers' courts are composed of three members each from the respective reservations. Peacemakers' courts are given powers to enforce the attendance of witnesses in the same manner as provided for courts of justices of the peace of the state. Peacemakers have, by statute, jurisdiction to grant divorces between Indians residing on the reservations, and to determine all questions between individual Indians involving title or possession of lands.

The surrogate court is composed of one person from the Allegany and one from the Cattaraugus Reservation, elected by voters of each reservation for a term of 2 years. The procedure is the same as in the surrogate court of the state, and appeal may be taken to the council.

Treaty making is declared to be a prerogative of the council, subject to approval by three-fourths of the legal voters and consent of three-fourths of the mothers of the reservation. The constitution provides for a clerk and a treasurer, and permits the council to provide for highway commissioners, overseers of the poor, assessors and police officers. Officers may be removed for cause.

Male Indians of 21 or over who shall not have been convicted of a felony are eligible to vote and hold office.

or witnesses is concerned, the 1833 constitution provides for such similarity also in jurisdiction and proceedings. (sec. 4).


The court in Rice v. Mayhew, 2 F. Supp. 699 (D. C. W. D. N. Y. 1923), described the Seneca government as follows:

In 1848 the Seneca Indians adopted a so-called "Constitutional Charter," abolishing the ancient form of government by chiefs, and setting up a new form of government composed of legislative, executive, and judiciary departments. In the judiciary department, provided for Peacemakers, the jurisdiction of which, the constitution would be "the same as in courts of justices of the peace of the state of New York, except in point of will, and the settlement of delinquent persons" estates, in which cases the Peacemakers shall have such power as shall be conferred by law." It also provided that "all cases of which the Peacemakers have not jurisdiction may be heard before the Council, or such courts of the state of New York as the Legislative thereof shall permit." The council is the lawmaking body. This charter also provided that all laws of the state of New York, not inconsistent with the provisions of the charter, were to continue in full force. This charter was amended in 1868 to provide that these courts have "exclusive jurisdiction in all civil causes and proceedings on said reservation except those of which the Surrogate's Court has jurisdiction." Since the organization of New York state, that state has been written upon the books many laws relative to the management of the affairs of the Indians in these reservations. The general Indian Charter contemplates a measure of control by the state. The general Indian Law of New York state is included in chapter 26 of the Consolidated Laws, and among its many provisions with reference to the Seneca Nation provides for a Peacemakers' Court, with "authority to hear and determine all appeals and applications for relief in any case arising upon such reservation, whether upon contracts or for wrongs, and particularly for any encroachments or trespass on any land cultivated or occupied by any one of them, and which shall have been entered and recorded in the clerk's books of records" (section 46), and, further, "jurisdiction to hear and determine all questions and actions between individual Indians residing therein involving the title to real estate on such reservations." It is clear that the provisions of the Indian charter and this section of the Indian Law include actions such as the one now before us, and the case of Surrogate's Court. Section 50 of the Indian Law, New York, provides for an appeal from the decision of the council in the council, which was the lawmaking body in the Indian reservation. Here we have both the tribal law and the state law purporting to confer jurisdiction.

The Peacemakers' Court did not originate with the state. It was formed in the constitution of the Seneca Nation of 1833, which provides for annual election of councilmen (sec. 2). Constitution, supra, sec. 3. See, too, New York Indian Code, supra, sec. 72.

New York Indian Code, supra, sec. 41.

Ibid., sec. 41, 42. See amended constitution of the Seneca Nation, 1893, which provides for annual election of councilmen (sec. 2).

Constitution, supra, sec. 3. See, too, New York Indian Code, supra, sec. 72.

New York Indian Code, supra, sec. 41.

Ibid., sec. 46. Although the New York Indian Code expressly provides for similarity in proceedings only insofar as compelling attendance
The council is given power to make laws not inconsistent with the Constitution of the United States, the State of New York, or the Seneca Nation. The constitution may be altered or amended at any time by a prescribed process.

B. TONAWANDA BAND OF SENECAS

The government of the Tonawanda band is separate and distinct from that of the rest of the Seneca Nation. The legislative branch of the government of this band is placed in a council of the chiefs, who are apparently chosen as in the days of the Iroquois Confederacy, with authority over the Indian code of the New York State law. The council is given power to pass by-laws not inconsistent with this law and is given jurisdiction over allotment of lands, their consent is necessary for sales of timber, and they may hear differences arising among Indians regarding trespass and titles to land. The only other elective office provided for is that of clerk.

C. ST. REGIS MOHAKWS

The local government of the St. Regis Mohawks is covered by a separate article of the Indian code of the State of New York. This permits and supports a local governmental unit of three elected chiefs, and three subchefs, who serve when the chiefs are unable to do so. One chief and one subchief are elected each year, to serve for a period of 3 years, by male Indians 21 or over residing on the American side of the international boundary, and entitled to draw yearly annuity money. The three chiefs have power to pass by-laws not inconsistent with law, relating to common land, fences and animal trespasses, have jurisdiction over allotment of lands, their consent is necessary for sales of timber, and they may hear differences arising among Indians regarding trespass and titles to land. The only other elective office provided for is that of clerk.

D. TUSCARORA NATION

The Tuscarora Reservation is governed by chiefs of the Tuscarora Nation tacitly recognized by the New York code, who have been given power to allot lands and control timber sales. The statute does not provide for a peacemakers' court on the Tuscarora Reservation. The statute provides no mechanism for election of chiefs and they appear to be chosen by ancient methods.

An attorney is appointed by the Governor who acts as treasurer and prosecutor for the band.

"The Tuscarora Reservation lies in Niagara County about 9 miles northeast of Niagara Falls, and contains 6,249 acres. The Tuscarora Indians have been adopted by the Iroquois League of Nations, by deed dated March 30, 1808, the Seneca Nation granted 1 square mile (640 acres) to the Tuscarora Indians. (Liber 1, folio 56, Land Records of Niagara County.) It is reported that subsequently the Holland and Michigan Land Company, under the auspices of Robert Morris, "ratified" this grant, and gave to the Tuscaroras 1,250 acres more, but no record of any paper title to this effect can be found. At any rate, the Tuscaroras occupy and claim these lands as a part of their present reserve, which are subject to the preemption right of the Ogden Land Co. (7 Stat., 560), although the Indians deny this, basing their claim on a decree of the State court in Buffalo, handed down in 1850. This suit resulted from an agreement with the Federal Government, January 15, 1838, under which the Six Nations were to remove west of the Mississippi River, and in anticipation of their removal the chiefs of the Tuscarora Tribe executed a deed to Thomas L. Ogden and Joseph Fellows, predecessors of the Ogden Land Co., conveying to said Ogden and Fellows, as owners of the preemptive right, the 1,920 acres last referred to. The deed was placed in the hands of Herman B. Potter, in escrow, pending the performance of certain conditions precedent to delivery. The expected removal failed to materialize, and in 1849 Wm. B. Chew et al., chiefs of the tribe, instituted suit against Herman B. Potter and Joseph Fellows (Thomas L. Ogden then being deceased), looking to a surrender and cancellation of the deed. A verdict in favor of the Indians was rendered and the deed canceled by the decree of the court, which resulted only in placing the matter in status quo, as far as the preemptive right of Ogden and Fellows was concerned. The execution of the deed was an admission of the existence of the preemptive right and the continuance of the Indians in the decree of the court canceling the deed also effectually extinguished the right of preemption in the Ogden people does not appear well founded. The records in the case are still on file in the county clerk's office at Buffalo.

About the year 1800 a delegation of Tuscarora Indians visited the governor of North Carolina and negotiated a sale of their lands in that State for approximately $15,000, which money was deposited with the United States in trust. In 1804 Congress authorized the Secretary of War to purchase the Tuscarora Tribe, who now own the fee. (Book "A," p. 5, Niagara County clerk's office.)" (H. Doc. No. 1590, 63rd Cong., 3d sess., 1915, pp. 12-13.)

The New York Indian Code, supra, Art. 7.

The New York Indian Code, supra, Art. 5.
E. ONONDAGA NATION

The governing body of the Onondaga Nation appears to be a council of chiefs chosen and installed according to dictates of ancient tradition. This body is recognized by Indian law as the representative of the Onondaga Reservation. It has jurisdiction to lease lands with the consent of the agent, and its consent is necessary before timber may be removed. It also settles disputes among Indians.

F. CAYUGA NATION

The Cayuga Nation has no reservation of its own, but maintains a tribal organization of chiefs and their families. The Cayuga Nation is recognized as a governing body, with headquarters on the Cattaraugus Reservation.

G. SHINNECOCK INDIANS

The Shinnecock Indians, occupying the 450-acre Shinnecock Reservation on Long Island, have always been distinct and separate from the Iroquois League, although at one time it is said they paid tribute to the Mohawks.

The New York Indian code provides for the election of three trustees by the adult males who have lived on the Shinnecock Reservation for 6 months prior to the election date. These trustees have authority over tribal land and timber matters. Authority, however, is vested in the Justices of the Peace in the town of Southampton to pass on leases of tribal lands proposed by the trustees.

H. POOSEPATUCK INDIANS

About a dozen families were reported in 1936 to occupy the 50-acre Poospatuck Reservation on Long Island. There appear to be no extant statutes specifically relating to this reservation, which had its origin in a grant by Governor William Smith in 1700. Land matters are managed by a board of trustees, elected annually in April, under authority of the "General Provisions" of the New York State Indian law.

"The Shinnecock Reservation, containing some 450 acres, is located on a neck of land running into Shinnecock Bay, Long Island. Southampton was an early colonial town, established in the seventeenth century, and the town trustees negotiated with "Shinnecock," chief of the tribe, for a lease of the lands. Tribal tradition has it that the chief sold out to the whites and skipped with the money. While this does not comport with accepted ideas of the honesty and integrity of aboriginal chiefs, yet it is a matter of record that the town trustees of Southampton in the early days gave a lease for a thousand years to the Shinnecock Indians covering some 3,600 acres, known as the Shinnecock Hills and Shinnecock Neck. Matters stood thus until about the middle of the nineteenth century, when the town had developed to such an extent that a more satisfactory arrangement was desired. Accordingly, in 1880 the state authorized the town trustees to negotiate with the Indians for a cession of their leasehold estate. An agreement was reached, under which the Indians surrendered the lands, in exchange for which they received legal title to the Shinnecock Neck." (H. Doc. No. 1690, 63d Cong., 3d sess., 1915, p. 13.)

For reference to the reservation of the Cayuga and Seneca who removed to Indian Territory, see Chapter 23.

The Cayugas are not treated by the New York Indian Code.

There are about 100 persons belonging to this tribe.

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"The Onondaga Reservation contains 6,100 acres and is located in Onondaga County about 5 miles south of the city of Syracuse. Prior to 1783 this reservation embraced something over 25,000 acres. March 11 of that year, however, the Indians sold over three-fourths of their reservation to the State, and by subsequent treaties in 1785, 1817, and 1822 the reservation was reduced to its present area. Under State law these Indians are authorized to lease land owned or possessed by individuals, and small areas within the reservation are so leased. The lands within this reservation are not covered by the claim of the Ogden Land Co." (H. Doc. No. 1600, 63d Cong., 3d sess., 1915, p. 12.)


"By the Treaty of February 27, 1792, the Cayugas sold certain lands to the State of New York, reserving only 100 square miles around Cayuga Lake, a small parcel on Seneca River, and a square mile at Cayuga Ferry. These reservations were later sold to the state, on July 27, 1795. The larger portion of the Cayugas has removed to the west of the Mississippi, but approximately 200 remain in New York. They live for the most part with the Senecas, but a few are with the Tonawandas.

For reference to the reservation of the Cayuga and Seneca who removed to Indian Territory, see Chapter 23.

The Cayugas are not treated by the New York Indian Code.

There are about 100 persons belonging to this tribe.

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New York Indian Code, supra, Art. 2.