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.[1] Because of the persistence of traditional forms of tribal organization,[2] 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 been the subject of a series of cases, federal[3] and state,[4] and at least two excellent legal studies.[5] 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, 1938, the Indian population of these states was, according to the Indian Office: New York, 6,610; Wyoming, 2,328; Colorado, 856; Utah, 2,184.

[2] See American Assn. of Indian Affairs, Inc., News-Letter Supplement, May 15, 1939.

[3] *Fellows* v. *Blacksmith*, 19 How. 366 (1856) (denying right of assignee of ultimate fee to Seneca lands to dispossess Indians); *New York ex rel. Cutler* v. *Dibble*, 21 How. 366 (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*, 5 Wall. 761 (1866) (denying 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 conveyances 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, set apart for these Indians and later sold by the United States, as well as for amounts of money agreed to be paid upon their removal); *Oneida Indians of Canada* v. *United States*, 39 C. Cls. 116 (1903) (Oneida Indians of Canada claim to share in fund under decision of Supreme Court in 170 U. S. 1); *New York Indians* v. *United States*, 40 C. Cls. 448 (1905) (claims 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. Cls. 462 (1906) (claims of New York Indians excluded from the membership rolls to share in judgment rendered in suit reported in 40 C. Cls. 448); *Kennedy* v. *Becker*, 241 U. S. 556 (1916) (hunting and fishing rights of Seneca Indians on ceded lands); *United States ex rel. Kennedy* v. *Tyler*, 269 U. S. 13 (1925) (State court jurisdiction over lands and members of the Seneca Tribe); *Spears* v. *United States*, 64 C. Cls. 684 (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, 373.

[4] See *Patterson* v. *Council of Seneca Nation*, 245 N. Y. 433, 157 N. E. 734 (1927), and cases cited.

[5] Rice, The Position of the American Indian in the Law of the United States (1934), 16 J. Comp. Leg. 78; Pound, Nationals without a Nation (1922), 22 Colum. L. Rev. 97.

SECTION 1. HISTORICAL BACKGROUND[6]

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

[6] Material on the historical background of the New York Indians and their relations with various colonial governments and the United States is taken, almost in its entirety, from the brief in the case of *United States* v. *Charles*, 23 F. Supp. 346 (D. C. W. D. N. Y. 1938), filed by the

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 to 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.

Diversion of fur trade to the English was effected by the Iroquois from as far as what is now Illinois and Wisconsin, and this 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 Chesneau in 1681:[7]

> 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 Outawa 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.[8]

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 concilliated" by England and that their national character was scrupulously observed and recognized.[9]

Department of Justice on behalf of the United States. The statements therein contained are corroborated by statements found in *New York Indians* v. *United States*, 170 U. S. 1 (1898).

An interesting account of the tribes inhabiting western New York during the early colonial period, some of whom no longer reside in the state, is contained in a memorandum of John R. T. Reeves, Chief Counsel, Office of Indian Affairs, which appears in H. Doc. No. 1590, 63d Cong., 3d sess. (1915), and reads as follows:

> Early colonists in what is now western New York found the country more or less densely populated by aborigines of various tribes, principally the Senecas, Cayugas, Onondagas, Oneidas, and Mohawks. These five tribes or nations were united in a common league, known among themselves as Ho-de-no-sau-nee, but generally designated by the whites as "Iroquois," and were much feared during the early days. In the Iroquois council the Onondagas, as the founders of the league, kept the central fire; the Mohawks guarded the eastern portal, and the Senecas the western. The Oneidas were stationed between the central fire and the east, while the Cayugas occupied a similar position in the west. * * *
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> About 1710 the Tuscaroras, then living in North Carolina, became involved in quarrels with white settlers and adjoining Indian tribes there. Having been severely defeated in battle they migrated to New York and were formally united with the five tribes just mentioned, thus making the Six Nations of New York, by which name these Indians are now most commonly known. At the period of its greatest strength—the latter part of the seventeenth century—the Iroquois league numbered 15,000 souls, and even to this day the union still continues to some extent, although its component membership as to tribes has materially changed.
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> With the exception of the Oneidas and a part of the Tuscaroras, these Indians sided with the mother country in the Revolution and were left unmentioned and unprovided for in the treaty of peace between Great Britain and the confederated Colonies. Naturally considerable unrest existed among them at the close of the Revolution, due to the fact that in the main they had sided with the losing party in that great struggle. The Mohawks moved to Canada and settled on lands provided for them by the British Government, where a remnant of this tribe still lives. By treaty the Mohawks ceded to the State whatever title they had to any land in New York, and subsequently the St. Regis Indians were formally adopted by the Six Nations in place of the Mohawks.
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> The Cayugas also sold their land to the State and gradually migrated westward, locating first in the Ohio Valley, but finally removing to the Indian Territory and becoming affiliated with other tribes there. A few Cayugas still remain in New York, residing principally with the Senecas and Tonawandas—the latter an offspring of the Seneca Tribe—being frequently designated "The Tonawanda Band of Seneca Indians." The State paid the Cayugas at the rate of 4 shillings per acre and thereafter sold the land for 16 shillings per acre. About 1853 representatives of the tribe began to petition the State for the difference in price between the one paid to them and that received by the State. Finally, in 1909, the legislative assembly authorized the land commissioner to adjust and settle the claim of the Cayuga Indians against the State for a sum not exceeding $297,131.20, with an additional allowance of $27,131.20 for legal expenses incurred.
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> The Oneidas also, by various treaties, sold all of their land, except about 350 acres, to the State, and removed to the reservation in Wisconsin procured from the Menominees by treaty with the Federal Government. The 350 acres in New York belonging to the Oneidas have long since been divided in severalty under State laws, and as a tribe these Indians are known no more in that State. Six tribes still remain in New York, to be regarded as of any importance at this time, viz, the Senecas, Tonawandas, Tuscaroras, Onondagas, St. Regis, and Shinnecocks, the latter, however, never having formed a unit in the Six Nations, although at one time they did pay tribute to the Mohawks. * * * (P. 11.)

See appendix of H. Doc. No. 1590, 63d Cong., 3d sess., *supra*, for a list of treaties, statutes, documents, and cases relating to the New York Indians. For a discussion of treaties between New York State and the New York Indians, see *Seneca Nation of Indians* v. *Christy*, 126 N. Y. 122, 27 N. E. 275 (1891).

[7] Brodhead, Documents Relative to the Colonial History of the State of New York (1855) (Edited by E. B. O'Callaghan), vol. 9, p. 165.

[8] Lieutenant Governor Clark, in an address to the Assembly on April 15, 1741, said:

> The house at Oswego being of highest Importance to the furr-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 expose the whole country to the merciless spoil and barbarous cruelty of a savage enemy, * * *; wherefore at any expense Oswego ought to be maintaind that the fidelity of the Six Nations may be Preserved * * *. (New York Assembly Journal 1691–1743 (1861 ed.), 22d Assembly, 6th session, p. 769)

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

> In 1768, 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 definitely set apart from the lands of the Colony 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 the

B. AFFAIRS OF IROQUOIS AS AFFECTING ALL COLONIES

With their territory, dominance, 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 general union of the British American Colonies." [10]

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 1686 gave to Albany the

> Sole & only Managmt of the Trade with the Indians as well within this whole County as without the same to the Eastward Northward and Westward thereof so farr as his Maties Dominion here does or may extend * * *.[11]

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.[12] 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 to 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 1783, 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 subjugated 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 Oneidas 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.[13]

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.

British Settlements bounded by a line which we have now agreed upon and do hereby establish as the Boundary between us and the British colonies in America." This is followed by a description of the boundaries, with its beginning and ending. (New York Colonial Documents, Vol. 8, p. 136; Ethnology Bureau Report, Pt. 2, 1897, p. 584). (1 L. D. Memo. 35 (1925).)

[10] Massachusetts Historical Society Collections (1836), series III, vol. 5, p. 5.

[11] N. Y. Colonial Laws, vol. 1, pp. 195, 211.

[12] "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*, 25 F. 2d 71, 72 (C. C. A. 3, 1928).

[13] 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 firmness 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 wish us not well, and who cherish hopes from a discord arising from different interests." (Ballagh, James Curtis, The Letters of Richard Henry Lee (1911), vol. 2, p. 298.)

The ensuing treaty was in effect three treaties:[14] (*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 Oneidas 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, intending to give Congress the power:

> To regulate affairs with the Indians, as well within as without the limits of the United States.[15]

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[16] and 1794[17] 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 1789[18] 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,[19] 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.

[14] Treaty October 22, 1784, with the Six Nations, 7 Stat. 15.

[15] Elliot, Jonathan, The Debates in the Several State Conventions on the Adoption of the Federal Constitution, vol. 5, (1937 ed.), p. 439.

[16] Treaty of January 9, 1789, 7 Stat. 33.

[17] Treaty of November 11, 1794, 7 Stat. 44.

[18] Treaty of January 9, 1789, 7 Stat. 33.

[19] Treaty of November 11, 1794, 7 Stat. 44, interpreted in 1 Op. A. G. 465 (1821).

These several treaties[20] 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.*[21]—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 1860, 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,[22] 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.*[23]—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 grantee 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

[20] Treaties of October 22, 1784, January 9, 1789, and November 11, 1794, *supra*.

[21] For a further discussion see Chapter 12, sec. 2.

[22] "* * * From time to time New York has enacted sundry laws pertaining to the Indians within her borders, has provided schools for their youth, appointed attorneys to protect their interests, and has delegated jurisdiction in some instances to her courts to entertain their complaints." (H. Doc. No. 1590, 63d Cong., 3d sess., 1915, p. 14.)

The State of New York has for 100 years or more legislated for and dealt with the Indians within its borders. The Revised Statutes of the State of New York of 1882, pp. 272–336, show the extent and purport of this legislation. Beginning with chapter 29 of the Laws of 1813 (N. Y.), prohibiting the purchase or occupancy of any Indian lands in New York by any person without the consent of the legislature, these statutes contain provisions for the improvement of the reservations, to prevent the destruction of timber on the same, for the appointment of peacemakers on certain reservations and giving them jurisdiction of actions for divorce, and to hear actions to determine title to real estate between Indians, to authorize certain Indians to hold land in severalty and to sell and buy the same, provisions for the appointment of attorneys to represent the Indians, and for the support of schools, ministers and churches on the reservations, to authorize the construction of railroads upon Indian lands, to prohibit the sale of liquor to the Indians, to establish laws of descent among them, and to provide the manner of conveying their lands and restricting conveyance of the same, police regulations, and for the purchase of lands of Indians by the state. 1 L. D. Memo. 35 D. J. (1929).

See also *United States ex rel. Kennedy* v. *Tyler*, 269 U. S. 13 (1925); *United States* v. *Waldow*, 294 Fed. 111 (D. C. W. D., N. Y., 1923), and *Benson* v. *United States*, 44 Fed. 178 (C. C. N. D., N. Y., 1890).

[23] See Chapter 15, sec. 18.

of land from time to time were thus purchased from the Seneca Indians under federal authority.[24]

3. *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 by the United States to the West.[25] 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.[26]

On August 18, 1821, the Menomonee 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 last 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[27] 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 $20,000 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,[28] 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 severalty 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 1887.[29]

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.[30] 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 Senecas' 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 as it existed at that time, and the Cattaraugus (21,680 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,[31] 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 those, none settled permanently in Kansas.[32] 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.[33]

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*,[34] 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

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[24] The State of New York acquired from the Indians all the western one-half of that state by nearly 200 treaties not participated in by the United States Government. (See brief of Plaintiff in Error in *Boylan* v. *United States*, No. 111, vol. 20, p. 3, answering motion to dismiss, Records and Briefs in United States cases, United States Supreme Court.) 1 L. D. Memo. D. J. 35 (1929). This memorandum analyzes many of the decisions of the New York courts concerning the New York Indians.

[25] Indian Office Letter Book C, p. 271.

[26] *New York Indians* v. *United States*, 30 C. Cls. 413, 414, 415 (1895).

[27] 7 Stat. 342.

[28] 7 Stat. 550, interpreted in *New York Indians* v. *United States*, 170 U. S. 1 (1898); *United States* v. *New York Indians*, 173 U. S. 464 (1899); *New York Indians* v. *The United States*, 40 C. Cls. 448 (1905); and 3 Op. A. G. 624 (1841).

[29] Act of February 8, 1887, 24 Stat. 388, 25 U. S. C. 331, *et seq.*

[30] Supplemental articles of February 13, 1838, 7 Stat. 561.

[31] 7 Stat. 586.

[32] Sen. Rep. No. 910, 52d Cong., 1st sess., pp. 5–6.

[33] *New York Indians* v. *United States*, 30 C. Cls. 413, 427 (1895).

[34] 5 Wall. 761 (1866).

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. 768.)

5. *Federal recognition of Seneca constitution.*—In 1848 a convention 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 represented 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 *Cattaraugus* and *Allegany* Reservation having been adopted by a majority, will be recognized by the Government, 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[35] 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[36] 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 improvements 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.[37]

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 *Blacksmith* v. *Fellows*,[38] which reached the United States Supreme Court in 1856 as *Fellows* v. *Blacksmith*.[39] The Supreme Court decided that even though the Indians had sold their lands they were to be considered as on the land under their original right of possession and entitled to the protection of treaties and that they could be removed only by the United States Government.

The formal recognition by the United States of the Tonawanda tribe of Indians, by the Treaty of 1857,[40] as a separate and distinct tribe of Indians and independent of the Seneca Nation on the Allegany and Cattaraugus Reservations, is significant in view of the history of the bands of the Seneca Indians. The Tonawandas were satisfied with their chiefs who had refused to participate in the sale of their lands, and this tribe has continued to regulate its internal affairs under its original tribal form of government and has continued to enforce its ancient laws, usages, and customs as modified by practice.

7. *Indian leases.*—Prior to 1875, the village of Salamanca on the Allegany Reservation grew up through numerous alleged leases of Indian lands, ostensibly under state laws and authority, but contrary to federal laws. A careful consideration of the validity of these leases under state authority led state courts to the conclusion that such leases were void as being in violation of federal restrictions on Indian lands against leasing or alienation. To place these illegal leases on a legal basis, the state legislature passed a concurrent resolution as follows:

> Whereas, The Legislature of the State of New York has, at different times, ratified and confirmed leases between Indian and white settlers on the Allegany Indian reservation in said State; and
>
> Whereas, The courts of this State have decided that said ratification is null and void, the Congress of the United States alone possessing power to deal with and for the Indians * * *; now therefore,
>
> Resolved (if the Senate concur), That our Senators and Representatives in Congress are requested to lay the matter before Congress, at an early day, and procure the passage of a law, or take some action for the relief of said white settlers.
>
> Resolved (if the Senate concur), That a copy of this resolution be furnished to each of the members of the Senate and Congress from this State.[41]

Congress legalized part of these leases for 5 years and provided for the establishment of certain villages on the Cattaraugus and Allegany Indian Reservations, and further provided for new and renewal leases.[42] Provision was also made for the extension of the highway laws of the State of New York over the Allegany and Cattaraugus Reservations of the Seneca Nation "with the consent of said Seneca Nation in council." By this act, as amended by Act of September 30, 1890,[43] and Act of February 28, 1901,[44] the Federal Government has regulated leases on the Allegany and Cattaraugus Indian Reservations and continues to do so.

[35] 7 Stat. 586, *supra*.
[36] 7 Stat. 550, *supra*.
[37] N. Y. State Assembly, Doc. 51, vol. 8, 1889, p. 30.
[38] 7 N. Y. 401 (1852).
[39] 19 How. 366 (1856).
[40] Treaty of November 5, 1857, 11 Stat. 735.
[41] N. Y. Session Laws, 1875, 98th sess., p. 819.
[42] Act of February 19, 1875, 18 Stat. 330 (Seneca), discussed in *Benson v. United States*, 44 Fed. 178 (C. C. N. D. N. Y. 1890).
[43] 26 Stat. 558 (Seneca Nation).
[44] 31 Stat. 819 (Seneca Nation). Also applicable to Oil Springs Reservation.

SECTION 2. THE PRESENT STATUS OF TRIBAL GOVERNMENT[45]

The Indian reservations now occupied by the New York Indians are the Allegany, Cattaraugus, Oil Springs, Cornplanter,[46] Tonawanda, St. Regis, Tuscarora, Onondaga,[47] Shinnecock, and Poosepatuck. All save the Shinnecock and Poosepatuck, which are on Long Island, are inhabited by descendants of the famous Iroquois League of Six Nations (originally 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-

[45] Material in this section is based, except where otherwise noted, on a report of Paul Gordon on New York Indians (Indian Office Files, 1935).
[46] The Cornplanter Reservation is actually in Pennsylvania, but residents are recognized by Senecas of the Allegany and Cattaraugus Reservations.
[47] For a discussion of the Onondaga Reservation, see Memo. by C. E. Collett, 5 L. D. Memo. D. J. 179, April 29, 1935.

vation is held by the St. Regis Mohawks; the Tonawanda by the Tonawanda Band of Senecas; and the Allegany, Cattaraugus, and Oil Springs Reservations by "The Seneca Nation of Indians," a corporate body under the laws of New York. The Cornplanter Reservation of Pennsylvania is held by the descendants of Cornplanter, who unite with the Seneca Nation in affairs affecting that nation.[48] The Indians of this reservation are grouped with those of the Allegany Reservation for purposes of local government and voting.

A. SENECA NATION

The government of the Seneca Indians is covered by Articles 4 and 5 of the New York Indian Code.[49] 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, 8 from the Cattaraugus Reservation and 8 from the Allegany Reservation.[50]

The executive power is vested in a president who presides, fills vacancies, and has a casting vote.[51]

The judiciary power is vested in peacemakers' and surrogate's courts. The peacemakers' courts are composed of three members each from the respective reservations.[52] 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.[53] 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.[54] Appeal may be taken to the council.[55]

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.[56]

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.[57] The constitution provides for a clerk and a treasurer,[58] and permits the council to provide for highway commissioners, overseers of the poor, assessors and policemen.[59] Officers may be removed for cause.[60]

Male Indians of 21 or over who shall not have been convicted of a felony are eligible to vote and hold office.[61]

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[48] Members of the several nations have intermarried and have taken up residence "abroad," with the result that members of every nation are found on every reservation.

[49] McKinney's Con. Laws of New York Annotated, Bk. 25, New York Indian Code.

> The Allegany Reservation, claimed by the Senecas, contains 30,469 acres, and is located on both sides of the Allegany River in Cattaraugus County, N. Y. It is about 40 miles long and averages from 1 to 3 miles in width. It is a part of the area specifically reserved to the Seneca Indians in the treaty with Robert Morris at "Big Tree" September 17, 1797. This entire reservation is subject to the "preemption right" or "claim" of the Ogden Land Co., to which reference is hereinafter more fully made.
>
> The Cattaraugus Reservation contains 21,680 acres, located principally in Erie County, a small part lying in each of the counties of Cattaraugus and Chautauqua. This reservation was conveyed to the Seneca Indians by Wilhelm Willnick, et al., predecessors of the Ogden Land Co., by agreement dated June 30, 1802 (7 Stat., 70), in return for which the Seneca Indians surrendered to the company certain other lands which had been reserved to them by the treaty at Big Tree. This reservation is also subject to the preemption right of the Ogden Land Co., such right being specifically retained in the agreement referred to.
>
> The Oil Spring Reservation, located partly in Allegany and partly in Cattaraugus Counties, contains only 640 acres. Its name is derived from a muddy pool, about 20 feet in diameter, located near the center of the tract, from which the Indians formerly gathered a sort of crude petroleum locally known as "Seneca oil," and which was used quite extensively by them in early days for medicinal purposes. The Senecas fully understood that this tract was reserved to them in the sale to Robert Morris at Big Tree, but this fact does not appear from an examination of the treaty itself. At any rate, this reserve was included in a sale by Robert Morris to the Holland Land Co., so-called, and several mesne conveyances transpired until by deed dated February 28, 1855, one Philoneus Pattison became the ostensible owner of a part thereof. On taking possession, the Seneca Indians promptly began an action in ejectment against Pattison. A verdict in favor of the Indians was rendered by the lower court; the case was appealed to the supreme court of the State and finally to the court of appeals, both of which affirmed the decision of the trial court, and the Indians have since remained in undisturbed possession. A written opinion of the case does not appear to have been handed down, but the pleadings, transcript of evidence, judgment, and decree of the court are still on file in Little Valley, the county seat of Cattaraugus County. (H. Doc. No. 1590, 63d Cong., 3d sess., 1915, pp. 11–12.)

[50] *Ibid.*, sec. 41, 42. See amended constitution of the Seneca Nation, 1893, which provides for annual election of councilors (sec. 2).

[51] Constitution, *supra*, sec. 3. See, too, New York Indian Code, *supra*, sec. 72.

[52] New York Indian Code, *supra*, sec. 41.

[53] *Ibid.*, sec. 46. Although the New York Indian Code expressly provides for similarity in proceedings only insofar as compelling attendance of witnesses is concerned, the 1893 constitution provides for such similarity also in jurisdiction and proceedings. (sec. 4).

[54] On the power of the peacemakers' courts of the Seneca Indians of the Cattaraugus Reservation, see *Washburn* v. *Parker*, 7 F. Supp. 120 (D. C. W. D. N. Y. 1934). In the absence of congressional legislation, the federal courts lack jurisdiction over internal questions relating to property rights of individual Indians of the Cattaraugus Reservation, *United States* v. *Seneca Nation*, 274 Fed. 946 (D. C. W. D. N. Y., 1921); *Rice* v. *Maybee*, 2 F. Supp. 669 (D. C. W. D. N. Y. 1933).

The court in *Rice* v. *Maybee*, 2 F. Supp. 669 (D. C. W. D. N. Y., 1933), 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 it provided for Peacemakers' Courts in which the jurisdiction would be "the same as in courts of justices of the peace of the state of New York, except in proof of wills, and the settlement of deceased 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 Legislature 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 1898 to provide that these courts have "exclusive jurisdiction in all civil cases arising between Indians residing on said reservation except those of which the Surrogate's Court has jurisdiction." Since the organization of New York state, that state has written upon its statute books many laws relative to the management of the affairs of the Indians in these reservations. The 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 Indians we find that it provides for a Peacemakers' Court, with "authority to hear and determine all matters, disputes and controversies between any Indians residing upon such reservation, whether arising 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 described in the clerk's books of records" (section 46), and, further, "jurisdiction * * * to hear and determine all questions and actions between individual Indians residing thereon 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 at bar and the action brought before the Peacemakers' Court. Section 50 of the Indian Law, New York, provides for an appeal from the decision of the Peacemakers' Court to 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 the creation of the Indians themselves. As the court in *Mulkins* v. *Snow*, *supra*, said: "It is an Indian court which has been recognized and given strength and authority by statute. It does not owe its existence to the state statute and is only in a qualified sense a state court." Matter of *Patterson* v. *Council of Seneca Nation*, 245 N. Y. 433, 157 N. E. 734. (P. 671.)

[55] New York Indian Code, *supra*, sec. 50.

[56] Amended Constitution, *supra*, sec. 4.

[57] *Ibid.*, sec. 5.

[58] *Ibid.*, sec. 6.

[59] *Ibid.*, sec. 8.

[60] *Ibid.*, sec. 9.

[61] *Ibid.*, sec. 10. The statute (New York Indian Code, *supra*, Art. 4, secs. 42, 43) contains no requirement that voters shall not have been convicted of felonies.

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.[63]

The constitution may be altered or amended at any time by a prescribed process.[64]

B. TONAWANDA BAND OF SENECAS

The government of the Tonawanda band is separate and distinct from that of the rest of the Seneca Nation.[64]

The legislative branch of the government of this band is placed in a council of the chiefs,[65] who are apparently chosen as in the days of the Confederate League of the Iroquois. The power and jurisdiction of this council is recognized and supported by the Indian code of the New York State law.[66] The council is given power to pass bylaws not inconsistent with this law and is given jurisdiction over animal trespasses, lands, and fences.[67]

The judiciary appears to be in the hands of three peacemakers elected annually by Tonawanda Senecas; males over 21 years of age may vote. Peacemakers try cases involving local ordinances and differences among Indians, and hear suits for divorce.

Additional officers are a president, clerk, treasurer, and marshal.

C. ST. REGIS MOHAWKS[68]

The local government of the St. Regis Mohawks[69] is covered by a separate article of the Indian code of the State of New York.[70] This permits and supports a local governmental unit of three elected chiefs, and three subchiefs, who serve when the chiefs are unable to do so.[71] One chief and one subchief are elected each year, to serve for a period of 3 years,[72] by male Indians 21 or over residing on the American side of the international boundary, and entitled to draw yearly annuity money.[73]

The three chiefs have power to pass by-laws not inconsistent with law, relating to common land, fences and animal trespasses,[74] have jurisdiction over allotment of lands,[75] their consent is necessary for sales of timber,[76] and they may hear differences arising among Indians regarding trespass and titles to land.[77] The only other elective office provided for is that of clerk.[78]

D. TUSCARORA NATION

The Tuscarora Reservation is governed by chiefs of the Tuscarora Nation[79] tacitly recognized by the New York code,[80] who have been given power to allot lands[81] and control timber sales.[82] 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.

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[63] Amended Constitution, *supra*, sec. 13. The statute (*supra*, fn. 61, sec. 73) limits the legislative power of the council to the passing of by-laws and ordinances relative to common land, fences, trespass of animals.

[64] *Ibid.*, sec. 16.

[64] *Cf.* New York Indian Code, *supra*, fn. 49, which deals with the Tonawanda Senecas separately in Art. 6.

"The Tonawanda Reservation now comprises but 7,549 acres lying partly in Erie, Genesee, and Niagara Counties. Originally it comprised upward of 45,000 acres, being a part of the lands reserved to the Seneca Indians in the sale to Robert Morris at Big Tree. This reservation was conveyed to Thomas Ludlow Ogden and Joseph Fellows by agreement with the Six Nations, dated January 15, 1838 (7 Stats., 550), and the subsequent treaty with the Senecas of May 20, 1842 (7 Stats., 586). The lands embraced within the present reserve were repurchased from Ogden and Fellows for the sum of $100,000, in accordance with article 3 of the treaty with the Tonawanda Indians, dated November 5, 1857 (11 Stats., 735). Title was first taken in the Secretary of the Interior, who held the lands until February 14, 1862, on which date, by deed, they were conveyed to the comptroller of the State of New York 'in trust and in fee for the Tonawanda Indians.' This settlement effectually extinguished whatever preemption right the Ogden Land Co. ever had in and to the lands within this reservation." (H. Doc. No. 1590, 63d Cong., 3d sess., 1915 p. 12.)

[65] *Ibid.*, sec. 82. Although this section provides for the filling of vacancies in elective offices by the chiefs it does not specifically provide that only a chief may be elected.

[66] *Ibid.*, sec. 80.

[67] See Memo. of C. E. Collett, 5 L. D. Memo. D. J. 236, May 13, 1935.

[68] *Ibid.*

[69] Subsequent to an act of the New York legislature in 1791 authorizing the sale of waste lands in New York, Alexander McComb attempted to purchase all lands between Lake Champlain and the St. Lawrence, proposing to exclude a tract 6 miles square for the St. Regis Indians. His offer was rejected. In 1792, 1793, and 1794, the Seven Nations of Canada, Iroquois who had sided with the British in the Revolution, waited upon the Governor of New York asserting their rights to a greater area, but without favorable results. In 1796 the New York legislature authorized the Governor to appoint a commission to extinguish the Indian titles to lands in the northern part of the state. On May 31, 1796, 7 Stat. 55, a treaty was made before Ogden as Commissioner for the United States by which the St. Regis Indians ceded all lands to the United States except an area 6 miles square at St. Regis, a mile square on the Salmon River, receiving $3,200 and an annuity of $535.

[70] New York Indian Code, *supra*, Art. 8.

[71] *Ibid.*, sec. 109, 110.

[72] *Ibid.*, sec. 110.

[73] *Ibid.*, sec. 108.

[74] *Ibid.*, sec. 107.

[75] *Ibid.*, sec. 102.

[76] *Ibid.*, secs. 103, 104.

[77] *Ibid.*, sec. 106.

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

[79] "The Tuscarora Reservation lies in Niagara County about 9 miles northeast of Niagara Falls, and contains 6,249 acres. The Tuscarora Indians having been adopted by the Iroquois League as one of the Six 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 Land Co., assignee of Robert Morris, "ratified" this grant, and gave to the Tuscaroras 1,280 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 Ludlow 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 cancelation 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 statu 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 contention of the Indians that 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 with this money additional land for these Indians. With these funds 4,329 acres, lying to the south and east of the 1,920 acres already occupied by them, were purchased for the Tuscarora Indians. Title to these lands was taken by the Secretary of War in trust for the Indians, but subsequently (January 2, 1809) the lands were conveyed directly to 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.)

[80] New York Indian Code, *supra*, Art. 7.

[81] *Ibid.*, sec. 95.

[82] *Ibid.*, secs. 96, 98.

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 inference by the Indian code of the New York State law.[83] It has jurisdiction to lease lands with the consent of the agent,[84] and its consent is necessary before timber may be removed.[85] It also settles disputes among Indians.

F. CAYUGA NATION

The Cayuga Nation[86] has no reservation of its own,[87] but maintains a tribal organization of chieftains, four chiefs forming the governing body, with headquarters on the Cattaraugus Reservation.[88]

G. SHINNECOCK INDIANS

The Shinnecock Indians,[89] 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[90] 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.[91] These trustees have authority over tribal land and timber matters.[92] 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.[93]

H. POOSEPATUCK INDIANS

About a dozen families were reported in 1936 to occupy the 50-acre Poosepatuck Reservation on Long Island.[94] 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.[95] Land matters are managed by a board of trustees, elected annually in April,[96] under authority of the "General Provisions" of the New York State Indian law.[97]

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[83] *Ibid.*, Art. 3, sec. 22, 23, and 24.

"The Onondaga Reservation contains 6,100 acres and is located in Onondaga County about 5 miles south of the city of Syracuse. Prior to 1793 this reservation embraced something over 65,000 acres. March 11 of that year, however, the Indians sold over three-fourths of their reservation to the State, and by subsequent treaties in 1795, 1817, and 1822 the reservation was reduced to its present area. Under State laws 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. 1590, 63d Cong., 3d sess., 1915, p. 12.)

[84] *Ibid.*, sec. 24.

[85] *Ibid.*, sec. 22.

[86] By the Treaty of February 27, 1789, the Cayuga Nation 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.

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

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

[89] There are about 100 persons belonging to this tribe.

"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 sale 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 1859 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 hills, in exchange for which they received in fee Shinnecock Neck." (H. Doc. No. 1590, 63d Cong., 3d sess., 1915, p. 13.)

[90] New York Indian Code, *supra*, Art. 9.

[91] *Ibid.*, sec. 120.

[92] *Ibid.*, secs. 121, 122.

[93] *Ibid.*, sec. 121.

[94] Report on the Shinnecock and Poosepatuck Indian Reservations in Relation to the Reorganization Act, by Allan G. Harper, January, 1936 (Indian Office files).

[95] *Ibid.*

[96] *Ibid.*

[97] New York Indian Code, *supra*, Art. 2.