

IN THE SENATE OF THE UNITED STATES.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Information relating to the Ogden Land Company, and to the claim of said company to certain lands of the Seneca Nation of Indians.

FEBRUARY 2, 1895.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 1, 1895.

SIR: In compliance with the following provision contained in the act of August 15, 1894, making appropriations for the Indian Service (28 Stats., 301):

That the Secretary of the Interior be, and hereby is, authorized to make a thorough investigation of the facts touching the so-called Ogden Land Company, its organization, when and by whom formed, its continued existence or organization to this date, its capital stock, number of shares, amount or face value, where and by whom held, its liabilities and assets, and the original history of the alleged claim of said company to any of the lands of the Seneca Nation of Indians in the State of New York, and any and all evidences of title; and also the condition of said Indians, their progress in civilization and fitness for citizenship, their number and system of government, and the propriety of allotting their lands in severalty, and to make to Congress a full report with such suggestions and recommendations as he may deem proper in view of all the facts ascertained.

I have the honor to transmit herewith copy of a communication of the 19th instant from the Commissioner of Indian Affairs, containing a history of the claim in question to certain lands of the Seneca Nation of Indians in the State of New York, and the origin of the title.

The Commissioner is of opinion that the Ogden Land Company has a valid existing right and interest in the Allegany and Cattaraugus and in a portion of the Tuscarora reservations, and he says:

The extent or quantity of this interest seems to be fully recognized by the courts and by the legislature of the State of New York, but the value of the interest is unfixed and undetermined and does not, I believe, admit of definite ascertainment.

He also says that it seems to him—

That the first and most essential thing to be done in the solution of the Indian problem is the extinguishment of the claim of the Ogden Land Company. This being accomplished, the allotment of their land in severalty, the conferring of full citizenship upon the Indians, the repeal of all special State laws with certain exceptions

relating to Indians, and their absorption into the body politic of the State should easily and speedily follow. They would then be placed on the plane of those around them with all the privileges and liabilities of citizenship and law, with the exception, perhaps, that some restriction should be placed upon the alienation of such lands as they may acquire by allotment in severalty.

To this end he recommends—

That Congress be asked to enact such legislation as will enable the Secretary of the Interior to negotiate, in a manner to be prescribed by him, with the Ogden Land Company, so-called, for the relinquishment of its claim in and to the Indian lands in question; the result of such negotiation to be reported to Congress for such action thereon as may be deemed advisable.

Whether the fee title to the lands in question is in the Ogden Land Company, so called, subject to the right of occupancy in the Indians, or not, the claim is a cloud upon the Indian title, and has been a most serious hindrance to the prosperity and advancement of the Indians, and an endless amount of trouble and annoyance to the Department.

In order to carry out the policy of the Government to allot lands in severalty to these Indians, with the view of their eventual absorption into the body politic, it is absolutely necessary to extinguish the claim of the said company to the lands in question, and in my opinion this should be done at once.

I have had a conference with the legal representative of the company, and I transmit herewith copy of his proposition to relinquish and surrender the title of the Ogden Land Company to the lands in question at the average rate of \$10 per acre. He maintains that this is much less than the real value of the company's title, but in view of the fact that the company has for so many years been deprived of the practical benefits of the ownership, and in order to close up the transaction, he is willing to take the price named.

In the monograph on the Six Nations of New York Indians, published by the Census Bureau, the Bureau places the value on these lands (encumbered as it is by the Ogden company's title) at \$15 per acre on the Allegany Reservation, and \$25 on the Cattaraugus Reservation, the average being about \$19 per acre, and says:

The appraisement of Indian lands is based upon the best local terms of sale and not upon that made by white people of outside lands; but farms upon some reservations may well be appraised at \$50 per acre, when on some other reservations equally good or better lands would range from \$25 to \$35 per acre, such lands having a leasehold value, but not the full value, of similar adjoining lands which are unencumbered by the present inalienable Indian title. * * *

The treaty with the Tonawanda Indians of November 5, 1857 (11 Stat., 735), authorized the extinguishment of the title of Ogden and Fellows to the lands now occupied by them, the price to be paid not to exceed \$20 per acre, the title being the same as in the case now under consideration.

Inasmuch as the price proposed to be accepted by the so-called Ogden Land Company for the relinquishment of its claim in the Allegany and Cattaraugus reservations is shown by the facts developed to be not an exorbitant one, there would seem to be no serious objection to giving, by an item in the present Indian appropriation bill, or by separate law, as may seem best, the Secretary of the Interior the authority to negotiate on behalf of the Indians and enter into contract with said company for the release of its claim, at a price not exceeding that mentioned in the proposition submitted by its representative. If this be done, provision should be made for obtaining the consent of the Indians to such transaction, under such rules and regulations as the Secretary may prescribe, and also the money necessary to pay the

purchase price, and also the expenses of the negotiation, the latter item not exceeding \$2,500.

A provision should also be made for the reimbursement of the United States for whatever sum may be expended in this behalf, out of any funds of said Indians now under the control of the United States, or that may hereafter arise from the sale or leasing of their lands. If it be thought inexpedient to authorize the purchase upon the terms submitted, then the recommendations of the Commissioner of Indian Affairs should be followed.

For the information of Congress, I transmit also copies of the correspondence submitted with the Indian Office report and of the brief filed by the counsel of the representative of the Ogden Land Company.

Very respectfully,

HOKE SMITH, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
January 19, 1895.

SIR: I am in receipt of your letter of September 8, 1894, in which you state that the following provision is contained in the Indian appropriation act approved August 15, 1894 (28 Stat., 301), and request that a thorough investigation and report be made to the Department, for submission to Congress, as required by the said provision of law:

That the Secretary of the Interior be, and hereby is, authorized to make a thorough investigation of the facts touching the so-called Ogden Land Company, its organization, when and by whom formed, its continued existence or organization to this date, its capital stock, number of shares, amount of face value, where and by whom held, its liabilities and assets, and the original history of the alleged claim of said company to any of the lands of the Seneca Nation of Indians in the State of New York, and any and all evidences of title; and also the condition of said Indians, their progress in civilization and fitness for citizenship, their number and system of government, and the propriety of allotting their lands in severalty, and to make to Congress a full report, with such suggestions and recommendations as he may deem proper in view of all the facts ascertained.

I have, accordingly, the honor to submit the following report:

THE HISTORY OF THE ALLEGED CLAIM OF THE OGDEN LAND COMPANY TO CERTAIN LANDS OF THE SENECA NATION OF INDIANS IN THE STATE OF NEW YORK, AND ORIGIN OF THE TITLE.

About one hundred years ago the entire portion of western New York, covering over 6,000,000 acres of land, in the present counties of Chautauqua, Cattaraugus, Allegany, Steuben, Erie, Wyoming, Livingston, Ontario, Yates, Niagara, Genesee, and Monroe, and the western portions of Wayne, Schuyler, and Chemung, were in the undisputed possession and control of a large number of Indians, known as the Six Nations of New York.

The right of occupancy or title by which these Indians held said territory was discussed in the case of *Johnson v. McIntosh* (8 Wheat., 543), in which Chief-Justice Marshall said:

On the discovery of this immense continent the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all, and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy.

The potentates of the Old World found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the New by bestowing on them civilization and Christianity in exchange for unlimited independence. But as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted should be regulated as between themselves. This principle was that discovery gave title to the Government by whose subjects, or by whose authority, it was made, against all other European Governments, which title might be consummated by possession. The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves and to the assertion of which by others all assented. Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.

In the establishment of these relations the rights of the original inhabitants were in no instance entirely disregarded, but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil with a legal, as well as just, claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty as independent nations were necessarily diminished, and their power to dispose of the soil at their own will to whomsoever they pleased was denied by the original fundamental principle that discovery gave exclusive title to those who made it. While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves, and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy.

The history of America from its discovery to the present day proves, we think, the universal recognition of these principles.

In the case of the Seneca Nation against Christie (126 New York Reports, 122), Mr. Justice Andrews said:

It was a necessary sequence to the claim that the sovereign had the ultimate title to the soil that the right to extinguish the Indian occupation was exclusively vested in the sovereign. The Indians were held to be incapable of alienating their lands except to the Crown, and all purchases made from them without its consent were regarded and treated as absolutely void. The title of the Crown was subject to grant, but a grant from the Crown only conveyed the fee subject to the right of Indian occupation, and when that was extinguished under the sanction of the Crown, the possession then attached to the fee and the title of the grantee was thereby perfected. These general principles were announced by Chief Justice Marshall in the great case of *Johnson v. McIntosh* (8 Wheat., 543), which has ever since been regarded as a sound exposition of the nature of Indian titles.

Soon after peace was declared in 1783 between the United States and Great Britain a controversy arose between the States of Massachusetts and New York respecting the title to the western part of the latter State, which part was then generally called "The Genesee Country." Massachusetts claimed title to this territory by grant from King James I, to the Plymouth Company in 1628, which colony was subsequently united with Massachusetts. New York claimed the same territory by grant from Charles II to the Duke of York and Albany in 1664.

The controversy was brought under the cognizance of Congress, in pursuance of the Articles of Confederation (Article IX), and a court was constituted to decide it, but the dispute was finally settled by a convention of commissioners on the part of each State at Hartford, Conn., December 16, 1786. Under the terms of this agreement Massachusetts ceded to New York the "government, sovereignty, and jurisdiction" of such lands, and New York ceded its "right of pre-emption of the soil of the native Indians and all other estate (except of sovereignty and jurisdiction) to Massachusetts, its grantees and assigns forever." These rights were mutually granted and released by each

State to the other by an agreement signed by ten commissioners, four of whom were appointed by Massachusetts and six by New York.

The tenth article of this compact provided that:

The Commonwealth of Massachusetts may grant the right of preemption of the whole or any part of the said lands and territories to any person or persons who, by virtue of such grants, shall have good right to extinguish by purchase the claims of the native Indians, providing, however, that no purchase from the native Indians by any such grantee or grantees shall be valid unless the same shall be made in the presence of and approved by a superintendent to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts.

There is a provision also (Article XI) that copies of the grants and of the acts of confirmation should be deposited in the office of the secretary of the state of New York, and be recorded, there without any charges or fees of office whatsoever, and a failure to have them so recorded is to render them void.

Two tracts were ceded to Massachusetts by said agreement, they being described as follows:

The State of New York doth hereby cede, grant, release, and confirm to the said Commonwealth of Massachusetts, and to the use of the Commonwealth, their grantees, and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all their estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the State of New York hath of, in, or to 230,400 acres, to be located by the Commonwealth of Massachusetts, and to be situate to the northward and adjoining to the lands granted respectively to Daniel Cox and Robert Lettice Hasper and their respective associates, and between the rivers Owego and Chenango, and also of, in, or to all the lands and territories within the following limits and bounds; that is to say: Beginning in the north boundary line of the State of Pennsylvania, in the parallel of forty-two degrees of north latitude, at a point distant eighty-two miles west from the northeast corner of the State of Pennsylvania, on the Delaware River, as the said boundary line hath been run, and marked by the commissioners appointed by the States of Pennsylvania and New York respectively, and from the said point, or place of beginning, running on a due meridian north to the boundary line between the United States of America and the King of Great Britain; thence westerly and southerly along the said boundary line to a meridian which will pass one mile due east from the northern termination of the strait or waters between Lake Ontario and Lake Erie; thence south along the said meridian to the south shore of Lake Ontario; thence on the eastern side of the said strait by a line always one mile distant from and parallel to the said strait to Lake Erie; thence due west to the boundary line between the United States and the King of Great Britain; thence along the said boundary line until it meets with the line of cession from the State of New York to the United States; thence along the said line of cession to the northwest corner of the State of Pennsylvania, and thence east along the northern boundary line of the State of Pennsylvania to the said place of beginning, and which said lands and territories so ceded, granted, released, and confirmed are part of the lands and territories described in the said petition.

In 1791 the State of Massachusetts conveyed its title and interest in and to about 5,000,000 acres of the lands ceded to it by the treaty of 1786, subject to the Indian right, to Robert Morris, of Philadelphia, who subsequently conveyed the greater portion to persons constituting the Holland Land Company, who afterwards, prior to 1826, conveyed the tract of about 98,000 acres embraced in the deed of the Seneca Indians of August 31, 1826, to Troup, Ogden, and Fellows, the grantees in that deed. The preemption right to that part of the territory included in the cession to Massachusetts not embraced in the conveyance to Morris in 1791, had, prior to that date and on July 4, 1778, been sold by that State to Oliver Phelps (known as the Phelps and Gorham purchase); being a large tract off the eastern side of the lands embraced in the compact of 1786. The deed to Morris is said to be recorded in Book

No. 23 of deeds, page 322, in the office of the secretary of the State of New York.

In this conveyance to Morris, Massachusetts reserved one undivided sixtieth part of the whole tract to satisfy a claim of one John Butler, who had entered into a contract for the purchase of the same from Phelps and Gorham prior to their surrender of the lands back to Massachusetts, which interest Morris afterwards purchased from Butler, thereby acquiring the entire title. This purchase from Butler was confirmed by deed from the State of ——— to Morris, dated June 20, 1792, recorded in book No. 24 of deeds, page 367, office of the secretary of state of New York.

The Allegany and Cattaraugus reservations are alleged to be within the tracts thus acquired by the Holland Land Company.

The tenth article of the said company of 1786 provided, as above stated, that no purchase from the native Indians should be valid unless made in the presence of, and approved by, a superintendent, such purchase to be confirmed by the Commonwealth of Massachusetts.

By the treaty of September 15, 1797, the control of nearly all the country which now comprises western New York passed from the hands of the Indians to their white neighbors. The Indians reserved from the operations of this treaty ten separate tracts of land, embracing 337 square miles: The Allegany Reservation, in Cattaraugus County, something over 42 square miles; the Cattaraugus Reservation, in Cattaraugus, Chautauqua, and Erie counties, with 42 square miles; the Buffalo Creek Reservation, in Erie County, 130 square miles; the Tonawanda Reservation, in Erie and Genesee counties, 71 square miles; the Squawky Hill Reservation, near Mount Morris, with 2 square miles; the Canawaugus Reservation, 2 square miles, on the Genesee River near Avon; the Canadea Reservation, in Allegany County, 16 square miles; Little Beard's and Big Tree reservations, 2 miles square each, on the Genesee River opposite Genesee, and the Gardeau Reservation, on the Genesee River below Mount Morris.

By the treaty at Buffalo-Creek, June 30, 1802, the Senecas exchanged the lands mentioned as reserved in the Big Tree treaty aforesaid with the Holland Land Company for the present Cattaraugus Reservation. The preemption right was reserved in the treaty, and it is now owned by the Ogden Land Company.

By deed dated September 12, 1810 (Book No. 1 of Deeds, Erie County, p. 68), the Holland Land Company conveyed to David A. Ogden, the Cattaraugus, Buffalo Creek, Allegany, Tonawanda, Canada, and Tuscarora reservations, in all 196,335 acres, at the rate of 50 cents per acre, with "all the estate, right, title, interest, property, claim, and demand whatsoever" of the first parties, "subject only to the right of the native Indian, and not otherwise."

The said Ogden afterwards sold the right to the land thus acquired, in shares to different individuals, he holding the legal title, as trustee, for all the parties interested. He subsequently resigned the trust, and the legal title was transferred to Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, on behalf of the associates. The title is now held by Charles E. Appleby, as trustee.

With this brief history of the alleged claim of the so-called "Ogden Land Company," I give the abstract of title to the Allegany and Cattaraugus reservations, as furnished by Mr. Charles E. Appleby, trustee, by communication dated November 10, 1894. This abstract is not certified by any abstractor or title company.

ABSTRACT OF TITLE.

These reservations are part of the lands claimed by the State of Massachusetts under its charter from Charles the Second, 1628-'29.

The State of New York also claimed the same lands under the grant to the Duke of York (12 Mar., 1664).

The two States appointed commissioners to settle the rival claims. The commissioners met at Hartford, Conn., and agreed upon a settlement December 16, 1786.

By this settlement the State of Massachusetts ceded to New York all claim to the government, sovereignty, and jurisdiction of the lands in question, and the State of New York ceded to Massachusetts and their grantees the right of preemption from the native Indians and all rights of ownership (the right and title of government, sovereignty, and jurisdiction excepted). "The State of Massachusetts may grant the right of preemption of the whole or any part of the said lands to any person or persons, who, by virtue of such grant, shall have good right to extinguish by purchase the claim of the native Indians, &c.

A copy of this settlement can be found on record in Cattaraugus County clerk's office, New York, liber 1 of Miscellaneous Records, p. 270-280.

The title to a large part of western New York is founded upon the above grants and settlement.

[Deed recorded in secretary of state's office, New York. Book 23, p. 322.]

May 11, 1791, the State of Massachusetts, by its committee, to Robert Morris conveys the preemptive and all other right and title to a large tract of land, including the "Cattaraugus" and "Allegany" reservations. (See Release from Mass., liber 24, p. 367.)

[Deed recorded 15 Feb'y, 1793, N. Y. secretary of state's office. Book 24, p. 510.]

December 24, 1792, Robert Morris and wife to Herman Le Roy and John Lincklaen conveys a large tract of land (part of the lands conveyed by Massachusetts), which includes the Cattaraugus Reservation and a part of the Allegany Reservation.

[Deed recorded 27 Mar., 1793, N. Y. secretary of state's office. Book 25 of Deeds, p. 38.]

February 27, 1793, Robert Morris and wife to Herman LeRoy, John Lincklaen, and Gerritt Boon conveys another large tract of land, which includes that part of the Allegany Reservation not embraced in the deed of December 24, 1892 (1792), above referred to.

The grantees in the two deeds last above mentioned represented what was commonly called "The Holland Company."

In 1797, September 15, by a treaty between the Seneca Indians and Robert Morris, the Indians surrendered up their rights to large tracts of land excepting certain reservations, the Allegany and Cattaraugus reservations being among those retained by the Indians.

[Deed recorded May 20, 1811, Erie Co. clerk's office, New York, liber No. 1, p. 68.]

September 12, 1810, William Willink and others to David A. Ogden. This deed conveys certain Indian reservation lands, with the rights of preemption, including the "Allegany" and "Cattaraugus" reservations.

The grantors in this deed are the parties (at the time) representing "The Holland Land Company."

[Deed recorded in liber 1, p. 102 to 110, Cattaraugus Co. In Erie Co., 22 June, 1821, liber C, p. 396.]

February 8th, 1821, David A. Ogden and wife to Robert Troup, Thomas Ludlow Ogden, and Benjamin W. Rogers, trustees. Conveys certain Indian reservations and rights of preemption, including the Cattaraugus and Allegany reservations, upon trust.

This trust deed is the one under which Charles E. Appleby is now the trustee. His succession to the trust is hereafter shown.

This trust is what is commonly called "The Ogden Land Company."

By treaty between Troup, Ogden, and Rogers, the trustees, and the Indians August 31, 1826, the Indians surrendered up certain reservations and also 5,120 acres, part of the Cattaraugus Reservation, leaving of that reservation 21,760 acres not surrendered. No part of the Allegany Reservation, containing 30,469 acres, was surrendered up.

[Deed recorded in Erie County clerk's office Sept'r 1, 1831, liber 160 of deeds, p. 282, &c.]

December 19, 1829, Robert Troup, Thomas L. Ogden, and Benjamin W. Rogers, trustees, to Thomas L. Ogden, Charles G. Troup, and Joseph Fellows, trustees. This

deed conveys the trust estate created by the deed of February 8th, 1821, including the whole of the Allegany Reservation, containing 30,469 acres, and that part of the Cattaraugus Reservation to which the Indian title had not been extinguished by the treaty of August, 1826, being 21,670 acres, to hold under the trusts of the deed of February, 1821.

In 1838 a treaty was made with the Indians by which the Indians agreed to surrender up all the reservations to Ogden and Fellows, Charles G. Troup being dead. This treaty was never carried out, but a compromise treaty was made May 20, 1842, by which the Indians agreed to surrender up a portion of the reservations, reserving, however, the Allegany and Cattaraugus, "with the same right and title in all things as they had and possessed immediately before" (the treaty of 1838), "saving and reserving to the said Thomas Ludlow Ogden and Joseph Fellows the right of pre-emption and all other the right and title which they then had or held in and to the said tracts of land."

The United States Government was represented in the negotiation of these treaties, and the title of Ogden and Fellows as owners of the Reservation lands was conceded.

Charles G. Troup and Thomas Ludlow Ogden, both being deceased, Joseph Fellows, the surviving trustee, executed the following deed:

[Deed recorded in Erie County, N. Y., February 2, 1872, lib. 293 of deeds, p. 591.]

September 21, 1871, Joseph Fellows, trustee, to George R. Babcock and Charles E. Appleby, trustees, conveys all the trust property held under the trust of February 8th, 1821, to be held upon the same trusts as the grantor held the same.

George R. Babcock died September 22, 1876, leaving Charles E. Appleby the surviving trustee.

New York supreme court, Queens County. Edmund H. Schermerhorn, &c., agt. Charles E. Appleby and others. This was an action brought to confirm the deed from Fellows to Babcock and Appleby, and the appointment of Appleby as trustee, and to have William D. Waddington appointed as co-trustee with the said Appleby. All the owners of shares in the trust were parties to the action.

A decree or judgment was made on the eighth day of December, 1883, confirming the appointment of Charles E. Appleby and George R. Babcock as trustees, and vesting them with all the rights, properties, and estates held under the trust deed of February 8th, 1821, and declaring that upon the death of Babcock that Appleby, as surviving trustee, became vested with such rights, estates, and properties. The judgment appointed William D. Waddington co-trustee to hold the trust estates.

William D. Waddington has since died, and Charles E. Appleby, as survivor, is now the sole trustee and vested with the trust property.

Dated New York, November 10, 1894.

CHARLES E. APPLEBY, *Trustee*.

The claim of the Ogden Company is a peculiar one, and the problem of determining its exact legal nature is complicated and perplexing. Just what rights New York had to grant, and just what rights Massachusetts had before or then acquired, may be difficult to determine definitely. But whatever these rights were it is doubtless too late to question them now after so many years' acquiescence in the compact. It is assumed that nearly all of the titles in western and central New York are traceable back to that compact, and to disturb it now would create such a vast deal of trouble and confusion that it is hardly probable that any court would lend its sanction to such disturbance.

By the said compact of 1786 New York assumed to grant to Massachusetts "the right of preemption of the soil from the native Indians, and all the estate, right, title, and property which the said State of New York hath," and Massachusetts assumed to grant to New York "the right to the government, sovereignty, and jurisdiction" of these lands. By the same instrument Massachusetts acquired authority to "grant the right of preemption of any part of the said lands to any person or persons, who, by virtue of such grant, shall have good right to extinguish by purchase the claim of the native Indians," that is, the authority to convey "the right of purchasing before others." This was the only interest in the land which Massachusetts assumed to sell to Morris, the only right which Ogden acquired for himself and his associates, and the only right which their successors now have.

In speaking of this claim, ex-Governor De Witt Clinton is said to have stated to the Indians:

All the right which the Ogden Company have to your reservations is the right to purchase when you deem it expedient to sell them. They can buy your lands, but no other person can.

The judiciary committee of the senate of New York, in a report made in 1857, referring to the Ogden claim, said:

It was simply the right to purchase of the Indians whenever they might choose to sell, to the exclusion of any other nation.

The committee of the general council of Massachusetts, in their report of 1840, also spoke of the claim to the effect that under the agreement with New York "Massachusetts held the sole and exclusive right to purchase the lands whenever the Indians should voluntarily dispose of them." "The sole and exclusive right to purchase the lands of the Indians gave no other title or interest in the land whatever." "Such interest or title could be assigned only by a sale or conveyance thereof by the Indians."

By treaty held at Buffalo Creek Reservation August 31, 1826, the Senecas sold to the Ogden Land Company their six reservations on the Genesee River, 33,409 acres of the Tonawanda Reservation, 33,637 acres of the Buffalo Creek Reservation, in Erie County, one square mile in the town of Hanover, Chautauqua County, the "mile strip" and "mile square" in Erie County, of the Cattaraugus Reservation; in all 87,526 acres, for \$48,216.

By the Buffalo Creek treaty of January 15, 1838, the Seneca Nation of Indians sold to Ogden and Fellows all their right, title, and interest in and to the Buffalo Creek, Cattaraugus, Allegany, and Tonawanda reserves, and by separate conveyance of the same the Tuscarora Indians conveyed to the said Ogden and Fellows their right, title, etc., in and to the Tuscarora Reservation.

Under the tenth article of the said treaty the Indians were to remove from the State of New York to certain lands in Kansas, agreed to be set apart for them by the United States within five years.

Before the expiration of the five years within which the Indians were to remove difficulties arose between them and Ogden and Fellows which resulted in the treaty of 1842 (7 Stat., 586). This treaty, after referring to the said treaty of January 15, 1838, and to the differences which had arisen between the Senecas and the said Ogden and Fellows, stipulated for the consideration afterwards mentioned, that the Seneca Nation may continue in the occupation and enjoyment of the whole of the two several tracts of land called the Cattaraugus and Allegany reservations, with the same right and title in all things as they had possessed immediately before the said treaty of 1838, saving and reserving to the said Ogden and Fellows the right of preemption. As part consideration for this grant by Ogden and Fellows, the Seneca Nation released and confirmed to them their right of occupancy in the two other reserves—the Buffalo Creek and Tonawanda—thereby reaffirming their action under the treaty of 1838 with respect to those two reservations.

JUDICIAL DECISIONS.

In *Fellows v. Denison*, Comptroller, the reservation tax case reported in 23 New York Reports, page 420, Judge Denio speaks of the Ogden claim as a "technical fee." From these facts the Indians dispute the claim on the part of the Ogden company to the ownership of the fee in

these lands, and assert that they only own what Massachusetts acquired the right to sell, which is simply the first right to buy these Indian lands, to the exclusion of all others; that the right to purchase can not be converted into a fee until it has been exercised and a consideration paid; that they may exercise this right or refrain from doing so, at their own pleasure, but that while it exists a sale of this land to another would be invalid and inoperative, and that in the remote contingency that the Indians should give up or abandon the possession of this land the Ogden company must still exercise their right and purchase the land to obtain the fee.

On the other hand, the Ogden company assert that the fee of these lands is in them; that by the grant to the Plymouth company Massachusetts became the owner of these lands; but if not, and New York held the title under the Duke of York's grant, certainly, after the cession by New York to Massachusetts, Massachusetts became the absolute owner, subject to the Indian possession; that the fee of these lands must be in some one; that it can not be in the General Government, because both New York and Massachusetts are older than the General Government, and neither State ever ceded to the United States any interest in these lands; that it is not in New York since her cession to Massachusetts, and not in the latter State since her sale to Morris, but must be in the grantees of Morris, and the Indians have only a permanent occupancy.

In opposition to the decision in *Fellows v. Lee* (5 Denio, 628), to the effect that the Indian title is "original, absolute, and exclusive" they cite the statement of Chancellor Kent, that by the pretense of "converting the discovery of the country into a conquest" the "rule that the Indian title was subordinate to the absolute ultimate title of the European colonists, and that the Indians were to be considered as occupants," became "the law of the land." They also cite Chief Justice Marshall's opinion that—

It has never been doubted that either the United States or the several States had a clear title to all the lands within the boundary lines described in the treaty, subject only to the Indian right of occupancy.

The company claims title from the King of England by right of discovery or conquest, through one or both of the early grants to Massachusetts, then to Morris, then to the Holland company and to the Ogden company, and that the "preemption right," the "ultimate fee," "technical fee," and "fee" are the same in meaning, and that when their own title has become united, as in the case of reservations already bought by them, a grantee under both becomes the absolute owner.

In *Ogden v. Lee* (New York Reports, 6 Hill, 546), in 1844, the supreme court of the State of New York held that—

The Seneca Nation of Indians never parted with the title to the lands on which the timber was cut. Their right is as perfect now as when the first European landed on this continent, with the single exception that they can not sell without the consent of the Government. The right of occupancy to them and their heirs forever remains wholly unimpaired. They are not tenants of the State nor of its grantees. They hold under their own original title. The plaintiffs have acquired nothing but the right to purchase whenever the owner may choose to sell. In the meanwhile, or until the tribe shall become extinct, the Seneca Indians will remain the rightful lords of the soil. They have cut and sold their own timber, and I see no principle upon which the plaintiffs can have action either against them or their vendees.

In *Strong and Gordon, chiefs of the Seneca Nation of Indians, v. Waterman* (11 Page, 607), the action being to dissolve an injunction granted by the vice chancellor of the eighth circuit restraining the

defendant from committing trespasses and waste upon the Cattaraugus Reservation, or interfering with the possession of the Indians residing on such reservation, in rendering the opinion, in 1845, the chancellor said:

The rights of the Indians in this State to the use, possession, and occupancy of the lands of their respective reservations which have not been by them voluntarily ceded to the people of the State or granted to individuals with the assent of the State do not at this time admit of a doubt. The ultimate fee of the land is undoubtedly in the State or its grantees, but the right of the Indians to the beneficial use and occupancy thereof until they think proper voluntarily to relinquish and abandon that right has been too long recognized in this State to be now called in question.

In *Wadsworth v. Buffalo Hydraulic Association* (15 Barbour, 83) Judge Marvin said:

The State possesses the power to appropriate to public use the lands of the Indians, notwithstanding the grant of the right of preemption to Massachusetts, and it has repeatedly exercised this right. In 1836 it passed a general law authorizing railroad companies to contract with the Indians for the right to make roads upon their lands, but the fee to the land is not to vest in the company, etc. A railroad has been constructed through the Allegany Reservation in Cattaraugus County. This is a portion of the land included in the grant of the preemption right to Massachusetts. Suppose the preemptors purchase this reservation from the Indians, will they have a right to eject the railroad company, or must they not take it subject to the rights of the railroad company, subject to the servitude imposed upon it by the authority of the legislature and the contract of the Indians while they were owners? It seems to me that the right granted to Massachusetts in 1786 to purchase the lands of the Indians was, and always has been, subject to the right of the State to take and appropriate for public use the lands to which the right of purchase attached; otherwise a portion of the territory of the State would be beyond its "right of sovereignty." When any of the lands of the Indians are taken for roads, railroads, and canals compensation is made to the Indians. They have not parted with their title to the preemptors, and may never do so. No compensation is made to the preemptors. It may be a matter of prudence to obtain their release or consent, but it seems to me it is not necessary, and when they purchase the land from the Indians they take it subject to the servitudes or easements upon it.

In the case of the New York Indians (5 Wallace, p. 761) the Supreme Court of the United States held that—

Until the Indians have sold their lands and removed from them in pursuance of the treaty stipulations, they are to be regarded as still in their ancient possessions, and are in under their original rights, and entitled to the undisputed enjoyment of them.

This was also the effect, Judge Nelson said, of the decision in the case of *Fellows v. Blacksmith* (19 Howard, 366). The judge further said:

All agree that the Indian right of occupancy creates an indefeasible title to the reservations that may extend from generation to generation, and will cease only by dissolution of the tribe, or their consent to sell to the party possessed of the right of preemption.

I have given in the foregoing pages such matters and facts relating to the so-called claim of the Ogden Land Company as I have been able to gather from the records and files of this office, and from such literature in the nature of legislative and other reports and documents as are accessible to me, excluding for the sake of brevity such matter as I have believed to be immaterial. I am indebted for much valuable information to a report, submitted January 31, 1889, by the special committee appointed by the New York assembly of 1888 to investigate the Indian problem of that State. To make the thorough investigation of the facts called for by Congress would doubtless necessitate the examination of the land records of several of the counties of New York,

and this I can not do without specific authority from the Department.

In concluding consideration of this part of the inquiry, it may be stated that either the Indians hold the title and the Ogden Company has the first right to purchase, or the Ogden Company has the title and the Indians a right to perpetual occupancy; and since it must be conceded that both the Indians and the Ogden Company have an interest in these lands, which can only be terminated in either case by purchase, and since there is no present prospect that the Indians will ever relinquish their possession of these lands, the fact would seem to be indisputable that it would be of much greater importance and advantage to the Indians that some plan be devised for the extinguishment of this Ogden claim than that the exact location of the fee in these lands be ascertained.

CONTINUED EXISTENCE OF THE SO-CALLED OGDEN LAND COMPANY,
ITS ORGANIZATION, ETC.

In his said communication of November 10 last, Mr. Charles E. Appleby conveyed information as follows:

(1) That there is not now and never was any corporation called "The Ogden Land Company."

(2) That the deed of trust of February 8, 1881, referred to in the foregoing abstract of title, creates all the estates, rights, and interests which have been commonly designated as "The Ogden Land Company."

(3) That there is no capital stock; the number of shares or interests in the trust estate was twenty, and that these shares have no face value, each share representing one-twentieth of the trust estate and its proceeds.

(4) That the said twenty shares or interest, so far as he has any knowledge or information, are owned as follows, viz:

The estate of—	Shares.
Joshua Waddington, deceased.....	4
Thomas Ludlow Ogden, deceased.....	2
Abraham Ogden, deceased.....	1
Peter Schermerhorn, deceased.....	1
Duncan P. Campbell, deceased.....	1
Robert Bayard, deceased.....	1
Benjamin W. Rogers, deceased.....	2
Louisa Troup, deceased.....	1
Charlotte Brinckerhoff, deceased.....	1
Robert L. Tillotson, deceased.....	1
James Wadsworth, deceased.....	1½
Ogden & Murry, deceased.....	1½
Charles E. Appleby.....	1
"Shaw and Wilson shares," now held by the Bank of England.....	20

That there are no debts or liabilities of the trust. The assets consist of the interest of the trustee in the Cattaraugus and Allegany Indian reservations, and a similar interest in 1,920 acres of the Tuscarora Reservation in Niagara County, N. Y., and certain securities and funds of the value of less than \$20,000; and

That the accompanying abstract of title shows the continued existence of the trust to the present time, and the source of his title to the trust property.

CONDITION OF THE SENECA NATION OF INDIANS, THEIR PROGRESS
IN CIVILIZATION, AND FITNESS FOR CITIZENSHIP.

The Senecas on the Allegany and Cattaraugus reservations are a corporate body under the name of "The Seneca Nation of Indians," and have a common interest in the lands of both reservations, and also of the Oil Spring Reservation. They are incorporated under an act of the legislature of the State of New York, and have a constitution for their government. An amended constitution was adopted by the Seneca Nation January 13, 1893.

The Allegany Reservation lies along the Allegany River for a distance of about 35 miles, and is in Cattaraugus County. The eastern terminus is near Vandalia, and the western at the boundary line between New York and Pennsylvania. The reservation varies in width from 1 to 2½ miles, the lines being so run as to take in, as far as practicable, all the bottom lands along the river. There are 30,469 acres in the reservation, of which about 11,000 are tillable, the remainder being hillside or river bottoms, subject to overflow. Of the tillable land not more than one-half is cultivated or used for pasturage by the Indians. There are residing on this reservation about 894 Senecas and 80 Onondagas. The Cattaraugus Reservation extends from Lake Erie up both sides of Cattaraugus Creek about 10 miles, and lies principally in Erie County, but having a small portion in Cattaraugus and Chautauqua counties. Its average width is about 3 miles, contains 21,680 acres, and has a population of about 1,314 Senecas, 168 Cayugas, and 34 Onondagas. They use on the Allegany Reservation about 3,000 acres for agricultural and about as much more for grazing purposes. The Indians are just emerging from the transition stage between lumbering and farming, all of the valuable timber having been cut off and sold. Many of the Indians are fairly enterprising and industrious, and steady improvement in the condition of their homes and farms is looked for.

The Indians on the Cattaraugus Reservation have in many instances attained a good degree of success in farming. Many of them have good farms and buildings, and are thrifty and prosperous people. There are several canning factories and good markets in the vicinity of the reserve, which take, at good prices, all the surplus fruits and vegetables raised by the Indians. The majority of these people, however, do but little real farming, simply cultivating small patches of land and eking out an existence by selling medicinal roots and barks and by working for whites in the neighborhood. Their buildings range from good-looking, comfortable, and, in a few instances, commodious houses and barns to hovels and shanties.

The Presbyterian and Baptist denominations have missions on both of these reservations. The State supports 9 schools on the Cattaraugus and 6 on the Allegany Reserve, all being supplied with good buildings. There are upward of 700 children of school age on both reservations, of whom about 600 are registered for attendance. The teachers are all white women, with one exception, and receive \$7.50 to \$8 per week. They teach two terms of sixteen weeks each.

The Thomas Asylum for Orphans, on the Cattaraugus Reservation, was incorporated by chapter 233 of the laws of 1885. This institution had, in 1889, two accomplished teachers and instructors, and had in that year 110 children, ranging from 3 to 16 years of age. In addition to their school work the boys are taught farming and the girls sewing and housekeeping.

Another school in the town of South Valley, near the Allegany Reservation, is supported by the Quakers. In 1798 three young Friends from Chester County, Pa., came on a mission to the Senecas and located upon the reservation in that town, and were the first white men to live within the bounds of Cattaraugus County. Shortly afterwards a school was organized among the Indians and a mill for grinding built, and in 1806 "the committee for the gradual civilization of Indian natives" bought a tract adjoining the reservation in the town of South Valley, which they have since cleared and made into a productive and desirable farm. The old building was destroyed by fire in 1886, and the present suitable and commodious building was erected at a cost to the Friends of about \$13,000. In addition to the products of the farm, the expenses of the school usually reach \$1,500 annually, which are paid by the society. The capacity of this school is 12 boys and 25 girls, and it is usually full, with applications in advance for admission. The parents of the children clothe them, and the remaining expense is borne by the society. Besides their usual studies, the girls are instructed in sewing and housework and the boys in farming. The United States gives these Indians no educational support, and much good is said to be lost on account of the poor pay of the teachers.

The Senecas receive an annuity from the State of about \$385, and \$11,902.50 and their share of \$3,500 worth of goods from the United States. The money and goods from the United States are paid to heads of families by the United States Indian agent.

Under the act of Congress approved February 19, 1875 (18 Stat., 330), certain leases from the Indians to railroad corporations of lands upon the Allegany Reservation, and also to white occupants, were made valid, and within certain defined limits or "villages" located and surveyed by commissioners appointed by the President, the nation was authorized to grant leases of lands with renewals. Six villages were surveyed, namely, Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House. Some of these have become the centers of considerable population, the principal one being Salamanca, where a permanent village of 4,000 people has grown up. Few railroads cross the Allegany Reservation. From these leases large revenues are received by the Senecas each year. The amounts collected by the different treasurers vary from \$11,408 in 1883 to \$5,702 in 1887. The amount received should be about the same every year, and the above figures indicate either gross incompetency or dishonesty on the part of the officers. Several complaints have been made to this office by the Indians of improper conduct and irregularities on the part of their officers in the handling of these funds.

The improvement of the Senecas in morals and education in late years has been considerable. They are more temperate; more marriage ceremonies are performed; their farms and buildings have improved; more of them work, more go to school, and their clothing and food are better. Marriage ceremonies among them have been, in the past, the exception rather than the rule. The trouble has been, to a great extent, that marriage has simply consisted in intercourse for such period of time as inclination might suggest, and then separation. The offspring of such unions are legitimate and inherit from their parents.

The low standard of morality existing among a considerable portion of these Indians seems to be principally traceable to this Indian custom of marriage. The Indians are divided into two parties, the Christian and pagan, and the principal charge brought by the latter against

the missionaries is that they oppose these Indian marriages and try to induce the Indians to abandon them and adopt the Christian method.

The influence of the missionaries has been all in the right direction, but they are almost powerless as long as the Indians are allowed to marry and divorce at pleasure. The application of the laws of the State regulating marriage and divorce to these people appears to be the only way to correct the evil. Some marked exceptions are to be found among the Senecas, families where the marriage tie is respected, where schools are prized and the teachings of the missionaries heeded, and where material comforts are sought for in comfortable houses and well-tilled farms.

The health and physical condition of many of the Indians is said to be far from satisfactory. In his testimony before the special committee to investigate the Indian problem of the State of New York, appointed by the assembly of 1888, Dr. A. D. Lake, of Perrysburg, N. Y., who was the State physician for the Indians for some years and had charge of the dispensary maintained by the United States on the Cattaraugus Reserve, stated that the prevalent diseases among these Indians are scrofula and consumption, which are caused by their mode of life, their unhealthy dwellings and bad sanitary condition, and the prevalence of venereal diseases among them. It has been asserted that the Indian himself is not so much to blame for this unfortunate condition as are the policy and laws which have allowed it to exist and develop; that the aid from State and nation and from public charity is not enough to support the Indian in comfort and decency and health, but is just enough to discourage, and often destroy, effort on his part to assist himself, and that if the laws are set right the schools and missionaries will do the rest. The committee above referred to declared that—

A careful and conscientious examination of the whole question must result in charging such fault to the laws which respect and tolerate communistic ideas, Indian customs, and tribal relations among these people.

Chancellor Sims, in answer to the question, "What can be done for the good of the Indians?" replied to the committee:

Obliterate the whole tribe; make them citizens; divide all the lands among them, and put them under the laws of citizenship in the State. It is the merest farce in the world to treat them as a nation.

Judge Daniel Sherman, of Chautauqua County, who was for several years the United States agent for the New York Indians, said:

I would never advise them to break up their tribal relations while this Ogden claim existed, but I would advise them to when this claim was wiped out, and become citizens eventually.

Many intelligent Indians are said to favor those views. John Kennedy, a Seneca on the Cattaraugus reservation, said:

I would actually be very glad if I could own my own proportion of our land, my share, and I know others, a great many of them, who would like to do the same. I know quite a number of our people who would like to be citizens. * * * A great many of us would be willing to do that, be very glad to do it, although there would be great opposition on the part of the pagans. They would like to own their property as they own it now. * * * The moment we extinguish that claim (the Ogden company's) why, how quick we would be glad to become citizens, adopted right along. We think some of us are fully capable, as well as any of these foreigners that come to our shores and don't know anything about our country and don't know the laws of the land. We would be glad to be men among men for once.

To the New York legislative committee's report and to Judge Daniel Sherman's address I am also indebted for much valuable information respecting the condition of these Indians.

THEIR SYSTEM OF GOVERNMENT AND THE PROPRIETY OF ALLOT-
TING THEIR LANDS IN SEVERALTY.

As heretofore stated, the Senecas residing upon the Cattaraugus, Allegany, and Oil Springs reservations are a corporate body, under the name of "The Seneca Nation of Indians," by an act of the legislature, and own a common interest in the lands of the three reservations. After the Senecas secured the return to them of their two reservations by the treaty of 1842, many of them becoming alarmed at the action of their chiefs in selling their lands began an agitation to change their form of government. This step encountered great opposition on the part of the chiefs, but at a general convention of the Senecas held on the Cattaraugus Reservation a series of resolutions and a "declaration changing their form of Government, and adopting a constitutional charter" were passed, in which they agreed to "abolish, abrogate, and annul" their form of government by chiefs. The chiefs who had thus been deposed from power endeavored to prevent the ratification of the new government by the United States and State of New York. After the recognition of the new government by the United States the chiefs sent a delegation to Albany to prevent any assent on the part of the State, but after an investigation of the subject by a committee of the assembly the legislature also recognized the new government, and the power of the chiefs was to a certain extent broken and destroyed.

In commenting upon this subject the late committee of the legislature stated that—

The history of these Indians, as well as that of every other tribe in the State, conclusively proves that the chiefs and officeholders have invariably barred the way to progress and improvement among them, and from these sources alone may be expected opposition to all plans for their future welfare.

Under their amended constitution adopted January 13, 1893, their government has three departments: Legislative, executive, and judiciary.

The legislative power is vested in a council of 16 members, called the councillors of the Seneca Nation of Indians, of whom 8 are elected annually for the Cattaraugus and 8 for the Allegany reservations. Such annual elections are held on the first Tuesday of May in each year. Ten members constitute a quorum, and in all appropriations of public money an affirmative vote of at least ten of the whole number elected is made necessary.

The executive power is vested in a president, whose duty it is to preside over the deliberations of the council, having only a casting vote therein, and who is also required from time to time to give to the council information of the state of the nation, and recommend to its consideration such measures as he may deem necessary and expedient. He must see that the laws of the nation are faithfully executed, and fill all vacancies by appointment that may occur in the council until such vacancy shall be filled by election.

In case of death or absence of the president the council chooses from among its number a presiding officer pro tempore.

The judiciary power is vested in courts known as peacemakers' and surrogates' courts. The peacemakers' courts are composed of three members each, to be elected from residents of the respective reservations, their term of office three years. It is provided by the constitution that the jurisdiction, forms of process, and proceedings under the law applicable to these courts shall be the same as in courts of justices of the peace of the State of New York. The peacemakers on each reser-

vation are vested with the power to hold court and preserve order in the same manner as a justice of the peace; they also have jurisdiction in divorces between Indians residing on their respective reservations, and to hear and determine all questions and actions between individual Indians residing on said reservations involving the title to or possession of real estate on said reservations. All determinations and decisions of this court are appealable to the council, and all cases of appeal are decided by the council upon the evidence taken in the peacemakers' court, and the decision of the council is final. Upon the hearing either party in interest has the right to appear either in person or by counsel and argue the merits of the case.

The surrogate's court is composed of one person from the Allegany and one from the Cattaraugus Reservation elected from the residents of the respective reservations, and the term of office is two years. Their jurisdiction is the same as surrogates of the several counties of the State, with the same forms, process, and proceedings. An appeal lies from the decisions of this court the same as from the peacemaker's court.

The treaty-making power is vested in the council, subject to the approval of at least three-fourths of the legal voters, and the consent of three-fourths of the mothers of the nation.

The constitution provides a clerk and treasurer for the nation and two marshals—one of whom shall reside in the Cattaraugus and the other on the Allegany Reservation—the rights, duties, and liabilities of which officers are as heretofore defined by law.

The council provides for the election of highway commissioners, overseers of the poor, assessors, and policemen for each of the said reservations.

All officers of the nation named in the constitution, except peacemakers and surrogates, are elected annually for the period of one year, and all may be impeached and removed for cause in such manner and form as may be prescribed by the council.

Every male Indian of the age of 21 years and upward, residing upon either of the reservations of the nation, and who shall not have been convicted of a felony, is competent to vote at all elections and meetings of the electors of the nation, and is eligible to any office in the gift of the people of the nation.

The council meets on the first Tuesday of June in each year, and the president has power to convene it in extra session as often as the interests of the nation may, in his judgment, require.

The council has power to make laws not inconsistent with the Constitution of the United States or of the State of New York, or of the Seneca Nation.

The constitution may be altered or amended at any time the council deem necessary; and it shall be lawful for the council, in their discretion, by at least a quorum vote, to appoint a committee of three on revision. It is the duty of such committee on ten days' notice of their appointment to prepare amendments to the constitution and report the constitution to the council, who shall submit the same to the electors of the nation for their approval or rejection, to be determined by a majority vote of the qualified electors at a meeting called by the council on said reservations for that purpose. In case of rejection by the electors no further action looking to amendment can be taken within one year.

The foregoing gives, in substance, the provisions of the constitution of the Seneca Nation.

The existing form of government is an improvement on the old system; but even this new plan of carrying on the affairs of the nation is insufficient to protect the rights of the people. Their courts are frequently alleged to be ignorant and incompetent and often venal, and their councilors and officers selfish and corrupt. One additional step would place these Indians wholly under the protection of the laws of the State.

LAWS OF THE STATE OF NEW YORK FOR THE GOVERNMENT OF THESE INDIANS.

Since the year 1813 many special laws have been passed by the State of New York for the protection and government of the Indians within its borders. The latest of these laws of which I have any information are found in "An act in relation to Indians, constituting chapter 5 of the General Laws," approved by the governor May 18, 1892, and amended by chapter 229, approved March 27, 1893.

By section 40 of said chapter 5 the Seneca Indians residing on the Allegany and Cattaraugus reservations are designated "the Seneca Nation," and the Seneca Indians residing on the Tonawanda Reservation are designated "the Tonawanda Nation." Section 41 abolishes the government of the Seneca Nation by chiefs, and declares that said nation shall have as officers those above designated in the constitution. Section 42 provides for the time, place, and manner of electing these officers. Section 43 prescribes the qualifications of voters and eligibility to office.

Sections 44 and 45 prescribe the compensation and duties of the treasurer and clerk, respectively, and section 46 fixes the compensation of the peacemakers.

Section 47 defines the jurisdiction of the peacemakers' courts. The jurisdiction thus conferred is exclusive in controversies involving the title to real property between individual Indians, and in divorces; and I should note here that it is this exclusive jurisdiction in real property and divorces, conferred upon courts known to be incompetent and alleged to be corrupt, that gives rise to many troubles and wrongs that can not be righted except by additional legislation.

Section 48 requires the keeping of a record by the peacemakers' court.

Section 49 fixes the costs and fees, and requires that they be paid to the treasurer of the nation for its use.

Section 50 prescribes remedy for incompetency of peacemakers arising out of the relation by blood of either of them to either of the parties to an action.

Section 51 provides for taking appeals from decisions of peacemakers to the council.

Section 52 relates to appeals from the peacemakers' court of the Tonawanda Nation.

Section 53 relates to the enforcement of judgments.

Section 54 prescribes the powers and duties of the marshals.

Section 55 provides that the Seneca Nation may prosecute, by the name of "The Seneca Nation of Indians," actions and proceedings to protect their rights and interests in the Allegany, Cattaraugus, and Oil Spring reservations, and that in every action or proceeding in relation to lands or real property situated within said reservations, may allege a seizin in fee; but such recovery shall not in any way affect the right, title, and interest of such Indians in such reservations, as between them

and the grantee or the assignee of the preemption right of such reservations, under the grants of the State of Massachusetts. Actions or proceedings may be prosecuted by the Tonawanda Nation by the name of "The Tonawanda Nation of Indians."

Section 56 relates to the very important matter of allotting lands in severalty. It provides that all lands on either the Allegany, Cattaraugus, or Tonawanda reservation, except such as have been allotted by the national council, or lands on the Allegany and Cattaraugus reservations appropriated, cultivated, and improved by any Indian or Indian family, or the heirs thereof, in accordance with the laws and usages of the Seneca Nation, or lands on the Tonawanda Reservation to which the possessors have become entitled in pursuance of law without an allotment, and descriptions of which have been recorded in the clerk's book of record, shall be held in common by the Seneca and Tonawanda nations, respectively, and be subject to the control of the council thereof. The common land shall not be appropriated by any Indian to his own use without the consent of the council, who shall, on application, allot to any Indian or Indian family so much of the common lands as they shall deem a reasonable and equitable proportion in reference to the whole number not possessing land. A description of the land desired shall be submitted to the council. Upon the approval of the council, certified by the presiding officer and clerk thereof, such description may be recorded in the clerk's book of records. The possessors of land on the Allegany, Cattaraugus, and Tonawanda reservations, descriptions of which are recorded, may maintain suits for trespass thereon.

Section 57 relates to Indian trespasses on common land and provides that if any Indian of the Seneca or Tonawanda nation shall occupy any of the common lands of his nation without having obtained from the council an allotment thereof as required by law he shall be removed by the marshal.

Section 58 relates to encroachments by Indians on occupied lands and provides for the removal of the trespassers.

Section 59 is intended to protect timber on the reservations and provides punishment for unlawful cutting.

Section 70, article 4, confirms the nationality of these Indians by declaring that—

The Seneca Indians residing on the Allegany and Cattaraugus reservations shall, subject to the limitations provided by law, hold and possess such reservations as a distinct community.

Section 71 declares that those parts of the Allegany Reservation included in the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House, as surveyed, located, and established pursuant to an act of Congress approved February 19, 1875, have been constituted parts of the several towns within which they are located, and all the general laws of the State are extended over and apply to the same, except that this section shall not authorize the taxation of any Indian or the property of any Indian not a citizen of the United States. Lands in such villages held under lease from the Seneca Nation, and which the holders thereof are entitled to have renewed by virtue of such act of Congress, shall be for all purposes considered a freehold estate, and the right of dower and tenancy by the courtesy shall attach thereto, and such lands, upon the intestacy of the holder, shall descend the same as a freehold of inheritance. But the rights of the Indians in such leases shall descend as provided by the laws of the Seneca Nation of Indians.

Sections 72 and 73 define the general powers and duties of the president and of the council.

Section 74 provides for the appointment by the governor of an attorney for the Seneca Nation, and defines his duties.

Sections 75, 76, and 77 relate to vacancies in elective offices, payment of annuities, and policemen at annual fairs, respectively.

ADDITIONAL FACTS AND INFORMATION RELATING TO THE ALLEGANY AND CATTARAUGUS RESERVATIONS.

The United States Indian agent having been called upon, by letters of November 15 and 24, 1894, for certain information respecting the reservations aforesaid, he reported, January 7, 1895, substantially as follows:

(1) That the names of the towns (or "villages," as they are termed by the act of Congress approved February 19, 1875, 18 Stats., 330) and their approximate acreage on the said reservations are as follows: Vandalia, 240 acres; Carrollton, 2,200 acres; Great Valley, 260 acres; Salamanca, 2,000 acres; West Salamanca, 750 acres, and Red House, 40 acres. The number of lots in each reservation could not be ascertained without a great deal of investigation. All of said villages are on the Allegany Reservation.

(2) The approximate value of improvements in each of said villages is as follows: Vandalia, \$8,000, value of lots, \$6,000, exclusive of railroad property; Carrollton, \$30,000, value of lots, \$25,000; Great Valley, \$20,000, value of lots, \$20,000; Salamanca, improvements, exclusive of railroad property, \$1,200,000, value of lots, \$300,000; West Salamanca, improvements, \$50,000, value of lots, \$50,000; Red House, improvements, \$10,000, value of lots, \$8,000.

(3) The assessed and market value of lands surrounding the Allegany and Cattaraugus reservations are approximately as follows: On the north side of the Allegany Reservation, market value, \$8 per acre; assessed value, \$4 per acre. On the south side of the Allegany Reservation, market value, \$4 per acre; assessed value, \$2 per acre. The lands surrounding the Allegany Reservation from Salamanca west to the end of the reservation are of but little value, especially the lands upon the south side of the Allegany River. The lands surrounding this reservation are principally mountainous and only valuable for the timber, the greater part of which has been taken off. The reservation lands, if cultivated and improved, would be very valuable, as they are as fertile as any lands in the State with proper cultivation. The most of the lands on the reservation have been allowed to grow up to brush, alders, and such other vegetable growth as is indigenous to low and fertile lands.

The lands surrounding the Cattaraugus Reservation are generally valuable. They are within the grape-belt and fruit-growing section of western New York, and the most of them are well improved and cultivated. The market value of lands surrounding the Cattaraugus Reservation averages \$40 per acre and the assessed value \$20 per acre. A large portion of the lands within this reservation would be equally valuable, if cultivated and improved, as the lands surrounding it, but a large portion has been allowed to grow up in brush and second-growth timber, and has been of but little benefit to the Indians.

(4) The names of railroads on each reservation, the distance each traverses the reservations, respectively, and the value of the property of each, respectively, are as follows:

ALLEGANY RESERVATION.

New York, Lake Erie and Western Railroad, 30½ miles of track, including 15½ miles siding, buildings, and telegraph line.....	\$450, 000
Buffalo, Bradford and Pittsburg Railroad, 4 miles of track and telegraph line.....	38, 000
New York, Pennsylvania and Ohio Railroad, 22½ miles of track, including sidings and buildings.....	271, 000
Buffalo, Rochester and Pittsburg Railroad, 7½ miles of track and buildings.....	121, 000
Alleghany and Kinzua Railroad, 1¼ miles of track, including sidings.....	4, 800
South Vandalia and State Railroad, 1¼ miles of track, including sidings..	4, 000
Western New York and Pennsylvania Railroad, 29½ miles of track, sidings, and buildings.....	199, 500
Total value of railroad property on reservation	<u>1, 088, 300</u>

CATTARAUGUS RESERVATION.

Western New York and Pennsylvania Railroad, 1½ miles of track, siding, and depot.....	21, 500
New York, Chicago and St. Louis Railroad, 1 mile of track, siding, and tank.....	28, 000
Lake Shore and Southern Michigan Railroad, 1¼ miles double track, siding, and buildings.....	65, 000
Total value of railroad property on reservation	<u>114, 500</u>

(5) The white population in each of the above-named villages is as follows: Vandalia, 200; Carrollton, 500; Great Valley, 500; Salamanca, 4,000; West Salamanca, 500, and Red House, 25.

(6) The election on the allotment question was held upon the Cattaraugus Reservation on the 16th day of January, 1894, a petition having been circulated by the Woman's Christian Temperance Union, composed of Indian women. The result of the election was 40 in favor of citizenship and allotments and 200 against.

No election or formal expression of opinion has been had upon the Allegany Reservation upon this question.

CONCLUSIONS AND RECOMMENDATIONS.

I have given in the foregoing pages such information respecting the New York Indians as I have deemed to be in anywise material and as I have been able to derive from sources believed to be reliable. This information has been taken to a great extent from reports of the United States Indian agents in charge of the Indians from decisions of the United States Supreme Court, from decisions of the State courts of New York, and from the report of the special committee to investigate the Indian problem of the State of New York appointed by the assembly of 1888. Owing to the fact that this office has not been enabled to examine the official records of the State of New York in verification, I can not vouch for the entire accuracy of all the matters and facts above stated. I can only recommend reliance upon them in general, because of the sources from which they have been obtained.

These matters and facts clearly establish, I believe, the fact that the Ogden Land Company has a valid existing right and interest in the Alleghany and Cattaraugus and in a portion of the Tuscarora Indian reservations. The extent or quantity of this interest seems to be fully recognized by the courts and by the legislature of the State of New York, but the value of the interest is unfixed and undetermined, and does not, I believe, admit of definite ascertainment. It is, and always has

been, a bare, unprotective interest, yielding absolutely nothing to its owners, and it is hardly within the range of possibility that it ever will yield anything in any manner except by its absolute sale to the Indians, or until they shall cease to occupy the lands as a tribe. The fact that these Indians are steadily increasing in number, and the further fact that they know that their continued occupancy is dependent upon the continuation of their tribal relation, must entirely preclude the belief that the company can ever hope to derive any benefit or profit on account of abandonment by the Indians. The knowledge of the Indians that severance of their tribal relations means immediate enforcement of the claims of the company is, as has been heretofore stated, the principal reason why they have not wanted to take allotments and become citizens.

Adverting to the question of the value to the company of their interest in these lands, I find in the files of this office a letter dated Alandar, Mass., September 22, 1892, from Mr. Philip C. Garrett, of the board of Indian commissioners, in which he states that at the suggestion of this office he had recently called upon Mr. Appleby, trustee of the Ogden Land Company, with the view to ascertaining the terms upon which the company would part with its interest in the Senecalands; that Mr. Appleby spoke with apparent candor and said the company was very desirous of making such a sale; that as to the price, he estimated the land to be worth \$40 to \$50 per acre, not taking Salamanca and other populous settlements into account; that the company's price was based upon \$5 per acre for its fee, which would mean about \$280,000. Mr. Garrett, continuing, stated that upon being pressed further Mr. Appleby said the company would take \$200,000, and would not take less; that this, states Mr. Garrett, is the price the company consented to accept years ago, when a similar negotiation was set on foot.

The conclusion seems to me to be irresistible that the first and most essential thing to be done in the solution of the New York Indian problem is the extinguishment of the claim of the Ogden Land Company. This being accomplished, the allotment of their lands in severalty, the conferring of full citizenship upon the Indians, the repeal of all special State laws (with certain exceptions) relating to Indians, and their absorption into the body politic of the State, should easily and speedily follow. They would then be placed on the plane of those around them, with all the privileges and liabilities of citizenship and law, with the exception, perhaps, that some restriction should be placed upon the alienation of such land as they may acquire by allotment in severalty.

To these ends I have the honor to recommend that Congress be asked to enact such legislation as will enable the Secretary of the Interior to negotiate, in a manner to be prescribed by him, with the Ogden Land Company, so called, for the relinquishment of its claim in and to the Indian lands in question, the result of such negotiation to be reported to Congress for such action thereon as may be deemed advisable. It is also recommended that an appropriation of \$2,500 be asked for, to be used in defraying such expenses as may be found necessary in said negotiation.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

Abstract of title to the Indian reservation lands in New York, known as the Allegany and the Cattaraugus Reservations, held by Charles E. Appleby, trustee, commonly called the Ogden Land Company.

These reservations are part of the lands claimed by the State of Massachusetts under its charter from Charles the Second, 1628-29.

The State of New York also claimed the same lands under the grant to the Duke of York, March 12, 1664.

The two States appointed commissioners to settle the rival claims. The commissioners met at Hartford, Conn., and agreed upon a settlement December 16, 1786.

By this settlement the State of Massachusetts ceded to New York all claim to the government, sovereignty, and jurisdiction of the lands in question, and the State of New York ceded to Massachusetts and their grantees the right of preemption from the native Indians and all rights of ownership (the right and title of government, sovereignty, and jurisdiction excepted). "The State of Massachusetts may grant the right of preemption of the whole or any part of said lands to any person or persons, who by virtue of such grant shall have good right to extinguish by purchase the claim of native Indians, &c."

A copy of this settlement can be found on record in Cattaraugus Co. clerk's office, New York, liber 1 of Miscellaneous Records, p. 270-280.

The title to a large portion of western New York is founded upon the above grants and settlements.

[Deed recorded in secretary of state's office, New York, book 23, p. 322.]

May 11, 1791, the State of Massachusetts, by its committee, to Robert Morris. Conveys the preemption and all other right and title to a large tract of land, including the "Cattaraugus" and "Allegany" reservations. (See Release from Mass., liber 24, page 367.)

[Deed recorded 15 Feb'y, 1793, N. Y. secretary of state's office book 24, page 510.]

December 24, 1792, Robert Morris and wife to Herman LeRoy and John Lincklaen. Conveys a large tract of land (part of the lands conveyed by Massachusetts) which includes the Cattaraugus Reservation and a part of the Allegany Reservation.

[Deed recorded 27 Mar., 1793, N. Y. secretary of state's office, book 25 of deeds, p. 38.]

February 27, 1793, Robert Morris and wife to Herman LeRoy, John Lincklaen, and Gerrit Boon. Conveys another large tract of land, which includes that part of the Allegany Reservation not embraced in the deed of December 24, 1892 (1792) above referred to.

The grantees in the two deeds last above mentioned represented what was commonly called "The Holland Company."

In 1797, September 15, by a treaty between the Seneca Indians and Robert Morris the Indians surrendered up their rights to large tracts of land excepting certain reservations. The Allegany and Cattaraugus reservations being among those retained by the Indians.

[Deed recorded May 20, 1811, Erie Co. clerk's office, New York, liber No. 1, p. 63.]

September 12, 1810, William Willink and others to David A. Ogden. This deed conveys certain Indian reservation lands, with the rights to preemption, including the "Allegany" and "Cattaraugus" reservations.

The grantors in this deed are the parties (at the time) representing "The Holland Land Company."

[Deed recorded in liber 1, p. 102 to 110, Cattaraugus Co. In Erie Co., 22 June, 1821, liber C, p. 396.]

February 8th, 1821, David A. Ogden and wife to Robert Troup, Thomas Ludlow Ogden, and Benjamin W. Rogers, trustees, conveys certain Indian reservations and rights of preemption, including the Cattaraugus and Allegany reservations, upon trust.

This trust deed is the one under which Charles E. Appleby is now trustee. His succession to the trust is hereafter shown.

"This trust" is what is commonly called "The Ogden Land Company."

By treaty between Troup, Ogden, and Rogers, the trustees, and the Indians, August 31, 1826, the Indians surrendered up certain reservations, and also 5,120 acres, part of the Cattaraugus Reservation, leaving of that reservation 21,760 acres not surrendered. No part of the Allegany Reservation, containing 30,469 acres, was surrendered up.

[Deed recorded in Erie County, clerk's office, Sept. 1, 1831, liber 160 of deeds, p. 282. &c.]

December 19, 1829, Robert Troup, Thomas L. Ogden, and Benjamin W. Rogers, trustees to Thomas L. Ogden, Charles G. Troup, and Joseph Fellows, trustees. This deed conveys the trust estate created by the deed of February 8th, 1821, including the whole of the Allegany Reservation, containing 30,469 acres, and that part of the Cattaraugus Reservation to which the Indian title had not been extinguished by the treaty of August, 1826, being 21,670 acres, to hold under the trusts of the deed of February, 1821.

In 1838 a treaty was made with the Indians by which the Indians agreed to surrender up all the reservations to Ogden and Fellows, Charles E. Troup being dead. This treaty was never carried out, but a compromise treaty was made May 20, 1842, by which the Indians agreed to surrender up a portion of the reservations, reserving, however, the Allegany and Cattaraugus, "with the same right and title in all things as they had and possessed immediately before [the treaty of 1838], saving and reserving to the said Thomas Ludlow Ogden and Joseph Fellows the right of pre-emption, and all other the right and title which they then had or held in and to the said tracts of land."

The United States Government was represented in the negotiation of these treaties, and the title of Ogden and Fellows as owners of the reservation lands was conceded.

Charles G. Troup and Thomas L. Ogden, both being deceased, Joseph Fellows, the surviving trustee, executed the following deed:

[Deed recorded in Erie County, N. Y., February 2, 1872, Lib. 293 of Deeds, p. 591.]

September 21, 1871, Joseph Fellows, trustee, to George R. Babcock and Charles E. Appleby, trustees, conveys all the trust property held under the trust of February 8, 1821, to be held upon the same trusts as the grantor held the same.

George R. Babcock died September 22, 1876, leaving Charles E. Appleby the surviving trustee.

[New York Supreme Court—Queens County.]

Edmund H. Schermerhorn, &c., agt. Charles E. Appleby & others. This was an action brought to confirm the deed from Fellows to Babcock and Appleby, and the appointment of Appleby as trustee, and to have William D. Waddington appointed as cotrustee with said Appleby. All the owners of shares in the trust were parties to the action.

A decree or judgment was made on the eighth day of December, 1883, confirming the appointment of Charles E. Appleby and George R. Babcock as trustees and vesting them with all the rights, properties, and estates held under the trust deed of February 8th, 1821, and declaring that, upon the death of Babcock that Appleby as surviving trustee became vested with such rights, estates, and properties.

The judgment appointed William D. Waddington cotrustee to hold the trust estate.

William D. Waddington has since died and Charles E. Appleby as survivor is now the sole trustee and vested with the trust property.

Dated New York, November 10, 1894.

CHARLES E. APPLEBY, *Trustee.*

History and brief of the origin and extent of the title of the Ogden Land Company to the lands within the limits of the Allegany and Cattaraugus Indian reservations in the State of New York. By C. A. Maxwell.

ON DISCOVERY OF THIS COUNTRY THE TITLE TO THE SOIL WAS IN THE SOVEREIGN WHOSE SUBJECTS DISCOVERED IT, AND PASSED TO THE GRANTEE THEREOF.

In the case of *Johnson v. McIntosh* (8 Wheat., 543) in discussing this question, Chief Justice Marshall said:

"On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as people over whom the superior genius of Europe might claim an ascendancy. The potentates of the Old World found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing upon them civilization and Christianity in exchange for unlimited independence. But, as

they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that discovery gave title to the Government by whose subject or by whose authority, it was made against all European Governments, which title might be consummated by possession.

"The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.

"Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.

"In the establishment of these relations the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and the power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it.

"While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate right to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy. The history of America, since its discovery to the present day, proves, we think, the universal recognition of these principles."

In accordance with these principles, grants were made by Great Britain to its colonies and also to various individuals and companies. By the treaty which concluded the war of the revolution, Great Britain relinquished all claim, not only to the Government, but to all the proprietary and territorial rights which had been acquired within the limits of the United States. By this treaty the powers of Government, and the right to the soil which had previously been in Great Britain, passed to the United States, with the exception, however, of such portion of the land as had been granted to the colonies and to private individuals.

THE UNITED STATES DID NOT BY THE TREATY WITH GREAT BRITAIN ACQUIRE TITLE TO ANY LANDS WITHIN THE COLONIES.

The nature of the Indian title to lands on this continent was established by the system of public law adopted by European nations regulating their possessions here. It became the recognized principle that discovery followed by possession vested in the sovereign by whose subjects the discovery was made the absolute title to the soil of the lands within the limits of the discovered territory, subject, however, to the right of occupation by Indian tribes, which could only be extinguished by their voluntary consent, unless forfeited under the laws of war. It was a necessary sequence to the claim that the sovereign had the ultimate fee to the soil; that the right to extinguish the Indian occupation, was exclusively vested in the sovereign. The Indians were held to be incapable of alienating their lands except to the Crown, and all purchases made from them without its consent were regarded and treated as absolutely void. The title of the Crown was subject to grant, but a grant from the Crown only conveyed the fee subject to the right of Indian occupation and when that was extinguished under sanction of the Crown, the possession [or right of occupancy] then attached to the fee and the title of the grantee was thereby perfected. These general principles were announced by Chief Justice Marshall in the great case of *Johnson v. M'Intosh* (8 Wheat. 543), which has ever since been regarded as a sound exposition of the nature of Indian titles.

"The several colonial charters undertook to define the territorial limits of the respective colonies. In many cases the boundaries were indefinite and in some cases conflicting. The Crown, however, except in case of proprietary charters, exercised the right of making grants of unappropriated lands within the limits of the colonies, although the right of soil and jurisdiction was vested in the colonial governments. On the Declaration of Independence the colonies became sovereign States. They were so acknowledged by the treaty of peace of 1783, and Great Britain, by that treaty, 'relinquished all claims to the government, property, and territorial rights' within the several colonies. It is the received opinion that the colonies suc-

ceded to the title of the Crown to all the ungranted lands within their respective boundaries, with the exclusive right to extinguish by purchase the Indian title, and to regulate dealings with Indian tribes. 'There was no territory in the United States,' says Johnson, J., in *Harcourt v. Gallard* (12 Wheat., 523), 'that was claimed by any other right than that of one of the Confederate States; therefore there could be no acquisition of territory made by the United States distinct from or independent of some one of the United States.'

'There was a controversy between the States and the United States as to the claim of the former to territory extending indefinitely westward, far beyond the limit of settlement, and whether the charters could be fairly construed to include these indefinite regions, which controversy, however, was happily compromised by cessions made by six of the States to the United States of territory claimed by them, commencing with that of New York, of March 1, 1781, and including the memorable cession of the Northwestern Territory by Virginia in 1784. (See *Clark v. Smith*, 13 Pet., 195; *Fletcher v. Peck*, 6 Cranch, 142.) This was the beginning of the acknowledged territorial possessions of the Government of the United States, subsequently largely increased by purchases from France and Spain. (*Seneca Nation v. Christie*, N. Y. Reports Court of Appeals, vol. 126, pp. 135-137.)'

ORIGIN OF THE TITLE.

Soon after peace was declared in 1783 a controversy arose between the States of Massachusetts and New York respecting the title to the western part of the latter State, comprising what was called the Genesee country. Massachusetts claimed this territory under the grant of King James I to the Plymouth Company in 1628, which company or colony was united with Massachusetts in 1692. (*American Cyclopaedia*, vol. 16, p. 151.) New York claimed it under grant of Charles II to the Duke of York in 1663. The controversy was brought under the cognizance of Congress, in pursuance of the Articles of Confederation, and a court was instituted to decide it, but the dispute was finally settled by a convention between the two States, concluded at Hartford, Conn., on the 16th of December, 1786. It was agreed by the convention that New York should have the right of government and jurisdiction, and Massachusetts the right of property in the disputed territory, which rights were mutually granted and released by each State to the other by an agreement signed by ten commissioners, four of whom were appointed by Massachusetts, and six by New York. (See *Journals of Congress*, vol. 4, p. 787; *Ann. Rept. Ind. Office*, 1877, p. 163.)

By virtue of this agreement two tracts were ceded to Massachusetts. One tract comprehended all that part of the State lying west of a line drawn through Great Sodus Bay, on the south side of Lake Ontario, and running thence southerly to the northern boundary of Pennsylvania, except a strip 1 mile wide on the east side of the River Niagara, and the islands in that stream. Its length on the south side was about 140 miles and on the north about 100 miles. Its breadth on the east from Lake Ontario to Pennsylvania was about 87 miles. The breadth was nearly uniform westwardly as far as Niagara River and the northeastern extremity of Lake Erie. This tract was estimated to contain about 6,144,000 acres. The whole tract was formerly called Genesee. The other tract, called the Boston Ten Towns, contained about 230,400 acres, and it is situated between Chenango River and Oswego Creek, being in the counties of Broome and Tioga. The area of these cessions is said to be nearly one-fourth of that of the State. By the first article of the agreement or compact the Commonwealth of Massachusetts ceded to the State of New York all her claim, right, and title to the government, sovereignty, and jurisdiction of the lands and territories therein particularly specified, which included the two tracts of land now occupied by the Seneca Nation of Indians, as well as several other reservations which have since been disposed of.

By the second article New York "ceded, granted, released, and confirmed to the State of Massachusetts, and to the use of the Commonwealth, their grantees, and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all other the estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the State of New York hath of and in or to the described lands."

By the third article Massachusetts "ceded, granted, released, and confirmed to the State of New York and their grantees, and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all other the estate, right, title, and property which the Commonwealth of Massachusetts hath of or in or to the residue of the lands and territory so claimed by the State of New York, as hereinbefore stated and particularly specified."

The tenth article is as follows:

"The Commonwealth of Massachusetts may grant the right of preemption of the whole or any part of the said lands and territories to any person or persons who by virtue of such grant shall have the right to extinguish by purchase the claims of

the native Indians: *Provided, however,* That no purchase from the native Indians by any such grantee shall be valid unless the same shall be made in the presence of and approved by a superintendent to be appointed by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts."

The convention authorized Massachusetts to hold treaties with the native Indians relative to the property or right of soil of the lands or territories thereby ceded to her. It was also agreed "That the lands so ceded, granted, or released and confirmed to the Commonwealth of Massachusetts, or such part thereof as shall from time to time be and remain the property of the Commonwealth of Massachusetts, shall, during the time that the same shall so be and remain such property, be free and exempt from all taxes whatsoever, and that no general or State tax shall be charged on or collected from the lands thereafter to be granted by the Commonwealth of Massachusetts, or to the occupants or proprietors of such lands, until fifteen years after such confirmation, as hereinafter mentioned, of such grants shall have expired, but that the lands so to be granted, and the occupants thereof, shall, during the said period, be subject to town and county charges or taxes only." There is a provision, also, that copies of the grants and the acts of the confirmation should be deposited in the office of the secretary of state of the State of New York, and be recorded there without any charges or fees of office whatsoever, and a failure to have them so recorded is to render them void. (Journals of Congress, vol. 4, p. 787. Monday, October 8, 1787.)

Massachusetts sold the large tract, estimated to contain 6,144,000 acres, to Oliver Phelps and Nathaniel Gorham, in 1788, for \$1,000,000, payable in a kind of scrip called consolidated securities, then much below par, and the other tract to John Brown, for \$3,300. (McCauley's History of New York and New York Gazetteer.)

Phelps and Gorham failed to comply with their contract for the whole of the large tract in consequence of the value of the scrip rising to par, and that which they failed to pay for was subsequently granted to Robert Morris by four deeds dated May 11, 1791.

Morris, after disposing of several tracts, reserving to himself a strip of average width of 12 miles, lying between the Phelps and Gorham and the Holland purchases, and known as the "Morris Reserve," mortgaged the residue (about seven-eighths of the whole) to the Holland Land Company, which, by foreclosure July 20, 1793, acquired full title to the land. (Thomas F. Gordon's New York Gazetteer, p. 150, and Hough's Gazetteer of the State of New York, p. 315.)

The Allegany and Cattaraugus reservations are within the lands the title to which was thus acquired by the Holland Land Company.

At the time of the convention between New York and Massachusetts, in December, 1786, the Seneca Indians, one of the tribes of the Six Nations, claimed the exclusive right to the lands whereof the preemption was ceded to Massachusetts. The Mohawks having removed to Canada, and the lands occupied by the Onondagas, Oneidas, Cayuse, and other tribes of the Six Nations not being included in the cession made to Massachusetts, the right of preemption as to the lands of these latter designated tribes remained in the State of New York, and Massachusetts, in the third article of the agreement, as before mentioned, relinquished all right, title, and claim thereto.

The Ogden Land Company, so called, was simply, originally, a company of joint owners, with the title to their property vested in trustees as joint tenants. The title was taken September 12, 1810, from the Holland Land Company to David A. Ogden, absolutely. In 1811, February 14, an agreement seems to have been entered into between David A. Ogden, of the first part, and Thomas L. Ogden, Charles L. Ogden, Joshua Waddington, Abram Ogden, Thomas Cooper, and Aaron Cooper, of the second part, which recited the purchase by David A. Ogden of the Indian lands from Paul Busti, acting for the Dutch proprietors, and giving of the bonds and mortgages for the purchase money, and which provided that David A. Ogden should continue to hold the title to the lands and have the management of the same, and the power to extinguish the claim of the Indians, and to receive 10 per cent of the proceeds of the sale of the lands as his compensation, and dividing the property into twenty shares or interests. In 1821 David A. Ogden retired, and an elaborate trust deed was executed providing for the appointment of Thomas Ludlow Ogden, Robert Troup, and Benjamin Woolsey Rogers as trustees, conveying the lands from David A. Ogden to these trustees, directing the new trustees to cause the lands to be surveyed with a view to an equitable division thereof in twenty shares or parcels, with suitable maps, and directing that when such survey should be completed the associates should be convened at the city of New York and a division be made by ballot. The following persons were at this time the owners of the twenty shares or interests:

David A. Ogden, 2 shares; Joshua Waddington, 3 shares; Thomas Ludlow Ogden, 2 shares; Thomas Ludlow Ogden and Charles Ludlow Ogden, in trust for Charles Leroux Ogden, 1 share; Benjamin Woolsey Rogers, 2 shares; William Ogden and

Susan, his wife, in right of Susan, Mary Murrey and Hannah Murrey, 1 share; Isaac Ogden, 1 share; Isaac G. Ogden, 1 share; Joshua Waddington and Thomas L. Ogden jointly, 3 shares; Robert Troup, 2 shares; Peter B. Porter, 1 share; James Wadsworth, 1 share.

December 18, 1829, another trust deed was executed, showing their debt to the Holland Land Company to be still \$57,500, and providing for the retirement of Robert Troup and Benjamin Woolsey Rogers and the appointment of Charles G. Troup and Joseph Fellows as trustees. Charles G. Troup died in 1839 and Thomas Ludlow Ogden in 1844. Fellows acted as trustee until 1871, when he conveyed the land to George R. Babcock and Charles E. Appleby, of New York. Joseph Fellows died in 1872 and Babcock in 1876. In 1882 an action was begun in the supreme court of Queens County, in which some of the joint owners were plaintiffs and the residue defendants, and a judgment entered December 10, 1883, confirming the appointment of Charles E. Appleby as trustee and appointing William D. Waddington as cotrustee. Waddington has since died, leaving Mr. Appleby now sole trustee. The present owners are as follows:

Charles E. Appleby, 1 share; estate of Joshua Waddington, 4 shares; estate of Peter C. Schermerhorn, 1 share; estate of Thomas L. Ogden, 2 shares; estate of Abram Ogden, 1 share; estate of Robert Tillotson, 1 share; estate of Duncan P. Campbell, 1 share; estate of Charlotte Brinckerhoff, 1 share; estate of James S. Wadsworth, $1\frac{1}{2}$ shares; estate of Ogden F. Murray, $\frac{1}{2}$ share; estate of Benjamin W. Rogers, 2 shares; M. Bayard Brown, trustee, 1 share; Louisa Troup, 1 share; Shaw and Wilson, now in the Bank of England, 2 shares. Total, 20 shares. (Report Committee N. Y. Legislature, 1889, p. 32.)

THIS TITLE HAS ALWAYS BEEN RECOGNIZED BY THE UNITED STATES.

The controversy between the States of Massachusetts and New York was brought to the attention of Congress, and under the provisions of the Articles of Confederation (article 9) a court was established for the purpose of determining the question. The matter was, however, adjusted under the compact between the two States hereinbefore referred to, without the intervention of the court. This compact was formally ratified and approved by Congress, whose consent was made necessary, both by the Articles of Confederation and the Federal Constitution, to any compact between States. (Journals of Congress, vol. 4, p. 787; *Seneca Nation v. Christie*, 126 N. Y. S., 132.)

TREATY OF 1787.

In volume 7, United States Statutes at Large, pages 601-603, will be found the contract entered into, under the sanction of the United States, between Robert Morris and the Seneca Nation of Indians, September 15, 1787, for the extinguishment of the Indian title, in which the tracts then and previously sold by them to the assignees of the State of Massachusetts were indicated, leaving the nine small reservations undisposed of so far as the native right was involved. In this contract the title or fee was admitted to be in Morris.

TREATY OF 1802.

An agreement was entered into June 30, 1802 (7 Stat., 70), between certain parties (supposed to be what was afterwards known as the Holland Land Company) and the Seneca Nation of Indians, whereby said nation ceded to said parties the lands embraced in the Cattaraugus Reservation, by the agreement with Morris, and in lieu thereof said parties ceded to the Senecas the tract described in said agreement, in accordance with a survey executed in 1798, to be held by the Indians by the same tenure as intended by the agreement with Morris.

TREATY OF 1802.

By treaty of June 30, 1802 (7 Stat., 72) the Seneca Nation ceded to Oliver Phelps, Isaac Brownson, and Horatio Jones the tract known as Little Beards Reservation, which also recognizes and admits the title of the grantees of the State of Massachusetts, and this title is likewise admitted in the treaties of 1826, 1838, 1842, and 1859, hereinafter referred to.

TREATY OF 1826.

It appears that prior to 1826 the title to the lands embraced in the Morris purchase vested in Robert Troup, Thomas L. Ogden, and Benjamin W. Rogers. By an agreement entered into August 31, 1826, under the sanction of the United States, represented by Oliver Forward, the State of Massachusetts being represented by

Nathaniel Gorham, between the Seneca Nation of Indians of the first part, and Robert Troup, Thomas L. Ogden, and Benjamin W. Rogers of the second part, the said parties of the first part, for and in consideration of the sum of \$48,216, agreed to convey to the parties of the second part the following tracts of land, viz:

All of the Big Tree Reservation, containing 2 square miles.

All of the Squawky Hill Reservation, containing 2 square miles.

All that part of the Gardean Reservation, containing 2 square miles, being that part of said reservation which was excepted under and reserved out of the sale of a part of the same to John Craig and Henry B. Gibson, at a treaty held at Moscow, September 3, 1823.

(This treaty does not appear in vol. 7, United States Statutes at Large, but is referred to in the case of Seneca Nation v. Christie (126 N. Y., 120), as being printed in "Indian Treaties, 1837, 305.")

All the Buffalo Creek Reservation, with the exception of 49,920 acres.

All of the Tonawanda Reservation, with the exception of 12,800 acres.

The parties of the first part also conveyed to the parties of the second part, by said agreement, 8 square miles, as therein described, out of the Cattaraugus Reservation.

The aggregate cession amounted to about 85,750 acres.

This agreement was transmitted to the Senate by the President, under date of February 24, 1827, and the same failed of ratification February 29, 1828, the Senate disclaiming any power over the subject-matter, as appears by an explanatory resolution passed at the time, of which the following is a copy:

"Resolved, That by the refusal of the Senate to ratify the treaty with the Seneca Indians it is not intended to express any disapprobation of the terms of the contract entered into by the individuals who were parties to that contract, but merely to disclaim any power over the subject-matter." (See Senate Journal 1815-1829, pp. 576, 579, and 600.)

Of the consideration money expressed in the aforementioned agreement it appears that Troup, Ogden, and Rogers assigned and transferred to the Ontario Bank, to be held in trust for the Seneca Nation of Indians, \$42,500 of the stocks of the public debt of the United States, bearing interest at the rate of 6 per cent per annum, being of the loan of May 2, 1814, and also \$550 of the stocks of the same debt, bearing the same rate of interest, being the loan of 1813, for which amount (\$43,050) said bank, on the 21st day of April, 1827, issued its declaration of trust.

This fund appears to have been held by the Ontario Bank until 1855.

By the third section of the act of Congress approved June 27, 1846 (9 Stat., 35), the President was authorized to receive from the Ontario Bank any stock of the public debt of the United States or moneys which said bank might hold in trust for the Seneca Indians.

In pursuance of the provisions of this act the said fund was transferred to the United States Treasury by warrant dated August 24, 1855.

TREATY OF 1838.

By the first article of the treaty of 1838 (7 Stat., 551) the New York Indians relinquished their right to certain lands at Green Bay, Wis., secured to them by the Menomonee treaty of 1831 (7 Stat., 342), to which said Indians gave their assent October 17, 1832, and in consideration of such relinquishment the United States agreed to set apart other lands west of the State of Missouri for their permanent homes.

By the tenth section of this treaty special provisions were made for the Senecas, including the Onondagas and Cayuse. The tribe was to remove from the State of New York to their new homes within five years. This section then recites the purchase of the title of the Seneca Nation to certain lands described in a deed of conveyance by Ogden and Fellows, in whom the title of the State of Massachusetts had vested, for the consideration of \$202,000, and directs in what manner the fund shall be disposed of.

The deed of conveyance from the Seneca Nation to Ogden and Fellows, referred to in the treaty, is annexed thereto.

It conveys four reservations in western New York, viz: The Buffalo Creek Reservation, estimated to contain 49,920 acres; the Cattaraugus, estimated to contain 21,680 acres; the Allegany, estimated to contain 30,469 acres, and the Tonawanda, estimated to contain 12,800 acres.

TREATY OF 1842.

Before the expiration of the five years within which the Indians were to remove difficulties arose between the Indians and Ogden and Fellows which resulted in the treaty of 1842 (7 Stat., 586), which, after referring to the treaty of 1838, and to the difficulties which had arisen between the parties thereto, provides in the first article

that Ogden and Fellows, in consideration of the release and agreements afterwards mentioned, stipulate that the Seneca Nation might continue in the occupation and enjoyment of two of the reservations the Cattaraugus and the Allegany, the same as before the deed of conveyance, from which it will be seen that the Indians on the Cattaraugus and Allegany reservations; actually hold the right of occupancy under a cession by Ogden and Fellows, the predecessors of the Ogden Land Company. In the second article the Seneca Nation, in consideration of the foregoing and other stipulations, agreed to release and confirm to Ogden and Fellows their right of occupancy in the two remaining reservations, the Buffalo Creek and the Tonawanda, which was practically reaffirming to that extent the provisions of the treaty of 1838.

The third article provides for reducing the amount of the purchase money to be paid by Ogden and Fellows, so as to correspond with the relative value of the two reservations released to the value of the four, as fixed by the treaty of 1838.

TREATY OF 1857 WITH TONAWANDAS.

Prior to the year 1857 the treaties of 1838 and 1842 remained unexecuted, so far as the Tonawanda Reservation and the band of Seneca Indians residing thereon were concerned, and the status of the Indians and the Ogden Land Company was the same as that existing before those treaties were entered into. (See treaty of 1857 with Tonawanda Indians, 11 Stat., 735.)

Under and by virtue of the terms of this treaty and the act of Congress of March 3, 1859 (Id., 409), the Indians purchased the land within that reservation from the Ogden Land Company, or its assigns, and the title thereto is now held by the comptroller of the State of New York in trust for said Indians.

NATURE AND EXTENT OF THE TITLE AND DECISIONS OF THE COURTS BEARING ON THE SAME.

As has been seen, the Indian title to the lands on this continent was established by the system of public laws by European nations regulating their possessions here. Discovery, followed by possession, vested in the sovereign, by whose subject discovery was made, absolute title to the lands within the discovered territory, subject only to the right of occupancy of the Indians, the right to extinguish the Indian title being vested in the sovereign.

At one time it was doubted whether a State can be seized in fee of the lands subject to the Indian title, and whether a decision that a State was so seized in fee might not be construed to amount to a decision that the grantees of the State might maintain an action in ejectment for them, notwithstanding the Indian title. In *Fletcher v. Peck* (6 Cranch, 87) the court was of the opinion that the nature of the Indian title, which is certainly to be respected by all courts until it be legitimately extinguished, is not such as to be absolutely repugnant to a seizin in fee on the part of the State.

One uniform rule seems to have prevailed (in the British provinces in America) "by which Indian lands were held and sold, from their first settlement, as appears by their laws; that friendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them as their common property from generation to generation, not as the right of individuals located upon particular spots. Subject to this right of possession, the ultimate fee was in the Crown and its grantees, which could be granted by the Crown or the colonial legislatures, while the lands remained in possession of the Indians; though possession could not be taken without their consent.

"Individuals could not purchase Indian lands without permission or license from the Crown, colonial governors, or according to the rules prescribed by colonial laws; but such purchases were valid with such license, or in conformity with the local laws; and by this union of the perpetual right of occupancy with the ultimate fee, which passed from the Crown by the license, the title to the purchaser became complete. (*Mitchell v. United States*, 9 Pet., 711.)

"Indian possession or occupation was considered with reference to their habits and modes of life. Their hunting grounds were as much in their actual possession as the cleared fields of the whites; and their right to its exclusive enjoyment in their own way and for their own purpose were as much respected, until they abandoned them, made a cession to the Government, or an authorized sale to individuals. In either case their rights became extinct, the lands could be granted, disencumbered of the right of occupancy, or enjoyed in full dominion by the purchasers from the Indians."

Such was the tenure of the Indian lands by the laws of Massachusetts, Connecticut,

Rhode Island, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, and Georgia. (Id.)

"Grants made by the Indians at public councils since the treaty of Fort Stanwix have been made directly to the purchasers or to the State in which the land lies, in trust for them, of which there are many instances of large tracts so sold and held, especially in New York." (Id.)

"It was a universal rule that purchases made at Indian treaties, in the presence and with the approbation of the officer under whose direction they were held by authority of the Crown, gave a valid title to the lands; it prevailed under the laws of the States after the revolution, and yet continues in those where the ultimate fee is owned by the States or their grantees. It has been adopted by the United States, and purchases made at treaties held by their authority have been always held good by the ratification of the treaty, without any patent from the purchasers from the United States. This rule in the colonies was founded on a settled rule of the law of England, that by his prerogative the King was the universal occupant of all vacant lands in his dominions, and had the right to grant them at his pleasure, or by his authorized officers." (Id.)

A grant of land in Florida within the Indian boundary by the governor, acting under the Crown of Spain before the cession of Florida to the United States, was confirmed to the grantees by the decree of the judge of the eastern district of Florida. The decree was affirmed on appeal. (*The United States v. Fernandez*, 10 Pet., 303.)

The subject of grants of lands within the Indian boundary which had not by any official act been declared a part of the royal domain was fully and ably considered in the case of *Johnson v. McIntosh*. (8 Wheat., 543; 5 Cond. Rep., 515.) Every European Government claimed and exercised the right of granting lands while in the occupation of the Indians. (Id.)

The grants of lands in possession of the Indians by the governor of Florida, under the crown of Spain, "were good to pass the right of the Crown. The grants severed them from the royal domain, so that they became private property, which was not ceded to the United States by the treaty with Spain." (Id.)

Indian tribes have not been conceded the natural capacity to hold absolute title to lands, except in cases specially provided for by treaty. (3 Op. Atty. Gen., 322.)

The Indians do not hold a fee in the lands of their original occupation, but only a usufruct, the fee being either in the United States or in some one of the several States. (8 Op. Atty. Gen., 255.)

A purchase of lands from the Indians can acquire only their title, which is that of mere occupancy; the ultimate seizin being in the Crown or State. (2d Circuit (N. Y.) 1825; *Sparkman v. Porter*, 1 Paine, 457.)

Though a statutory grant of lands (as to which the Indian title has not been extinguished) is absolute in terms, nevertheless it is subject to the outstanding title of the Indians. (*Langford v. U. S.*, 12 C. Cls. R., 338.)

The colonial charters, a great portion of the individual grants by the proprietary and royal governments, and a still greater portion of the grants by the States, after the revolution, were made for lands within the Indian hunting grounds. North Carolina and Virginia, to a great extent, paid their officers and soldiers of the Revolutionary war by such grants, and extinguished the arrears due the army by similar means. The ultimate fee (incumbered with the Indian right of occupancy) was in the Crown previous to the revolution, and the States of the Union afterwards; and was subject to grant. The right of occupancy was protected by the military power, and respected by the courts, until extinguished, when the patentee took the unincumbered fee. (*Supreme Ct.*, 1839, *Clark v. Smith*, 13 Pet., 195, S. P., 1840; *Latimer v. Poteet*, 14 Pet., 4.)

"The Indians of New York, remnants of the once powerful 'Six Nations,' number 5,070. They occupy six reservations in the State, containing in the aggregate 63,668 acres. Two of these reservations, viz: The Allegany and Cattaraugus, belonged originally to the colony of Massachusetts, but by sale and assignment passed into the hands of a company, the Indians holding a perpetual right of occupancy, and the company referred to, or the individual members thereof, owning the ultimate fee. The same state of facts formerly existed in regard to the Tonawanda Reserve, but the Indians who occupy it have purchased the ultimate fee of a portion of the reserve, which is now held in trust for them by the Secretary of the Interior." (Annual Report Com. Ind. Affs., 1872, p. 15.)

Now held in trust by the comptroller of the State of New York.

"The only title which the Indians can give is a leasehold title. They have only the right of possession. The preemptive right, or the right to extinguish the Indian title by purchase or otherwise, in this case belonged originally to the State of Massachusetts, but has passed by several conveyances to the trustees of the Ogden Land Company, who now hold it." (H. R. Report No. 478, Forty-third Congress, first session.)

In the case of *Strong and Gordon*, chiefs of the Seneca Nation of Indians, *v. Water-*

man (11 Paige, 607), the court held that "The rights of Indians in this State (New York) to the use, possession, and occupancy of the lands of their respective reservations, which had not been by them voluntarily ceded to the people of the State or granted to individuals with the assent of the State, do not at this time admit of a doubt. The ultimate fee of the land is undoubtedly in the State or its grantees, but the rights of the Indians to the beneficial use and occupancy thereof, until they think proper to voluntarily relinquish and abandon that right, has been too long recognized in this State to be now called in question."

In the case of the New York Indians (5 Wall., 761) the court says: "All agree that the Indian right of occupancy creates an indefeasible title to the reservations that may extend from generation to generation, and will cease only by the dissolution of the tribe or their consent to sell to the party possessed of the right of preemption. He is the only party that is authorized to deal with the tribe in respect to their property, and this with the consent of the Government. Any other party is an intruder, and may be proceeded against under the twelfth section of the act of 30th June, 1834."

The title of the Indians to the soil is founded upon simple occupancy, and they have no power to dispose of the soil, except to the Government or any one who has acquired from the Government the right of preemption. The possession, when abandoned by the Indians, attaches itself to the fee without any further grant. (*U. S. v. Cook*, 19 Wall., 591; *Jackson v. Hudson*, 3 Johns., 375; *Howard v. Moot*, 64 N. Y., 270; *Strong v. Waterman*, 11 Paige, 607; *Johnson, v. MacIntosh*, 8 Wheat, 543; 3 Kent's Comm., 78, 80; *Beecher v. Wetherby*, 95 U. S., 517.)

The fee to the lands in question was in the State of Massachusetts, and the exclusive right to extinguish the Indian's right of occupancy had been secured to that State and its grantees by the compact between the States of Massachusetts and New York, which had been duly confirmed and adopted by the United States Government. The United States Government has, therefore, recognized the right of the Indians to sell and the right of the State of Massachusetts and its grantees (the Ogden Land Company) the exclusive right to extinguish the Indian's title of occupancy. These rights, thus secured, can not be taken away by a mere act of Congress, or without the consent of the parties. (*Wilson v. Wall*, 6 Wall., 89; *Holden v. Joy*, 34 U. S., 211, 250; *Insurance Co. v. Cantor*, 1 Pet., 542; *Mitchell v. U. S.*, 9 Id., 749; *Murray v. Wooden*, 1 Wend., 531; *Smith v. City of Rochester*, 92 N. Y., 476, 477; *U. S. v. Kagama*, 118 U. S., 375.)

In accordance with the law as established between the European nations whose subjects discovered and occupied this country, and under the principles enunciated and laid down by the United States Supreme Court in the cases cited, the fee to the lands in question was in Great Britain, subject to the right of occupancy in the Indians. Prior to the treaty of 1783, Great Britain made two grants of this land, one to the Plymouth Company and the other to the Duke of York, and under the compact between the States of Massachusetts and New York it was determined that the former had succeeded to the title in fee, or in other words, the State held the fee to the lands, subject to the Indian's right of occupancy in the same manner in which the United States holds the fee to ordinary Indian reservations, and as decided in *Mitchell v. United States* (9 Pet., 711), and other cases herein cited, and under the compact between the two States, Massachusetts had full power and perfect right to grant title in fee, subject only to the Indian's right of occupancy, the exclusive right to extinguish which, or the right of preemption, vested in the State's grantee. The State of Massachusetts exercised this right by its conveyance, to Morris, whose title subsequently vested in the Holland Land Company, which in turn conveyed its title to David A. Ogden, who conveyed certain interests by shares to certain individuals who are now known as the Ogden Land Company.

By reference to the compact between these two States it will be observed that New York "ceded, granted, released, and confirmed to Massachusetts, and to the use of the Commonwealth, their grantees and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all other the estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the State of New York hath of, in, or to the described lands."

Webster defines the word "preemption" as "the act or right of purchasing before others."

It will not be seriously contended by anyone that Massachusetts acquired any title to these lands from New York by reason of the compact between the two States or otherwise. New York admitted the title to be in Massachusetts, under the grant to the Plymouth colony in 1628, some thirty-five years previous to the grant to the Duke of York, under which New York made claim. (*Hough's Gazetteer of the State of New York*, p. 5.)

While New York admitted title to be in Massachusetts, the lands were within the jurisdiction of the former, which jurisdiction she desired to maintain and exercise,

and this was granted to her by Massachusetts. This placed matters in an anomalous condition, the title to the lands being in one State and the jurisdiction and government thereof in another, and therefore it became necessary to insert in the compact between the two States a provision authorizing the State of Massachusetts or its grantees to go within the jurisdiction of New York for the purpose of exercising the right to deal with the Indians and extinguish the right of occupancy, and this right to come within the confines of the State of New York for the above-named purposes is the only right granted to the State of Massachusetts by the State of New York. New York had no title and consequently could grant none, and none passed by virtue of the compact between the two States. Of course, in view of the claim originally made by New York, there were inserted in the compact some formal words of relinquishment of title by New York, but this was not at all necessary, for, as before seen, Massachusetts had the title in fee subject only to the Indian's right of occupancy, which right she or her grantees have the exclusive right to extinguish.

In other words, prior to the compact of 1786, the State of Massachusetts had not only the title in fee, subject only to the right of occupancy in the Indians, but also the right of preemption, to both of which she succeeded by virtue of the grant of the Crown to the Plymouth colony in 1628.

FROM THE FOREGOING IT APPEARS

(1) That the fee to the lands within the Allegany and Cattaraugus Indian reservations, on the discovery of this country, vested in the Crown of Great Britain, and that subject to the Indian right of occupancy, the Crown had the right to grant the fee.

(2) That King James I granted the fee to "The Plymouth Company."

(3) That in 1692 the Plymouth Company was incorporated with Massachusetts, and thereupon the fee vested in Massachusetts.

(4) That the fee as well as the right of preemption was recognized and conceded to be in Massachusetts under the compact between that State and the State of New York.

(5) That Congress ratified that compact as required by the articles of confederation and the Constitution of the United States.

(6) That Massachusetts conveyed the fee to Robert Morris.

(7) That Morris mortgaged the land to the Holland Land Company, which company by foreclosure (July 20, 1793) became the owner of the fee.

(8) That the Holland Land Company conveyed the fee to David A. Ogden by deed dated September 12, 1810.

(9) That David A. Ogden subsequently conveyed the land in share to different individuals, he holding the legal title as trustee, thus forming what is now known as the Ogden Land Company.

(10) That subsequently the title vested in Thomas Ludlow Ogden and Joseph Fellows, as trustees.

(11) That the title is now held by Charles E. Appleby, as trustee.

WHAT EFFECT WOULD BE PRODUCED UPON THE TITLE OF THE INDIANS BY MAKING THEM CITIZENS?

Making the Indians citizens would effect a dissolution of the tribe, which, as indicated in the decisions referred to, would divest them of their right of occupancy, and thus the right of occupancy would attach to the fee of the Ogden Land Company, the said company already holding the unquestioned title to the land, subject only to the right of occupancy, which would cease when the tribal relations of the Indians ended.

WHAT EFFECT WOULD BE PRODUCED UPON THEIR TITLE BY ALLOTING THESE LANDS IN SEVERALTY, AND WOULD THE ALLOTTEES HOLD THEIR ALLOTMENTS IN FEE SIMPLE?

The attempt to confer any different title than that of occupancy without the consent of the Ogden Land Company, or its assigns, would undoubtedly divest the Indians of their right of occupancy and vest the same in said company. It is evident that the fee to these lands would not be secured for the Indians except by purchase from the Ogden Land Company, which is the legitimate successor of the party to whom the State of Massachusetts granted the fee, subject, as before stated, to the Indians' right of occupancy.

As was said by the court in *Mitchell v. The United States* (9 Pet., 711), and held by other decisions of the courts herein referred to, the Indians held the right of

occupancy, as a common property, in their capacity as a tribe or nation, and not in the right of individuals located upon particular spots, and this rule has been recognized and adopted by the legislative, executive, and judicial departments of the Government since its foundation.

In all cases where the tribal or national right of occupancy has been extinguished the United States, as the owner of the fee to the lands, has disposed of them by allotment in severalty to the Indians and by throwing the balance of the lands open to settlement, and in both cases the individual allottee and settler obtained title from the Government as the owner of the fee. The several original States have exactly the same rights, and the State of Massachusetts parted with that title by its grant to Morris.

An absolute fee simple title can not be given these Indians except by the Ogden Land Company or its assigns.

WHAT MEANS, IF ANY, ARE NECESSARY TO ENABLE THE UNITED STATES TO ALLOT THESE LANDS TO THE INDIANS IN FEE?

The purchase by the Indians of the lands from the Ogden Land Company or its assigns, as was done in the case of the Tonawanda Reservation.

It must be remembered that the United States has no title to public lands in the State of New York, and no authority over them.

REPORT OF THE COMMITTEE OF THE NEW YORK LEGISLATURE.

The special committee appointed by the assembly of the State of New York to investigate the Indian problem in that State transmitted its report to the assembly February 1, 1839. The committee visited the various reservations in the State and took the testimony of many of the headmen and chiefs upon each reservation, and many noted white people who are acquainted with the Indians, their customs, mode of living, and previous history. After taking this mass of testimony, and giving the matter very careful attention, the committee then recommends for the consideration of the assembly:

- (1) That a compulsory-attendance school law be enacted.
- (2) That the legislature request the General Government to take action to extinguish the claim of the Ogden company to the lands of the Senecas and that portion of the Tuscaroras covered by it.
- (3) That the lands of the several reservations be allotted in severalty among the several members of the tribe, with suitable restrictions as to alienation to whites and protection from judgments and other debts, but such division not to go into effect as to lands affected by the Ogden Land Company's claim until that claim be removed. This allotment in severalty ought not to be limited to a division of the possession of the land, but should comprise a radical uprooting of the whole tribal system, giving to each individual absolute ownership of his share of the land in fee.
- (4) The repeal of all existing laws relating to the Indians of the State, excepting those prohibiting sale of liquors to them and intrusion upon their lands, the extension of the laws of the State over them, and their absorption into citizenship.

THE VALUE OF THE TITLE OF THE OGDEN LAND COMPANY.

It being fully demonstrated by an unbroken line of decisions of the United States Supreme Court in cases involving the question as to the character of title by which the Indians hold their lands, and by all treaties made with the New York Indians since 1795, as well as by the universal action of the legislative and Executive Departments of the Government, that the fee title to the lands in question is in the Ogden Land Company, let us see what the value of the title is.

The Monograph on the Six Nations of New York Indians, compiled by the Census Bureau of 1890, is of interest in arriving at a just conclusion relative thereto, and wherein it is stated that "the appraisement of Indian lands is based upon the best local terms of sale made by white people of outside lands; but farms upon some reservations may well be appraised at \$50 per acre, when on some other reservations equally good or better lands would range from \$25 to \$35 per acre. Such lands have a leasehold value, but not the full value of similar adjoining lands which are unnumbered by the present inalienable Indian title.

"The following table gives the number of acres and total value (estimated) of each reservation. The total acreage of the reservations of the Six Nations is 87,327.75, and the value is estimated at \$1,810,699.60. The reservation lands, if sold and the proceeds divided per capita, would give each of the 5,203 Indians and adopted persons \$348.01. The acreage to each person on the several reservations is also given, and the names and area of reservation as to tillable and grazing lands, acres cultivated, under fence, fenced during the year, leased, new lands broken, pasture lands actually used in 1890, estimated value per acre, and total value of reservations. * * *

"Allegany, 30,460 acres; average price per acre, \$15; total value, \$457,035.

"Cattaraugus, 21,680 acres; average price per acre, \$25; total value of reservation, \$542,000.

"Total value Allegany and Cattaraugus reservations, \$999,033."

It will be seen, therefore, that the value fixed by the Census Bureau is based upon what the lands are worth among the Indians; that is, considering the title one Indian can give to another, but is much less than the actual value of the said lands, or lands of a like character outside the reservations.

By reference to the Census Bureau's report of 1890 in regard to farms, homes, and mortgages in the State of New York (No. 54, p. 5), it will be seen that the mortgage indebtedness on farm lands in that State averages \$22.06, and that the average for which land is mortgaged in Erie County (one of the counties in which the Cattaraugus Reservation is partly situated) is between \$37 and \$38 per acre. The basis for lending money on farm lands in New York State, as set forth by the Census Bureau, is a little less than 44 per cent of their value, their capacity for producing revenue being an important item for consideration in their valuation. With these facts as a basis of calculation, we find that the average price for farm lands throughout the State of New York is \$50 per acre, and in Erie County slightly in excess of \$86 per acre.

The foregoing is the best evidence as to the value of the lands in these reservations owned by the Ogden Land Company. The average value of the Indians' right of occupancy in the lands of the Allegany and Cattaraugus reservations, as estimated by the Census Bureau, is \$19 per acre; and by the calculation hereinbefore made, based upon farm mortgages, the average value of farm lands throughout the State, taking the lowest estimate, is \$50 per acre. Thus, taking the estimated value of the Indians' title per acre, and the average value per acre of farm lands in the State, we find the difference to be \$31 per acre; and this figure might be fairly claimed to represent the value of the Ogden company's title.

Under the treaty of 1857 with the Tonawanda Indians (11 Stat., 735) the title of the Ogden Land Company to the lands within the Tonawanda Reservation was purchased, the amount paid therefor being \$20 per acre. The lands embraced within the Tonawanda Reservation are not as good for agricultural or other purposes as those within the Allegany and Cattaraugus reservations, and when we recall the fact that thirty-eight years ago the Ogden Land Company's title to the Tonawanda Reservation was worth \$20 per acre and paid for at that rate, and when we further consider the natural increase of real estate values since that time, it would seem to demonstrate to any reasonable mind that the difference between the estimated value of the Indians' title of occupancy and the value of farm lands of like character held in fee is a fair and reasonable estimate of the worth of the Ogden company's title to the lands in question, viz, \$31 per acre.

C. A. MAXWELL.

NEW YORK, *January 25, 1895.*

DEAR SIR: Mr. Edwin D. Chadick, of Suffern, N. Y., is authorized to enter into negotiations with you for the sale of the right, title, and interest of the Ogden Land Company, so called, in and to the lands embraced within the limits of the Allegany and Cattaraugus reservations in this State, the basis of sale being \$10 per acre, subject to my ratification.

Very respectfully,

CHARLES E. APPLEBY,
Trustee Ogden Land Company.

HON. HOKE SMITH,
Secretary of the Interior, Washington, D. C.

WASHINGTON, D. C., *January 30, 1895.*

DEAR SIR: In accordance with the suggestion made at our interview this morning I, as the representative of the Ogden Land Company, so called, hereby submit a proposition on behalf of said trustee and company, so called, for the sale of the right, title, and interest in and to the lands embraced in the limits of the Allegany and Cattaraugus reservations in the State of New York; the said proposition being the sale of the Ogden title to the lands in question for the sum of \$10 per acre, this being in strict accord with the letter authorizing me to act for the trustee and company, so called, the original being annexed hereto.

It is not my purpose or desire to enter into any lengthy argument upon the merits of this case. I am not an attorney and not competent to present the matter in

its true legal aspect, and must therefore be content with pointing out some indisputable facts worthy of the most careful consideration.

It is nowhere disputed that should the Seneca Indians cease to occupy these lands they (the lands) would revert to the Ogden Land Company, so called. Nor is it questioned that if the Senecas became citizens of the United States that their lands would revert to the Ogden Land Company. If they endeavor, without becoming citizens, to dissolve the tribe, and attempt to take the lands in severalty, the lands, in that event, revert to the Ogden Land Company.

These are not mere assertions, made by a party in interest, but are facts sustained by an unbroken line of decisions of the courts, and also by reports of legislative committees charged with the investigation of this matter.

Assuming the facts to be as stated, what logically follows such a condition of things? First, the United States Government is unable to carry out its declared policy of making citizens of all the Indians as rapidly as possible, since the Senecas will not consent to citizenship while it involves their ejection from the lands they now occupy; allotment is impracticable for the same reason; and, last but by no means least, the progress of the Senecas toward a higher civilization and improved morals is effectually barred, neither the tribe nor the individual members of it having any incentive to effort in any direction. No man will sow for another to reap. No community will seek to progress when the only result of such effort bids fair to be financial ruin and social annihilation. If the General Government, as we all believe, is in good faith trying to ameliorate the condition of the Indians, and to make them worthy of citizenship, I respectfully submit that this is not the way to set about it so far as the Senecas are concerned.

It is not necessary to argue at this or any other time the causes which have produced the present situation. The facts are as I have stated them, and the condition of the Indians, by the reports of the agents of the General Government, is deplorable as to the present and almost hopeless as to the future. The only effectual aid that can be extended them is to purchase these lands and extinguish the cloud upon their title. That accomplished the Government can make them citizens and allot their lands in severalty with the certainty that good results will follow.

The present position of the Senecas is certain to work additional evil to the tribe if longer continued. They are hemmed in on all sides by an aggressive, highly civilized community; they can expect no favor or protection from such neighbors so long as they maintain their tribal system, and yet, if they abandon that and become citizens of the United States and of the State of New York, they lose the last acre left to them upon the earth. Is it not a humane, reasonable, and sound policy to place these people upon a different and sure footing?

In conclusion allow me to hope that some prompt and effective method may be devised by which this vexed and pressing question may be settled to the satisfaction of all concerned.

With this end in view I have requested our counsel to submit a brief memorandum of what seems to be the quickest way of solving the problem. The document alluded to will be submitted by them during the day.

Very respectfully, your obedient servant,

EDWIN B. CHADICK,

Representing Trustee and Ogden Land Company.

Hon. HOKE SMITH,
Secretary of the Interior.

BOARD OF INDIAN COMMISSIONERS,
Alandar, Mass., September 22, 1892.

DEAR SIR: I have received a letter from Agent Ferrin, of Salamanca, N. Y., written, he says, at your suggestion, proposing that I should try to ascertain from the agent or trustee of the Ogden Land Company the terms upon which they would part with their interest in the Seneca lands. Passing through New York City this week I therefore stopped and saw Mr. Appleby, stating to him that I had myself urged the cancellation of this claim by purchase, and would therefore be glad to know what could be done. He spoke with apparent candor, and said the company were very desirous of making such a sale. As to price, he said he estimated the land, of which I think he said there were about 56,000 acres, to be worth \$40 and \$50 per acre, not taking Salamanca and other populous settlements into the account. But he said their price was based on \$5 per acre for their fee, which is subject to the Indians' right of occupancy. This would mean about \$280,000. Upon being pressed further, he said they would take \$200,000, and would not take less. This, I believe, is the same price as they consented to accept years ago, when a similar negotiation

was set on foot. He added that their shares are much broken up by subdivision of inheritance, and he might not be able to get the assent of all the holders to that price; but I fancy that by judicial or other means the general consent will be procured to anything agreed upon by the trustee.

Your favor relating to Capt. Leroy Brown was duly received.

I remain, yours, very truly,

PHILIP C. GARRETT.

Hon. T. J. MORGAN,
Commissioner of Indian Affairs.

UNITED STATES INDIAN SERVICE,
New York Agency, January 7, 1895.

SIR: I have the honor to transmit to you herewith my report according to your instructions contained in office letter of November 15, 1894, as explained by office letter of November 24, 1894.

I have endeavored by correspondence and inquiry to get the data from which to make this report ever since your instructions were forwarded to me, and have not been able to complete them so as to make even an approximate report until now.

Your advices were that nothing but expenses would be allowed. It has been difficult for me to ascertain even approximately the value of railroad property upon the reservations, or even approximately the number of miles of track, including sidings, etc. I therefore employed the tax and land agent of one of the railroads, who necessarily had the data as to the other roads, or a part of it, to compile a statement for me. He had to make some measurements and be to some little expense. He has rendered his bill to me, and I have paid him for that service the sum of \$25, and there is no other expense attached to this matter. If that is not allowed at the office it will be no great loss to me, and it would have taken considerable time and considerably more expense than this for me to have ascertained the facts embodied in my report.

Very respectfully,

J. R. JEWELL, *Agent.*

The COMMISSIONER OF INDIAN AFFAIRS.

UNITED STATES INDIAN SERVICE, NEW YORK AGENCY,
Salamanca, N. Y., January 7, 1895.

SIR: In compliance with your instructions contained in office letter dated November 15, 1894 (Land 34513-1894), and also following out your instructions contained in office letter dated November 24, 1894 (Land 45724-1894), I have the honor to submit the following statement of facts so far as I have been able to obtain them by correspondence and as well-directed inquiry as was practicable:

First. The names of towns (or, as they are called in the act of 1875, "villages") on the Allegany and Cattaraugus reservations are as follows, viz: Vandalia, on the Allegany Reservation; Carrollton, on the Allegany Reservation; Great Valley, on the Allegany Reservation; Salamanca, on the Allegany Reservation; West Salamanca, on the Allegany Reservation; Red House, on the Allegany Reservation.

Second. The number of lots in each of these villages can not be ascertained without a great deal of investigation. The number of acres in each of these villages I can give approximately.

The approximate number of acres in the several villages heretofore mentioned, respectively, are as follows:

	Acres.
Vandalia, about.....	240
Carrollton, about.....	2,200
Great Valley, about.....	260
Salamanca, about.....	2,000
West Salamanca, about.....	750
Red House, a small strip of land of about.....	40

Third. The approximate value of improvements in each village, respectively, is as follows, viz: Vandalia, \$8,000; value of lots, \$6,000 outside of railroad property. Carrollton, \$30,000; value of lots, \$25,000. Great Valley, \$20,000; value of lots, \$20,000. Salamanca, improvements aside from railroad property, \$1,200,000; value of lots, \$300,000. West Salamanca, improvements, \$50,000; value of lots, \$50,000. Red House, improvements, \$10,000; value of lots, \$8,000.

Fourth. The assessed and market value of lands surrounding the Allegany and Cattaraugus reservations are approximately as follows, viz: On the north side of the Allegany Reservation, market value, \$8 per acre; assessed value, \$4 per acre. On the south side of the Allegany Reservation, market value, \$4 per acre; assessed value, \$2 per acre.

The lands surrounding the Allegany Reservation from Salamanca west to the end of the reservation are of but little value, especially the lands upon the south side of the Allegany River.

The Allegany Reservation includes the valley of the Allegany River, about 1 mile in width and occupying nearly all of the fertile lands from one end of the reservation to the other. The lands surrounding the reservation from the eastern end to Salamanca are of more value than the lands surrounding said reservation from Salamanca to the other end of it. The lands surrounding this reservation, for the most part, are mountainous and only valuable for the timber, the greater part of which has been taken off.

The reservation lands, if cultivated and improved, would be very valuable lands, as they are as fertile as any lands in the State with proper cultivation and improvement. The most of these lands on the reservation have been allowed to grow up to brush, alders, second-growth timber, and such other vegetable growth as are indigenous to low and fertile lands.

Cattaraugus Reservation.—The lands surrounding the Cattaraugus Reservation are generally valuable lands. They are within the grape belt and fruit-growing section of western New York, and the most of them nicely improved and cultivated. Market value of lands surrounding the Cattaraugus Reservation (average), \$40 per acre; assessed value, \$20 per acre.

The lands upon the Cattaraugus Reservation, a large portion of them, are equally valuable, if cultivated and improved, as the lands surrounding it; but a large portion of the lands on the Cattaraugus Reservation have been allowed to grow up to brush and second-growth timber, and have been of but little benefit to the Indians.

Fifth. The names of railroads on each reservation, the distance each traverses the reservations, respectively, and the value of the property of each, respectively, are as follows, viz:

ALLEGANY RESERVATION.

New York, Lake Erie and Western R. R.:	Value.
9 miles of main track	\$144, 000
6 miles of second main track	72, 000
15½ miles of siding	124, 500
Buildings, coal trestles, and telegraph line	110, 000
	<hr/>
	450, 000
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Buffalo, Bradford and Pittsburg R. R. (operated by the New York, Lake Erie and Western R. R.):	
2½ miles of main track	25, 000
1½ miles of side track and telegraph line	13, 000
	<hr/>
	38, 000
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New York, Pennsylvania and Ohio R. R. (operated by the New York, Lake Erie and Western R. R.):	
11 miles of main track	176, 000
11½ miles of side track, and buildings	95, 000
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	271, 000
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Buffalo, Rochester and Pittsburg R. R.:	
7½ miles of main track	96, 000
Side tracks and buildings	25, 000
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	121, 000
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Allegany and Kinzua R. R.:	
$\frac{3}{4}$ mile main track	3, 600
$\frac{1}{4}$ mile side track	1, 200
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	4, 800
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ALLEGANY RESERVATION—continued.

South Vandalia and State Line R. R.:	
½ mile main track	\$3, 000
¼ mile siding	1, 000
	4, 000
Western New York and Pennsylvania R. R.:	
29½ miles main track	177, 000
Sidings and buildings	22, 500
	199, 500
Total value of railroad property upon the Allegany Reservation ... 1, 088, 300	

CATTARAUGUS RESERVATION.

Western New York and Pennsylvania R. R.:	
1 mile 1,470 feet main line	18, 000
½ mile side track and depot	3, 500
	21, 500
New York, Chicago and St. Louis R. R.:	
1 mile 1,470 feet main line	25, 500
Siding and tank	2, 500
	28, 000
Lake Shore and Michigan Southern R. R.:	
1½ miles main double track	55, 000
Side tracks, buildings, and gravel pit	10, 000
	65, 000
Total value of railroad property on Cattaraugus Reservation 114, 500	

Sixth. The result of the election upon the allotment question.

The election was held upon the Cattaraugus Reservation on the 16th day of January, 1894, a petition having been circulated by the Women's Christian Temperance Union, composed of Indian women. The result of the election was upon a division of the house, 40 in favor of citizenship and a division of lands, and 200 against it.

I have not been able to procure any of the resolutions adopted by the Woman's Christian Temperance Union composed of Indian women, but upon inquiry I have learned that that society is about evenly divided upon that question.

No election or expression has been had upon the Allegany Reservation upon this question.

Seventh. The white population in each of the villages:

Vandalia	200
Carrollton	500
Great Valley	500
Salamanca	4, 000
West Salamanca	500
Red House (in village)	25
Outside of village on the reservation	200

All of which is respectfully submitted.

J. R. JEWELL,
United States Indian Agent.

The COMMISSIONER OF INDIAN AFFAIRS.

55 LIBERTY STREET,
New York, November 10, 1894.

DEAR SIR: In reply to your communication of October 6, 1894, I will state that there is not and never was, any corporation called "The Ogden Land Company."

The deed of trust of February 8, 1821, referred to, in the accompanying abstract of title, creates all the estates, rights and interests which have been commonly designated as "The Ogden Land Company."

There is no capital stock—the number of shares or interests in the trust estate was twenty—the shares have no face value—each share represents one-twentieth of the trust estate and its proceeds.

The twenty shares or interests, so far as I have any knowledge or information, are owned as follows, viz:

By the estate of—	Shares.
Joshua Waddington, deceased.....	4
Thomas Ludlow Ogden, deceased.....	2
Abraham Ogden, deceased.....	1
Peter Schermerhorn, deceased.....	1
Duncan P. Campbell, deceased.....	1
Robert Bayard, deceased.....	1
Benjamin W. Rogers, deceased.....	2
Louisa Troup, deceased.....	1
Charlotte Brinckerhoff, deceased.....	1
Robert L. Tillotson, deceased.....	1
James Wadsworth, deceased.....	1½
Ogden and Murray, deceased.....	½
Charles E. Appleby.....	1
“Shaw & Wilson shares,” now held by the Bank of England.....	2
	20

There are no debts or admitted liabilities of the trust. The assets consist of the interest of the trustee in the Cattaraugus and Allegany Indian reservations, and a similar interest in the Tuscarora Reservation in Niagara County, N. Y., containing 1,920 acres of land, and certain securities and funds of the value of less than \$20,000.

The accompanying abstract of title shows the continued existence of the trust to the present time and the source of my title to the trust property.

Respectfully, yours,

CHARLES E. APPLEBY, *Trustee.*

FRANK C. ARMSTRONG,
Acting Commissioner of Indian Affairs.

