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Ogden Land Company.

54TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 154.

OGDEN LAND COMPANY.

FEBRUARY 25, 1897.—Laid on the table and ordered to be printed.

Mr. CALL presented the following

MEMORIAL OF THE SENECA NATION OF INDIANS, PROTESTING AGAINST THE PROPOSED PURCHASE BY THE SECRETARY OF THE INTERIOR OF THE TITLE OR INTEREST OF THE OGDEN LAND COMPANY, SO CALLED, IN AND TO THE LANDS EMBRACED WITHIN THE ALLEGANY AND CATTARAUGUS INDIAN RESERVATIONS, IN THE STATE OF NEW YORK.

EXECUTIVE DEPARTMENT,
SENECA NATION OF INDIANS,
Salamanca, N. Y., ——— ——, *1897.*

Know all men by these presents:

That the Seneca Nation of Indians in council assembled have duly made and appointed W. C. Hoag, A. L. Jimerson, Frank Patterson, W. W. Jimerson, and W. S. Kennedy to be our delegates to go to Washington, D. C., on business for the said Seneca Nation of Indians, and especially to remonstrate against the passage by Congress of the proposed amendment in the appropriation bill H. R. 10002 intended to be proposed by Mr. Hill, of New York, that the Secretary of the Interior be authorized and directed to purchase the title or interest of the Ogden Land Company, so called, in and to the lands embraced within the Allegany and Cattaraugus Indian reservations, in the State of New York, for which purpose the sum of $270,345 is appropriated, said sum to be paid to said Ogden Land Company or its legal representatives; and the amount thereby appropriated shall be reimbursed by the United States out of any funds of the Indians. Now, as that may hereafter come under the control of the United States, we give them full power and authority in the matter, with full confidence in them to represent us and make known our wishes.

The foregoing was duly adopted in open council by a unanimous vote of the Seneca Nation council, assembled at Shongo Court-House, on the Allegany Reservation, this 17th day of February, 1897.

In testimony whereof we have caused these presents to be signed by our president and attested by our clerk, and have caused the great seal of our nation to be hereunto attached the day last above named.

W. C. HOAG,
President of the Seneca Nation of New York Indians.

Attested:
A. L. JIMERSON,
Clerk Seneca Nation of New York Indians.

DEPARTMENT OF THE INTERIOR,
U. S. INDIAN SERVICE, NEW YORK AGENCY,
Olean, N. Y., February —, 1897.

To whom it may concern:

I hereby certify that W. C. Hoag, named in the annexed record of a meeting of the council of the Seneca Nation of Indians, is president of said nation, that A. L. Jimeson is the clerk of said Seneca Nation of Indians, that Frank Patterson and W. W. Jimeson are councillors of the said Seneca Nation, and that W. S. Kennedy is surrogate of the Seneca Nation of Indians on the Cattaraugus Reservation.

I also certify that, as I am reliably informed, the said W. C. Hoag, A. L. Jimerson, Frank Patterson, W. W. Jimerson, and W. S. Kennedy were duly chosen to represent the Seneca Nation of Indians as delegates to state the wishes of said Indians with reference to the proposed purchase of the alleged title of the Ogden Land Company (so called) by the Government, and upon the question of the proposed allotment of the lands of said Indians in severalty and making said Indians citizens, as provided by the amendment to the appropriation bill (H. R. 10002) intended to be proposed by Mr. Hill, of New York, in the Senate.

I also certify that, as I am informed, W. C. Hoag, A. L. Jimerson, Frank Patterson, W. W. Jimerson, and W. S. Kennedy were chosen as such delegates at a regular meeting of the council of said Seneca Nation of Indians.

J. J. JEWELL,
United States Indian Agent.

To the Honorable Senate and House of Representatives of the United States in Congress assembled:

We, the undersigned, delegates of the Seneca Nation of Indians, would respectfully memorialize your honorable body against the proposed amendment to the Indian appropriation (H. R. 10002) intended to be proposed by Mr. Hill, of New York:

That the Secretary of the Interior be, and he hereby is, authorized and directed to purchase the title or interest of the Ogden Land Company (so called) in and to the lands embraced within the Allegany and Cattaraugus Indian Reservation in the State of New York, for which the sum of two hundred and seventy thousand three hundred and forty-five dollars is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, said sum to be paid to said company or its trustees or legal representatives upon the execution and delivery of a deed or deeds of conveyance of said lands to the United States satisfactory to the Secretary of the Interior, and the amount hereby appropriated shall be reimbursed to the United States out of any funds of the said Indians now, or that may hereafter come, under the control of the United States, or that may hereafter arise from the sale or leasing of the landswithin said reservations.

This intended legislation created a great disturbance among the people of the Seneca Nation of Indians, and the council of said nation took immediate consideration on the subject and concluded to oppose the said intended amendment by said Mr. Hill, of New York, for the following reasons:

Your memorialists believe such act of legislation on the part of the Congress of the United States inconsistent with the agreement and understanding with our forefathers in pursuance of article 3 of the treaty proclaimed January 21, 1795, where the following clause is mentioned: "Now, the United States acknowledge all the land within the said reservation to be the property of the Seneca Nation of Indians, and the United States will never claim the same nor disturb the Seneca Nation of Indians, nor any of the Six Nations residing thereon and united with them in the free use and enjoyment thereof, but it shall

remain theirs until they choose to sell the same to the people of the United States, who have the right to purchase." The treaty is as binding upon the Congress of the United States as any treaty with a foreign power.

In regard to the Ogden Land Company (so called) there never was a corporation called "The Ogden Land Company." There is no capital stock. There are twenty shares or interests in the trust estate. They have no face value, each share representing one-twentieth of whatever may be the value of the right to buy the lands. An effort was made in the Fifty-third Congress to amend the Indian appropriation bill by inserting a provision for the purchase by the Government of the alleged Ogden Land Company's claim, and then compel the Indians to reimburse the Government. The amendment was made in the Senate, but after prolonged discussion in the House was rejected. It was believed that the passage of the amendment would be a gross act of injustice toward the Indians.

The Hon. Charles Daniels, for many years a justice of the supreme court of his State and a jurist of the highest standing, was thoroughly familiar with all the facts concerning the claim of the Ogden Land Company. He said in the House of Representatives:

> Now, Mr. Speaker, all that the Ogden Company have in connection with this matter is simply the right to buy out the Indians in case the Indians are willing to sell. They have no further authority over the property in any shape or form, and the Supreme Court of the United States, in 5 Wallace, decided that the Indians were owners of the property and no person had the right to interfere with them or force an exchange of property unless they were willing to sell. It was simply the option to buy the lands of the Indians, and the Indians refused to sell. From the time when the treaty was first made with them—and they were cheated by the treaty—the Ogden Company were really required to and did convey back to the Indians these two reservations because of the fact that they had been cheated; and I repeat, from that time to this the Indians have been unwilling to make any agreement with these people or to part with their title under any circumstances.

Mr. Van Voorhis, one of the most eminent lawyers in western New York, said to the House of Representatives:

> I call attention to a decision by the highest court of the State of New York, the court of appeals (in the case of Fellows *v.* Lee, 5 Denio, 628), to the effect that the title of these Indians to these lands is original, absolute, and exclusive.

And your memorialist believes that the decision of the court of appeals in the State of New York and the Supreme Court of the United States settles the question beyond all doubt that the title in these two reservations is in the Seneca Nation of Indians absolutely, and that the Indians would acquire nothing by the payment of this $270,345.

This Ogden Company, now reduced to a single trustee, named Appleby, residing in New York, claiming to hold in trust a mere abstract right, has been watching a hundred years or thereabouts to chisel the Seneca Nation of Indians out of their lands. Not being able to do it, they come and ask Congress to compel the poor Indian to give them $270,345, and your memorialist calls the attention of your honorable body to the annexed report of the nature, extent, and effect of the alleged claim of the Ogden Land Company.

Therefore your memorialist respectfully and earnestly prays before your honorable body that no such legislation or amendment be made in the aforesaid Indian appropriation bill as is intended to be proposed by Mr. Hill, Senator of New York.

W. C. HOAG,
FRANK PATTERSON,
ELI T. JIMERSON,
WILLIAM W. JIMERSON,
A. L. JIMERSON,
Seneca Indian Delegation.

FEBRUARY 7, 1896.

SIR: Having been requested to investigate and report to you the nature, extent, and effect of the alleged claim of title of the Ogden Land Company in and to the Allegany and Cattaraugus Indian reservations, and possibly a small portion of the Tuscarora Reservation, in the State of New York, I respectfully report that the alleged claim of the Ogden Land Company arises out of the following facts, viz:

Massachusetts claimed lands embraced in the claim of the Ogden Land Company under a charter to the Plymouth Company from Charles II, 1628–29.

New York claimed the same lands under a grant from the Duke of York, March 12, 1664.

The two States appointed commissioners to settle the disputed claims. The commissioners met at Hartford, Conn., and a settlement was effected December 16, 1786. By that settlement Massachusetts ceded to New York all claims of government, sovereignty, and jurisdiction of the lands in question. New York ceded to Massachusetts and its grantees the right of preemption from the natives and all rights of ownership, except sovereignty, etc., the State of Massachusetts to have the right to grant the right of preemption to any person or persons, which persons shall have good right to extinguish by purchase the claim of the natives. May 11, 1791, the State of Massachusetts granted to Robert Morris the same rights and ownership as ceded by New York to Massachusetts, being the right to extinguish by purchase the title of the natives. That is to say, the State of Massachusetts made a deed purporting to convey the same rights and ownership as ceded by New York to Massachusetts, being the right to extinguish by purchase the title of the natives, to Robert Morris.

The only alleged claim, right, or title in and to these lands occupied by the Seneca Nation of Indians subsisting in the Ogden Land Company is derived wholly through several mesne conveyances from Robert Morris, under the deed from Massachusetts to Robert Morris, purporting to convey the preemption right to extinguish by purchase the title of the natives.

One of the questions involved is the effect of the deed from the State of Massachusetts to Robert Morris and what title, right, or interest it conveyed, and is probably the vital question as to the extent of the claim of the Ogden Land Company, inasmuch as the Ogden Land Company derive their alleged title or claim through and under the deed from Massachusetts to Robert Morris.

The lands in question are now occupied by the Indians, and consist of the Allegany and Cattaraugus reservations, and possibly a small part of the Tuscarora Reservation, in the State of New York.

For a history of this alleged title and the origin of the same, and the status of the Ogden Land Company, its origin, formation, and legal status, see the letter of the honorable Secretary of the Interior addressed to the President of the Senate, dated February 1, 1895, and particularly the brief of the Hon. C. A. Maxwell, contained therein, commencing at page 24. Also see the case of the Seneca Nation of Indians *v.* Christie, 49 Hun. (New York State Reports), 524. Also, see the same case, 126 New York Reports (Court of Appeals), page 122.

It will be seen from the transactions between the States of New York and Massachusetts, and the several conveyances under which the Ogden Land Company obtained its alleged claim or title, that the alleged claim or title is the right to extinguish, by purchase from the Indians, the Indian title.

The real question, therefore, is: What right, title, or interest did the State of Massachusetts, by said deed, convey to Robert Morris in and to the lands occupied by the Indians within the sovereignty and jurisdiction of the State of New York?

The deed purported to convey the preemptive right to extinguish the title of the Indians by purchase. The question, therefore, is: What is the preemption right to extinguish by purchase in the Ogden Land Company? What does it amount to? What is the extent of that claim or alleged right? Has the Ogden Land Company any vested right or interest in said lands?

Preemption in the abstract and in common law is the first buying of a thing—a privilege formerly enjoyed by the Crown of buying up provisions and other necessaries, by the intervention of the King's purveyors, for the use of his royal household at an appraised valuation in preference to all others, and even without the consent of the owner. (Burrill's Law Dictionary, vol. 11, 326; 1 Blackstone's Commentaries, 287.)

Webster defines preemption to be the act or right of purchasing before others, as the privilege or prerogative formerly enjoyed by the King of buying provisions for his household in preference to others. This was abolished by 12 Charles 11. In American law, a privilege enjoyed by Government in relation to Indian lands. Congress has the exclusive right of preemption to all Indian lands lying within the territory of the United States. (Burrill's Law Dictionary, supra; 8 Wheaton, 543; 1 Kent's Commentaries, 257.)

Preemption is defined in Bouvier's Law Dictionary to be the right of a nation to detain the merchandise of strangers passing through her territory or seize in order to afford her subjects the preference of purchase. (1 Chitty's Common Law, 103; 2 Sherwood's Blackstone's Commentaries, 287.)

Preemption right is defined by Bouvier to be the right given to settlers upon the public lands of the United States to purchase them at a limited price in preference to others. It gives a right to the actual settler, who has entered and occupied without title, to obtain a title to a quarter section at the minimum price fixed by law, upon entry in the proper office and payment, to the exclusion of all others. It is an equitable title, and does not become a title at law to the land until entry and payment. (See Bouvier's Law Dictionary, 361, and cases cited; 3 Washburn on Real Property, 532, marginal paging.) And though it was held in Illinois that it was a right which might be transferred by deed as property (9 Illinois, 454), it gave merely a right of occupancy and a right to acquire the legal title. A preemptive right confers no title until the holder of it makes an entry and pays for the land. (3 Washburn on Real Property, supra; 15 Illinois, 131; 15 Wallace, 77 and 94; 9 Wallace, 187.)

It follows that there is no title, either legal or equitable, in the person who has the right, unless an entry is made and he is in possession under it.

It may be said that there is no preemptive right except in the sovereign. Indeed sovereignty, eminent domain, and preemption are inseparable. From the very nature of the right an individual can not exercise it, except with the consent of the sovereign. The term preemption is nearly, if not quite, synonymous with "eminent domain." At any rate it is so closely allied as to be inseparable from it.

The courts of the State of New York have incidentally passed upon

this question in several cases; but in most of them, if not in all of them, the direct question herein involved was not in question. In most of them remarks have been made by the learned judges, hereinafter referred to, which were "obiter." In no case which has been decided by the courts of New York has the question been passed upon as to what right or title the Ogden Land Company have in Indian lands where the Ogden Land Company have not made an agreemnt with the Indians, paid the purchase price, and taken possession, with the consent of the agents of the State of New York and in the presence of a commissioner appointed by the United States, and with the approbation and consent of the United States, except in one case where the commissioner of the United States was not present, and in that case the transaction was afterwards validated by an act of Congress, hereinafter referred to.

I can find no decision of any court passing directly upon the question as to what right or title the Ogden Land Company have in the lands of the Indians that are now occupied by the Indians, or would have in any lands occupied by the Indians without an agreement to purchase, with the consent of the agents of the State of New York and with the approbation of the General Government.

The only cases in which any right or title of the Ogden Land Company has been recognized by the courts are cases in which it has been able to secure an agreement from the Indians for a purchase, with the consent of the agents of the State of New York and with the approbation and ratification of the United States.

It is held in 5 Denio, 628, that the title of the native Indians to their lands is an absolute ownership; that the right of preemption of lands in the western part of the State of New York, ceded to Massachusetts by the convention of 1786, was simply a right to purchase the lands from the Indians when they chose to sell them.

The case last cited was an action for waste upon the Indian lands, in the form of an action of trover, for timber cut. The plaintiffs claimed title under the preemptive right secured to the State of Massachusetts by the convention made between Massachusetts and New York in 1786. This case was in the court of errors of the State of New York. Senators Barlow, Porter, Putnam, and Spencer delivered written opinions affirming the judgment in that case, which was a judgment for the defendant, and upon the ground sustained in the Supreme Court, that the Indian title to the lands was an absolute fee, and that the preemption right ceded to Massachusetts was simply a right to acquire by purchase from the Indians their ownership of the soil whenever they should choose to sell it.

In Ogden *v.* Lee (New York Reports, 6 Hill, 546), the supreme court held, among other things, 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 the tenants of the State or of its grantees. They hold under their own original title. (See also Strong and Gordon, Chiefs of the Seneca Nation of Indians, *v.* Waterman, 11 Paige, 607.)

In the case of the New York Indians (5 Wallace, 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 stipulation, they are to be regarded as still in their ancient possessions and are under their original title, and entitled to the undisputed enjoyment of them.

To the same effect, see Fellows *v.* Blacksmith, 19 Howard, 366.

Judge Nelson in the case last cited also says:

All agree that the Indian right of occupancy creates an indefeasible title to the reservation 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.

The concensus of opinion would seem to be that the Indians have an indefeasible right and title to the occupancy of their lands reserved to them and their heirs forever, subject only to the right of preemption when they choose to sell. Preemption and sovereignty being inseparable, it is difficult to see what tangible interest the Ogden Land Company have in these lands. In my opinion it is clear that the Ogden Land Company have no vested right in these Indian lands. If the Indians choose to sell their title, and the Ogden Land Company purchase upon the terms made by the Indians, and the sale is made with the consent of the agents of the State of New York, and in the presence of a commissioner of the United States Government, and ratified by the United States Government, and the terms of sale completed, then the Ogden Land Company would get a title, and not otherwise.

It is difficult to see how a sovereign State, having the right of preemption, can alien the same to an individual, although authorized so to do by the terms of the cession to the sovereign. That is to say, it is difficult to see what measure of title the alienee of the sovereign would take, being unable to acquire any vested interest without the intervention or rather consent and ratification of the agents of the State of New York, and particularly the ratification of the General Government.

The State of Massachusetts owned the preemptive right to purchase of the Indians, but surrendered the sovereignty, jurisdiction, and government to the State of New York. The lands in question lie wholly within the State of New York. The Government of the United States is the guardian of all the Indians within the domain of the United States, and the wards of the Government can not sell their lands without its consent.

Congress has the exclusive right of preemption to all Indian lands lying within the territory of the United States. Upon the doctrine of the court in the case of Fletcher *v.* Peck (8 Wheaton, 543), the United States own the soil as well as the jurisdiction of these lands. (See also 6 Cranch, 142 and 143; 1 Kent's Commentaries, 258, marginal paging.)

It is claimed that Massachusetts obtained the preemption right to have these lands before the adoption of the Federal Constitution, and therefore obtained a title to said right independent of the General Government. Massachusetts, however, did not convey to Robert Morris until after the Federal Constitution had been adopted and ratified by Massachusetts.

It has been held that subdivision 3, of section 8, of article 1 of the Constitution of the United States, providing "That Congress shall have the power to regulate commerce with foreign nations and among the several States and with the Indian tribes," does not apply to this right of preemption. (See Seneca Nation *v.* Christie, 126 New York, 122.)

It is, however, apparent from this decision that no purchase can be made of the Indians of their lands by anyone except in the presence of the lawful agent or agents of the State who may be present at a treaty held with the Indians under the authority of the United States, in the presence and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, and to

propose and adjust with Indians the compensation to be made for their claims to lands within such State which shall be extinguished by treaty. It is not necessary that a treaty for the purpose shall be one between the United States and the tribe from which the purchase is made; it is sufficient that the purchase is made and a treaty held under the authority of the United States, and in the presence and with the approbation of its commissioner. (See Seneca Nation *v.* Christie, 126 New York, supra, and the opinion of Andrews, J.)

In the case last cited, which was in the court of last resort in the State of New York, it was held that although the sale to Ogden by the Seneca Nation was not made in the presence and with the approbation of the commissioners of the United States, that it was afterwards validated by an act of Congress of 1846.

Section 12 of the act of 1802, known as "the Indian intercourse act," invalidates any purchase of land from Indians unless made by treaty or convention entered into pursuant to the Constitution, and applies simply to purchases of Indian lands owned by the United States, for the sale of which its consent is indispensable. The proviso in said provision making it "lawful for the agent or agents of any State who may be present at a treaty held with Indians under the authority of the United States, in the presence or with the approbation of the commissioner or commissioners of the United States appointed to hold the same, to propose and adjust with the Indians the compensation to be made for their claims to lands within such State which shall be extinguished by treaty," was intended to except from the scope of the first part of section dealings with Indian tribes for the purchase of their rights to lands within the State of which the State owned the preemptive title, and it does not require that the treaty for that purpose shall be one between the United States and the tribe from which the purchase is made. (See 126 New York, 122, supra, and the opinion of Andrews, J., and cases cited.)

The State of New York owns no preemptive title, neither does the State of Massachusetts. It will be seen from the case last cited that even in a case where the State owns the preemptive title, the consent of its agents and the presence of the commissioner of the United States, and the approbation of the United States is indispensable to a sale, although in such a case no formal treaty between the United States and the Indian tribe is requisite to a perfect title.

It is therefore clear to me from the authorities that whoever may purchase from the Indians, it must be a purchase made with the authority of the agents of the State which has jurisdiction and sovereignty of the Indian lands, under a treaty or convention with the Indian tribe, under the authorty of the United States, and in the presence of and with the approbation of its commissioner.

In my opinion, the Ogden Land Company, as the alienee of the State of Massachusetts, received no substantial right or claim by such grant or conveyance. It appears from the letter of the Honorable Secretary of the Interior to the President of the Senate, before referred to, that it is contemplated that the Indians will at some time be made citizens and their lands allotted to them in severalty by the General Government. This, in my opinion, would evaporate all alleged claims of the Ogden Land Company to their Indian lands.

It was remarked by Judge Denio, incidentally, in the case of Fellows *v.* Dennison, Comptroller (23 New York Reports, 420), that the alleged claim of the Ogden Company is a "technical fee." I can not assent to this. It is either a fee or it is not a fee. I know of no such thing in

law as a "technical fee," any more than there can be a "technical" African or a "technical" Caucasian.

In any event, the Indians can not sell their lands without the consent and approbation of the General Government to anyone, and the alleged right of the Ogden Land Company is the mere naked right to purchase from the natives when it can induce them to agree to a sale, with the consent of the agent of the State of New York, and the contract being made in the presence of a commissioner or commissioners of the United States and with the approbation of the United States. Anyone else can purchase if the agents of the State of New York consent, and the sale is made in pursuance of the provisions of the said Indian intercourse act. The only advantage the Ogden Land Company can claim (and this, in my opinion, is their sole right or alleged title) is that, under the circumstances, neither the agents of the State of New York or the General Government would consent to or approve of a purchase by any other than the Ogden Land Company.

If any other than the Ogden Land Company should purchase of the Indians, the purchase must be made under the same consent and authority and for a fair market value. This is the only right the Ogden Land Company has. In other words, the Ogden Land Company relies upon the General Government and the State to approve of any purchase it may make under the provisions of the Indian intercourse act of a purchase made by anyone else under the same provisions. The Ogden Land Company may claim that under the circumstances good faith would require the State of New York and the General Government so to do. This is the whole scope and extent of the alleged claim of the Ogden Land Company, in my opinion.

But the Indians, it is conceded, are entitled to occupy their lands to them and their heirs forever, which is a fee simple absolute, qualified only by the bare and naked right of the Ogden Land Company to purchase, depending for its enforcement and completion upon a satisfactory agreement to purchase from the Indians, with the consent and approbation of the General Government and of the State; paying a full value therefor and relying upon the expectation that the State and General Government would not approve or consent to a sale by the Indians to another upon the same terms.

The reception by the General Government of the consummated and perfected sale of Indian lands referred to in the brief of the Hon. C. A. Maxwell, contained in said letter from the Honorable Secretary of the Interior hereinbefore referred to, has no weight, in my opinion, in determining the question here involved. All of these sales were executed and completed contracts, with the consent of the agents of the State of New York and in the presence of a commissioner of the United States, except in one instance where the commissioner was not present, and which transaction was afterwards validated by an act of Congress. Any other than the Ogden Land Company could, in my opinion, have made the same purchase under the same circumstances.

It is true that the United States approved of the cession by New York to Massachusetts, and also of the deed from Massachusetts to Robert Morris. This was only a recognition of the right of Robert Morris and his grantees to extinguish by purchase the title of the Indians; this right was of course subject to all the conditions before mentioned for such a purchase. The Indians were in possession, and were the wards of the Government and, notwithstanding the terms of the deed to Robert Morris from Massachusetts, the Government and the State of New York would at all times be bound to protect the

rights of the Indians, and to consent to no purchase, either by the Ogden Land Company or anyone else, except upon terms as favorable as possible to the Indians.

It is beyond question that the Indians are entitled to occupy their lands from generation to generation, and until they become absolutely extinct, and when they do become extinct the title is in the General Government.

There seems to be no prospect that the Indians will abandon their lands and homes they have so long occupied. A large portion of the lands are cultivated and improved, and many of the Indians have fine homes. If, as is contemplated, the Indians at some time are made citizens by the General Government and their lands allotted to them in severalty, the alleged claim or title of the Ogden Land Company would, in my opinion, be dissipated and worthless. The Indians, or any of them, could sell to whom they chose without the consent of the General Government or of the State, and if others than the Ogden Land Company could not dispossess the purchaser, it is difficult to see how it would be entitled to any damages.

In my opinion the United States are under no obligation, moral or otherwise, to refuse citizenship to the Indians and the allotment to them of their lands in severalty until a purchase is made from the Ogden Land Company of this alleged claim. As has before been said, the act of making them citizens and allotting to them their lands in severalty completely evaporates, in my opinion, this alleged claim of the Ogden Land Company.

It has been said that this alleged right of preemption in the Ogden Land Company constitutes a cloud upon the Indian title. In my opinion that cloud is not of such sufficient density to cause any serious embarrassment in the future, or to be of any considerable value; and the same will be entirely dissipated as soon as the Indians are made citizens and their lands, which they and their heirs forever are permitted to occupy, shall be allotted to them in severalty.

J. R. JEWELL,
United States Indian Agent.

Hon. W. A. POUCHER,
United States Attorney for the Northern District of New York.

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