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never lawfully extinguished. The state was bound by the 1790 and 1802 Federal Indian Non-Intercourse Act which forbade the sale of Indian lands without federal consent. The state courts held that title was extinguished when the Indians were paid the \$5,960 even if there was no evidence showing that the money was actually distributed. The courts also said that although the island was not referred to in the 1796 treaty, the state had the right to “adjust” its terms to include “a claim which had arisen as a result of ambiguous language.” see *St. Regis Tribe of Indians v. State of New York*, 5 N.Y. 2d 24, 177 N.Y.S. 2d 289 (1958). The courts ruled that Indians possessed only an ‘occupancy’ right to the land with actual title resting with the state which meant it could take Indian lands without compensation. The Tribal Council appealed to the Supreme Court of the U.S. but only to be denied a review. *St. Regis Tribe of Indians v. State of New York*, 359 U.S. 1015, 3 L. Ed. 2d 573, 79 S.Ct. 586 (1958).

New York had characteristically exercised control over Indians to the exclusion of federal law. The federal government had actually brought suit to contest the state’s jurisdiction over Akwesasne in 1943. The case was tried in federal court. The state emerged with a holding that exempted New York from adhering to the Federal Indian Non-Intercourse Acts saying that the law was not enacted to prevent state purchase of Indian land but merely to guard against fraud. New York was allowed its exclusive option to extinguish Indian title. *U.S. v. Franklin County*, 50 F. Supp. 152 (1943).

Thirty-one years later, the United States Supreme Court ended New York’s ‘option’. In *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), the court ruled that New York was indeed subject to federal laws which prohibited the taking of Indian land without federal consent. The court held in part “There has been recurring tension between federal and state law; state authorities have not easily accepted the notion that federal law and federal courts must be deemed the controlling con-



siderations in dealing with the Indians.” The federal government had given the state criminal and civil jurisdiction on Indian land but Indian title was in no way to be impaired.

The 1974 decision was bolstered in 1977 in a similar case *Oneida Indian Nation of N.Y. v. County of Oneida*, 434 F. Supp. 527 (1977). The federal district court for the Second Judicial Circuit dismantled *U.S. v. Franklin County* by reaffirming the letter of the Non-Intercourse Act Statutes which expressly forbade the sale of Indian land without federal consent. Such transfers as were made in violation of this statute were void. The court further ruled that: “Restrictions on the alienation of Indian land which have their origin in treaties or in land patents, are not weakened by the passage of time.”

It is apparent that when the state of New York alienated Barnhart and Baxter islands from the Mohawks in 1822 it was in violation of then existing federal statutes which prohibited such losses of title. It is further observed that lands taken from the reservation after 1796 were done so without federal approval and hence, contrary to federal law. New York does not, nor did it ever, have the right to enter into treaties with other nations. This right is retained by the federal government.

It is noted that the Seven Nations of Canada were in fact Christian settlements of Hurons, Mohawks,

Oneidas, Onondagas, Abenakis and Algonkians living in villages along the St. Lawrence. They were not a political body. They did not represent the Mohawk people. The treaty is an extinction of their interests in New York, but they never possessed verifiable claims within the state. The treaty was the most expedient way for the Americans to vacate aboriginal title, as required by law. The Supreme Court has noted, however, that the federal government can take native lands without giving compensation because Indians do not have any title that the U.S. is bound to respect. see *Tee-Hit-Ton Indians v. U.S.*, 348 U.S. 272 (1955).

The economic value of Barnhart island is tremendous. In light of its value to the northern New York economy plus its critical value to the St. Lawrence Seaway it is unlikely that the courts would return it to Akwesasne. While the facts are that the state removed it illegally from the reservation, the most logical ruling for the court would be to take into consideration not only the letter of the law but the implications of enforcing its provisions given contemporary circumstances. Barnhart and Baxter islands’ loss to Akwesasne would be calculated from the time of alienation - 1822 - with interest. When Indian land is taken illegally, the courts do not necessarily return the land upon successful suit. see *Sioux Nation v. U.S.*, 220 Ct.Cl. 442, 601 F.2d. 1157 (1979).

The way is open for affirmative actions for the recovery of a valuable piece of Akwesasne territory. Such actions would be best initiated by the Mohawk government, for true aboriginal title rests in that body which best represents the Mohawk people in all of its communities.



HOGANSBURG VOLUNTEER FIREMEN’S FIELD DAY OFF TO A RAINY START

The day events got off to a soaking start at 11 a.m. with a parade beginning at the Cruikshank’s Rd. that was escorted into town by the St. Regis Police. Big Bird (Allen Herne), the Punk Rocker (Angela Benedict) and the High Rolling Cyclist (Greg Herne) followed next. Behind them, marched members of the American Legion Post 1479. The Akwesasne Emergency Team’s ambulance led the entourage of sirens with fire trucks from all three stations of Akwesasne. Also participating were floats from the Cradleboard Nursery, T.O.P.S. (Take Off Pounds Sensibly) Program, and the horse and buggy teams of Roy Adams, Mitchell Arquette and Bill Cook.

Trophies were awarded to all who participated. The Cradleboard Nursery and T.O.P.S. received trophies for the Best Appearing Floats. Bill Cook and Mitchell Arquette were presented a trophy for the Best Dressed Horse & Buggy Teams. Roy Adams of J&R Stables received an award for the Best Appearing Float. The Akwesasne Emergency Team was presented with a trophy for the Best Appearing Emergency Apparatus of 1983.

The Little River Mohawks, Night Wing, and the versatile Fiddler Joe Jacobs entertained the audience throughout the day.

The poker tables, dime pitch game, roulette game, several concession stands, and the beer tent kept everyone broke but full and happy.

The spirit of the day was not dampened even though the rain kept dousing out the coals on the grill. The firemen had their hands full trying to keep the fire going!

The undaunted spirit of the firemen and their volunteers has once again contributed to another successful field day.

