

numerous cases involving rights of private individuals in connection with the business done in national banks.

The fact that the savings bank had on deposit with the national bank more than ten per cent of their total deposits, which they are allowed to accumulate for the purpose of meeting current expenses in excess of receipts (section 118, chapter 689, Laws of 1892), would not, in my opinion, in any manner interfere with the rights of the saving bank to enforce its preference under the statute up to, an amount not exceeding twenty-five per cent of the paid-up capital and surplus of the bank in which the deposit is made.

Very truly yours,

S. W. ROSENDALE,

*Attorney-General.*

*Oneida Indians. — Tribal rights of, in lands.*

The Oneida Indians have no rights as a tribe to lands ceded to them by statute of 1788; such lands have either been acquired by the State or partitioned among the Indians, who own the same in severalty.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *June 2, 1893.* }

HON. ROSWELL P. FLOWER, *Governor:*

Sir. — In the matter of the correspondence in relation to the complaint made to you in behalf of the Oneida Indians, which correspondence was referred to me, I have the honor to state as follows:

The correspondence referred to consists,

1. Of a letter dated March 11, 1893, from the Acting Commissioner of Indian Affairs at Washington, directed to James Powlis, Esq., of Oneida Castle, advising him to refer to you all questions arising under the treaty between the State of New York and the Oneida tribe of Indians, dated September 22, 1788.
2. A communication to A. W. Ferrin, United States Indian agent, signed by Baptiste Huson and twenty-one others, claiming to be Oneida Indians, requesting that the State grant them

at least two miles square of land for settlement among their people.

3. A communication from said A. W. Ferrin, United States Indian agent, to your excellency, submitting the matter to you, dated April 10, 1893.

4. A communication dated April 25, 1893, to the Indian agent, calling attention to the treaty between the State of New York and the Oneida Indians on the twenty-second day of September, 1788. This communication makes two quotations from the said treaty; first, in regard to the agreement that certain lands should remain ungranted by the people of the State of New York on the northerly shore of Oneida lake; and, second, that the people of the State should assist the Oneidas in repelling from the lands reserved to them all intruders and criminals.

This communication closes with the statement that the lands referred to have already been occupied, and that the Oneida Nation were not allowed to settle, and now demand their just rights, as they have no homes. This communication is signed by James Powlis, Oneida Castle.

5. A communication from A. W. Ferrin, Indian agent, submitting the matter to your excellency, dated May 1, 1893.

The treaty between the State of New York and the Oneida Indians, dated September 22, 1788, which is referred to in this correspondence, purported to cede in its first paragraph all the lands of the Oneidas to the people of the State of New York. In the second paragraph of said treaty certain lands were reserved from its operation. These lands were located in Madison and Oneida counties, and were described and a map thereof was filed in the office of the Secretary of State.

Subsequent to the celebration of this treaty numerous other treaties were made between the Oneida Indians and the people of the State, whereby portions of the land reserved by the treaty of 1788 were purchased by and conveyed to the people of the State of New York.

Finally, in the year 1842 and immediately prior thereto, it being the desire of a large portion of the Oneida Indians to emigrate from the State, treaties were made between the various parties of this tribe of Indians whereby the lands, the Indian title to which still remained in the tribe or in various parties

of the tribe, were attempted to be partitioned, and so much thereof as belonged to the Indians about to emigrate were ceded to the people of the State for a sum of money to be paid to said migrating Indians. The remainder of the land was still held by the tribe.

By chapter 185 of the Laws of 1843, it was provided in section 1: "The Oneida Indians owning lands in the counties of Oneida and Madison, are hereby authorized to hold their lands in severalty, in conformity to the surveys, partitions and schedules annexed to and accompanying the treaties made with the said Indians, by the people of this state in the year one thousand eight hundred and forty-two and now on file in the office of the secretary of state; and the lots so partitioned and designated by said survey to the said Indians, shall be deemed in lieu of all claims and interest of the said Indians, in and to all other lands and property in the Oneida Reservation, except the mission lot on lot 1, and the church lot on lot 2, of the Oneida Purchase, of May 23d, 1842, which are to be held by the said Indians as tenants in common."

It appears from the report of the special committee of the Assembly, appointed by the Assembly of 1888 to investigate the Indian problem of the State (which report was submitted to the Assembly February 1, 1889, and constitutes Assembly document No. 51 of that year), with reference to the Oneida Indians, as follows: "They have no tribal relations, and are without chiefs or other officers; they, as a tribe, receive no money from any source, but receive a small annuity from the general Government amounting to about eleven yards of cotton cloth to each person per year. The land formerly the Oneida reservation, and now commonly known as such, by an act of the Legislature was long since divided among the Indians there in severalty, and they now own it in fee. These Indian lands are about four miles south of the Oneida station on the New York Central railroad. The exact number of acres was not ascertained, but there are probably about 400, nearly all of which is under cultivation; the soil is rich and fertile, producing under the management of these industrious people abundant crops. These Indians not only manage and cultivate all of this land themselves, but in many instances have purchased quantities of

lands of the whites and paid for them. They have observed the habits and practices of the white farmers among them, and have profited by their examples that the committee in going over the territory was unable to distinguish, in point of cultivation, the Indians farms from those of the whites."

(Assembly Documents 1889, No 51, page 46.)

From a consideration of the foregoing facts, it would seem that whatever rights the Oneida Indians may have acquired under the statute of 1788 were finally sold and disposed of to the people of the State of New York, except so much of the lands as were retained by them under the last treaties, and that said lands so retained by them were partitioned so that the Indians became the owners thereof in severalty.

I am unable to see, therefore, what right the Oneida Indians can now claim as a tribe to the lands reserved by the treaty of 1788, referred to in the correspondence submitted to me.

Respectfully yours.

S. W. ROSENDALE,

*Attorney-General.*

*Legislature.— Eligibility to.— Supervisors in cities.*

The Constitution prescribes the qualifications for eligibility to the Legislature. Each house is the judge of the qualifications of its own members. Supervisors would seem to be eligible.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,  
ALBANY, June 6, 1893. }

WILLIAM P. ROBINSON, Esq., *Auburn, N. Y.:*

Dear Sir.—I am in receipt of your favor of the fifth instant requesting my opinion as to whether a supervisor of a ward in the city of Auburn is ineligible to act as Member of Assembly.

You call my attention to article III, section 8 of the Constitution, which provides that "No person shall be eligible to the legislature who, at the time of his election, is, or, within 100 days previous thereto has been, a member of congress, a civil or mili-