

OFFICIAL RECORD

OF

Indian Conference

Called to Determine the Status of the Indians of the
Six Nations on the Indian Reservations of the
State of New York, and Their Relations to
the Federal and State Governments

Held in the Assembly Hall of the Onondaga Historical
Association at Syracuse, N. Y., March 6 and 7,
1919, under the Auspices of the Syracuse
Chamber of Commerce, the Indian Wel-
fare Society, and the Onondaga
Historical Association

1919

2

the teacher would sneer at the dirty children because he was poor and had no father or mother.

"School went on until I was 12 years old. Then our neighbors began to quarrel over who should be the teacher. They were not going to teach the Indians. They soon got tired of it. Finally the State decided there was not enough attendance to keep this school, so they closed it up, and so I and the rest of the Indians could not go to school. The Oneidas had no legal authority to appeal to the Government and were at the mercy of the State. I went away and made my living as best I could.

"As far as I can see, this State has never done anything for the Oneidas."

CHIEF RICHARD of the Tuscaroras:—

"I don't believe there is an Indian who would keep his children out of school if he could help it. Sometimes the children are sick and it is pretty hard for these parents to go to a doctor and get a certificate, but we have never had any trouble in that line. Talking about not having power to send these children to school, I know of a man who went to jail for not sending his children to school. He ought not to be in jail. He was not in a physical condition to be in jail, but he went just the same.

"This Conference is trying to look after the Indian. I think if these civilized American people working for democracy would look into the details more closely they will find that the Indians can be led a great deal better than drove."

CHIEF WALTER KENNEDY, Clerk of the Allegany-Senecas:—

"Three years ago the Seneca Nation passed what you people call the Conservation Law for the preservation of fish and game on the reservation. We asked the State to enforce this law. When it came before the United States Senate, the suggestion of Senator Walters, the commissioner at that time, was to drop the bill and present the same to the Conference. Last winter we had to go again to Washington to the Senate and Mr. Hamilton went to see what he could do.

"We appreciate what you are trying to do for us. What we oppose is when you try to take everything away from us. When you try to do something good for us, to educate

us and make us live like everybody ought to live, we appreciate it."

REV. LOUIS BRUCE, Pastor St. Regis Indian Mission:—

"Everytime I come back to the Onondaga Reservation I notice the school is just a little better than it was before, and we have to congratulate them that they have such a fine school system. We want to co-operate with the State in all that they are doing. I know there are some people here who have small complaints about their reservation. I think they should be heard. Not that we want to complain, but we want to help the State. They have put in those good systems and we want to help them to make it more efficient. I know the Indians want to stand back of the State to enforce all good laws."

CHIEF JULIUS HERRON of the St. Regis Reservation:—

"There was a doctor appointed on the reservation who was paid by the year. Has he a right to doctor the Canadian as well as the State people? Can he doctor them and let us people go after he has been paid to look after us?"

"POOR AND INDIGENT INDIANS."

DR. ROBERT W. HILL.

Suplt. State and Alien Poor, State Board of Charities.

"New York State since earliest colonial days has been interested in the welfare of the Indians within its boundaries. In colonial days long before the question of jurisdiction arose the white people had various controversies with the Indians, but in spite of controversies were actuated with the desire to do good to such of the Indians as seemed to be in league. In colonial day there was even legislation regulating the quality of wampum, and it was in those times that there was an adherent power residing in the colony which would enable it to enforce a regulation of that kind, and in those times we read now and then of particular cases of Indians who required the attention of white settlers and who received certain assistances and so were moved gradually into a recognition of a responsibility on the part of the State towards the Indians who were settled within its boundaries.

dian reservations at the cost of human character and human lives? The fog should be cleared away; the smoke screen should be swept away so that the truth may be known and the weakness of Indian government removed. This is the vital need of the schools and of all the agencies for uplift that are working among New York Indians."

MR. REEVES:—

"No such doubt has arisen about this question of jurisdiction and control in connection with Prof. A. C. Hill in enforcing a compulsory school attendance law on the Indian schools. It seems to be up to me at this time to endeavor to clear up democracy very briefly by one decision I think will decide the entire question.

"We all understand about the Western Indians; and the decisions of the various courts referring to the Western Indians may be interesting, but they do not apply to the Indians of New York State.

"Since yesterday I had occasion to refer to one decision of the Supreme Court referring to the New York Indians. It arose over an act of the State Legislature of New York passed in 1821. The question of the right of the State to legislate on matters of this kind arose and they finally went to the Supreme Court of the United States. It was decided that the State in question has a police regulation for the people. It is a fact of the truth. Nevertheless the relations these Indians hold to the United States is so far as it is necessary to preserve the differences of the commonwealth and protect them from imposition and intrusion. The power of the State to make such regulations to preserve the differences of the community is absolute and has never been surrendered.

"Need more be said about your question of jurisdiction? Need more be said about your power to maintain health regulations, not only of the Indians themselves but the State of New York?

"I think it useless to stand and ask these questions, citing numerous decisions to support this one case, which I believe ample to defend the entire proposition."

ANGUS WAHRE, Chief of St. Regis-Mohawk Indians:—

"It interested me very much when Mr. Hill was speaking.

I approve of any enforcement of law in regard to anything that he talked about here, but I must say that perhaps something could be added to what he has already presented to you people here.

"We have on our reservation eight district schools, and I do not think you will find that there is very much trouble as far as enforcing the school attendance law on the St. Regis Reservation. We have had a very few cases of it.

"I think that if the people would take a little different course it would not be necessary to form a court on the Indians on the St. Regis Reservation. The State Troopers have come in and assisted us and gone to the justice in our town and given sufficient satisfaction in that respect.

"I think the health conditions on the St. Regis Reservation are equal to the whites. I know positively and in fact could get proof of this from Dr. Sears.

"When you talk of sanitary conditions, I want to ask if, when the children go into the schools and have to pump water from the cellars of the schools before school hours, is that sanitary? We have two school houses on our reservation where there is perhaps three or four feet of water in the cellar which has to be pumped out before school hours by the children.

"Mr. Hill said the Indians would not help in grading and other work about the school. Perhaps some of the older people don't do it, but the children do. I passed one of the schools where they were going to put in a furnace and I saw two little girls shoveling dirt. The man hired to do this work sat on a boulder, and when I came back the girls were still shoveling and they were tired out.

"Perhaps if you get both sides of things you will understand the thing better. When you want to do anything with Indians you can lead them easier than drive them. By getting the proper authorities on the reservation I think we would have no trouble at all."

CHIEF CHAPMAN SCHENANADOAH of the Oneidas:—

"I was born in 1870 in Madison County. When I was a boy we had a little State school on the reservation. My folks said it was best for us to go to school. Anybody knows that. We were never forced to go to school. We wanted to go, but the conditions are what drove us away. Sometimes

"When the Kincaid bill was before the Senate they sent for me, knowing that I had something to do with this matter,—and the Kincaid bill was cut down and the Government got hold of this opinion on the ground that it was an impossible thing to do. The failure to pass that Kincaid bill two years ago has been a great detriment to the children on these reservations and this is what hurts my feelings. If we put it off two years more we will have another generation of children going to the devil. There is no law on the reservation by which we can look after morality or school attendance or even health. But, as Judge Jenks says, nothing can be done by sitting in a chair and talking about it. It seems that something springs up somewhere every time we attempt to do anything with the Indians."

"HEALTH AND SANITATION ON THE RESERVATIONS."

DR. FREDERICK W. SEARS.

Sanitary Supervisor, State Department of Health.

"I do not think that the Government or the State has taken any recognition of the obligation which they owe to the Indians in the protection of health until our present administration came into existence.

"Since the discovery of America, the relations of the Indians to the white population has been complex and difficult.

"Looking at the problem from the literature, one can form any opinion of the Indians which best suits his fancy, varying from the most barbarous to the most fantastic.

"From a health standpoint, we seem to have been content to hand to them all of the diseases and vices which are spread by civilization, without in any appreciable way attempting to mitigate these evils. For example, tuberculosis has become very prevalent among the various tribes (causing one out of every three deaths), largely because they have been encouraged to follow our example of living in houses, but have not been clearly shown the dangers of improper housing and lack of ventilation.

"Immorality has been substituted for unmorality, because the fundamental principles upon which the social fabric of

THE ONONDAGA HISTORICAL ASSOCIATION

the marriage state rests has not been sufficiently impressed upon them.

"Small-Pox and other epidemic diseases have in the past depleted their ranks by tens of thousands with no special effort to check these diseases, except in so far as they affected the adjacent white settlements.

"Historians have told us that the invasion of Europe by Syphilis was from the returning soldiers and sailors who accompanied Columbus on his voyage in which he discovered America, they having contracted this disease from the Indians. Although medical authorities do not agree with this statement, no one has attempted to defend the Indians from this stigma. While we should not excuse many of the unjust practices of the Indian upon the Whites, we must admit that much prejudice against them has been caused by those whose motives in dealing with them have always been above suspicion.

"It is the opinion of the majority of those who have studied the Indian situation, that the final solution of the Indian problem is to admit them to full citizenship with its responsibilities and privileges.

"With this end in view, why should we not do all in our power to interest the man in the higher ideals of citizenship? Let us replace the spirit of selfishness and aggression dealing with them with one of altruism, change our attitude of indifference towards their health and social welfare with one of sympathetic and helpful assistance.

"It was with these principles in mind that an attempt was made to create better health conditions in the Onondaga Reservation, with results which have far exceeded expectations. When attention was first called to the high mortality existing in the Reservation in October, 1918, with the reports of serious illness, in which there was not proper medical attention, it was decided to make a careful investigation of these conditions. The Reservation was without attending physician, owing to the resignation of their former physician, except as one was designated for a special purpose by the County Overseer of the Poor, upon request. No school examinations had ever been made, and no equipment for such examination. On November 4th the Board of Supervisors, upon request, made an appropriation of \$100 for such equipment, and at their next meeting, Nov-

calling your attention to the fact that the states did surrender the power between them and the Indians. Is it true or not, that the States having Indian tribes living within their midst at the time when the original States entered the Union, did, prior to the union, assume to exercise jurisdiction over the tribal Indians living and acting within the limits of the reservation?"

MR. CHELTON H. LEWIS, State Board of Charities:—

"I would like to get the exact holding of the Attorney General's office on this question. It is of vital importance to us here in the City of Syracuse, within ten miles of the Onondaga Reservation. It has been assumed by the County and we have assumed the control as far as they have agreed on that reservation as in regards to the Indian contracts, but in regard to their contractile relations we have obeyed the law."

"When I was district attorney of this County, I remember that these matters came frequently before me. I assumed at that time to enforce the law of the State of New York. For instance, here is a statute in the State of New York that forbids the Indian to sell timber, and here is a statute that forbids the Indian to lease his property to the whites, in each case without the consent of the Government. Now, I assumed to enforce that. They came to me saying that they had been leasing without the consent of the white man, and I indicted the white men and the Indians. There are Indians here today that were indicted by the Grand Jury at that time for selling timber without the consent of the Commission. Now it would seem to me, from the holding of the Attorney General's office that those statutes as passed by the State of New York in regard to the sale of their timber, etc., would be an unconstitutional statute. If high crimes were committed on the reservation we punished those crimes. We indicted and we punished."

Now, supposing there are two parties on this certain reservation. Suppose there is a riot and one of those parties is exterminating the other. Then, have we the right to punish? Are they so far outside the jurisdiction as a separate nation that we are compelled to allow them to kill each other? It seems to me that under the common law, outside of the statute (which is far more reaching than any

statute that can be made), we have a right to suppress and punish when high crimes of that kind are committed. Of course, if the Attorney General's office takes the decision that the County of Onondaga cannot go out to the Onondaga reservation and get a murderer, suppress a robbery, etc., those people then have no justice or protection."

JUDGE JENKS:—

"It is not what I say or what the Attorney General says. This opinion was probably in the Attorney General's office and adopted by the court as a law in that case and the judge was responsible for the decision. I am speaking simply as a member of this Conference on my own responsibility to point out what the United States Supreme Court has held. I am speaking now about the administration of the law, whether jurisdiction is conferred by statute or whether it has been asserted by the United States Government. In the Minnesota case it was decided it would never do to have both the United States and the State legislation on the same subject. By the act of Congress in '85 it would seem to me that the United States has given the decision that no State of the Federal Government has a right to interfere with the Indians on their reservations."

DR. EARL A. BATES:—

"The matter of leases made by the New York State agents is a matter of very serious moment. What is their value, in your opinion?"

JUDGE JENKS:—

"They are not worth the paper they are written on."

DR. A. C. HILL, State Director Indian Schools:—

"Supposing the State of New York should pass certain laws in regard to the Indians on their reservations, would there be any case to cite that as illegal?"

"Why not say we will remedy all this by going to Congress and asking Congress to give New York State power to pass certain laws like health laws, school laws, etc.?"

"We have been proceeding along the wrong road. I am not to blame for holding the opinion I do in regard to this matter; I earnestly believe I am right."

Question:—

"Is there a difference between the affairs of a tribe as a tribe or an individual as an individual?"

JUDGE JENKS:—

"The individual is governed by the tribe in which he lives. The United States Government has always held exclusive jurisdiction over them, to govern them with respect to punishment of murder. The United States can go in, arrest the man, try him, and if he is found guilty punish him."

Question:—

"We are especially interested in the health of the Indian. There is a statute in the Public Health Law which permits the Commissioner of Health during an epidemic, to take certain action. Am I to understand that this law has no standing in the United States?"

JUDGE JENKS:—

"It is my purpose to bring this sore to the surface. At the present moment, while the United States Government has not taken any action, I am here to ask you to see that it does for the protection of the people and the Indians of the State of New York. That condition of things ought not to be allowed, but we must follow the law as it is laid down to us by the United States. They should pass a law permitting the Government to go on their property to look after them during an epidemic.

"I want to call your attention to an incident that happened which I know of, because I was in the case.

"Some Indians were spearing fish off from their reservation. They were fishing on another territory in the State of New York. They were arrested and it was sought to get them out on a writ of habeas corpus. By a treaty that was made with them, on the land on which these Indians were fishing, they reserved hunting and fishing privileges. This being the case, the State authorities had no jurisdiction over them. Those Indians did have a right to hunt and fish in those waters the same as any other citizen would have. The treaty said they could continue to hunt and fish on those waters, and they, therefore, claim the right to hunt

and fish on this stream at their own will at any time of the year. The Supreme Court held that they were available to the police law of the State of New York when they were fishing outside of the reservation."

MR. GEO. N. CHENEY, Librarian of the Court of Appeals:—

"The decision of Judge Miller would indicate that the Federal Government had authority to enact legislation on all of these kind of matters. Was there ever any time when the State of New York had any police power of that kind, even before the establishment of the United States Government over the Indians on their own lands? If the State of New York never had power to pass jurisdiction over the Indian on the Indian lands so as to punish them for the crime of murder, I cannot see how they can have it now. Before the United States Government was in existence, if the State of New York didn't have that authority, when and where and by what instrument was that right ever surrendered to the State of New York?"

JUDGE JENKS:—

"At the beginning of the United States Government. That right was conferred on them when the Constitution was adopted."

MR. CHENEY:—

"I want to know where, in your mind, this was founded. Of course, you say, yourself, the situation is very unsatisfactory and that you are laying bare a sore. I have never examined these questions very carefully, but I was wondering whether these learned decisions that you have read ever traced the authority or an original state like the State of New York, and which certainly must have had some jurisdiction to suppress murder. By the fact that the United States Congress is given authority to regulate commerce with foreign nations, between States and with the Indian tribes, that it has jurisdiction to a police regulation. That may be within those learned decisions, but I have never examined them."

JUDGE JENKS:—

"Judge Miller was careful in his decision. I am simply

Cherokee Nation against the State of Georgia, written by John Marshall,—

"The condition of the Indian in relation to the United States is perhaps unlike that of any other people in existence. Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned, right to the lands they occupy until that right is restrained by the Government, yet it may well be doubted whether these tribes who reside within the boundaries of the United States should be designated Foreign Nations. They may more correctly perhaps be denominated Domestic Dependent Nations. They occupy a territory to which we assert a title independent of their will which must take effect when their right of possession ceases. Meanwhile, they are in a state of pupillage. Their relation to the United States resembles that of a ward to its guardian. They look to the Government for protection, rely upon its kindness and power, appeal to it for relief from their wants, and address it as their "Great Father".

"In regard to the Cherokee Nation against the State of Georgia, he states: "The Cherokee Nation is a distinct community occupying its own territory with Boundaries correctly described, in which the laws of Georgia can have no force. The whole intercourse between the United States and this nation is by the laws vested in the Constitution of the United States."

"After the Revolutionary War was over and the United States had won its independence, they started to negotiate with the Indians, and that ran along until 1871. In the meantime the tribes had become scattered on account of the American civilization. A mere simplicity of the Indian mind as it was in its original condition made it exceedingly easy for the Indians to pick at the wicks of the white man without possessing those qualities which enabled the white man to resist all these and arise above them. They died off from disease and exposure until they became devastated. In 1871 the Government said they had become so reduced and inferior they would govern them by laws, treating them as pupils and wards. The Government, therefore, said we will make a treaty with them that 'Any nation or tribe within the territory of the United States shall be acknowledged as a dependent nation with whom the United States may con-

tract by treaty.' Up to that time there was no government of the Indians. They were self-governing, but they made a mess of it—sometimes. Sometimes the grossest crimes were committed on these reservations. The United States Government said, 'We cannot let things go this way, what shall we do?' They decided that a number of major crimes ought not to be tolerated, so they passed a statute that the jurisdiction of the United States district courts (up to that time there had been no jurisdiction for an Indian tribe) is extended to the prosecution of certain crimes on these reservations.

"In the learned opinion of Mr. Miller, observed in the statute, he says: 'It seems to me that this is within the competency of Congress. Those Indian tribes are the wards of the nation. They are communities dependent upon the United States,—dependent largely for their daily food, dependent for their political rights.' This is true. I am here to state it is our business to see that the Indians' rights are preserved.

"The Indian owes no allegiance to the States. The citizen owes allegiance to his country and to the flag, but the Indian does not owe allegiance to us. From their weakness and helplessness, so largely due to the action of the Federal Government and the treaties in which there has been made promises, there arises the duty of protection and with it the power of protection. This power resides in the United States Government. This has always been recognized by Congress, the United States courts, and wherever the question has arisen.

"In concluding his opinion, Mr. Miller says: 'The power of the Government over these races, now weak and diminished, is necessary to their protection and to their safety with whom they dwell.' It must exist in that Government because it has never existed anywhere else.

"Judge Werner discharged an Indian who had committed an assault in the first degree from custody because he said the State had nothing to say in jurisdiction matters. And in speaking of the difference between the tribes in the West and in the State of New York he says, 'We find no such distinction in the statute and we can think of none that largely differs one from the other.'"

votes, which I think is only fair, as they are vitally interested in the doings of this Conference.

The above report was duly seconded and unanimously carried.

"THE LEGAL STATUS OF THE NEW YORK INDIANS"

HON. A. F. JENKS.

Deputy Attorney General, State of New York.

"I am charged with the duty, and it is an important duty, at this conference of trying to impress upon the people here what the legal status of the Indian tribes of this State is.

"It would do no good if I was to talk here two or three hours and then succeed in convincing most of those people if you went away and forgot all about it afterwards. If I go back to Albany feeling that I have made some impression on the people here assembled in an effort to reach correct results based on the foundation of the law as it is and not as some people would like to have it, I would feel that I have accomplished a public service in connection with this Conference.

"I hold in my hand a print copy, which the Attorney General paid me the honor to print and furnish to the public, of the opinion which I wrote in 1915 under very peculiar circumstances, which I will briefly state.

"Two Indians on the Cattaraugus Reservation had been fishing with nets in Cattaraugus Creek within the boundaries of their own reservation; Willford Kennedy and Nelson Hare, Seneca Indians. Leon Paxon and Albert Stadelmeier, State game protectors from Buffalo, wandered out there and found these Indians fishing on their own land, in their own stream and in their own way,—but they were violating the Forest, Fish and Game Law of the State of New York. These Indians were arrested by these game protectors and taken to Buffalo on the Charge of violating the Forest, Fish and Game Law. Whether these Indians had a right to regulate the fishing operations on their own reservation in their own way, or whether they should abide by the state law regulating that subject, was to be decided.

"While these Indians were in custody in Buffalo arraigned before the judge on this charge, they proceeded to

retain counsel in the City of Rochester, with Mr. George P. Decker, who came to Buffalo and procured the United States District Attorney to make out a writ of habeas corpus for the release of these two Indians.

"Word was wired to the Attorney General and I was directed to go to Rochester on behalf of the State. If the New York State law extended over the Indians on their reservations, then the State had jurisdiction and controlled them the same as every other individual in the State. The question arose sharply whether the State law covered that territory. Does the State law reach the Indian on his reservation? I am here to tell you that it *don't*.

"I went to Rochester, intending to direct the District Judge that he should hold these Indians and dismiss that writ, because I didn't know any better,—but I was honest enough to try and find out, and I asked the District Judge if he would give me time to go back and look the matter up. He said to me, 'You can take all the time you want. These Indians are in the custody of the attorney and not in prison.'

"When I arrived in Albany I said to the Attorney General that I questioned whether we ought to proceed along that line. I said that I was convinced the Indians were not under the jurisdiction of the State. He told me to follow my own judgment. I proceeded to write this opinion, and instead of making a brief to commit these Indians back to their reservation, I sent this announcement, stating that in my judgment they should be discharged, as I represented the people of the State of New York and the Attorney General. In reply I received a letter which said, in substance, 'I have read your opinion, which commands my absolute concurrence, and I have passed my decision on it and it will be filled'—and the prisoners were discharged. These were the circumstances which led up to the opinion.

"The Indian tribes in the State of New York are not foreign nations in the sense other foreign nations are, and yet they are foreign to our domestic policy. They live among us but they are not of us. They are not foreign nations in the sense that they could bring action in court against the State. They tried this in the State of Georgia, but were defeated.

"I want to read to you two or three notes in regard to the