Kellogg's

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

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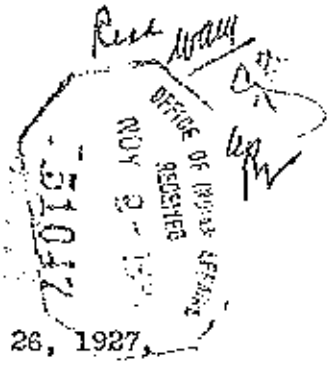
ADDRESS ONLY THE COMMISSIONER OF INDIAN AFFAIRS

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

Noted



The Honorable

The Commissioner of Indian Affairs.

My dear Mr. Burke:

In accordance with Office instructions of September 26, 1927, approved by the Department September 27, 1927, I proceeded to Montreal, Canada, to attend the trial entitled "King v. Kellogg". The case came before Judge Wilson in the Court of King's Bench, and was called Monday, October 3, 1927, at 10.00 A.M.

O. J. Kellogg, Laura C. Kellogg and Wilson Cornelius were indicted on the criminal charges of conspiracy to defraud and of obtaining money under false pretenses.

Monday, October 3, was taken up principally with the selection of the jury and the presentation and filing of documents taken from the accused by the Royal Canadian Mounted Police at the time of their arrest. The principal part of the documents was found in their possession in a black bag. There was a mass of documents all of which sustained the charge of conspiracy to defraud, and showed that money was actually collected and turned over to Wilson Cornelius, who styles himself Chief Cornelius, and is alleged to be Treasurer of the so-called Six Nations Confederacy. It was further shown by the documents that the Kelloggs received $1,000 per month from the moneys which had been collected from the Indians. Edward A. Everett, an attorney of Potsdam, New York, and a

former legislator, received $750 per month, and the law firm of Wise, Whitney & Parker, of New York City, received considerable monthly payments, the actual amount of which was not fully established, but they were to receive a retainer of $75,000 and a substantial contingent fee in case a settlement could be obtained.

After filing of the documents and the oral testimony of certain of the Mounted Police, who participated in the arrest and search of the quarters of the accused, the Crown called to the stand certain Indians of Canada who had been connected with the Kelloggs in their activities. The witnesses were all friendly to the accused and unwilling to render a full account of the activities of their principals.

One witness, styling himself Chief Edward A. Walker, of the Muncey Reservation, Province of Ontario, testified that the Kelloggs had informed the Indians that the claim for which they were collecting money was for 18,000,000 acres of land in New York and Pennsylvania. While not so stated by the witness the facts are that the land involved had been granted to the Six Nations as a confederacy by the Federal Government in 1784, and later released to the State of New York and to the Federal Government for the State by treaties with individual tribes of the Six Nations, the Confederacy not being parties to the subsequent cessions. Based upon the treaty of 1784 the Indians claim that subsequent treaties were illegal because they were with the individual tribes rather than with the Confederacy.

Walker, who appeared to be an intelligent Indian, and really

believed he was stating facts, said, in effect, that the Six Nations were a Confederacy, the members of which lived in the United States and Canada, and that the Confederacy is an independent nation, owing no allegiance to either the United States or Canada. That they in Canada have never sworn allegiance to the British Crown and do not consider themselves subjects of the King of England. Walker further insisted that they did not consider themselves bound to follow the laws of the country except when ordered to do so by the Council of the Six Nations. He admitted on cross-examination that he had but lately acquired the ideas which he had expressed on the stand. When pressed for an approximate date when he formed the ideas he stated that it was about 1924. This was when the Kelloggs began operating in Canada.

It appears from the documents admitted as evidence that the independence idea has been asserted and advocated not alone in Canada but also in the United States. The Crown filed a letter from Col. Jennings C. Wise, of the firm of Munn, Anderson & Munn, to Mrs. Kellogg concerning the request that Mr. Wise obtain the intervention of the United States in the James Deere case. It appears that she had asked Mr. Wise to intervene because Deere was a ward and to obtain intervention through the Foreign Relations Committees of Congress and the State Department on the ground that the Indians were an independent nation. Mr. Wise pointed out the inconsistency and refused to take the matter up with the State Department and committees of Congress on the ground that they were not independent.

It was brought out in the trial that Mrs. Kellogg had been operating in Montana, but it was not shown the purpose of her operations or the tribe or reservation to which her visit was made.

Other witnesses called to the stand testified as to the independence of the Six Nations Confederacy. This question appears to have been stressed more strongly than any other for a short time.

The Crown showed that the Indians had been promised by the accused from $35,000 to $40,000 each in their recovery of the New York claims besides the erection of a $50,000,000 industrial plant somewhere in the United States or Canada.

The Kelloggs had not claimed that the United States had ever made any offer of settlement of the James Deere or any other claim, and the Assistant Attorney General for the State of New York denied that the State of New York or any of the defendants in the Deere case had ever made such an offer.

The Crown showed that the Indians of the United States became citizens of the United States under the Act of 1924, and that the United States was forbidden by an act of its Congress passed in 1871 to make any treaties with any Indians in the United States. The United States Indians were shown to be wards of the Government, those of New York being under the dual jurisdiction of the State and the United States.

Considerable stress was laid upon the suit in the United States District Court for the Northern District of New York entitled James Deere, a St. Regis Indian, etc. v. The St. Lawrence River Power Co.,

et al. However, it was learned during the course of the trial that the James Deere case was dismissed on October 10, without prejudice, and the plaintiffs were given 20 days within which to amend their petition to show that a Federal question was involved. After the report as to the dismissal of the Deere case, which was officially confirmed, all allusion to this case was dropped.

Mr. Edward A. Everett, an attorney of Potsdam, New York, and a former member of the New York Assembly, was called as the first witness for the defense. He outlined his contract with the New York Indians and stated that it had not been approved under United States law for the reason that the claims were against the State rather than the United States. He did not say that the Indians were independent and did not define their status. He stated that they were not citizens and declared, after reading the citizenship act of 1324, that such act was not "a proper law". The act of 1871 was presented to the court and Mr. Everett was asked to read a part of the decision of the United States Supreme Court in the Lone Wolf case relating to the power of Congress to legislate for Indians and to abrogate treaties by legislation. He declined to read it and after it was read to the jury by another he stated, "I do not agree with the decision".

Mr. Carl E. Whitney was called by the defense from New York and appeared on October 12. He testified, in effect, that he had advised the Indians and the Kelloggs in their activities and produced a copy of a letter in which he had advised George E. Thomas, in effect, by

letter of March 18, 1924, that he believed the New York Indians to be sufficiently independent to permit of their levying a tax and making collections, and that any collections made would be legal. He advised them orally to make collections outside of New York State. He did not say why collections should not be made in New York. The Whitney firm was to receive $75,000 as a retainer. However, Whitney confessed to having received $7,441. From the evidence it appeared that Mr. Whitney conducted most of the work of the Wise, Whitney & Parker firm in this claim. The evidence showed that Mr. Whitney and Mr. Everett are first cousins, and the New York firm was brought into the case on the suggestion of Mr. Everett.

In the summary of the case to the jury the defense argued that the Kelloggs had acted all along on the advice of counsel and were not guilty. That if any one was guilty it was the attorney or attorneys who counseled them. The attorneys were not on trial or even liable, as their activities had all been carried on in the United States and they were not under the jurisdiction of the Canadian courts.

The Crown argued that they had no right to commit an unlawful act even on the advice of counsel. The Crown was sustained by the court in the charge to the jury. The jury was out thirty minutes and returned a verdict of "not guilty". The verdict was given on the conspiracy charge only. The jury was not discharged but was ordered to appear in the Court of King's Bench on November 14, 1927, and agree upon a verdict on the

charge of obtaining money under false pretenses. The attorneys for the Crown are of the opinion that the Kelloggs will, no doubt, be discharged and collections be renewed with added vigor.

From the testimony of Everett it appears that the activities of the Kelloggs and Cornelius, in fact all New York Indians, had their inception in an act of the Assembly of New York in 1919 by which a commission was created to study the New York Indian problem, and to confer with the Indian committees of Congress, or some other body, with a view to agreeing upon some plan of disposing of the problem. The committee was to be composed of various legislators and officials of the State of New York.

When organized the committee was headed by Everett and twelve others, among whom was the Attorney General of the State. A report was written and signed by Everett in 1922 or 1923. No other member of the committee signed the report or agreed with it and no dissenting report was ever written. Everett says that his so-called report was presented to the New York Assembly and tabled. It is still on the table. However, based upon the so-called report it appears from what later transpired that Everett took the matter up with some Indians and established contact with the Kelloggs and they devised the present scheme to institute litigation with adequate fees for the attorneys. Everett stated that he was employed first and later recommended as associate attorneys, the firm of Wise, Whitney & Parker,

of New York City. Whitney is a former Attorney General of New York. In the James Deere case he appeared in court on behalf of his firm, and had associated with him Col. Jennings C. Wise, of the Washington firm of Munn, Anderson & Munn.

Why the aforementioned report of Everett was not signed or approved by his colleagues is not disclosed, but Mr. Everett left the impression that they did not agree with him. When Mr. Everett was on the stand he was indefinite as to whether the body with which he was authorized to confer by the New York Legislature was the Board of Indian Commissioners, the Indian Office, or the Indian committees of Congress.

Mr. Everett stated that he was of the opinion after making his investigation, that the Indians had a good claim for the present value of 18,000,000 acres of land in New York and Pennsylvania, the valuation of which is between five and seven billion dollars.

From the testimony the Indians appear to believe that the treaty of Fort Stanwix of 1784 constituted a recognition of the Six Nations Confederacy as an independent nation, and that this recognition has never been withdrawn. They hold this view even in the face of the acts of Congress above mentioned and the decisions of the United States courts on the subject.

In view of the facts as set out above and brought out in this trial, it appears that any claims the New York Indians are asserting are based largely upon exaggerated facts, which facts are being enlarged from time to time in order to more readily induce these Indians to contribute

to schemes which have been concocted to relieve them of any surplus wealth which may be in their possession.

As this is not the first instance on record in the United States where Indians have been induced to part with their money through the medium of sharp practices and frauds, it is believed that the time has now arrived when Congress should amend the United States Criminal Code or in some other way provide legislation to forbid in a positive way the collection of any money for any purpose by any person from any Indian ward of the United States without first rendering a statement as to the object to be accomplished by such collection, naming the approximate amount to be collected and obtaining permission from the Office of Indian Affairs by and with the approval of the Department of the Interior. It is therefore recommended that appropriate legislation to that effect be introduced.

In furtherance of the above recommendation and for proper consideration it is further recommended that the following bill, or other appropriate legislation, be introduced at the next session of Congress, and strong request be made for its early enactment:

A Bill.

To regulate collections from Indian wards of the United States.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled: That from and after the passage of this act, any person, whether of his own volition or upon the advice of another, collects any moneys or other thing of value, or solicits subscriptions or contributions of money or other valuable thing, from any Indian ward of the United States within the territorial limits of the United States for any purpose, shall, upon conviction, be subject to a fine of not less than $500 nor more than $1,000, and imprisonment for not less than three years nor more than five years: Provided, that the collections and subscriptions may be obtained from among such Indian wards of the United States upon application to the Commissioner of Indian

Affairs, and the making of a proper showing in such application as to the purpose of such collection or subscription with a statement as to the maximum amount to be collected or subscribed and obtaining the approval of such application by the Commissioner of Indian Affairs and the Secretary of the Department of the Interior.

Sec. 2. Attorneys or others who advise or recommend collections or subscriptions in any other manner than designated in section one shall, on conviction, be subjected to the penalty provided in section one of this act.

It is believed that the above legislation will permit of collections being made for any legitimate purpose upon the approval of the proper officers of the United States Government. It is also believed that legislation of this kind will serve to deter self-constituted collectors of Indian moneys from exercising activities such as are being conducted by the Kelloggs by and with the advice of counsel and others who may devise some scheme of personal enrichment at the expense of the Indians of the United States as has been done at different times in the recent past.

Very truly yours,

F. G. Tranbarger.

F. G. Tranbarger,
Clerk, Indian Office.

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F C T

MEMORANDUM FOR COMMISSIONER BURKE.

The accompanying letter refers to the indictment of O. J. Kellogg, his wife, Laura C. Kellogg, and her brother Wilson Cornelius in Canada for obtaining money under false pretenses from former New York Indians now living in Canada. These persons have committed the same offense against Indian members of the Six Nations Confederacy in the United States, except that their allegations to the United States Indians are of a different nature from those made to the Canadian members of the Confederacy.

The letter further requests that someone representing the U. S. Government be called as a witness on behalf of the Crown.

Nothing is stated as to the nature of the testimony desired, by the Crown attorneys except that they wish to refute the statement that an offer of settlement of the claims of the New York Indians has already been made by the United States. However, from prior correspondence with Canadian officials it is believed that the person called as a witness, if one is sent, will be questioned concerning treaties with and acts of Congress relating to the New

York Indians. The Canadian Courts will also probably ask for copies of certain papers, which were mentioned in Office letter of January 11, 1927, to Honorable Duncan C. Scott, Deputy Superintendent General, Department of Indian Affairs, Ottawa, Canada. Mr. Scott was also furnished with copies of the papers referred to in the letter.

As the Kelloggs have been very troublesome to the Six Nations Confederacy Indians in the United States and to the United States Department of the Interior and Department of Justice, also the Post Office Department, it is probable that all trouble can be eliminated by obtaining the conviction of these persons in the Canadian Courts. It is believed, therefore, that some employee from the Indian Office familiar with the matter should be authorized to proceed to Montreal at the request of the Canadian authorities and at a time to be later designated, provided that a satisfactory arrangement can be made with the Canadian Government for payment of the necessary transportation and expenses of such employee.

If some one from this Office is to go, I suggest Mr. Tranbarger, as he has prepared practically all the correspondence about the case & he is therefore familiar with it.

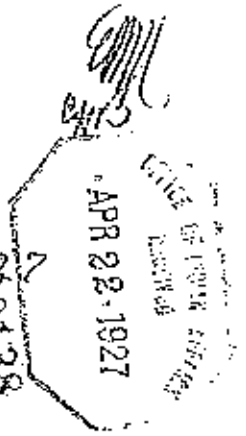
[illegible signature]
Chief, Land Division.

I approve [?] Tranbarger [?] is designated now [?] [illegible initials]

I concur [illegible initials]

Ditto [illegible initials]

22 Hyde Park
Rochester, N.Y.
April 20, 1927



Com. of Indian Affairs
Washington, D.C.

Dear Sir:

Your communication dated April 18, 1927 received. I wish to state that from the beginning of activities of Mr. and Mrs. Kellogg and their associates in defrauding the Indians, I have disapproved their actions. Just to make certain of my stand, I wrote your office regarding it.

I was installed as Sachem of Tonawanda Band of Senecas on Sept. 26, 1926 and as such I now hold the title. On March 31, 1927 the associates of Mr. and Mrs. Kellogg, staged a ceremony of raising up Chiefs much to the contrary of procedure of such ceremony. I understand they installed three new Chiefs and one was the same title as I now hold. They tried to hold their ceremony in the council house by breaking into it, but they were prevented from doing so and they held it elsewhere. We do not recognize these new Chiefs as they were raised up by the associates of Mr. and Mrs. Kellogg for the purpose strengthening their contention.

I hardly think their associates will cease their activities after those cases are disposed unless they are made to understand where they are at.

Yours truly
Freeman Johnson

22 Hyde Park
Rochester, N. Y.
April 7, 1907

Com. of Indian Affairs
Washington, D.C.

Dear Sir:

I wonder if you have heard of a certain group of people headed by Mrs. Kellogg who has been collecting money from the Indians to defray the expenses of a case that they claim to start some years ago. It seems that this same group have been arrested on more than one occasion. It also seems that they have quite a following among the Iroquois Indians and are beginning to be a troublsome group. Just recently, they raised up some new Chiefs at the Tonawanda Reservation and declared themselves that they would make some radical changes. I believe that in time there will be a serious split among Iroquois if they keep on with their activities. Now the thing I want to know is this. Are they right or wrong?

Yours truly
Freeman Johnson

CHB

322 Grove St.,
Milwaukee, Wis.,
January 7, 1927.

Commission McBurke:-
Washington D.C.

Dear Sir.:

No doubt many inquiries have come to you regarding the New York land claim.

At the time the white man arrived the New York Indians had what they called a "Six Nations Government" and the Indians have never lost their rights of self-government.

Large sums of money have been solicited from the Six Nations Indians, N.B. with in the last four years, ostensibly, as lawyers' fees. It is this large sums that has puzzled many an Indian. We are told that unless we contribute some large sum of money we will not participate in the benefits derived from a successful prosecution of the case. My opinion, is that if the prosecutions is

successful every Six Nations Indian will benefit by it, regardless of whether they contribute or not.

Mr and Mrs O.J. Kellogg, of Seymour, Wis., have solicited large sums of money from the Stockbridge Indians, under the consideration do we know of the Stockbridges, being members of the Six Nations. Mr Kellogg says; they have been adopted. No government or treaty shows of such an adoption, only those that have intermarried into the Six Nations adopted.

If the Stockbridge Indians gets a share in this New York land claims, does that mean, that, the real participants the, Six Nation Indians, do not get a share in this claim. and those that have no right to it; share it,

Chiefs have been installed recently, to manage the Indians affairs, but it seems that the Indians' statements and opinions have been disregarded, and

11.B. 7

a white man, Mr O. J. Kellogg, who has
no right in Indian matters, is the
predominating figure.

As, chief, I am expected to see that
my people share in this claim, and
share alike, and I mean to do it.

I am hoping for an early reply
regarding the matter, and would
certainly appreciate your opinion.

Respectfully,
Chief Joe. Lehmgleu.

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Markley
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Ryan

Mr. William Skenandore,
Route 1,
Oneida, Wisconsin.

JUL 23 1926

My dear Mr. Skenandore:

Receipt is acknowledged of your letter of July 9, 1926, requesting a copy of the United States Supreme Court report in the case United States ex rel. Walter S. Kennedy and Sylvester J. Pierce vs. Frank M. Tyler as sheriff of Erie County, et al. A copy of the decision requested is inclosed herewith.

With reference to the status of the St. Regis Indian case, it may be said that there is nothing in the records to show that the St. Regis tribe of Indians brought suit in the United States Court against the United States or the State of New York. However, a suit was instituted in the United States District Court for the Northern District of New York sometime ago. The suit was brought by James Deere as a member of the St. Regis tribe of Indians, on behalf of himself and all other members of said St. Regis tribe of Indians, against the St. Lawrence River Power Company, et al. The State of New York became a party defendant by its own request, the United States refusing to join although requested to do so by the attorneys for the plaintiffs. None of the tribes of the Six Nations Confederacy had any interest in the outcome of the suit except the St. Regis tribe.

Initialing Copy - For File

A motion to dismiss was entertained by the court and sustained, the case thereupon being dismissed. The records of this Office do not show that any other suit is contemplated by the Indians. Should this Office be convinced that the Six Nations Confederacy has a valid claim, there will be no necessity for the collection of funds from individual Indians for the reason that the Department of Justice will be requested to bring and maintain the action for them.

With reference to the statement that Mrs. Kellogg has filed the New York claim with the United States Senate, it may be stated that this Office has no knowledge of such action. The records do not show that any bill relating to the Indians of New York was forwarded to this Department for a report to Congress during the session just closed.

Very truly yours,

7-13-20

(Signature illegible)
Assistant Commissioner.

Oneida, Wis. Route No. 1.

July, 9, 1926

Commissioner of Indian Affairs

Washington, D. C.

Dear Sir:

Some time ago I informed your office that matters pertaining to the illegal conveyances of titles to Oneida lands had been submitted to the United States Attorneys for action.

The rulings of the U. S. Attorneys in the matter of Jerimiah Williams estate, was that a similiar case had been tried in the U. S. Court in Oklahoma for an Osage Indian, namely, the La Motte case and was decided against the Indian, therefore the Williams case would likewise come under the same ruling, thus the case was set aside.

You will also notice in looking over our correspondence that about a year ago you forwarded to me a photographic copy of the decision of the United States Court of Appeals in the matter of the "United States and Boylen et al." I went over this document carefully a good many times and argued the case from it at the councils called by Mrs. J. C. Kellogg. Thus the Oneidas got a clearer and better understanding of the New York matter. The Oneidas are no longer alarmed by the threats of Mrs. Kellogg and are not giving or receiving any serious thoughts about her dictions.

Now I would like a copy of the United States Supreme Court Report in the matter of the "United States ex rel Walter S. Kennedy and Sylvester J. Pierce Aopellant and Frank M. Tyler as Sheriff of Erie County, et. al."

I would also like to know the outcome of the case filed by the St. Regis Indians in the United States Northern District Court of New York. This case is being drummed up by Mrs. Kellogg that will determine our New York case or claim.

Now a little more information I desire in regards to the activities of Mrs. Kellogg at Washington. She has told us so many different stories that we cannot give it any weight and for the benefit of finding the truth we have always to investigate.

Mrs. Kellogg claims now that her party have now filed the New York claim in the U. S. Seante through the U. S. Senator Walsh of Montana for Congressional action or investigation.

We wish to know the truth about this and if any action on the case to have been filed in Congress as stated by Mrs. Kellogg, or if the Kellogg party to have visited Washington within the last few months on such a mission of filing the claim into the hands of Congress, we wish to know the outcome of it, then we can impart the facts to the Oneidas.

Your letter and contents therein to our Representative of this district, the Hon. George J. Schneider, of April 12th was transmitted to me and corrected erroneous statements made to the Oneidas by Messrs. Henry Doxtator and Joseph M. Smith after they came back from Washington early in January.

I wish to have all my queries fully gone into as the Oneidas are learning more and more to look for the true facts from me.

Yours respectfully,

Wm. Shenandoah