IV. HISTORICAL AND FACTUAL BACKGROUND

The Oneida Nation was formed by defectors from the Onondagas several centuries before Champlain first set foot in Iroquois territory. The Oneidas subsequently multiplied until they outnumbered the Onondagas, and became a full-fledged member of the Iroquois Confederacy. In the early 1700s they even sponsored the immigrant Tuscaroras' membership in the confederacy.

When the first whites landed in North America the Oneida domain covered most of what are now St. Lawrence, Lewis, Oneida, Madison and Chenango Counties (see Map No. 1, annexed).

The first limitation of this domain resulted from a 1768 treaty between the British, represented by Sir William Johnson, and the Iroquois, Cherokee, Shawnee and Delaware tribes. This treaty set a "Line of Property" extending from Tennessee northward to the Great Lakes, and east of which was to be British territory. That part of the Line of Property which ran through what is now New York State became the northeast boundary of the Oneidas' territory and (with later modifications) of the Oneida Reservation (see Map No. 2, annexed).

The Oneidas joined the rest of the Iroquois against the French in the French and Indian Wars, but (like the Onondagas) reluctantly and only because of Sir William Johnson's constant and careful persuasion.

In the Revolutionary War, however, the Oneidas and their "Little Brothers", the Tuscaroras, elected to join the colonists against the British and against the other four Iroquois nations. During that war their fellow Iroquois destroyed most of their villages. For their pains the United States subsequently gave them $5000, erected and staffed a grist mill and a saw mill on their reservation, applied $1000 toward rebuilding a burned-out reservation church, and reaffirmed a British requirement that they surrender a part of their lands to the Stockbridge and Brothertown tribes of New England. In return for all this the Oneidas released the United States from all further claims on account of their wartime services and losses by a treaty engineered in 1795.

Earlier, however, the Treaty of Fort Stanwix between the United States and all the Iroquois "confirmed to the Oneida and Tuscarora Nations the lands upon which they live." This treaty was signed in 1784, just after the war ended. It was considered a political coup for President Washington, whose advisors feared that with British help and urging the Iroquois (still smouldering from their wartime losses and apprehensive at growing mistreatment by white adventurers) would begin a Holy War uniting themselves, the Chippewa Sioux, the Shawnee, Delaware, and Ottawa nations in an onslaught against the encroaching American frontier. New York delegates at the Fort Stanwix treaty did all they could to frustrate the federal negotiators to win greater advantages for the state at Iroquois expense.

In 1788 the state managed to enter a separate treaty with the Oneidas by which the nation ceded all its lands to the state forever. Reserved to the Oneidas were about 100 square miles comprised of all the northern part of what is now Madison County and that part of Oneida County lying south of Wood Creek and southwest of the Line of Property. (See Map No. 2, annexed, including lands set out by lots and lands surrounded by the subdivided lands and by Oneida Lake and Chittenango Creek.) Reserved also were a mile-wide strip up Fish Creek (a tributory flowing south into Wood

Creek), three half-mile squares spaced along the north shore of Oneida Lake, and a larger parcel at Fort Brewerton. In effect this Treaty of Fort Schuyler (ex-Fort Stanwix, later Rome, N.Y.) wrenched most of Madison and all of Chenango counties from the Oneidas for $5500 in cash and provisions and a $600 perpetual annuity. This treaty also forbade sale or lease of any of the Oneida Reservation except for a four-mile strip along its south edge, which could be leased for up to 21 years, and subsequently was leased to a Peter Smith. The Stockbridge and Brothertowns were to remain forever in their parts of this reservation. We have no indication whether the United States participated in or ratified this treaty.

One year later the United States signed another treaty with, among others, the Iroquois. By this Treaty of Ft. Harmar (later Ft. Wayne) "The Oneida and Tuscarora Nations are again secured and confirmed in the possession of their respective lands."

The 1794 Treaty of Canandaigua promised that the United States would never claim any Oneida Reservation lands, but allowed the Oneidas free use and enjoyment of these lands "until they choose to sell the same to the People of the United States." The United States still pays the Iroquois' descendants the $4500 annuity promised them by this treaty.

Thus the 150-square-mile Oneida Reservation would presumably remain intact until the Oneidas chose to sell it to the federal government.

One year later the Oneidas ceded most of this land to New York State. Ceded were a four-to-five mile strip around the east and south perimeter of the Reservation, the three half-mile squares across Oneida Lake and the parcel at Fort Brewerton, and a two-mile wide strip projecting northward into the remaining reservation lands. See areas marked into lots, Map No. 2, annexed. The Oneidas were to receive a $2952 perpetual annuity for the bulk of these lands and 3 cents per acre perpetual annuity for the rest. There is no evidence of federal authority for or participation in this treaty.

A 1798 treaty ceding the western half of the remaining 45-50 square miles definitely was ratified by the United States. By this treaty the Oneidas also ceded one-mile strips along the Seneca Turnpike for 1-1/2 miles along both sides of the road from the east side of the reservation, for three miles eastward from its west side along the south side of the road, and eastward one mile on the north side of the road. By this treaty the Oneidas also ceded strips one mile wide along both sides of the Seneca Turnpike for 1-1/2 miles westward from the eastern boundary of the reservation, and for three miles eastward on the south side of the turnpike and one mile eastward on its north side from the western boundary of the reservation. (See Map No. 3 annexed.) The Oneidas were to receive $500 cash and a $700 annuity for these lands.

In 1802 another eighth of the remaining reservation, primarily in its southwest corner (see Map No. 4), was ceded to the state along with the northern half of the mile-wide strip along Fish Creek, north of the main reservation. Price: ~~$300~~ 900 cash and a ~~$600~~ 300 perpetual annuity. This treaty was by its terms made subject to ratification by an Agent of the United States. We have found no evidence that it was ratified, but presumably it was.

In 1805 the Oneidas split into two parties - the Christian and Pagan parties - which partitioned the remaining reservation between them. It was so partitioned that the Christian Party kept three noncontiguous areas and the Pagan Party two noncontiguous areas. (See Map No. 5, annexed.)

In 1807 the Christian Party ceded the western third of its remaining lands to the state for an annuity of 6 per cent on principal computed at 75 cents per acre less $600 paid down. (See Map No. 6.) In 1809 this party ceded the 7500 acres remaining of its Fish Creek strip for $600 cash and a $120 annuity.

In 1809 the Pagan Party ceded one of its two parcels, or about half its remaining lands, for an annuity of 6 per cent on principal computed at 56 cents per acre less $1000 cash paid down. (See Map No. 7.)

In 1810 the Christian Party ceded half its remaining lands west of Oneida Creek for an annuity of 6 per cent on principal computed at 50 cents per acre less $800 cash down. (Map No. 8), and in 1811 ceded another half of that half for an annuity of six per cent on principal computed at 50 cents per acre less $600 cash down (Map No. 9). In 1815 it ceded four separate parcels west of Oneida Creek (Map No. 10) for a flat $1 an acre. At this point the Christian (now First Christian) Party held only some 20 square miles, mostly west of Oneida Creek.

In 1817 the Second Christian (formerly Pagan) Party ceded all of its lands west of Cowasselon Creek and south of a westward extension of the north line of New Stockbridge. As in all these treaties certain of the ceded lands were to be turned over to individual tribesmen or white friends, but in this one the 1356 acres remaining to the state were half paid for by 678 of the acres formerly ceded to the state by the First Christian Party

(Map No. 11). The rest was to be paid for by $1200 cash and a $9.36 annuity.

In 1824 the First Christian Party ceded all its land east of Oneida Creek (for $350 down and a $240 annuity) and a 700-acre parcel on the north side of the turnpike about three miles west of the creek (for $800 and a $60 annuity). See Map No. 12. Payment under this treaty was to be made to certain chiefs reprsenting the "Green Bay Party" and others representing the "Detroit Party."

These names were the first Treaty references to a grandiose plan, long nurtured by the state and finally approved by the federal government, by which the entire Oneida Nation (as well as the other New York Iroquois Nations) was to emigrate from New York to points in Wisconsin and Canada. The plan, set forth in a treaty with the Iroquois approved by the President in 1822, involved use of the proceeds of the Oneidas' sales of their New York reservation lands to purchase a new and larger reservation in Wisconsin from the Chippewas and Menominees native to the area. Pursuant to this plan the Oneidas arranged in 1821-1822 to purchase five million acres from the Menominees. This purchase had the approval of President Monroe and his Secretary of War, but subsequent shabby treatment at the hands of the federal government supplanted the arrangement with a purchase of some 65,000 acres which were actually surveyed and laid out in 1839. For this land, however, the Oneidas paid the Menominees only about $3400. (The history of this transaction is thoroughly set forth in a fact appendix to New York Indians vs. United States, 170 U.S. 1, 18 S.Ct. 531 (1898).)

As implemented in New York the 1822 plan provided for the splitting off from the Second Christian Party of a third group, to be called the Orchard Party, whose lands were to be those at the eastern extremity of the Second Christians' territory, all in Oneida County. The Orchard and the First Christian parties were comprised of those Oneidas expressing an intent to emigrate sooner or later.

An 1829 state statute provided that the state make treaty purchases from both such parties, paying each individual Indian family separately for its own improvements at their appraised value, then paying each emigre party the appraised value of the lands ceded on its departure, less survey and appraisal expenses. Acres ceded were to bear the same proportion to total acres as emigres bore to total Oneidas in the particular party (First Christian or Orchard) whose lands were to be affected. The emigre party was to be accompanied to Green Bay in each case by a bonded Indian Agent who would carry the net proceeds from the ceded lands and apply them as directed by written instructions from the Governor. The statute also provided that annuity payments, up to then paid to the Oneida Nation as a whole, thenceforth be divided among the three basic parties in proportion to their numbers as carried on membership rolls each year.

Under the Green Bay Plan almost all the Oneidas eventually emigrated to Wisconsin, where the bulk of their descendants still farm its well-known dairy country.

In 1826, before the statute was enacted, the Second Christian Party ceded the southwesternmost three square miles of its land, that lying along the east side of Cowasselon Creek (See Map No. 13), for $3 an acre. One thousand dollars was to be paid down and the rest when the Governor was satisfied that an adequate number of this party, too, were ready to emigrate.

An Indian Agent was to make pro rata distribution of this subsequent payment between emigre and home parties of these Second Christians.

Thus in 1826 there were three parties of New York Oneidas with which the state would thereafter treat. The First Christians held about five square miles of land in and around what are now the Madison County communities of Oneida and Oneida Castle and along the Seneca Turnpike. The Second Christians held about seven square miles, primarily in Madison County, to the south and east of the First Christians' lands. The Orchards held about four square miles just east of the Second Christians, all in Oneida County. (See Map No. 14.)

In 1827 the Orchard Party ceded a small part of its land (see Map No. 15) for $3.50 an acre, $700 down and the rest upon proper survey.

In 1829 the First Christian Party ceded all its land lying west of Oneida Creek and north of Seneca Turnpike - that part upon which now stands the City of Oneida. (See Map No. 16.) Price: $1500 cash, proceeds of 200 acres to be funded at six per cent to pay the salary of a teacher at Green Bay, rest pursuant to the 1829 statute described above.

Late in 1829 and early in 1830 the First Christian Party ceded in two parcels all its remaining lands. Payment was made pursuant to the statute, with $1000 to be paid down. (Map No. 17.)

Also in 1830, the Orchard Party ceded 1000 acres of its land pursuant to the statute. In 1834 it ceded another 900 acres, again setting parcels aside for certain specific tribesmen. See Map No. 18.

The laws of 1837, Chapter 22, authorized the few First Christian Party members who had elected not to emigrate in 1830 to assume a proportionate share of the Second Christian Party lands, now supposed to amount to 4509.85 acres. By 1840 both such parties had joined in a treaty pursuant to which some of each party were to emigrate and the state was to purchase and resell the emigrants' lands, holding the net proceeds of such resales for the accounts of the emigrating parties, or to pay such parties appraisal prices if resale could not be effected within a stated period. The plan provided for three separate emigrating groups. Any remaining Oneida family could, if its pro rata population entitled it to fifty or more acres, apply for ownership of the land in severalty as a family. Such land could pass by inheritance, but no family could sell it to anyone except the State of New York. Appended to this treaty were four membership schedules, one for each of three emigrating parties (totaling 400 persons) and one for the so-called "Home Party" (totaling 178). Pursuant to it were ceded all but about 1388.75 acres of the Second Christian Party lands. (Map No. 19)

1841 witnessed two treaties granting small cessions. (See Map No. 20.) The First and Second Christians again subdivided into emigrant and home parties, the emigrants ceding 274.75 acres, the Home Party retaining 1114 acres. The remaining treaty provisions were almost identical to those of the 1840 treaty. The Orchard Party's 1841 cession was of 217.44 acres (there were 44 emigres), with the Home Party (54 persons) retaining 286.88 acres. Treaty provisions were very similar to those of the Christian Party treaties of 1840 and 1841.

The last cessions occurred in 1842. By these the Orchard emigres ceded 76.18 acres and the Christian emigres 371.34 acres; the Home party at Orchard Park retained 190.70 acres, the Home total annuities capitalized at six per cent and thereafter received no more such annuities. There is similar evidence that as to all sales after 1824 they received cash - no annuities. And finally, as to all cessions made after 1829 they received proceeds equal to the amounts for which the state resold their lands to whites, less survey, appraisal and administrative expenses. Unless these expenses were "padded" by way of distributing political plums the Oneidas received fair value for such lands.

With respect to reservation lands, the treaties discussed above (if these are all there were) would have left the Home Party Oneidas with two parcels of land, shown in blue on Map No. 21. One such parcel, of 190.70 acres, is at Orchard Park, Oneida County. The other, a large but irregular parcel of 757.44 acres, lies two to three miles west of the first, in the Town of Lenox, Madison County. Unless subsequent statutes of which we are unaware effectively permitted the Oneidas and their descendants to alienate these lands, both such parcels must still be considered Oneida Reservation lands. Any white occupancy should be subject to lease arrangements with the remaining New York Oneidas.

The effects of various New York statutes purporting to enable such alienation, in the light of federal law and treaties, is discussed below. Suffice it here to say that the validity of such statutes, and of all those treaties discussed above which were executed since 1800, is very much in doubt.

Finally, as to the Oneidas themselves, there are New York Oneidas still carried on the rolls of the Oneida Nation for federal annuity purposes, and the continued payment of such annuity presupposes the continued existence of the Oneidas as a tribe or nation of Indians.

Of the Oneidas living today, most - about 1800 - live in Wisconsin. They apparently hold their lands in fee there, having elected to abandon reservation life and assume citizenship under the Wheeler-Howard Act of 1924. These Wisconsin Oneidas were almost unique in doing so. (Testimony before Senate Internal and Insular Affairs Subcommittee, 80th Cong., 2d Session, 1948, p.41.) Like most of the New York Oneidas, they now engage primarily in dairy farming. There are supposed to be about 200 New York Oneidas, some still on the Madison and Oneida reservation lands, others (driven from such lands) now living on the Onondaga Reservation south of Syracuse.

X

V. FEDERAL VS. STATE SOVEREIGNTY

Following the Revolution, New York State assumed almost exclusive jurisdiction over the affairs of its local Indians. This has continued up to the present. 1962 Op. Atty. Gen. 37-39. The federal government has pursued pretty much a "hands off" policy as to land dealings of New York's indians, with certain exceptions noted below. Recent cases indicate that the federal authorities are involved whether they want to be or not. See discussion in 8 Buffalo Law Rev. 1-26 (1958. The Second Circuit in Tuscarora Nation v. N.Y. Power Authority, 257 Fed. 2d 885(1958), held that the State had no power to condemn Indian Reservation lands. This was in the face of a broad assertion by the State of power over New York Indians.

A. Seneca Indians v. Christie, 126 N.Y. 122 (1891).

This is a leading New York case on the validity of Indian treaties selling land to the State. It involved an attempt to recover for the Seneca Indians a sale of 87,000 acres of land to the Ogden Land Company, a sale participated in by the State of New York and by a federal commissioner. The Indians claimed that no valid purchase would be made except by formal treaty with the United States and that specific federal statute forbade such sales. The Court of Appeals stated:

> "These claims challenge the title not only of every purchaser and holder of lands within the boundaries of the grant of August 31, 1826, but also the title to many millions of acres of lands in this state, held under Indian treaties made by the state of New York with the Indian tribes within its borders or under grants made by Indians to individuals under the authority of the state, where no treaty had been made between the United States and the Indian occupants." p. 135.

MAP. NO. 1

XHIBIT A