STATE OF MAINE.

REPORT

OF THE

ATTORNEY - GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1904.

AUGUSTA
KENNEBEC JOURNAL PRINT
1905

WHITE PAUPERS ON INDIAN RESERVATION.

Tribal funds may not be used to assist white persons in distress, who are not members of the tribe, although they may have married members of the tribe, and have gained a settlement on the Reservation.

If such persons have not a residence on the Reservation or elsewhere in the state, then they are state paupers.

If they have gained a residence on the Reservation, and fall in distress, the oldest incorporated adjoining town, or the nearest incorporated town, when there are none adjoining, becomes liable to furnish relief to such persons.

STATEMENT OF FACTS SUBMITTED BY THE GOVERNOR AND COUNCIL.

There are seven or more white persons who have married members of the Penobscot tribe of Indians, but are not members of the tribe. Of this number, four are now living on the reservation, and two of them are too old and feeble to work, and have fallen into distress. At a public meeting the tribe by a large majority voted to assist those two, to wit, Gasper Ranco and Tuester Ranco, from the funds of the tribe. A minority objected thereto. It appears that both men have lived upon the reservation practically all their lives; that for the past eight years Gasper has lived on Olamon Island and Old Town Indian Island—for the last three years at the latter place; that Tuester has lived on Olamon Island and has spent almost all his life there. Gasper was born in Canada and presumably Tuester was also born there.

The questions submitted by the Indian agent are as follows:

First: Whether the agent has any right to take from the funds of the tribe any money to assist whites who are not members of the tribe, but have fallen into distress while living upon the Reservation, especially when some members of the tribe object to such assistance being given, even though said whites have married into the tribe and have had children by their Indian wives or husbands?

Second: If said agent has no right to afford assistance in such cases, will the State regard such persons as State paupers living in unincorporated places and aid them accordingly; or should they be considered paupers of neighboring towns which are accustomed to exercise police and sanitary jurisdiction over the Reservation?

OPINION.

In my judgment the first question must be answered in the negative. From an examination of the treaty of 1820 entered into between said tribe and the State of Maine, and from the various acts of the legislature from that time to the present, it is evident that the manifest and reasonable conclusion must be reached that the funds of the tribe are to be held and dispensed solely for the benefit of its members. Before any of its funds can be disbursed for the benefit of any person, such person must be a member of, or be adopted into the tribe, pursuant to the provisions of statute. Each member of the tribe is entitled to his full share of the funds, and he cannot be lawfully deprived thereof, against his will, by vote of a majority of the tribe which seeks to unlawfully divert said funds. Nor would it be in accordance with the provisions of statute and the treaty obligations, for the Governor and Council to cause such funds to be expended for the benefit of persons who are not members of the tribe.

Since the tribal funds are not available to assist in the support of these persons, we are brought to answer the second question propounded and to determine, if possible, who is to care for them. To answer this, involves the examination of various early Indian treaties to determine the status of the tribe, particularly in respect to the tenure of the lands which it occupies.

By the treaty of 1725, there was saved unto the Penobscots, and their natural descendants, "all their liberties and property not by them conveyed or sold or possessed by any of the English subjects," * * * and the same was confirmed by the treaties of 1749 and 1754. By their quitclaim deed of August 8, 1796, the Penobscot Indians relinquished to the Commonwealth of Massachusetts, lands on each side of the Penobscot River, "excepting however and reserving to the said tribe, all the islands in said river above Old Town including said Old Town Island." * * *

By the treaty of 1818, the tribe quitclaimed lands on both sides of the river, excepting and reserving for its perpetual use four certain townships, and the islands above Old Town, including said Old Town Island.

The treaty of the State of Maine with the Penobscot Indians, (Mass. Archives, Treaties, etc., vol 1, page 366,) dated August 17, 1820, was a novation, substituting the State of Maine "in the stead and place of said Commonwealth of Massachusetts to all intents and purposes whatsoever" in respect to the treaty of 1818. By virtue of this, Maine assumed the obligations of Massachusetts pursuant to the Fifth Article of the Act of Separation. The four reserved townships were sold in 1833 by the Penobscots to this State of Maine for their benefit, the purchase money, $50,000 being placed in the State treasury and, increased by certain shore rents, is a part of the tribal funds. Thus all that now remains of the original reservations, are certain islands above Old Town Falls including Old Town Indian Island. Upon this I assume that the Rancos now reside.

In the acts incorporating Orono (Pub. Laws of Maine, 1840 Chap. 46) and Old Town, March 12, 1806, no mention is made of the Indian Reservation. Whether those towns are so bounded as to embrace it, I cannot absolutely determine from the description before me. I cannot pass on geographical locations. But I infer, and assume, from general statements that neither includes the reservation, and on such assumption base this opinion. For reference I append extracts of the acts referred to, showing the original limits of said municipalities.

The case of State vs. Newell, 84 Maine, 465, defines the status of the Passamaquoddy tribe, and for the purposes of this opinion the Penobscots may be considered the same as the Passamaquoddies. Speaking of the treaties the court says,

"But, whatever may have been the original force and obligations of the treaties, they are now functus officio. One party to them, the Indians, have wholly lost their political organization and their political existence . . . Though these Indians are still spoken of as . . . the tribe and consider themselves as a tribe, they have for many years been without a tribal organization in any political sense. They cannot make war or peace, cannot make treaties; cannot make laws; cannot punish crime; cannot administer even civil justice among themselves. Their political and civil rights can be enforced only in the court of the State; what tribal organization they have, is for tenure of property and the holding of privileges under the laws of the State. They are as completely subject to the State as any other inhabi-

tants can be. They cannot now invoke treaties made centuries ago with Indians whose political organization was in full and acknowledged vigor." See also Murch vs. Tomer, 21 Maine 535, and Stevens vs. Thatcher, 91 Maine, page 70.

In view of State vs. Newell, and the frequent acts of the legislature, it must be held that the actual control of these tribal lands is in the State. In the first place an Indian agent is appointed who exercises authority over the lands in question; Secs. 7, 8, 9, Chap. 13, Revised Statutes, 1903. Also the purchase and disposal of reservation lands by an Indian is regulated and restricted by statutes, (Secs. 25-35, Chap. 13, Revised Statutes.)

The status of these tribal lands, is somewhat anomalous. Before the white man came they belonged to the Indian insofar as he claimed ownership therein. Gradually he relinquished, either voluntarily or by compulsion, all his lands within the State, saving only these islands in the Penobscot River, which were always specifically excepted by treaties, recognized by Maine, and by Massachusetts its predecessor in authority. Deducing the title to these excepted lands in accordance with the general law of conveyancing, it would seem that the fee simple still remains in the Indians; but whether rightly or wrongly, it has nevertheless become an accepted fact, that these lands are not within their control or disposal. The State, from the year of its creation, has assumed the high prerogative of restricting, and even prohibiting their alienation.

Therefore for the purposes of this case, it is my opinion that the Indian Reservation is State land and an unincorporated place, but subject to treaty obligations, over which no municipality has assumed or may assume general jurisdiction; although it is understood that the adjoining towns have control in certain cases, also that the State has the right to maintain highways (treaty of 1818). Moreover "the jurisdiction and sovereignty of the State shall extend to all places within its boundaries," Chap. 2, Sec. 1, Revised Statutes. The reservation is State land, but held for the use of the Indians, at least so long as they remain a tribe. Where then, rests the obligation to furnish relief for needy persons found in such places? Such obligation arises solely from statutory enactment. We are dealing with a matter which has "none of the elements of a contract expressed

or implied." Davis vs. Milton Plantation, 90 Maine 512. There are no equitable considerations out of which presumptions will arise in favor of placing the burden either upon any municipality or upon the State. Sec. 30 of Chap. 27 of Revised Statutes reads:

"Persons found in places not incorporated and needing relief, are under the care of the overseers of the oldest incorporated adjoining town, or the nearest incorporated town where there are none adjoining, who shall furnish relief to such persons, as if they were found in such towns; and such overseers may bind to service the children of such persons as they may those of paupers of their own town, and may bind out persons described in section twenty-eight in manner therein provided, residing in such unincorporated place, as if in their own town, and such persons shall be entitled to a like remedy and relief. When relief is so provided, the towns so furnishing it have the same remedies against the towns of their settlement as if they resided in the town so furnishing relief. And when such paupers have no legal settlement in the State, the State shall reimburse said town for the relief furnished, to such an amount as the governor and council adjudge to have been necessarily expended therefor. And the reasonable expenses and services of said overseers relative to such paupers, shall be included in the amount to be so reimbursed by the State."

The first five lines of said section fairly and squarely put the primary obligation to furnish relief to those persons in need thereof, and who dwell upon the Indian Reservation, upon either the oldest incorporated adjoining town, if any such town adjoins it, or upon the nearest incorporated town; that is to say, either upon the city of Old Town or upon the town of Orono, according to their location in respect to said reservation. But the last six lines of said section 30, provides that when such paupers have no *legal settlement* in the State, the State shall reimburse said town for the relief furnished. If the Rancos have a legal settlement within the State, then recourse cannot be had to State funds; if, on the other hand, they have no legal settlement within the State, then they are State paupers and the town shall be reimbursed by the State. What, then, constitutes a legal settlement? Section 1, clause 8, of chapter 27 of R. S. is as follows:

"A person having his home in an unincorporated place for five years without receiving supplies as a pauper and having continued his home there until the time of its incorporation acquires a legal settlement therein. Those having homes in such places for less than five years, before incorporation, and continuing to have them thereafterwards until five years are completed, acquire settlements therein."

In my opinion, both of the Rancos come well within the provisions of this clause. For many years, (to wit, for five years or more), they have continuously dwelt upon the Indian Reservation, which is an unincorporated place. That certainly is their home, and the fact that they may be aliens does not bar them from gaining a settlement in the State. Know vs. Waldoborough, 3 Maine, 455. Nor is there any evidence that either of them has at any time received supplies as a pauper from any municipality required to furnish the same. Therefore having determined that the Indian Reservation is an unincorporated place within the meaning of the statute, my opinion is, that the Rancos having lived there and made it their home continuously for the required period of time, they have a legal settlement therein; hence one of the municipalities, as before mentioned, is required by law to furnish them relief, and the State is not required so to do.

It may be added that this whole question, particularly in respect to the status of the Reservation lands, is not free from perplexing difficulties, and that conditions may arise whereby it would be inequitable, at least, for the adjoining towns to be required to care for persons who gain settlement and fall into distress upon these lands. It is a matter upon which further legislation may be found advisable and necessary.

May 6, 1904.