

MAINE STATE LEGISLATURE

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Fifty-Seventh Legislature.

HOUSE.

No. 176.

REPORT.

By a resolve of the General Court of the Commonwealth of Massachusetts, passed on the twenty-sixth day of June, seventeen hundred and ninety-four, Alexander Campbell, John Allen and George Stillman were appointed a committee on behalf of the Commonwealth, to negotiate and settle any misunderstanding, dispute or difference which might subsist between the commonwealth and the Passamaquoddy tribe of Indians, and those of other tribes connected with them, with full power and authority to lay out and assign to the said Indians any tract of unlocated land belonging to the commonwealth, in the county of Washington, not exceeding ten thousand acres, and also to purchase any particular spot of ground or tract of land for the use and convenience of said Indians, provided the purchase should not exceed the sum of five hundred pounds.

In pursuance of said resolve the committee, on the twenty-ninth day of September, A. D. seventeen hundred and ninety-four, made an agreement on behalf of said Commonwealth with the Passamaquoddy tribe of Indians, duly executed, signed and sealed by said committee, and by John Neptune, Francis Neptune and five other Indians in behalf of said tribe, wherein it was agreed, among other matters, in consideration of the said indians relinquishing all their right, title, interest, claim or demand to any land or lands lying and being within the said Commonwealth of Massachusetts; and also engaging to be peaceable and quiet inhabitants of said Commonwealth, without molesting any other of the settlers of the

Commonwealth aforesaid, the committee for and in behalf of the Commonwealth did assign to the said indians, in the following words, viz :

“ The following tract or parcel of land lying and being within the Commonwealth of Massachusetts, viz: All those islands lying and being in Schoodic river, between the falls at the head of the tide, and the falls below the forks of said river where the north and west branch parts; being fifteen in number,” &c.

“ The said islands, tracts of land and privileges to be confirmed by the Commonwealth of Massachusetts to said indians and their heirs forever.”

And the said agreement, duly executed, was ratified and confirmed by the General Court of Massachusetts on the tenth day of February, A. D. one thousand seven hundred and ninety-five.

At the date of said agreement the boundary line between the United States and what is now the Province of New Brunswick was not established, the United States claiming that the Maggwa-daic river was the true St. Croix; but the “ Schoodic ” was afterwards, in the year eighteen hundred and eight, fixed upon as the true St. Croix, and established as the correct northeastern boundary of the United States, the trough or center of the river being the true boundary.

Some few of the fifteen islands assigned by the said commissioners to said tribe were beyond the center of the river, and so without the limits of the Commonwealth of Massachusetts. And all those islands which were in said river between the falls at the head of tide waters and the falls below the forks where the north and west branch parts, had been conveyed by the Commonwealth of Massachusetts to William Bingham and others, as was decided by the Supreme Judicial Court of this State, where said lands or islands are situated.

By a resolve of Legislature of the State of Maine, approved on the seventeenth day of April, A. D. eighteen hundred and fifty-four, it was made the duty of the Agent of the Passamaquoddy tribe of Indians to ascertain and report to the Governor and Council whether the conditions of the treaty between the State of Massachusetts and said tribe, executed in the year seventeen hundred and ninety-four, had been fulfilled on the part of said State and the tribe placed in possession of all the lands and islands guaranteed to them by said treaty, and if not, what part of the lands and

islands specified in said treaty had not been conveyed, and whether they had been conveyed to other persons, and that the report should be laid before the next Legislature of Maine. In January, eighteen hundred and fifty-five, Seth W. Smith, agent of the Passamaquoddy tribe, made his report, as required by the resolve, in which he said :

“ The only question of any importance is in regard to the islands mentioned in the *Schoodic river*. The original grant from Massachusetts to William Bingham of townships No. six and seven, was dated January twenty eighth, A. D. seventeen hundred and ninety-three, and recorded September twelfth, seventeen hundred and ninety-four, (both transactions prior to the Indian treaty) and the present owners, holding their title thus derived, *claim to the channel of said river*. If this is correct, townships No. five, six and seven, being all bounded as they are *on the river*, will cover all the islands in the Indian treaty.”

On the sixteenth day of December, eighteen hundred and fifty-four, the Hon. Joseph Granger of Calais, claiming one of said islands by conveyance from Wm. Bingham, instituted an action of trespass against Peter Avery, agent of said Passamaquoddy tribe, for taking the grass from said islands. The defendant claimed title in the State, as trustee of said tribe of indians, and put into the case the said agreement, or treaty, between the State of Massachusetts and said tribe of indians. The full court decided, as reported in Vol. 64 M. R., page 292, that the title of said island did not pass to the indians, because the Commonwealth of Massachusetts had already parted with its title to the same by deed to Wm. Bingham.

By an act of the Legislature of Massachusetts, entitled “ An act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into an independent State,” approved June nineteenth, eighteen hundred and nineteen, it was provided in section five, that “ The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this commonwealth towards the indians within the said District of Maine, whether the same arise from treaties or otherwise;” for which the State of Massachusetts was to pay the “ new State, the value of thirty thousand dollars.”

It may be questionable whether "obligations" of this particular kind were then understood to have been assumed by this State by the terms of separation. But the language is very broad, and it having been made a part of the Constitution of Maine, the tribe may fairly look to this State for such remuneration as they may be justly entitled to receive for the loss they have sustained.

The Committee therefore report that the following Resolve ought to pass :

STATE OF MAINE.

RESOLVE relating to the Passamaquoddy Indians.

Resolved, That the governor is hereby authorized and
2 requested to ascertain the value of the islands situated
3 in the St. Croix river, which were conveyed by the
4 Commonwealth of Massachusetts to the Passama-
5 quoddy tribe of Indians in the year seventeen hundred
6 and ninety-four, and described in the treaty as "fifteen
7 in number ;" and also the fair yearly value of their
8 use and income since taken from the tribe, and also
9 the expenditures necessarily incurred in defending the
10 title to the lands or islands mentioned ; and report to
11 the next legislature what sum of money, if any, in his
12 opinion, should be deposited in the state treasury, as
13 a trust fund, to the credit of said tribe, in full com-
14 pensation for the islands, their use and income, and
15 for the expenditures necessarily incurred in the way
16 above stated.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
February 15, 1878. }

Reported from the Committee on Indian Affairs, by Mr. MUR-
RAY of Pembroke, and on his motion ordered printed.

ORAMANDAL SMITH, Clerk.