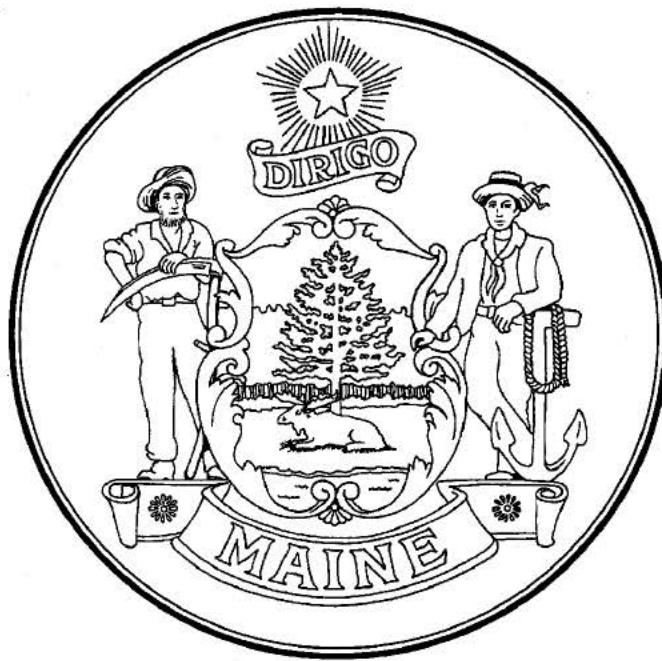


# MAINE STATE LEGISLATURE

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LEGISLATIVE RESEARCH COMMITTEE

July 27-29, 1942.

Testimony of FRANK COWAN, Attorney General

Re: Indians.

## Testimony of FRANK COWAN, Attorney-General:

MR. WEBBER: Frank, we had this bill referred to us, and some of us at least are in a state of utter confusion. You remember the bill. (Presents bill) If you have any pearls of wisdom to let fall on that bill, we would be glad to listen to them.

MR. COWAN: I think I can give you some information in regard to the background. I do not remember the exact bill, but there have been quite a few individuals come into the tribe who have been adopted under that quarter blood law that have been trouble makers, so they say, and the present representative to the Legislature is a Canadian Indian and he has quite a long criminal record which I have in my office. Now it may be that this bill had some connection with that man, I couldn't say, but Shea and his friends were in to see me a year ago and also some of the others. There were two factions there. I know some of them, went to school with some of them when I was a kid, and they discussed these matters, but I do not know what the background of this particular bill is unless it does lie in that.

MR. WEBBER: In our discussion this afternoon we hopped right off from this into a discussion of some possible long-range program on this Indian situation. You made a study of this whole Indian thing when Governor Gardiner was

Governor, and you probably know a lot more about it than any of us do. I know you have got some thoughts of a possible long-range program because you have mentioned it to me. I think the committee would like to know what you think is a possible ultimate way out of the Indian thing.

MR. DOWAN: I think the only proper solution of the Indian question is to give them recognition as citizens and try to work out some method of getting any of them that show any ambition at all off the island and away from the reservation. There are some pretty good people there on the island, but as long as they live there in that communal atmosphere and have everything passed to them they will never amount to anything. They are just children and they never will develop. I think the only way we can ever do anything for them is to get them out and get them working for themselves.

MR. WEBBER: Do you think we owe them any money?

MR. COWAN: Oh yes, no doubt about that.

MR. WEBBER: Do you think they could recover anything from us?

MR. COWAN: That would depend upon the industry of the people who investigated and probably the skill of the lawyers. I think we owe them some millions probably.

MR. WEBBER: That is for timber rights and fishing rights?

MR. COWAN: An accumulation.

MR. WEBBER: Of course so far as the agreed stipend is concerned we have paid them a great deal more annually than that would amount to, haven't we?

MR. COWAN: Yes; we have paid them very well. I was looking yesterday at the original treaty between Massachusetts and the Indians, made in 1780, and as far as our attitude has been, our conduct the last few years, probably the last fifty years, we have used the Indians all right: I do not believe there have been any new robberies to amount to anything in that time. It is the Penobscot Indians particularly. There was a man named Hunt who was Indian agent for many years, and he had an excellent reputation for fair treatment of the Indians, and whether or not there was anybody who succeeded Hunt or whether the State took over directly I don't know, but I haven't heard of anybody who has robbed them in the last few years, and I do not think there has been any chance because there has been too close a watch kept and the law has been pretty carefully worked out, but you go back into the earlier history of the State and it would seem fairly apparent that they were robbed left and right.

MR. WEBBER: Wasn't there timber sold off by state officials?

MR. COWAN: There was. And how far the Federal court would go in upholding the treaties is a question.

Now the original Massachusetts treat from which ours really stems conveyed to Massachusetts all the land on the west side of the river below the Piscataquis River or

whatever the name is, up there at Howland, and on the east side of the river all below that river that comes in at Mattawamkeag, and reserved to them all the islands, including the island on which Old Town stood; and then there was a flaw apparently in the survey, and then they reserved all the islands on which the Indians themselves made improvements which were north of that line, and they also reserved two islands in the mouth of the river.

Now I haven't read the later treaties recently, but, as I recall, the second Indian treaty that Massachusetts made in 1800 and something changed that and, without any particular consideration, took away their lands except for some townships. I may be confused there, because the Passamaquoddy treaty reserved two townships to the Pleasant Point Indians, but anyway our treaty which was made in 1820 really took over the Massachusetts treaties. The principal idea at that time seemed to be to get the lands and the rights and pay nothing for them. I think Massachusetts in 1780 gave three hundred pounds of something or other, a few shirts and so on, but the consideration was so grossly inadequate that it was absurd. I have very serious doubt that if it were put up on ~~an~~ contract relation there would not be considerable difficulty. Of course the courts would give us credit for the care that we have given to the Indians and all this money we have paid and things like that, and also the fact the thing has stood for so many years and rights

been gained. Of course they would not be disturbed, or any titles or things like that, but if a real energetic effort were made on behalf of the Indians I am inclined to think the State of Maine would be stuck.

MR. WEBBER: In considering the advisability of an act like this one here no mention is made in here of the preservation of any property rights. How far do you think we ought to go in fairness to them in preservation of their semi-titles -- they don't have a complete fee but they have a sort of a transferable ownership. Here is a woman who marries a non-member and she owns a house and a lot over there.

MR. COWAN: She has a right under our statute that can be transmitted to her offspring. Her husband has no dower rights, as I recall: I don't remember he does anyway. These rights can be sold subject to the approval of the State of Maine. We had the question come up the other day when the Federal government wanted to take some land on one of the upper islands for an extension of the airport. The federal officials said, "We will buy or condemn it." I told them they couldn't do either. We gave them a long term lease. As long as the Indians stay on the island I do not think they ever will amount to anything as citizens, and I think we are very right in not recognizing them as citizens in spite of the federal statute because they are no good over there. They are just about like the Brown-Tuttle colony up in Athens, a little higher grade, but

they intermarry quite strongly and there is a lot of degradation.

CHAIRMAN DOW: You think we ought to subscribe to the theory we ought to wipe them out?

MR. COWAN: No.

CHAIRMAN DOW: What is an Indian anyhow? How long does he stay an Indian -- Until he is melted down by intermarriage?

MR. COWAN: They don't seem to stay Indians very long.

I have got a client who is a quarter Indian, lives up at Raymond, and certainly he is not an Indian. There is our friend Neale Bishop down here who seems to have quite a lot of Indian blood in him, but there is his brother Leonard who does not seem to show any Indian characteristics. I think Neale told me his grandfather or great grandfather was an Indian squaw.

MR. WEBBER: That is a freak of nature.

MR. COWAN: I was thinking of his grandfather and great grandfather, then I remember, I think he said Princess Smuttynose -- that would make it a lady apparently.

MR. PAYSON: Did you make any written report to Governor Gardiner?

MR. COWAN: On the Indians, no, sir. I was scared of it when I got into it and closed the door.

MR. BOUCHER: Did you read the Webster-Ashburton treaty?

MR. COWAN: I have.

MR. BOUCHER: Isn't there a section in there regarding the Indians?



MR. COWAN: I wouldn't be able to say, because I haven't read it for thirty or forty years.

MR. BOUCHER: I was told there was a section in there, quite an important section, referring to the Maine Indians, when they divided the line between New Brunswick and Maine and swung way up into the northern part.

MR. COWAN: That would be easy enough to find out because I have that treaty. It appears in one of our law books. It would be I think along about 1840. I think it is printed in the sessions laws.

MR. PAYSON: Did you make your study from material available in the State Library, or did you have any outside material?

MR. COWAN: Right here in the State House and down in the Land Office. My study, as you call it, -- I was digging into things down there and I kept running into this stuff, and I was checking up on the Indian trust fund, trying to find the origin of it and find out why it was a certain amount of course, and as I went back through the Land Office records I began to get more and more dubious. I finally said "The Indian trust fund amounts to \$138,000 -- period", and stopped right there.

MR. PAYSON: This is a skeleton in our closet.

MR. COWAN: Well, I had a feeling it would be more than we wanted to see in that closet, so I closed the door.

MR. PAYSON: We were just talking about an expenditure of \$100,000 a year capitalized at two per cent, in the vicinity of fifty million, so we thought we would like to find out something about it.

MR. COWAN: Well, I can't give you anything definite.

CHAIRMAN DOW: Did your study show you as far back as you could go this Passamaquoddy tribe of Indians were still at this present location, or don't you remember?

MR. COWAN: Oh yes. The Passamaquoddy Indians have a good record. They were so far away and the land and timber was of so little value during the first half of the century they were not disturbed much; and the Indian tribes down there north of Princeton, there were two or three townships and those have been administered pretty carefully.

CHAIRMAN DOW: You mean Pleasant Point and Princeton?

MR. COWAN: Yes. And I didn't see anything to criticize except of course the original treaty.

CHAIRMAN DOW: As far back as your study went, they were still there?

MR. COWAN: Yes. That was the Sebois River, I think they call it.

CHAIRMAN DOW: And the same is true of the other tribe?

MR. COWAN: Wait a minute. We haven't any recorded treaty with the Pleasant Point Indians: we have just an arrangement with them.

CHAIRMAN DOW: A written arrangement?

MR. COWAN: Well, the Legislature passed something in the acts or resolves.

CHAIRMAN DOW: There is no treaty with them?

MR. COWAN: I don't know of any treaty with them. The

Penobscot Indians, there have been three different treaties, two in Massachusetts and one in Maine.

MR. LIBBY: On what was the amount based? We are assuming we are paying \$47,000 to the Penobscot Indians and \$34,000 to the Passamaquoddy Indians. That is not a fixed sum, as I understand it?

MR. COWAN: No. I guess it is based on the needs. They have been regarded as State wards and for the last quite a number of years they have been treated very well. I asked Shea last year when he brought up this subject if he had rather, if he and his people had rather have whatever rights might be due them in cash from the State or have \$50,000 a year that the State is giving them. He said, "I am not that much of a damn fool: I had rather have the \$50,000 a year." So that ended that subject.

CHAIRMAN DOW: This fellow that came to the Legislature, how did he get his credentials down there to come here if he was not a member of the tribe?

MR. COWAN: He was adopted into the tribe. He came in under this present law, of which there has been considerable criticism.

CHAIRMAN DOW: And by their adopting him into the tribe he becomes a State ward? A Yes.

CHAIRMAN DOW: So all these Canadian Indians could come down and be adopted and become State charges?

MR. COWAN: Yes; and we support them.

MR. PELLETIER: Have there been many Indians from Canada coming down and gaining adoption in our Indian tribes?

MR. COWAN: Oh yes, this present representative to the Legislature is French.

MR. PELLETIER: Has that been very general, that situation?

MR. COWAN: I think quite a few. I would not be surprised if twenty-five per cent of that Penobscot tribe are either Canadian Indians or children of Canadian Indians on one side or the other.

MR. PELLETIER: That gives rise to another question: Are the Canadian Indians in Canada taken care of in any similar manner to the way ours are here, and, if they are not, wouldn't that give rise to temptation for them to come over here where they could be taken care of?

MR. COWAN: I don't know how they take care of their Indians there.

MR. LIBBY: I know of one tribe on Indian Point in New Brunswick: I don't know how much the Province of New Brunswick gives them in actual cash but they have a colony, church, schools, fishing rights in the river, and no white man can fish there without an Indian guide, and they do a lot for the Indians.

MR. COWAN: When I was a kid in Old Town they all attended one church and had one school taking care of them: now they have got two different religious organizations in a small group and these two religious organizations are

more or less pulling apart, and it makes it harder to consider what will be best for them because you don't know when you talk with them whether he is talking honestly or whether he is mad with the other fellow because he belongs to the other religious sect.

CHAIRMAN DOW: It is your understanding that five hundred of these Canadian Indians could march down here today and be adopted and we would have them there?

MR. COWAN: I do not think there is anything to curb them.

MR. LIBBY: There are no restrictions about an Indian crossing the border, as I understand it.

MR. COWAN: We have very liberal Indian laws we don't live up to. For instance, under our treaties they have free rights of fishing and hunting. We do not grant them that. Of course they are tax-free. We require them to pay an excise tax on their automobiles. They do not understand that, and we tell them it is not a tax at all, it is an excise payment for a privilege. They say, "It looks to me like a tax."

When we are talking of the federal government, the federal government says it is a tax. The Land Bank comes down here with some automobiles and they say the federal statute says we shall be wholly tax free so we shall not pay the excise tax, and we tell them that is not a tax, it is a charge for a privilege; and they say, "Look at the case of White vs. Land Bank."

MR. PAYSON: Is there anything in this treaty we took over from Massachusetts about licensing their automobiles?

MR. COWAN: It does not seem to mention automobiles or airplanes.

CHAIRMAN DOW: Do you make them get a fishing license?

MR. COWAN: They have to get a fishing license. I don't know whether they pay for it or not. You see under the treaty they could hunt anywhere they wanted to any time, but the courts have said of course very definitely, both here and in other states and the United States Supreme Court said they must be governed by local restrictions.

MR. WEBBER: This Passamaquoddy thing, there was simply the agreement between Massachusetts and the Passamaquoddy tribe in 1834. It is rather ingenious because on the one hand the Indians gave up all of the lands they had in the Commonwealth of Massachusetts and the consideration for that was they gave back to the Indians certain restricted areas of the same land. Nobody could make money trading that way.

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