

ST. REGIS MOHAWK TRIBAL COURT

Shawn Chubb Square,)
Plaintiff)
v.)
Eli Tarbell,)
Defendant)
By Dale White, Esq.)

Case No.: 11-LND-00004

DECISION AND ORDER

I. HISTORICAL BACKGROUND:

Today the Court is called upon to address a historic “troublesome and vexatious”¹ issue for members of the St. Regis Mohawk Tribe: Land disputes on the Saint Regis Mohawk Indian Reservation (SRMIR). In addressing this case, as well as other cases now pending in front of the Court, it would be simple and expedient to simply utilize U.S. legal principles in disposing these cases in what some would deem to be an efficient manner.

On behalf of the Tribal Court, I have chosen not to pursue that efficient manner, and instead have chosen to follow the Saint Regis Mohawk Tribe (SRMT) Laws given to the Court, and to do what is ‘just’ over what is ‘expedient’. Although this has added considerable time in deliberating upon these cases, something we apologize to the parties for, it does not change the requirement that an exacting review of land holding patterns on the SRMIR reservation was necessary in order to properly deliberate and decide the cases now before the SRMT Court.

Although lengthy, it is clear that this exacting review will assist the SRMT Court in deliberating upon these cases and cases that may come for review in front of the SRMT Court in the future.

LAND HOLDING ORIGINS

The civil code of the St. Regis Mohawk Tribe, under the section titled “Applicable Law”, provides for the following:

“[3.] Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions, and practices.”²

The SRMT Court finds that the following is meant within the language used within the SRMT Civ, Code, as it relates to land disputes.

Clearly the community of Akwesasne has the word Mohawk inserted into many of its current locations and institutions, and this facet clearly references the historical origins of some

¹ See NY Assembly Document No. 131 February 9, 1841.

² See Saint Regis Mohawk Tribal Court TCR-2008-19, Civil Code, (hereinafter SRMT Civ. Code) at § V(a) (3).

SRMT members and residents to the Mohawk Nation, which is one of the ‘founding’ Nations of the Iroquois Confederacy³. Yet, it is also clear that not all members and residents of Akwesasne trace their historical origin to the Mohawks, and subsequently, the Iroquois Confederacy. The confusion this can cause is compounded by the fact that the primary aboriginal language spoken in Akwesasne is Mohawk. Yet, this only helps explain the rise in the use of the term Mohawk in Akwesasne.

Some of this confusion originates from the establishment of certain Tribal Nation/Communities on the shores of the St. Lawrence River. One particular Tribal Nation community was that of Caughnawaga/Kahnawake which was established across from Montreal (PQ) Canada in the mid to late 17th Century. In this community were not just Mohawks, but also other member Nations of the Iroquois Confederacy (namely Oneida), as well as Algonquin, Huron (/Wyandot), and Abenaki Nations. As noted, this community would become known as Caughnawaga/Kahnawake, and when the Iroquois became the more dominant group located there, it became known as the Iroquois of the Sault.⁴ Although this village quickly came into alliance with France, it would also be a ‘founding member’ of its own alliance known as the Seven Nations of Canada. This ‘other’ alliance would, to the chagrin of both British and French monarchy officials, maintain alliance with other Tribal Nations to its East, North, and with the Iroquois to the South.⁵ The military importance of this Community/Nation became very apparent during the many wars of the 18th Century, and even more so during the period of what is commonly called the French & Indian War, or the Seven Years War.

This history is included because it is from here that we can gather some crucial and relevant information with respect to what life ‘resembled’ within the Caughnawaga/ Kahnawake community during this time period. This includes the native ‘land holding’ patterns internal to the Caughnawaga/Kahnawake community. Louis Antoine de Bougainville, who served as aide-de-camp to the French General Montcalm during the French & Indian War (1756-1760), leaves what is perhaps the best glimpse of the issues which are of concern to us here. In Bougainville’s journal he recorded the following observation on July 9th 1757 with respect to Caughnawaga/Kahnawake:

The village at the Sault is attractive, *laid out in regular form* with a parade ground which divides it and serves as a riding field, for they have many horses and exercise them continually. The church is pretty and well decorated. The Indians have, as do those at the Lake, fields cultivated by their women, fowl and cattle, *all individually owned. They sell, buy, and Trade just like Frenchmen.*⁶ [emphasis added].

³ The other Iroquois Nations being: The Seneca, Cayuga, Onondaga, Oneida, Mohawk, and later joined by the Tuscarora.

⁴ Which is in reference to the Lake St. Louis rapids, that were, in the St. Lawrence River directly in front of the Community.

⁵ The Seven Nations, or Fires, as they are referenced, would include the Huron/Wyandot of Lorette, Abenaki of St. Francis, and the Iroquois of the Sault-Caughnawaga/Kahnawaka, the Missassauga-Algonquin-Iroquois of the Lake of Two Mountains (Kanasatake), and the Iroquois at LaPresentation. To the East were Micmacs and Penobscots of the 14 Fires, to the North the Odawa. See Hough *supra* note 22, and PETER MACLEOD. THE CANADIAN IROQUOIS AND SEVEN YEAR’S WAR. Dundurn Press. (1996).

⁶ See, ADVENTURE IN WILDERNESS. THE AMERICAN JOURNALS OF LOUIS ANTOINE DE BOUGAINVILLE, 1756-176” 124-125 (Edward P. Hamilton trans. ed., Univ. of Oklahoma Press 1964).

This passage becomes extremely relevant when one recognizes that it was from the ‘Iroquois of the Sault’ that a majority of the ‘founding families’ of Akwesasne originated from.⁷ And from all appearances, the land holding pattern then in use in Caughnawaga/Kahnawake was emulated and/or transferred to Akwesasne.

Customary Land Holding in AKWESASNE

There is not readily available⁸ any documented first hand observations made during the period of 1760 to 1780 with respect to land holding patterns in what is called Akwesasne, and later on, synonymously the St. Regis Mohawk Indian Reservation.⁹ Yet, other proofs show that the land holding pattern which existed in Caughnawaga/ Kahnawake was duplicated in Akwesasne.

In the post revolution period (June 1786) an ensign with the British Military was traveling through the St. Lawrence River Valley and noted the following observations:

On the Opposite side of the River is an *Indian Village called St. Regis*. I do not know to what Nation this village properly belongs but believe the most part of its inhabitants were originally a Branch of the Hurons. It is now a considerable Village, can produce Warriors which are esteemed as good ones. The Last House in this Village is exactly on the 45th Parallel of Latitude. Of course this is by treaty the last Settlement of the English. On the South Side the River as the boundary from hence runs up the center of the Lakes and Rivers go I only know where as to islands. *They are all the property of the Indians who will not part with them.*¹⁰ [emphasis added].

Later in the same journal another entry records the following:

“On these Islands all the way up the River and even above Cataraque *the Indians grow* all the corn the[y] make use of as well as Pumpkins Squashes and even a few Mellons. [Sic]”¹¹

These observances indicate that clearly those Indians of the village of St. Regis, who in large part had emigrated from Caughnawaga/Kahnawake, brought with them the notions of property ownership, and began agricultural pursuits utilizing their property. Further evidence of this ‘land use’ knowledge can be discovered in the following:

⁷ These include the Tales of those Captured during the intermittent wars, the more famous being the families of Williams, Tarbell and Rice. Said surnames still exist in both Kahnawake and Akwesasne. See, John Demos, *THE UNREDEEMED CAPTIVE: A FAMILY STORY FROM EARLY AMERICA*. Alfred A. Knopf. 1994. (discussing Kateri’s Kin).

⁸ To date.

⁹ The term Mohawk was added only later, and is a rather recent phenomenon.

¹⁰ See, *THE AMERICAN JOURNALS OF LT. JOHN ENYS 96* (Elizabeth Cometti ed., Syracuse University Press 1976).

¹¹ *Id.* At 96.

Araguente was a Caughnawaga Indian and a trader, which is indicated by a series of leases for land and a mill-site near Fort Covington, New York. Two of these leases are recorded in the County Clerk's office at Plattsburgh, New York; the first of these, dated December 15, 1798, is between 'William Gray, of St. Regis, trader of the one part, and Thomas Arakouante of the Village of Caughnawaga of the 2d part, and [several] Chiefs of the Indians of St. Regis of the 3rd part.' In which Gray assigns to Araguente his lease from the Indians. The second lease, dated December 29, 1798, is 'between Thomas Arakunte of Caughnawaga, Trader, and James Robertson of Montreal, Merchant,' in which Araguente in turn assigns the lease to Robertson.¹²

Therefore, in combination these observances clearly show some sense of property control, for both agricultural and commercial purposes, by the Indians of St. Regis. This leaves a separate question though, was there any sense of an individual Indian possessing property ownership rights. The following from 1804 sheds some light on this issue, and seems to answer that inquiry in the affirmative:

Crossed from Cornwall to St. Regis an Indian Village of about 200 warriors....*They have tolerable log houses, iron stoves-chimneys-glass windows etc.... many of their houses are of squared log & shingled* but more of rough log covered with Elm bark. ...The Indns [Sic]. Have contributed for building a Mill, the revenue of which they allow the priest....¹³ [emphasis added].

Although demonstrative of the early history of Akwesasne, it appears that a more exacting description is needed. For that, we turn to other sources.

Following the War of 1812 both Britain (British Canada) and the United States agreed to form a 'joint-commission' to set the international boundary between the two countries. Both countries subsequently appointed their own commissioners and provided support staff which largely consisted of commissioners, surveyors, and lay workmen. The work was commenced in earnest around 1817, and at that time due to the nature of the work, the language contained in treaties entered into between the two countries, and the location of 'St. Regis', the joint-Commission arrived at St. Regis in 1817. Most telling for current purposes is the journal maintained by Major Joseph Delafield which contained his observations made during that time.¹⁴ The following passages from that diary provide a description of St. Regis.

Arrived at the village of St. Regis in the afternoon, having first stopped at Col. Ogilvy's camp a little north of the village on the Isle de St. Regis. St. Regis

¹² See, McLellan, H. and Charles McLellan. Eds. "A Quarterly Magazine of American History." *The Moorsfield Antiquarian*, 1.2 (1937): 195.

¹³ See, Lord SELKIRK'S DIARY, 1803-1804; *A JOURNAL OF HIS TRAVELS IN BRITISH NORTH AMERICA AND THE NORTHEASTERN UNITED STATES* 196 (Selkirk, T. D., & White., P. C. eds., (1958). Further, it is noted in other sources that the Indians of St. Regis built their own church at a cost of 800l.

¹⁴ See, Major Joseph Delafield. *The Unfortified Boundary. A diary of the first survey of the Canadian Boundary Line from St. Regis to the Lake of the Woods by Major Joseph Delafield an American Agent under Articles VI and VI of the Treaty of Ghent.* (1943).

contains but one or two English or American residents. A Catholic priest is the tribunal to which the natives on all occasions refer.¹⁵

With respect to agriculture Delafield notes the following:

Observed some squaws planting seeds which had previously covered in the earth, and permitted to remain til germinating-having found their place of deposit they carried off only such seeds as had sprouted, to plant, thus securing a crop without any wasteland. The seeds were corn, cucumbers, peas & beans. *The Indians of St. Regis cultivate considerable land & much of this island....*¹⁶

In further description of some of the islands possessed and cultivated by 'the Indians,' Delafield notes that they are: "Considerable cultivated by Indians. Could not learn that they could grant satisfactory titles. An apple orchard was then in full bloom. Strawberry, blackberry & gooseberry vines are found."¹⁷ Furthermore, during this period Delafield had an opportunity to observe the 'Corpus Christi' in St. Regis and he describes: "*The village* has been prepared for the occasion, by sweeping the lanes which are in green sod, & *very regular*, and planting rows of poplar & hemlock, on either side giving it quite a fanciful appearance."¹⁸

When the joint-commission needed storage space, Delafield notes that "*The Chiefs of the village* assemble at our lodgings to *execute a lease* of a store lot to Judge Atwater for 10 dls., yearly rent, the delivery of which I witness."¹⁹ As a collective whole, these observations clearly begin to show a sense of property ownership was already in existence on the St. Regis Mohawk Indian Reservation/Akwesasne. Perhaps the best description of 'reservation life' and Reservation Land Holding patterns from that time is discovered in the diary entry for July 13, 1817:

There are some good looking fields of grain on this island, which are cultivated almost exclusively by the women. Corn, wheat, peas, and potatoes & beans chiefly. ***He who first cultivated a plot of ground becomes the possessor, and by this use gains a right to sell his privilege.*** The Chief Loran, an industrious sober & prudent old man, is the greatest farmer and has the most cleared land by purchase of privilege in part. [emphasis added].²⁰

This clearly provides early evidence of some sense of the privilege and/or right associated with property control on the St. Regis Indian Reservation by an individual St. Regis Indian: Those who first cultivated become the possessor. In addition, the passage clearly shows that 'property transfers' were occurring by and between St. Regis Indians.

¹⁵ *Id.* at 139(day of May 20, 1817).

¹⁶ *Id.* at 140 (day of May 29, 1817).

¹⁷ *Id.* at 142 (day of June 5, 1817).

¹⁸ *Id.* at 143 (day of June 8, 1817).

¹⁹ *Id.* at 145 (day of June 19, 1817).

²⁰ *Id.* at 151.

Proof of the security of an individual St. Regis Indian in their land can be gleaned from other sources by 1847, and this information originates from the so-called northern (Canadian) portion of the territory of Akwesasne:

When an Indian is once in possession of a piece of land, is he secure from the intrusion of other Indians; also, has he power by usage, of Transmitting it to his heirs or conveying his interest in the property to other members of the tribe, or other parties?

Any Indian, whether man or woman, once in possession, by purchase or otherwise, of a piece of land within the tract held and owned by the tribe in common, *is, by usage, protected against intrusion of any other person or party, and has the right of transmitting his or her interest therein to their heirs, or of conveying it to any other Indian of the tribe, but to no other persons.*²¹[emphasis added].

This observation is confirmed later in the same report by another answer given to the same style question:

Their cultivated and uncultivated lands are not divided into regular portions; each Indian makes choice of a piece of land according to his taste. The chiefs do not choose.

Similarly:

When an Indian is in possession of a piece of land he holds it as proprietor; no other Indian can take it from him. He may by custom transfer it to his heirs, or sell it to any number of the Tribe, but not to the whites. [emphasis added].

One would be prone to say that this is only pertinent to the so-called northern portion of Akwesasne. Yet, other historical observations from the same time period confirm the individual St. Regis Indian right to hold their lands. In 1852, the noted New York State Historian Franklin B. Hough would also travel through the so-called ‘American portion’ of the St. Regis Indian Reservation and recorded his observations at that time:

The surrounding fields, are an open common, without separate enclosure, and are used as a public pasture by the inhabitants. Around the cabin of the villagers are usually small enclosures, devoted to the cultivation of corn, and culinary vegetables, *which by the right of occupancy have come to be considered the private property of individuals, and as such are bought and sold among the natives, although the law recognizes no such private ownership, and holds them all as tenants in common, denying them the right of buying or selling land, except to the government.*²² [emphasis added].

²¹ See, Appendix to the sixth volume of the journal of the legislative assembly of the province of Canada, from the 2nd day of June to the 28th day of July, 1847, both days inclusive, and in the tenth and eleventh years of the reign of our Sovereign Lady Queen Victoria being the third session of the second Provincial Parliament of Canada session; Appendix(T.), Appendix No. 5, Answers from the Resident Superintendent of the Indian Department at St. Regis.

²² See, FRANKLIN B. HOUGH. A HISTORY OF ST. LAWRENCE AND FRANKLIN COUNTIES, NEW YORK, FROM THE EARLIEST PERIOD TO THE PRESENT TIME. 110,113. Little. (1853). (Identifying June 1852 as the time of Hough’s visit).

For clarification it is apparent that Hough's statement "although the law recognizes no such private ownership" is NOT in reference to the laws or customs internal to the St. Regis Indian Reservation, but rather to the neighboring Anglo-American legal system.²³ Confirming this is the observation that the customary land holding mechanism at St. Regis, by the end of the 19th Century, had evolved to the point where written documents were used. This can be seen in the following extracts from records in the SRMT Clerk's Office:

November 19th 1898,

Moe's Na So Ta Ko washios Wentsianinon ne tsi nar ne tekaronIa ke

[*Sold land, Two Blue Skies (name)*]

niho ninon ne watio ta on

[*he bought it from*]

She Te ni ha on wen tsia kenha

[*Land that used to be his*]

Ken na hiion \$80.00

[*Good hide or leather*]

Tionhonskwaron enska

[*One cow*]

Ta Hiion

[*I gave him*]

Ken nia ha tkene \$30.00

[*He took hold, grabbed or accepted the deal*]

Owistha \$40.00

[*Money*]

Tanon rikaro tani ne \$10.00

[*And I lent him*]

Tho nenka wa o ti teh

[*Now it is finished \$80.00*]²⁴

Following this transaction, another is noted in the SRMT Records:

November 5th 1900

So Se Sho Tien Tonh

[*Reverts back or goes back to (Sose, owned it first)*]

Wahiiio wentsianinon netetia Tekha

[*I gave, bought or sold land, the land goes up against (setting a boundary mark)*]

Ne Mose (?) Raonwentsiakenha

[*It was Mose's land*]

Tanon tekeniiashe tsiohonskwaron

[*And a pair of cows*]

Kon nia hatkeneh \$130.00

²³ In all likelihood Hough was referencing New York Property law in this regard, and the minimal Federal Indian Law then in existence.

²⁴ This is the earliest SRMT Recorded transaction given in the Traditional language at St. Regis. The reader must be cautioned that other records do exist that may be outside of the SRMT Clerk's Office.

[*It convinced him or sealed the deal (wa'thokoni- he couldn't resist the price)*]

Oksaok akwekon Wak kariake

[*Right away I paid it off*]

Owista

[*Money*]

I:I John Garrow

[*Me John Garrow*] ²⁵

Therefore, the foregoing makes clear that St. Regis already had developed a 'customary' land holding system which recognized an individual Indians land rights.

Distinguishing the St. Regis Leases

First, as noted herein it is clear that as early as 1798 there is proof that certain lands of the St. Regis Indian Reservation were already 'under lease'.²⁶ This though has to be coupled with other related observations. For instance, and returning to the 1817 joint commission, as the Commission continued their survey work up the St. Lawrence River, Delafield's diary notes the following:

The St. Regis Indians claim title & give leases. The Chiefs having divided, however, part among the British & part among the Americans, throws their concerns into confusion and, as neither can agree, the rent is neither demanded by nor paid to either.²⁷

This is further enlightened by the following in the Delafield Diary:

Louch has a lease from the St. Regis Chiefs in 1806 when they were united, and another lease of 1817 from the British Chiefs who have seceded, but is uneasy about his right of property or title.²⁸

These instances make clear that there was a discernible distinction made with respect to lands under the control of the St. Regis Indians. First, although individual St. Regis Indians could easily acquire control over a certain parcel by simply clearing, cultivating, and occupying a land parcel; 'another' aspect indicates that lands NOT under the control of individual St. Regis Indians were free to be 'leased'. In regards to this 'leasing' mechanism it is noted by Hough that:

On the approach of the war [of 1812], the situation of St. Regis, on the national boundary, placed these people in a peculiar and delicate position. Up to this period, although

²⁵ *Id.*

²⁶ *See, supra* note 12.

²⁷ Delafield at 159, *supra* note 14. (Date of July 28, 1817).

²⁸ *Id.* at 171 (Book Two date of September 15, 1817).

residing in both governments, they had been as one, and in their internal affairs, were governed by twelve chiefs, who were elected by the tribe, and held their offices for life.

*The annuities and presents of both governments were equally divided among them, and in cultivation of their lands, and the division of the rents and profits arising from leases, they knew no distinction of party.*²⁹ [emphasis added].

This reference is again repeated in Hough, wherein he records much of the same, but also adds:

Before the war, the *St. Regis Indians* were allowed to *hold, in common* with their brethren in Canada, *all the Indian lands*, and also to receive the rents and profits of them. Since the war, the British government refused them the privilege of even occupying the lands on the St. Lawrence River, in common with their brethren in Canada.³⁰ [emphasis added].

These observations clearly provide another unique twist to the Akwesasne land holding pattern:

Prior to the war of 1812 there was one (1) Council in Akwesasne receiving and distributing the lease payments to ALL St. Regis Indians. As indicated, it appears that only war and the fluctuations of non-St. Regis governmental policy altered this fact.³¹

Yet, it would be the leases, and the lease payments, that would cause St. Regis much trouble in ensuing years.³² Included in these troubles was a subtle, but very important, distinction with respect to lands in the St. Regis Indian Reservation: Was it an individual St. Regis Indian who was making the lease to those portions of land which had come within their possessory interest, OR, was it the Tribe (via the Tribal Chiefs) that was in fact leasing the remaining ‘common’ and/or ‘unoccupied’ lands of the Reservation which had NOT been chosen and occupied by a St. Regis Indian? This trouble clearly persisted for some time for as Hough observed in 1852:

By an act passed April 27, 1841, the trustees of the St. Regis tribe duly elected, at a regular meeting, were authorized with the advice and consent of the agent for the payment of annuities, to execute leases to white persons for *any part of their unoccupied lands*, for any term not exceeding twenty one years, for such rents as may be agreed.³³[emphasis added].

Even with such dubious ‘state granted’ authority, it is clear that the only lands that would be covered were those for “unoccupied lands”. Clearly meaning those lands not cleared and under the control of an Individual St. Regis Indian. This did little to quell issues surrounding these leases though, as Hough further observed:

²⁹ HOUGHS at 154-159.

³⁰ *See, Id.* at 168.

³¹ Clearly, through the operation of government and the passage of time would inure to the benefit of the person on St. Regis lands and not to the St. Regis Indians themselves.

³² *See, HOUGH* at 159-164.

³³ *Id.* at 171.

The question of the propriety of this measure [land leases], has ever been a subject of contention and party strife among them, at their annual election of trustees. For several years, the party opposed to leasing land, has been in the ascendancy, and the measure has been discontinued.³⁴

In the post Hough period (1867) other reports made clear, and confirmed, that there existed on the St. Regis Indian Reservation a customary land holding pattern, inclusive of individual parcels and 'common lands'. Wherein:

This reservation includes, or presents, originated in the war of 1812-'15, and according as they or their ancestors declared their preference at that time. The distinction is kept up by inheritance from mother to child, according to the Indian custom. Each party is governed by a separate class of trustees or chiefs, and their domestic affairs are generally managed harmoniously. Although tenants in common, *it is customary for them to buy and sell improvements among themselves, and the conventional titles thus acquired are respected by common consent.*³⁵ [emphasis added].

Even in light of the 'customary consent' it appeared that the lease issue was not very far away, and that no easy solution was at hand as the topic appeared again in 1879 and 1888. First, in 1879 at the annual meeting of the Religious Society of Friends, noted the following with respect to St. Regis lands:

Portions of the lands belonging to the tribe are leased to white people by virtue of an act of the State of New York passed in 1841....They hold the land in common.... These elections are often conducted with much spirit, the Indians being divided chiefly of the propriety of leasing their lands.... Although the law recognizes no individual rights in the land, *custom has sanctioned*, in this as well as in the other New York Tribes, *the holding of lands for the exclusive benefit of families, and these rights are bought and sold among themselves*. Any Indian may consequently appropriate for cultivation so much of the wood-land as he chooses, provide he clears and occupies it, and the improvements on the land he thus takes up he may rent to others of the tribe. Indians may pasture upon the unenclosed land as many cattle as they please, there being no limitation as to number: *it is said white people frequently hire the privilege of pasturage on the common, paying the chiefs or trustees a small compensation for it*. Every Indian of the tribe may cut as much wood on the Reservation as he wants for his own use, or desires to sell, and within a few years large quantities have been disposed of.³⁶ [emphasis added].

These same occurrences were recorded just nine years later (1888):

³⁴ *Id.* at 172.

³⁵ See, NY Office of the Secretary of State, June 25, 1867, Report on Indian Tribes in the State.

³⁶ See, A BRIEF SKETCH OF THE EFFORTS OF PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS TO PROMOTE THE CIVILIZATION AND IMPROVEMENT OF THE INDIANS ALSO OF THE PRESENT CONDITIONS OF THE TRIBES IN THE STATE OF NEW YORK. 39-43. (Friends Book Store 1879)(1866).

They hold it in common [land] and seem to have no method of dividing in amongst themselves, but *each Indian takes as much as he wants, and in any locality he likes, occupies and cultivates, and it is his without further requirements.* They sometimes purchase of each other improved land...that *not actually occupied or cultivated [land] by the Indians is termed common land and is used as pasturage. Some of it is used for pasturage by white people, who pay the trustees of the nation rent therefor [Sic]...*³⁷ [emphasis added].

The foregoing clearly shows that there existed both a customary ‘land holding pattern’ by individual St. Regis Indians on the St. Regis Mohawk Indian Reservation AND a mechanism by which leases were entered into for certain St. Regis Indian Reservation lands. Those leased lands would be those which were not cultivated and/or occupied by an individual or family of St. Regis Indians. Most often described as common lands. This custom of individual St. Regis Indian allotments versus leases is clearly contrary to the last report (1888) alleging that there did not appear to be a method of land division. Yet, even in light of this, these customs were under constant attack by the state of New York during the 19th Century.

NEW YORK STATE LEGISLATION Respecting St. Regis Land Holdings

The civil code of the St. Regis Mohawk Tribe, under the section titled “Applicable Law”, provides for the following:

[B] Principles of New York State law for resolving private civil disputes *are not automatically applied* in Mohawk Courts. Principles of New York State law for resolving a private civil dispute may be applied in Mohawk Courts for the purpose of resolving a private civil dispute over which the Mohawk Court has jurisdiction if (but only if) the Mohawk Court finds: (i) there is no other controlling principle of Mohawk law;(ii) application of the New York State law is consistent with principles of Tribal sovereignty, self-government, and self-determination; and (iii) application of the New York State law is in the overall interest of justice and fairness to the parties.³⁸ [emphasis added].

The SRMT Court finds that the following is intended with respect to the language used within the SRMT TCR 2008-19, Civil Code, [hereinafter SRMT Civ. Code] with respect to land disputes on the SRMIR.

In 1777 New York State made as part of their State Constitution that no one³⁹ could purchase ‘Indian Lands’ without the consent of the State legislature. This is NOT what we are concerned with here. For our review we are concerned with issues affecting the land holding pattern of the Indians on the St. Regis Indian Reservation. As such, the earliest NY State legislation effecting St. Regis can be seen in 1802, wherein:

³⁷ See, NYS Legislature, Assembly “Report of Special Committee to investigate the Indian problem of the State of New York, Appointed by the Assembly of 1888” Troy Press Co. 1889, at pages 56-58.

³⁸ See, SRMT Civ. Code] §V (B).

³⁹ Really meaning a white male freeholder of property.

And be it further enacted, That it shall and may be lawful for said tribe, at any such meeting aforesaid, to make such rules, orders and regulations, respecting the improvement of any of their lands in the said reservation, as they shall judge necessary, and to choose trustees for carrying the same into execution, if they shall judge such trustees to be necessary.⁴⁰

This ‘pattern’ of state legislation, while ignoring established customs on the St. Regis Indian reservation, would continue into modern times. In fact, much of the same language used in the 1802 Act would reappear in an 1813 act. The 1813 Act purportedly authorized the St. Regis Indians to have a Town Hall meeting on the first Tuesday of May, to choose a Clerk, to choose Trustees, to pass rules, orders and regulations respecting the improvement of their lands, and for the District Attorney of Washington County to bring suits on their behalf.⁴¹ The role of ‘bringing actions’ by a District Attorney was subsequently transferred to Franklin County in 1818.⁴² And this appeared to be in large part to assist the St. Regis Indians in collecting rents or removing trespassers.⁴³ Nonetheless, it is difficult to determine as to how this state legislation would attempt to alter what was already being described as certain customary practices of the Indians of the St. Regis Indian Reservation with respect to land holding.

This ‘bringing of actions’ clause appears to be at a tipping point during this period for in 1821 there was State legislation which made it unlawful for any non-St. Regis Indian to reside on the lands of the St. Regis Indians, and by the same act, nullified all leases which permitted non-Indians to reside on the lands of the St. Regis Indians.⁴⁴ It can be noted that in the same year there was one of the first reported Court cases with respect to the St. Regis Indians attempt to remove a non-native who apparently held lands under a lease.⁴⁵ They were unsuccessful in this regards, and this probably helped fuel the long vexing problem that we are forced to address today.

Throughout the 19th Century there continued to be numerous forays of New York state legislation with respect to land holdings on the St. Regis Reservation. By 1841 there was the aforementioned state legislation ‘permitting’ the trustees of the St. Regis Tribe to execute leases for the ‘unoccupied portions’ of the territory, for a duration of 21 years, and only with the consent of the state appointed Agent or the Franklin County District Attorney.⁴⁶ What is ironic, and as the history herein shows, the St. Regis Indians were already engaging in entering leases, and had collected the rents from these leases, which were subsequently equally distributed.

⁴⁰ See, NYS Act passed March 26, 1802, cited in Hough *supra* note 22 at 154. It can also be further noted that similar legislation was passed by NY with respect to Oneida, Brothertown, and Stockbridge Indians. See, “Laws of the Colonial and State Governments, Relating to Indians and Indian Affairs, from 1633 to 1831 inclusive”. Washington City, Thompson and Homans 1832.

⁴¹ See, Laws of New York, 1813, Ch. 29 §§ 13, 14, 16.

⁴² See, Laws of New York 1818 Chap. 283 §2.

⁴³ There is no indication if ‘self-help’ was occurring at this point.

⁴⁴ See, Laws of New York 1821 (The actual workings allegedly permitted the Judge of the Court of Common Pleas to issue a warrant that was to be executed by the County Sheriff).

⁴⁵ See, *The St. Regis Indians v. Drum*, 19 Johns. 127 (N.Y. Sup. 1821) (holding that ALL agreements with Indians with respect to land are void and unenforceable pursuant to the State Constitution).

⁴⁶ See, Laws of New York 1841 § 1, and as noted *infra*.

The foregoing would be followed by a more general law in 1849, which purportedly permitted all “nations, tribes or bands” within the State to divide their “common lands into tracts or lots”. These ‘now’ divided lots would be given to the Tribal Nation members to be held in severalty and in fee simple⁴⁷, thereby it could be freely alienated by those Tribal Nation members, and hence no longer be considered ‘reservation/treaty/Indian’ lands.⁴⁸ This also ignored the fact that at St. Regis there already was an allotment process in place, and that a prohibition against alienation (sale) to non-natives was also in place. Had St. Regis engaged in the State created system it is probable that the St. Regis Indian Reservation could have ceased to exist.

The next State legislative effort originated in 1858 in a rather inconspicuous manner.⁴⁹ This act, in rather simple terms, permitted the Governor to appoint a Commissioner for the St. Regis Indians, who would then receive the annuity paid by the State, and then distribute the same to the “heads of families” at St. Regis. As this function (collection/distribution of the annuities) had already been addressed in other New York legislation prior to 1858, it is odd that it appears again. It would be one year later in 1859 that more legislation was added to the 1858 Commissioner’s role, and the motivation behind the 1858 Act becomes clearer.⁵⁰

As before, the Commissioner was not only to collect and distribute the annuities but added to this was the collection of lease rents for St. Regis. In addition, the Commissioner was to collect these rent monies “until the said lands shall be divided or apportioned”. Next, the Commissioner was also to survey all lands of the reservation “held as common property of the said tribe, including all lands ...leased by said tribe....” Following this survey the Commissioner was to:

Divide such lands into tracts or lots and distribute the same to and among said Indians according to the best judgment of the Commissioner....⁵¹

After this allotment by the State appointed Commissioner, the St. Regis reservation lands were allegedly “to be held by the persons to whom they shall be set apart or apportioned, *in severalty and in fee simple* according to the laws of this state.” When this was completed, the NYS Commissioner’s next role was to provide a certificate to each St. Regis Indian “describing the land”⁵² and that the person is “to have and to hold in severalty and fee simple”. This process;

When so executed, acknowledged, approved and recorded, shall have the effect to convey all the interest of said tribe, and the people of this state, in the lands therein described....⁵³

⁴⁷ Fee Simple is the most common term used in the United States signifying an estate in land without any limitations on it which gives the owner the absolute power of disposition.

⁴⁸ See, Laws of New York 1849 Chap. 420 §7.

⁴⁹ See, Laws of New York 1858 Chap. 368 § 1-3.

⁵⁰ See, Laws of New York 1859 Chap. 364 §4, 19.

⁵¹ *Id.* at §5.

⁵² There is no definitive proof that this may have created the current SRMT Use and Occupancy Deed system on the SRMIR.

⁵³ *Id.* at §8.

Other relevant provisions included § 10 which provided that “in all other respects the said lands shall descend and be inherited according to the general laws of this state.” The next section then provided that any St. Regis Indian receiving such land shall also “be entitled to all the civil remedies as between each other, and as against persons not members of the tribe, for trespass upon, and injuries to their lands and other property....” Perhaps most interesting to note is one of the last sections that provides:

All statutes now in force authorizing the appointment or election of trustees for the said tribe, and all acts, and rules and regulations inconsistent with this act are hereby abolished.⁵⁴

Finally, § 19 of the act provided that:

No Indian shall be obliged to accept under the provision of this act the land allotted to him, and all Indians declining to receive certificates for such allotment shall continue as now, to hold their lands in common.

It appears this legislation went nowhere and by 1865 the State re-ratified most of the prior provisions of laws allegedly applicable to St. Regis and their lands.⁵⁵ For instance: Conducting an annual meeting and selecting one clerk and three trustees to hold office for one year. With respect to land, the Trustees were to have power to issue leases but only with the consent of the agent of the state, and only to one or more Indians of said Tribe for “any part or parts of unoccupied lands”, the leases could only be for 10 years, and the rents at this point were to be for “the general benefit of the tribe.”⁵⁶ For current discussions it is interesting to note that whereas on prior occasions the money was distributed among the families, in this instance, it was to now be retained by the Tribal Trustees.

Next in this New York legislative history is the Act of 1889, which seems to legislatively adopt the animosities developed from the War of 1812 at St. Regis. Wherein, “It shall be unlawful for any member of the St. Regis tribe of Indians residing in the Dominion of Canada to settle or trespass upon the reservation of the St. Regis Indians situated in the State of New York....”⁵⁷ For whatever reason, this piece of legislation was accepted on the St. Regis Indian reservation and continued to persist well into the 20th century.⁵⁸

The next significant New York legislative event is what is commonly referred to as the “Whipple Report”, which produced the “Report of the Special Committee to Investigate the Indian Problem of the State of New York.”⁵⁹ The Committee pursued this as an investigation

⁵⁴ *Id.* at §18.

⁵⁵ *See*, Laws of New York 1865 Chap. 346 § 1- §10. Another interesting facet of the law was §10 which provided: “The power vested in said trustees by this act, may be exercised by them or any two of them.”

⁵⁶ *Id.* at §5.

⁵⁷ *See*, Laws of New York 1889 Chap. 554 § 1.

⁵⁸ This may be related to simple arithmetic. As indicated, since lease money was distributed between all members, limiting membership would ensure a bigger payment. Irrespective that during a prior period all was shared by all members.

⁵⁹ *See*, New York Assembly Doc. 51, Feb. 1, 1889.

into the social, moral, and industrial conditions of the Tribes in which to ascertain the perceived best policy to be pursued by New York with respect to its 'Indian Problem'. In no big surprise, the New York Legislative Committee advocated the abolishment of the Indian Reservations and the allotting of Tribal Lands to individual Indians in fee-simple.⁶⁰

Contemporaneously with the foregoing were efforts at the federal level to also allot and devise the lands of Indian Reservations to individual Indians. This is often referred to as the Dawes Act (1887).⁶¹ The unique facet of this effort was that it was never made applicable to those Tribal Nations located in New York. Therefore, St. Regis like the other 'so-called' New York Tribal Nations, were 'exempted out' of its application. As is clear from the foregoing though, was that New York was already making numerous attempts to do what was envisioned in the Federal 1887 Dawes Act.

A cursory review of New York laws will show that by 1909 nearly all prior enacted NY Legislation were reinstated. Many of which can still be found in Article 8 of the New York Indian Law.⁶² It is clear that the legislative forays by New York into the land holding patterns on the St. Regis Indian reservation not only ignored the existing customs and habits of the St. Regis Indians, but it also attempted to change the underlying title to those lands. It did this by attempting to 'allot' said lands, 'devise' the 'allotted' lands among the St. Regis Indians, and to declare that the said lands were to be now held in 'fee simple', thereby freely alienable to native and non-native alike, and where New York state law was to be applied.

As a cautionary tale, one should also not be lulled into believing that it was just the New York Legislature that was concerned with the land holding pattern on the St. Regis Reservation. As the next section will make clear, forays made via a New York Courthouse were also made, and have assisted in the 'troublesome and vexatious' land issues on the St. Regis Reservation.

State Litigation Involving the Land Holding Pattern on the St. Regis Reservation

As noted herein, as early as 1821 there was what is known in legal parlance a reported Court case with respect to the St. Regis Indians attempt to remove a non-native who apparently held lands under a lease.⁶³ They were unsuccessful in this regards, and this probably helped fuel the long vexing problem that we are forced to address today. Such an effort would be reversed 80 years later, when in 1901 a local press report indicated:

A law suit has been in progress for some time between an Indian, Peter Cook, and his mother, regarding possession and title to a small house and lot. Friday Constable Gratton and half a dozen Indians swooped down upon the place and drove Cook and his wife out of doors, likewise removed their furniture and provisions. Then they battered down the

⁶⁰ *Id.*

⁶¹ *See*, General Allotment Act of 1887, Dawes Act 24 Stat. 338.

⁶² *See*, New York Laws of 1861 Chap. 368, section 6, for reinstatement see New York Laws of 1909 Chap. 31, §125.

⁶³ *See*, *The St. Regis Indians v. Drum* 19 Johns. 127 (N.Y. Sup. 1821) (holding that ALL agreements with Indians with respect to land are void and unenforceable pursuant to the State Constitution).

doors and windows, tore out the chamber floor and committed other unlawful acts. Cook and his wife were compelled to seek shelter at a neighbor's.⁶⁴

There does not appear to be any reported Court decision regarding this event, yet it does not appear that the foregoing was an isolated event. For example in 1877 another case was reported in the press involving two St. Regis Indians and the produce generated from lands on the St. Regis Reservation.⁶⁵ Similarly, the aforementioned leases also lead to litigation.⁶⁶ It should also be noted that these New York Courthouse experiences were conducted at a time when all Indians were not citizens of the United States.⁶⁷

Perhaps the most interesting of the St. Regis 'reported cases' can be highlighted by the 1909 case of *Terrance v. Crowley* and the 1916 case of *Terrance v. Gray*.⁶⁸ In order to appropriately understand these cases, one has to go back to an earlier time period.

It was reported that on Christmas Day 1906 three St. Regis Indians, Thomas Gray and his son Peter Gray, along with Louis Bero, traveled to Hogsburg. During their trip they consumed alcohol, and upon their return to the Gray Farm, an argument between the two Grays ensued and Peter murdered his father Thomas. There was an apparent dispute about the family farm.⁶⁹ Peter was charged with murder, pled to a manslaughter charge, and was subsequently sent to prison.⁷⁰ During this period, or shortly thereafter, Peter Gray deeded the farm to Hattie White who eventually deeded it to George Terrance. All are St. Regis Indians.

After receiving these 'deeds', George Terrance attempted to use this property as security for certain transaction involving Michael J. Crowley and another St. Regis Indian, Alex White whom it is presumed was the husband of Hattie White. When certain payments were not made, litigation ensued.⁷¹ Eventually George Terrance would be put back into possession of the farm. Hence, the 1909 decision was filed. Matters did not stay calm for very long though.

Upon his release from prison Peter Gray sought to have the 'family' farm returned to him by 'terrorizing' Mr. Terrance.⁷² This would lead to litigation, and the reported 1915 case cited above. For current discussions, one of the interesting facts of the case is the Court recognizing that:

There is nothing in the record to indicate that the St. Regis Indians in the state have divided their common property among the members of the tribe in severalty, and the court

⁶⁴ See, ST. LAWRENCE REPUBLICAN, January 9, 1901. The article also notes that Constable Gratton had been in multiple scraps among the Indians, and on this incident an arrest warrant had been issued for him.

⁶⁵ See, FRANKLIN GAZETTE, December 14, 1877 (Case of Jake Williams v. Charles White, which was referred to the Indian Attorney).

⁶⁶ See, CANTON COMMERCIAL ADVERTISER, April-June 1907 (case involving Mitchell Laughing, Sidney Grow, and Albert Brennan).

⁶⁷ Something that would not occur until 1924.

⁶⁸ See, *Terrance v. Crowley*, 62 Misc. 2d. 138 (1909); See, *Terrance v. Gray*, 171 A.D. 11, 156 N.Y.S. 918 (1916).

⁶⁹ See, JOURNAL and REPUBLICAN, January 3 1907; NORWOOD NEWS, May 28, 1901.

⁷⁰ *Id.* Unique in this regard was that all proceedings were in state court.

⁷¹ See, *Terrance v. Crowley*, at 138.

⁷² See, ESSEX COUNTY REPUBLICAN, August 20, 1915.

will take judicial notice of the fact that the tribe continues to hold its lands in common, and that the partition permitted by this section has not taken place.⁷³ [emphasis added].

Therefore, the foregoing confirms that for all of the legislative and judicial forays into the land holding of the St. Regis Tribe, none were ever implemented to the point where they transplanted those customs and usages of the St. Regis Indians with respect to land holding. Furthermore, it is interesting to note that for all of the litigation that occurred, at the end of the *Terrance* case, the Court simply relied upon the allotment made by the “Chiefs of the tribe to the plaintiff [George Terrance].”

Next, although the foregoing cases appear to be the relative few ‘reported cases’ of the New York Courts, it was not the only cases to be reported. By 1928 the issue of the purported Canadian Indians would be the next issue. The Courts would appear to routinely authorize actions where what they believed to be non- ‘American’ St. Regis Indians could be forced to leave the St. Regis Reservation, even if they were members of the ‘British’ St. Regis Indians.⁷⁴ Similarly, the Court also has in its possession what appears to be a copy of a 1954 filing by the Franklin County District Attorney for the removal of William Hanson as an intruder on the St. Regis Indian Reservation.⁷⁵ These show that some New York judicial actions were requested and implemented at St. Regis, with some of these even at the request of the St. Regis Mohawk Tribe itself.

To this point it can be noted that New York has attempted legislative and judicial forays into the land holding on the St. Regis Reservation. For instance: In 1821 when the St. Regis Indians attempted to remove a leaseholder the New York Courts refused to entertain the action, and yet throughout the 1800’s the State attempted to pass their own legislation with respect to St. Regis Lands, and by the 1900’s New York Courts were now entertaining land dispute suits from the St. Regis Reservation and utilizing ‘some’ state laws to do so!

New York State Hybrid Approach: The Indian Attorney

As indicated herein, it was reported in the local media on December 14, 1877, that a land dispute case involving Jake Williams and Charles White was referred to the “Indian Attorney”⁷⁶. This report shows the hybrid approach employed by the state from the 19th Century to the middle of the 20th Century. What this hybrid approach consisted of was a State appointed official allegedly acting in the role of agent or attorney on behalf of the St. Regis Indians. This agent/attorney would then purportedly be responsible to ensure that the St. Regis Indians received their lease payment[s]. This was deemed necessary as Indians were not citizens and therefore could not litigate in state Courts, and also the restriction stemming from the 1821 *Drum* case, which said that all Indian land contracts were null and void.

⁷³ See, *Terrance v. Gray*, at 918. For current discussions it can be noted that Peter’s sister Hattie sold the property to the Plaintiff George Terrance, who had also paid Thomas Gray’s widow and Peter Gray’s wife for the estate.

⁷⁴ See, *In. Re Herne*, 133 Misc. 286 (1928) (Initiated for the removal of Mary Lazore).

⁷⁵ Dated July 16, 1954 complaint made by Henry A. Fisher.

⁷⁶ See, *supra* note 64.

The ‘role’ played by this position is easily discernible in some of the early legislation cited herein, whereby in 1812 the District Attorney for Washington County had the responsibilities of initiating actions against trespassers on Indian lands. This responsibility was subsequently transferred to the Franklin County District Attorney in 1818. By 1861 New York Legislation was enacted to create the actual position of ‘Indian Attorney’ who had similar responsibilities contained in the District Attorney provisions as noted above.⁷⁷ Under the State legislation the Indian Attorney was also given an annual salary and was to be selected by the New York Governor for three year terms of office. Therefore, very often New York spending legislation contained provision for the salary expenditures associated with the ‘Attorney for the St. Regis Indians’.⁷⁸ This ‘Indian Attorney’ position also survived New York’s great ‘Indian Law’ revisions of 1890-1895, and of 1909, so that the position remained intact up to the 1950’s.

The persons who have filled this role of agent/attorney have been notable for a number of reasons, least of which is the geographic locations involved in the SRMT Land Claims litigation which bear their names. For instance, the mile square in Massena is actually the Hascall/Haskell mile square for Asa Hascall. Fulton’s Woods is in the Hogansburg Triangle, and is for A. Fulton one time agent/ attorney for the St. Regis Indians. In 1920 Maurice Lantry of Bombay was appointed to the position, and was in all likelihood related to the Lantry who had business/trading interests within the Hogansburg Triangle. Perhaps the most famous of these was the person who was appointed on March 28, 1848: W.A. Wheeler. Mr. Wheeler at the time was District Attorney for Franklin County, and by March of 1877, was Vice President of the United States. Along this trajectory, Mr. Wheeler was also President of the New York Northern Railroad. There is some suggestion that this is the reason the railroad goes around the St. Regis Reservation. How effective these individuals were in performing their duties can be a matter of great debate, but in any event, it is clear that they played a role in the land holding history of the St. Regis Reservation.⁷⁹

What can be noted at this point is that it would not be until 1942 that these New York State forays would be questioned in Federal Court, upon which the Federal Courts rejected these New York forays.

FORNESS

The civil code of the St. Regis Mohawk Tribe, under the section titled “Applicable Law”, provides for the following:

Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust

⁷⁷ See, Laws of New York, 1861, Chap. 325.

⁷⁸ E.g. 1841, 1858, 1859, 1861, 1871, 1873, etc.

⁷⁹ Adding to this debate would be the recognition that early land case litigation initiated by the St. Regis Indians never seemed to be initiated by these state appointed Indian Attorneys. E.g. Deere v. St. Lawrence River Power Co., 32 F.2d 550 (2d Cir. 1929).

responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes),⁸⁰

The SRMT Court finds that the following is intended with respect to the language used within the SRMT Civil Code with respect to land holding and land disputes.

On March 4, 1939 the Seneca Nation of Indians of New York, in response to the chronic non-payment of land leases, canceled all leases that were in arrears. Thereafter, the United States government on behalf of the Seneca Nation of Indians commenced proceedings to enforce the cancellation of the leases. These proceedings were initially opposed by the non-native leaseholders, one of whom was Frank Forness. After a decision at the Federal District Court an appeal was taken to the Second Circuit Court of Appeals, where another decision was rendered which was favorable to the Seneca Nation of Indians, and therefore, un-favorable to Frank Forness and the other lease holders. An attempt was then made to take appeal to the United States Supreme Court, which was denied, and thereby making the Second Circuit's *Forness* decision the 'law of the land' within the Second Circuits geographic jurisdiction, which includes New York. For current discussions the relevant language of the *Forness* decision is as follows:

But state law cannot be invoked to limit the rights in lands granted by the United States to the Indians, because, as the court below recognized, state law does not apply to the Indians except so far as the United States has given its consent.⁸¹

It was not long thereafter that the reach and effects of this decision were of a going concern to the state of New York. As a subsequent NYS legislative committee chair opined:

In that decision [*Forness*] it was stated that the laws of the state of New York have no force whatsoever upon Indians except as the United States Government has approved or consented or whatever term or words are used.⁸²

For current discussions though, it is only important to recognize the import that decision would have on St. Regis lands, or in more particular, what had occurred up to that point. As the foregoing makes clear, there had already been numerous New York state legislative, judicial, and executive forays into the internal affairs at St. Regis regarding the lands of the SRMIR. And, based upon the *Forness* decision these were without authority, including those with respect to the land holding system on the St. Regis Indian Reservation.

In response to the *Forness* decision New York very quickly, and simply, began the process of attempting to have the federal government grant jurisdiction over the Tribal Nations located in New York. These efforts begin in earnest as early as 1943 with the formation of a Joint Legislative Committee on Indian Affairs, which subsequently conducted hearings at the

⁸⁰ See, SRMT Civil Code §V(a)(1).

⁸¹ See, *United States v. Forness et.al.*, 125 F.2d 928 (C.C.A.2d, 1942).

⁸² See, 1945 Legislative Hearing at note 65.

various Tribal Nations.⁸³ On September 8th, 1943 one such hearing was conducted at the Thomas Indian School on the Cattaraugus Reservation.⁸⁴ Although these discussions were primarily geared toward the Thomas Indian School, the Committee did not take long to bring up “the subject of this conflict of Federal and state jurisdiction”⁸⁵, which included a perception by the New York Committee of lawlessness, lack of education, and the bemoaning by state officials that everything has been thrown into disarray. In 1944 the following was included in the Committees report:

And the limited civil jurisdiction of Federal Courts ... renders the latter practically unavailable for determination of controversies between individual Indians, and at the suit of Indians, against white men. Of necessity, therefore, Indians have litigated most of their civil disputes in State courts. An extreme application of the *Forness* case doctrine would deprive State courts of jurisdiction over many of these matters.⁸⁶

Similar language, if not simply self-fulfilling, was included in the Committees 1945 report:

Many Indians as well as other students of their condition, have long believed that the moving force to accomplish these reform must come from without. A substantial number of Indians, including residents and non-residents of reservations, recognize the need and desire that laws confirming broad State jurisdiction be enacted promptly.⁸⁷

Up to this point there had been no discussions with respect to the land holding patterns on the Tribal Nation territories inclusive of St. Regis. In fact, it can be noted that at times the reports of the Joint Committee would be ‘at odds’ with people who testified in front of the Committee, or from presentations made to the Committee, on that very issue. For instance, at a January 4th, 1945 Committee hearing held at the Ten Eyck Hotel in Albany, the following portion of a letter was submitted from the U.S. Department of the Interior on the land issue and was read into the record:

But we believe that any such transfer of jurisdiction must be qualified so as to preserve the capacity of the Federal Government to take appropriate action for the protection of restricted Indian property and for the discharge of all treaty obligations.⁸⁸

Perhaps most telling was the opinion offered by a St. Regis Chief at the same hearing:

⁸³ August 4,5 at Salamanca, September 7,8 Cattaraugus, September 9,10 at Lewiston and Newstead, September 30 at Nedrow, October 1 at St. Regis, October 14 at Southampton and Mastic. See Report of the Joint Legislative Committee on Indian Affairs February 25, 1944. (Legislative Document No. 51).

⁸⁴ See, Joint Legislative Committee on Indian Affairs Public Hearing had at Thomas Indian School Cattaraugus Reservation, N.Y. Wednesday, September 8, 1945. Fred J. Koester Court Reporter.

⁸⁵ *Id.* at page 44, questions posed to Robert P. Galloway.

⁸⁶ *Id.* See 1944 Joint Legislative Cmte. Report at 4.

⁸⁷ See, 1945 Joint Legislative Cmte. On Indian Affairs March 15, 1945 (Legislative Document 1945, No. 51).

⁸⁸ See, Hearing before Joint Legislative Committee on Indian Affairs on Thursday January 4, 1945 at ten Eyck Hotel Albany New York, at p. 8, reading letter January 2, 1945 letter by Mr. Abe Fortas, Office of the Secretary of the Interior.

But coming to the civil affairs, according to this paper, it says that New York State will take over the jurisdiction in regard to civil affairs. *When we let the state have the jurisdiction of civil affairs, at that time ends all Indian government*, because the state will have both criminal and civil, -therefore why should we have that? I think we are going to have little difficulty in ironing out the civil affairs. One of the things is, if we let the state have jurisdiction, sometimes it costs us more money than the property is worth. In the past we have had to go to courts, and it cost us a lot of money. I am afraid you will have trouble in trying to get that through as far as getting the consent of the Indians to permit jurisdiction in civil affairs, because in that case if I have a dispute with one of my neighbors, we have nothing to say about it. The state courts handle it.⁸⁹

After proclamation by NY Assemblyman Wade that there would be no interference upon the Tribal Nation governments, Chief Joseph Solomon continued:

You come to the limit of our jurisdiction where the state begins. *We try to handle all civil affairs like land disputes on the reservation.*⁹⁰ [emphasis added].

When NY Assemblyman Wade made further comment that “There is no intention to change the government.”⁹¹ Chief Solomon further added with respect to land disputes going off the reservation:

In most cases they will not let it go out of the reservation into the state courts. That is where I think you will have trouble. My ideal is to make a better form of government on the reservation and work in harmony with the state and federal governments.⁹²

Nonetheless, the state persisted in their request to the Federal Government to get both civil and criminal jurisdiction. The first successful jurisdiction transference was the criminal piece that was passed on July 2, 1948.⁹³ With this transference the New York Legislative Committee continued to push for the civil jurisdiction piece. In this effort the ‘prose’ of the NY Committee Chairman Wade took a sudden right turn, as the 1950 Committee Report indicates:

Enactment [civil jurisdiction to NY] would end their long isolation and inevitably work towards complete assimilation with the main body of citizens.⁹⁴

Except in respect to nationality, inheritance and *land ownership*, New York Indians are conspicuously lacking in rules or customs to regulate ordinary civil relationships. Yet even in these three categories, existing governments are incapable of compelling respect for these traditions without assistance from State courts.⁹⁵ [emphasis added].

⁸⁹ *Id.* at 51, Statement of Chief Joseph Solomon, Mohawk.

⁹⁰ *Id.* at 52.

⁹¹ *Id.* at 53.

⁹² *Id.* at 53-54.

⁹³ *See*, Public Law 881, 80th Congress, codified at 25 USC § 232.

⁹⁴ *See*, 1950 Report of the Joint Legislative Committee on Indian Affairs, Legislative Document No. 57, (1950), pg 3.

⁹⁵ *Id.* at 4.

The only significant changes to be expected from passage of the bills would be the positive ones of extending orderly processes of government to the reservations and of ending the power of individual Indians to avoid ordinary civil responsibilities.⁹⁶

How much longer New York Indians will be condemned to the stagnating and stifling effects of segregation depends upon how soon Congress will recognize the futility as treating them as independent, self-governing units which they long since ceased to be.⁹⁷

Clearly these comments are in stark contrast to the assurances made by the exact same Committee Member (NY Assemblyman Wade) to our Chief Solomon. In fact, Chairman Wade's comments reinforce the concerns of Chief Solomon uttered just 5 years earlier to the Committee; The destruction of the existing Tribal Government. Nonetheless, by September 13, 1950 the state was successful in acquiring the civil jurisdiction transfer.⁹⁸ The Joint Legislative Committee in their 1951 report announced the 'successful' legislative transfer, and from the report one can quickly ascertain that there was a new Chairman of the Committee.⁹⁹

For current discussions it is important to note that land disputes on Tribal Nation territories were NOT included within the civil jurisdictional transfer to New York:

The only apparent effect of this provision may be the unfortunate one of *barring State courts from handling private land disputes in which event most Indians will have no forum for the disposal of such cases.*¹⁰⁰ [emphasis added].

Nonetheless, other ulterior goals of the Committee would be noted in the report:

On a small scale New York is now faced with the same general problem of Indian assimilation that has never been satisfactorily solved by the Federal government.¹⁰¹

With respect to land, the Committee's other motives can be gleaned from the following:

Eventually, therefore, it is greatly to be *hoped that Indians will reach the point of desiring to hold their lands in severalty as do western tribes, and to abandon present restrictions against ownership by non-Indians, even at the cost of having all such lands bear a fair proportion of the tax burden.* Not until then will Indians complete the transition from hermit hood to the vigorous and responsible citizenship assured by their intelligence, independence and courage.¹⁰² [emphasis added].

⁹⁶ *Id.* at 5.

⁹⁷ *Id.* at 6.

⁹⁸ *See*, Public Law 785, 81st Congress, Chap. 947, 2nd Session. Codified at 25 USC § 233, Jurisdiction of New York State courts in civil actions.

⁹⁹ *See*, Report of the Joint Legislative Committee on Indian Affairs, Legislative Document (1951) No. 66., submitted February 28, 1951 by Chairman William H. MacKenzie.

¹⁰⁰ *Id.* at 3.

¹⁰¹ *Id.* at 5.

¹⁰² *Id.* at 5.

The Committee nonetheless would make intermittent ‘requests’ to acquire this unattained piece of jurisdiction with respect to land disputes.¹⁰³ Even with the ‘civil jurisdiction’ transfer, there still existed an unique ‘carve out’ in the law.

That provision provided that:

The governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve....¹⁰⁴

Similarly, although this act permitted transference of civil jurisdiction, Courts were still free in “recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts.”¹⁰⁵ It appears that only one Tribal Nation made any such filing to the Federal Government with respect to their laws and customs.¹⁰⁶ It is interesting to note that this provision has echoed through history to modern times where one Court recently held that:

While the federal statute shall not be construed ‘to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts.’¹⁰⁷

In that case the Court recognized that:

Defendants [Harts] have not proffered any St. Regis Mohawk Tribal Law concerning liability for injured workers. Thus, we apply the civil laws of New York to this action.¹⁰⁸

For current discussions, where exactly on-reservation land disputes fit in to the overall legislative framework appears to be murky at best. What is ascertainable is that the land holding pattern on the St. Regis Mohawk Indian Reservation continued to exist, and that ‘Tribal Council’ remained very much the arbitrator of land disputes, and that the SRMT Clerk performed many of the administrative tasks associated with land holding on the reservation. Nonetheless, land dispute litigation originating from the St. Regis Indian Reservation was NOT included in the civil jurisdictional transfer to New York. Therefore, and pursuant to *Forness*, no state legislation prior to 1942 would be applicable to St. Regis. This though, can leave many issues unanswered.

In more recent times on the ‘Rez’ it is somewhat fashionable to blame just the St. Regis Mohawk Tribe for the perceived deplorable status of the land holding mechanism in place. It is hoped that the foregoing adequately shows that such blame can be spread out over a much broader base. Clearly there was a number of contributing factors over a sustained period of time:

¹⁰³ See, Report of the Joint Legislative Committee on Indian Affairs, Legislative Document (1959) No. 15, same in 1960.

¹⁰⁴ See, 25 USC § 233.

¹⁰⁵ *Id.*

¹⁰⁶ See, 1953 Report of the Joint Legislative Committee on Indian Affairs, Legislative Document (1953) No. 74. (The lone exception was the Seneca Nation of Indians which proffered its constitution).

¹⁰⁷ See, *Alexander v. Hart* 884 N.Y.S.2d. 181 (2009) (concerning worker’s compensation case originating from the SRMIR).

¹⁰⁸ *Id.* at 183,184.

In the 19th Century New York's legislative efforts were an attempt to divest the lands of the St. Regis Indian Tribe, and if those had been successful, it would have resulted in divesting individual St. Regis Indians with the customary use of the lands in the St. Regis Mohawk Indian Reservation. Couple that with sporadic lawsuits resulting in mixed findings, and 'wild-cat' law enforcement efforts (e.g. Gratton), and the deplorable state that SRMT land holdings may best described as the by-product of New York State efforts. Finally, the *Forness* decision clearly rejected these efforts, and the State thereby doubled its efforts to acquire jurisdiction through federal legislation. But clearly exempted out from this legislation were land disputes on the St. Regis Indian Reservation.

Nonetheless, it can be stated to this point that any observation and/or description of both the land holding patterns and land dispute mechanisms on the St. Regis Indian Reservation, engenders much controversy and hard feelings by members and residents of the St. Regis Mohawk Indian Reservation. Considering the history up to this point, should anyone be surprised that such a "troublesome and vexatious" history of these issues has surely led to such a result. Clearly it is reaping what has been sowed. Similarly, complaints and accusations have also been made against the land holding and land holding dispute mechanism on the 'Rez.' Accusations of favoritism, nepotism, fraud, and theft, are not uncommon and persist to today. How much of this is rooted in fact versus either a failure to properly execute decisions, or to have such decisions politically respected and executed, is unknown. Nonetheless, as described herein, there exists on the St. Regis Indian Reservation a customary land holding mechanism by and between individual St. Regis Indians.

Change has occurred though, and based upon the rather unique history noted so far, it may be surprising to discover that this change has originated from within the St. Regis Indian Reservation itself and not from outside the St. Regis Mohawk Indian Reservation.

AMENDING ST. REGIS MOHAWK TRIBAL LAND DISPUTE RESOLUTION PROCESS

The civil code of the St. Regis Mohawk Tribe, under the section titled "Applicable Law", provides for the following:

Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe....¹⁰⁹

The SRMT Court finds that the following is intended with respect to the language used within the SRMT Civil Code as it relates to land disputes.

As indicated herein, there has been a multitude of New York State legislation with respect to land holding on the St. Regis Indian reservation. By the time the Federal transference of jurisdiction was completed (1947-1952) though, the basic parameters of the SRMT system still remained in tact. This can be summarily described as such: SRMT members for some time now occupy certain land parcels which they are free to devise of in whatever manner they see fit, over time they are issued 'use and occupancy' deeds which are endorsed by the Chiefs of the

¹⁰⁹ See, SRMT Civil Code §V (a)(2).

SRMT, and the use and occupancy deeds also have affixed to them the SRMT Clerk's signature, and these use and occupancy deeds are recorded at the SRMT Clerks office. Disputes between SRMT members and residents were decided by the Chiefs of the SRMT. Where all of this originated from is unclear, but it is certain that aspects of it originate in the history and customs of the St. Regis Indians. Nonetheless, there has been sufficient criticism of that system that change was called for, and perhaps a movement towards Chief Solomon's 1945 position: "My ideal is to make a better form of government on the reservation and work in harmony with the state and federal governments."¹¹⁰ This change has resulted in the implementation of a SRMT Court, creation of a Land Dispute Tribunal, and the passage of a SRMT Land Dispute Ordinance.

Some change was begun in 1987 and again in 1995 when the Saint Regis Mohawk Tribe went through a period of attempted political structural changes.¹¹¹ During this time there was an attempt to establish and implement an SRMT Court. This was unsuccessful though. Nonetheless a SRMT Tribal Court Program has come a long way since 1987 when committees were first formed to plan, draft laws, and seek funding.¹¹² By 2005 community referendums were conducted and the community approved the creation of a SRMT Court system. By 2007, all the members of Tribal Council, as per the 2005 community referendums, signed a resolution recognizing "the Tribal Court system as an independent decision-making entity with independent judicial authorities".¹¹³ This has resulted in the establishment of the current existing Court which is addressing this case, and is the rare instance of a government institution actually being created and approved by the St. Regis community itself, versus that initiated by New York legislation.

In conjunction with the effort to establish a Tribal Court there has been attempts to amend and reform the land holding and land dispute resolution system on the St. Regis Indian reservation. Part of this attempted change included the enactment of SRMT Tribal Council Resolution¹¹⁴ 95-11, titled the Lands and Real Property Act of 1994 [hereinafter cited SRMT TCR 95-11]. The purpose of this act was to provide SRMT requirements for the control, allotment, use, transfer and disposition of all lands subject to the jurisdiction of the SRMT. Under this ordinance, a panel of three land examiners, consisting of the Tribal Clerk, Tribal Council, and the Tribal Court, heard land disputes and made a recommended decision, which was sent to the Chief Judge for endorsement as a proposed final order, or for further hearing.¹¹⁵ A final order was not effective until countersigned by 3 or more members of Tribal Council who could for good cause adopt, modify or reject the Court's final order. Pursuant to TCR 95-11, the decision of the Tribal Council was final and future Tribal Councils were not to re-hear previously decided cases absent a showing of fraud, violation of the Elder Care Act, or an

¹¹⁰ See, Hearing before Joint Legislative Committee on Indian Affairs on Thursday January 4, 1945 at ten Eyck Hotel Albany New York, at p. 8, reading letter January 2, 1945 letter by Mr. Abe Fortas, Office of the Secretary of the Interior at 53-54.

¹¹¹ This included the attempted passage of a SRMT Constitution that resulted in numerous lawsuits and the end of which was a subsequent roll back of those efforts, which resulted in a return to the pre 1994 structure which resembles in large part that established via New York legislation.

¹¹² See generally, SRMT TCR-87-8, Judicial Committee to Draft Legal Codes; SRMT TCR 1989-16 Akwesasne Funding Committee BIA Funding Request; SRMT TCR 90-32 Grants for Law Enforcement and Tribal Court; TCR 91-14 Grant for Start of Tribal Court; SRMT TCR 92-122 -92-123 Tribal Courts Contract.

¹¹³ See, SRMT TCR 2007-01, Authority of the Tribal Courts System; see also, SRMT TCR 2005-35 Tribal Referendum on Tribal Courts; SRMT TCR 2005-64 Referendum on the Tribal Family Tribal Court.

¹¹⁴ Often referred to as TCR's.

¹¹⁵ See, SRMT TCR 95-11 at § 20-21.

affirmative finding of manifest injustice.¹¹⁶ As indicated, the application of this act is subject to much questioning, and by and large matters have returned to the pre-1995 system described above. This is particularly true in light of the 2005 and 2009 referendums.

Another subject area of much discussion has been the occurrence of land disputes settled by prior SRMT Councils being brought anew to a currently sitting SRMT Council, who sometimes overturned, overruled, or altered a previous decision[s]. That factor, coupled with much of what has been described so far, caused the initiation of an effort to de-politicize and finalize land disputes. At which point the SRMT Council consulted with the St. Regis Mohawk community to determine a way to improve how land disputes could be resolved within the Saint Regis Mohawk Indian Reservation.

In addressing this issue, the Saint Regis Mohawk Tribe (SRMT) conducted several public meetings that shaped the development of what would become the current Land Dispute Resolution Ordinance and lead to another referendum on who should decide tribal land disputes. The first of these public meetings was held on March 11, 2009, and by June 6th, 2009 another referendum was conducted. On June 6th, 2009, the SRMT held its annual election, and in addition to the election of new Tribal Chiefs, community members voted on the following referendum question:

“Do you want tribal land disputes to be decided by the tribal court?”

If the issue passes, that will mean the Tribal Court will make the **final decision on land disputes** and an **ordinance will be developed and adopted accordingly**.

If the issue does not pass, that will mean the Tribal Council will continue to make the final decisions on land disputes.¹¹⁷

Community members participating in the referendum approved the Tribal Court as the entity to issue final decisions on land disputes; and, they approved the development and adoption of a land dispute ordinance by a margin of 388 to 151.¹¹⁸

On December 3rd, 2009 the Council enacted SRMT TCR 2009-69, Land Dispute Resolution Ordinance (Amended by SRMT TCR 2011-20 Land Dispute Resolution Ordinance)¹¹⁹, [hereinafter SRMT LDRO], which created a Land Dispute Tribunal, composed of

¹¹⁶ *Id.*

¹¹⁷ See, "Saint Regis Mohawk Tribe | News." *Tribe Schedules Referendum Vote and Public Meetings*, 6 May 2009. Web. 22 Nov. 2011. <<http://srmt-nsn.gov/news/archived/2009>> [emphasis added].

¹¹⁸ See, "Saint Regis Mohawk Tribe | News." *St. Regis Mohawk Tribal Election Board Announces Official Election Results | Home*. SRMT, 12 June 2009. Web. 22 Nov. 2011. <<http://srmt-nsn.gov/news/archived/2009>>.

¹¹⁹ SRMT TCR 2011-19, Land Dispute Resolution Ordinance (Amends SRMT TCR 2009-69). After the Tribunal completed its first full year in existence, Council enacted the following amendments to improve the Ordinance: Amendments included such things as adding alternatives, procedures to allow for Tribunal members whose terms have expired to serve until reappointed or replaced, and providing clarification on who may remove a Tribunal member. (See, §§VII(D)(1);(D6);(D10)) In addition, the Amendment clarified the duties and expectations of the Tribal Clerk in fully researching and providing information filed in the Tribal Clerk's Office. (See, §VIII(B)(5)-(6)). Responsibility is on the Complainant to provide valid address for the respondent (See, §VIII(D)). Service of Notice was clarified and added was that if the Tribal Clerk could not effectuate service within 30 days, a notice in a newspaper would effectuate service. (See, §VIII.F). Service of Process was extended from 10 to 30 days public

community members, and delegated to it authority to resolve land disputes to the Land Dispute Tribunal and the Tribal Court. Wherein, the SRMT LDRO provides:

The Tribal Council is vested with the authority to control the use of lands on behalf of the tribe and has customarily been responsible for resolving land disputes and the Reservation. Pursuant to the referendum held June 6, 2009, this authority is hereby delegated to a Land Dispute Tribunal and the Tribal Court, which shall have the authority to render final decisions. (SRMT LDRO §II).

The 2009 SRMT LDRO also established a Land Dispute Tribunal, defined criteria for Tribunal members, and the length of each member's appointment.¹²⁰ It is also important to note that the SRMT Land Ordinance not only provides delegated authority to the Land Dispute Tribunal, it also lays out the procedure for resolving land disputes,¹²¹ and provides the Land Dispute Tribunal with the applicable law to be used in resolving all disputes that come before them.

Pursuant to the SRMT Land Ordinance the SRMT Court may hear land dispute cases on appeal from either: A Tribunal decision or a Council decision.¹²² In each of these, the standard of review to be used by the Tribal Court is different:

The Tribal Court will review the [Tribunal Decision] appeal *based upon the record developed before the Tribunal*. The Tribal Court may affirm the decision or may vacate the decision and substitute its own decision, which shall be final and not subject to appeal.¹²³ [emphasis added].

With respect to Council decisions:

The Tribal Court shall *take a fresh look at* land dispute decisions rendered by Tribal Council and may request evidence or testimony as necessary to develop a full and complete record of information upon which to base its final decision, which shall not be subject to appeal.¹²⁴ [emphasis added].

The SRMT Tribal Court, pursuant to the Land Dispute Ordinance, acts as a court of last resort in that there is no appeal to the Tribal Court of Appeals.¹²⁵ As a Court of last resort, the Court must be diligent in addressing errors and insuring that the possessory interests of all parties are equally heard and protected.

The passage of the Land Dispute Ordinance would mark the second instance in which the land holding pattern on the St. Regis Indian Reservation was implemented not from sources external to the reservation, but rather, from the community itself. With the SRMT Court being the other part developed by the St. Regis Indian reservation Community. The creation of the

notice period. (See, §X(A)). Issuance of deeds was clarified in that deeds shall only be issued when all judicial remedies have been exhausted. (See, XIII.D.6H).

¹²⁰ See, SRMT LDRO § VII.

¹²¹ See, SRMT LDRO § III.

¹²² See, SRMT Land Ordinance XV (B)-(C).

¹²³ See, SRMT Land Ordinance §XV (B).

¹²⁴ See, SRMT Land Ordinance §XV (C).

¹²⁵ *Id.* §XV (D).

SRMT Court and the passage of the SRMT Land Dispute Ordinance are not the only matters which the Court must address in deciding land disputes on the St. Regis Indian Reservation.

Other SRMT Laws Relevant to Land Issues

In 2008, the SRMT Court, as part of its development, requested from the SRMT Tribal Council that a certified copy of the laws the SRMT Court is to utilize be sent to the Court. The Court received a bundle of certified laws, which included the following:

SRMT TCR 2008-16 Rules of Civil Appellate Procedure;
 SRMT TCR 2008-17 Rules of Evidence;
 SRMT TCR 2008-18 Attorney Practice Requirements;
 SRMT TCR 2008-19 Civil Code;
 SRMT TCR 2008-20 Rules of Civil Procedure;
 SRMT TCR 2008-21 Court Filing Fees [Amended 2010-40]; and
 SRMT TCR 2008-22 Tribal Court and Judiciary Code [Amended 2012-15].

In 2009, the Court received a certified copy of:

SRMT TCR 2009-51 Animal Control Ordinance [Amended 2011-19], and
 SRMT TCR 2009-69 Land Dispute Ordinance [Amended Apr. 14, 2011].¹²⁶

Most noteworthy for current discussions, and as we have cited herein, is that SRMT TCR 2008-19 Civil Code (hereinafter SRMT Civ. Code) specifically lays out, in a hierarchal fashion, the choice of law to be applied by the SRMT Court. In the words of the SRMT Civ. Code:

Civil disputes over which the Tribal Court has jurisdiction shall be decided by the Court in accordance and by applying the following principles of law in the priority and precedence in which the principles of law are first identified below higher priority and precedence being accorded those identified earliest in the list, so that in the event of inconsistency or conflict between principles of law, the principle of law identified earlier in the list shall be relied upon as the controlling principle for deciding the dispute....¹²⁷

The SRMT Civ. Code then gives precedence to those first appearing in the list and the Court must first determine by examining §V(A)(1)-(6) of the SRMT Civ. Code, in sequence, which law is controlling in any case which comes before the court.¹²⁸ This provides:

[1.] Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes);

¹²⁶ SRMT laws can be found at the Court's webpage. See, http://www.srmt-nsn.gov/divisions/justice/tribal_court.

¹²⁷ See, SRMT Civ. Code §V, Applicable Law.

¹²⁸ See, SRMT Civ. Code § V (A) (1)-(6).

- [2.] Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe;
- [3.] Unwritten Mohawk laws, and (*written and unwritten Mohawk customs*), traditions and practices; [emphasis added]
- [4.] Generally recognized principles of the law of contracts as reflected by the most recent Restatement of Contracts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine;
- [5.] Generally recognized principles of the law of torts, as reflected by the most recent Restatement of Torts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine;
- [6.] New York State law (but only if) consistent with principles of Tribal sovereignty, self-government, and self-determination and it is consistent with the aforementioned. (*See*, SRMT Civ. Code at § V (A) (1)-(6)).

Therefore, as the foregoing makes clear, it is not a single law that must guide this Courts approach to any case, including land disputes, it could be a combination of the foregoing that must guide the Court. This approach, as required by the laws given to the Court, must be the one that is used. The SRMT Court, created by referendum vote on the St. Regis Reservation, does not have the option to ignore the laws given to it by the Nation which created it.

Next, within the SRMT Civ. Code it is clear that there is NO automatic application of New York Law. As provided:

Principles of New York State law for resolving private civil disputes *are not automatically applied* in Mohawk Courts. Principles of New York State law for resolving a private civil dispute may be applied in Mohawk Courts for the purpose of resolving a private civil dispute over which the Mohawk Court has jurisdiction if (but only if) the Mohawk Court finds: (i) there is no other controlling principle of Mohawk law;(ii) application of the New York State law is consistent with principles of Tribal sovereignty, self-government, and self-determination; and (iii) application of the New York State law is in the overall interest of justice and fairness to the parties.¹²⁹

This process provided in the SRMT Civ. Code can lead to conflict with cases already decided by Courts external to the St. Regis Reservation. By way of example, one can consider the aforementioned case of *Terrance v. Crowley*.¹³⁰ The Court deciding *Crowley* included the following:

The lands of the St. Regis are in a reservation and still belong to the state of New York.¹³¹

This language has been often repeated in numerous pieces of New York legislation, New York Legislative reports, and New York Court decisions. It has been uttered so often that even newspaper articles and historical works repeat it. There is one problem though, it is in all

¹²⁹ *See*, SRMT Civ. Code, V (B).

¹³⁰ *See*, *supra* note 68.

¹³¹ *See*, *Strong v. Waterman*, 5 Sarat. Ch. Sent. 13 (Sup. Ct. 1845), rev'd, 11 Paige Ch. 607 (Ch. Ct. 1845);

likelihood not true, and is contrary to stated positions of the St. Regis Indians, Federal Indian Law, and some findings made by federal courts.

As the St. Regis Mohawk Tribe finds itself in the midst of its own protracted land dispute litigation involving New York, it is interesting to note that a United States District Court addressing those issues had this to say with respect to the St. Regis lands:

In deciding whether the tribal plaintiffs had abandoned their homeland so as to preclude recovery, this court in *Cayuga Indian Nation of New York v. Cuomo* ...distinguished between aboriginal and recognized title. 'Aboriginal title' connotes rights deriving from ancestral use. Thus, 'an Indian tribe obtains aboriginal title in land when it continually uses and occupies said property to the exclusion of other Indian tribes or persons... On the other hand, 'where Congress has, by treaty or statute conferred upon the Indians the right to permanently occupy and use land, then the Indians have a right or title to that land which has variously been referred to ...as 'treaty title', 'reservation title', 'recognized title', and 'acknowledged title.'" [citations omitted]¹³²

Nowhere in the foregoing does the Court make any allusion to New York having the underlying title to the lands of the St. Regis Indian Reservation, thereby depriving the St. Regis Indians of aboriginal/ treaty/ reservation/ recognized/ or acknowledged title to the St. Regis Indian Reservation. If New York in fact had title this would also deprive the individual members and residents of the St. Regis Mohawk Indian Reservation the customary use of their territory as has been historically enjoyed. Whereby, the New York laws determined to be inapplicable under *Forness* would now be applicable.

In fact, the aforementioned United States District Court was not addressing anything new as another Federal Court in 1927 had this to say with respect to a land dispute incident involving a St. Regis Indian:

The source of title here is not letters patent or other form of grant by the federal government. Here the Indians claim immemorial rights, arising prior to white occupation, and recognized and protected by treaties between Great Britain and the United States and between the United States and the Indians.¹³³

In addition to these cases, we remain mindful of the missing jurisdictional piece that was not granted to New York State under federal law, land disputes on the reservation.¹³⁴ Therefore, as the foregoing makes clear, although the State of New York may feel it has the underlying title to the lands of the St. Regis Reservation, they are the only sovereign with such a feeling. Both St.

¹³² See, *Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York*, 278 F. Supp.2d 313, 43, 344 (N.D. N.Y. 2003).

¹³³ See, *Deere v. New York*, 22 F.2d. 851 (2d Circ. 1927).

¹³⁴ See, 25 USC § 233, and *supra* note 78-106.

Regis and the United States government have found otherwise.¹³⁵ This is not the end of our inquiry though, and the purpose in which to address this issue.

As provided above, the inquiry the Court must undertake does not cease at a recitation of case law decided by other sovereigns. The steps which this Court must follow are provided for in the laws given to the Court, the SRMT Civ. Code. That is what must govern, and therefore is what this Court must follow. As such, this Court must first look at the SRMT Civ. Code which provides:

[1.] Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes);

A careful reading of this provision is in order. As provided, only “Such portions” of the U.S. Constitution and Federal Laws apply when it is clear that they are to apply. Given the U.S. Constitution’s general applicability it is uncertain as to which portions of it would be ‘clearly applicable’ to Mohawk Indian Country. Particularly with respect to land disputes.¹³⁶ What can be noted is that by its plain terms the U.S. Constitution addresses ‘Indians’ in only three instances: Twice in what is known as the apportionment clauses, and once in the commerce clause.¹³⁷ In each of those clauses the terms do not specifically identify Mohawk Indian Country, but Indians in the general sense of the word. This is not to say that all of the other provisions of the U.S. Constitution will never apply in Mohawk Indian Country, for such a determination can only be made when such a controversy is before this Court, and when a party before this Court wishes to invoke such provisions. This simply means there is no automatic application of such provisions in SRMT Court with respect to land disputes. To do so would ignore the “clearly applicable” requirement contained in the SRMT Civ. Code. Therefore, any party before the Court seeking to have the U.S. Constitution or Federal laws applied would have to request such application, as provided for in the SRMT Civ. Code.

In either event, this Court is given further guidance in the SRMT Civ. Code and the inquiry that must be made in determining whether to approve the application of either the U.S. Constitution or Federal Laws to Mohawk Indian Country. Wherein the SRMT Law provides that:

¹³⁵ See, also letter from Interior/BIA to NY Indian Commission confirming the restricted status of St. Regis lands as provided *supra* NOTE 86 herein.

¹³⁶ And furthermore, as indicated herein, land disputes are not subject to NY Jurisdiction pursuant to federal law.

¹³⁷ The apportionment clause is with reference to how (and if) Indians are to be counted for enumeration of population, and therefore, inclusion or exclusion for counting of the number of Representatives in Congress. As originally ratified, Indians were NOT counted as citizens, and therefore were NOT to be counted. The Commerce clause reserves to the Federal Government ONLY the power to trade and deal with foreign countries, which Tribal Nations were to be considered.

With great weight given at all times to principles of the United States Constitution and federal Indian law *which recognize Indian sovereignty, self-determination, and self-government*, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and *which provide rules of legal interpretation favorable to Indian tribes.* [emphasis added]¹³⁸

Therefore, even if a party wishes to invoke either a portion of U.S. Constitution or Federal Indian Law[s], such request then must be compared to, and be in furtherance of, *Indian sovereignty, self-determination, and self-government, and only those sections can be applied that provide rules of legal interpretation favorable to Indian tribes* may be applied here in ‘Mohawk Indian Country’, via the approval of the SRMT Court to cases before it. This, as provided for in the SRMT Civ. Code, is what the SRMT Court must follow.

Next, it must also be noted that nowhere in the foregoing provision is the SRMT Court mandated and/or required to simply follow federal case-law.¹³⁹ In its simplest definition, such decisions are just reflections of those Courts interpretation of either the U.S. Constitution or Federal Laws that were in controversy before those Courts. Nowhere in the SRMT Law is that issue addressed, and this Court in light of the foregoing, cannot make ‘automatic application’ of such decisions. The SRMT Law leaves the SRMT Court no such authority to do so. This though, does not mean that such decisions can never be raised in SRMT Court, as any party wishing to rely on such decisions can request that SRMT Court consider and apply those decisions in Mohawk Indian Country. Say for example, by requesting that a certain Federal law be made applicable, but also that this case interpreting that Federal Law should be the one to be applied in ‘Mohawk Indian Country’ by the SRMT Court. But again, in deciding such a request the SRMT would have to follow the process and requirements described above.¹⁴⁰

Therefore, in the example we began with, should a party before the Court request that the *Crowley* case be made applicable in a land dispute case on the St. Regis Indian Reservation, we would: First, see that *Crowley* is a New York State Court decision which is not even identified as being ‘applicable’ in the SRMT Civ. Code. Next, any reading of the decision shows that it is contrary to *Indian sovereignty, self-determination, and self-government*, and it does not *provide rules of legal interpretation favorable to Indian tribes* because of its holding that New York has title to the lands of the St. Regis Indian Reservation. This would not lead to furtherance of Tribal Sovereignty, but in all likelihood lead to a diminishment of Tribal Sovereignty. Next, as indicated herein, *Forness* in 1942 provided that New York laws could not apply on the Tribal Nations. Since *Crowley* was decided in 1909 it would violate the holdings of *Forness*. Finally, although 25 USC §233 ‘granted’ civil jurisdiction to New York, it is clear that reservation land disputes are not included in that jurisdictional transfer, thereby *Crowley* would be of no precedent in an action involving a ‘Reservation’ land dispute. *Infra*

Contrary to *Crowley*, would be the decisions of *Canadian St. Regis Band of Mohawk Indians ex. rel.* and *Deere*. An interpretation of these could potentially be favorable to *Indian*

¹³⁸ See, SRMT Civ. Code § (A)(1).

¹³⁹ Which are the reported decisions rendered by Federal Courts.

¹⁴⁰ Meaning would following such decisions *recognize Indian sovereignty, self-determination, and self-government, and provide rules of legal interpretation favorable to Indian tribes.*

sovereignty, self-determination, and self-government, and it does *provide rules of legal interpretation favorable to Indian tribes*. Therefore, they could be potentially applicable to Mohawk Indian Country if requested by a party and as provided for in the SRMT Civ. Code which the SRMT Court must follow.

This provision though, is not the end of the inquiry that the Court must make. As indicated, the next couple of provisions in the SRMT Civil Code provided guidance to us in the instant matter. The next two provisions in the SRMT Civ. Code provide that the following should be applied:

[2.] Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe;

[3.] Unwritten Mohawk laws, and written and unwritten Mohawk *customs, traditions and practices*;¹⁴¹

Clearly, with respect to the pending issues, this is where the inquiry of the SRMT Court can begin. Again, this is buttressed by the fact that no party currently before the Court on the present matter has requested that the Court apply either a U.S. Constitutional provision[s] or Federal Law[s].¹⁴² And, it is clear that the land dispute case currently before the Court is subject to both of these SRMT Civ. Code provisions.

As indicated, there is a SRMT law directly on point covering the subject matter of the dispute between the parties: the SRMT Land Dispute Resolution Ordinance.¹⁴³ For current discussions it can be noted that various provisions of the Land Dispute Ordinance include a prohibition that a non-member cannot buy or hold lands on the St. Regis Reservation.¹⁴⁴ Clearly, this is simply codifying what is, or was, the recognizable custom of the St. Regis Indian Reservation prior to the enactment of the Land Dispute Ordinance. In addition, there is a provision with respect to ‘intestate distribution’ of lands on the St. Regis Reservation.¹⁴⁵ In reviewing the Land Dispute Ordinance though, it is still clear that not every legal issue is addressed, and in fact it may be impossible to address every issue that can arise in a land dispute on the St. Regis Reservation. Nonetheless, it is clear that there is an adopted law of the SRMT addressing the issue at bar.

Next, as is also clear, in this decision it has been reviewed at great length what exactly can be included, to date, with respect to the “Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices” involving the land holding pattern and land disputes on the St. Regis Indian Reservation.¹⁴⁶ As provided herein, it is clear that custom and “unwritten laws” on the St. Regis Mohawk Indian Reservation recognizes that: *“He who first cultivated a*

¹⁴¹ See, SRMT Civ. Code §V(A)(2)-(3).

¹⁴² Due to the nature of the action, a land dispute on the St. Regis Reservation, it may be difficult to find such law that is on point.

¹⁴³ SRMT TCR 2009-69 Land Dispute Ordinance [as Amended Apr. 14, 2011].

¹⁴⁴ See, SRMT Land Ordinance §V(C), General Provisions.

¹⁴⁵ See, SRMT Land Ordinance §V(E), General Provisions of Land Dispute Ordinance.

¹⁴⁶ See, SRMT Civ. Code §V(A)(3).

plot of ground becomes the possessor, and by this use gains a right to sell his privilege."¹⁴⁷, once in possession custom also recognizes that *"When an Indian is in possession of a piece of land he holds it as proprietor; no other Indian can take it from him. He may by custom transfer it to his heirs, or sell it to any number of the Tribe, but not to the whites."*¹⁴⁸, and this custom, although contrary to 'outside law', is our custom provided for in SRMT Law. As summarized reservation lands are those: *"which by the right of occupancy have come to be considered the private property of individuals, and as such are bought and sold among the natives, although the law recognizes no such private ownership, and holds them all as tenants in common, denying them the right of buying or selling land, except to the government"*¹⁴⁹ Therefore, the SRMT Court must look first to the SRMT Land Dispute Resolution Ordinance in conjunction with the SRMT Civ. Code. When those laws direct the Court to use unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices that is what the Court must do. Therefore, in this context custom does not require the sanction of another sovereign.

It must be further noted that the history included herein is not exhaustive. Clearly any party may wish to raise, invoke, or otherwise utilize, anything they believe to be a custom, tradition, or practice on the St. Regis Indian Reservation. This may include those more specifically associated with the facts involved in their specific case. Meaning, those customs, traditions, or practices involved in their own 'private' land dispute[s]. Nonetheless, it is hoped that the foregoing adequately provides to the respective parties involved in the case at bar the reasoning that the SRMT Court will follow, and to provide the applicable laws that the SRMT Court must first look to and apply.

II. PROCEDURAL HISTORY

Complainant Mr. Shawn Chubb (AKA Shawn Chubb Square, Shawn M Square-Chubb) filed a case with the Saint Regis Mohawk Tribe Land Dispute Tribunal [hereinafter Tribunal] on June 9th, 2010 concerning ownership of Lot#433-A-2, McGee Road, Akwesasne against Mr. Eli Tarbell. Mr. Chubb (Square) alleges that his family bought the property from Mr. Michael Cole. (See, Complaint filed June 8, 2010). On March 16th, 2011 the Tribunal decided in favor of Eli Tarbell and held valid the SRMT Use and Occupancy Deed to Lot#433-A-2 from Austin Cook to Eli Tarbell dated June 14th, 1999. (See, Tribunal Decision dated Mar. 16, 2011)

Shawn Chubb Square, the Appellant, filed an appeal with the Tribal Court on April 15th, 2011, from a Tribunal Decision dated March 16th, 2011. June 16th 2011, Eli Tarbell, the Appellee, filed a Motion to Dismiss, which was later withdrawn. After the Appellant failed to show for scheduled pre-trial conference hearings the Court ordered the parties to appear before the Court on August 10, 2011. On August 9th, 2011, the Court received a Notice of Appearance from Attorney Dale White that he would be representing the Appellee, Mr. Tarbell.

¹⁴⁷ See, Major Joseph Delafield *supra* note 18 at 151.

¹⁴⁸ *Id.* at Appendix No. 6 Evidence of the Rev. J.X. Marcoux, Missionary, having reference to the Iroquois of St. Regis.

¹⁴⁹ See, HOUGHS *supra* note 22 at pg. 110,113.

A pre-trial conference was scheduled for September 28th, 2011. Attorney White submitted a Memorandum on behalf of the Appellee, on September 15th, 2011. In addition, Attorney White asked for an adjournment until October 5th, which was granted and the date scheduled. On October 5th, 2011, in Court, Mr. Chubb Square asked for an adjournment to have time to respond to Appellee's memorandum. The adjournment was granted and a new Court date was set for October 26th, at 10:00 am with the parties receiving copies of the order. In addition, the order was sent via certified return receipt mail to the parties.

Mr. Dale White, Attorney for the Appellee Mr. Eli Tarbell, was present on October 26th; however, the Appellant Mr. Shawn Chubb Square was not present. The Court waited 30 minutes as is required by Court rules for Mr. Chubb Square to appear. Furthermore, the Court Attorney also phoned the phone numbers provided to the Court by Mr. Chubb Square; however, he was unreachable.

On October 26th the court decided to proceed in making a decision on the motions before the Court. The letter order advised the Appellant that if he wished to add papers, at this point, the Court required that a petition for permission to do so must be submitted to the Court before any such submission can be made. However, to date, no such request has been made to the Court.

III. DISCUSSION

Pursuant to Saint Regis Mohawk Tribe, TCR 2008-20, Rules of Civil Procedure, the Appellant carries the burden of proof. (*See*, § XX [Rule 17](A)). "He who pleads must prove."¹⁵⁰ The Appellant's burden moving forward is one of proving that ownership of Lot#433-A-2 is his¹⁵¹ rather than belonging to the Appellee, Mr. Eli Tarbell.

Pursuant to SRMT law there are various forms of evidence that one may use to prove ownership of property. The Tribunal determines the weight given to evidence with the following forms of evidence to show ownership of property being acceptable:

- Official and valid original deed;
- Certified copy of deed;
- Valid Will;
- Valid Bill of Sale;
- Valid receipt;
- Prior Tribal Council finding;
- Prior Tribal Court finding;
- Transcript of prior Tribal meetings or hearings;
- Decisions from other Courts;
- Sworn written testimony;
- Sworn oral testimony;
- Any other relevant evidence. ((SRMT L.D. Ordinance §XIV (D)(1)(12)).

¹⁵⁰ *Actori incumbit onus probandi*. The burden of proof is upon on the Plaintiff.

¹⁵¹ Shawn M. Square – Chubb was appointed by Mitchell M. Chubb as Power of Attorney over his real and personal property. (See, POA dated 2/16/11).

In addition, Use and Occupancy deeds, land contracts, and bills of sale recorded with the Tribal Clerk that are signed and notarized, or witnessed have preference over other such documents. (See, SRMT L.D. Ordinance §V (F)-(H)[emphasis added]).

Showing linear evidence is crucial in the case at bar to show ownership of Lot#433 and subsequently Lot#433-A-2. The Appellant, Mr. Chubb Square, alleges that his father Marlon (Mitch) Chubb purchased the land in question from Michael Cole. (See, Complaint dated 6/9/10). This is clearly contrary to the documentation submitted to the Tribunal which shows that Mr. Fred Lazore, and not Michael W. Cole, allegedly sold the disputed lot to Marlon Chubb. (See, F. Lazore document dated 12/4/2001). Perhaps this misstatement is because Mr. Shawn Chubb is pursuing the suit on behalf of his father Marlon (Mitch) Chubb.¹⁵² The Tribunal did note that during Appellant's testimony, "that he did not know any details of the land transaction." (See, Tribunal Decision dated Mar. 16, 2011). In addition, the Tribunal found that the Appellant did not provide evidence to refute Mary Lazore McGee Terrence's ownership or her right to sell to Mohawk Indian Housing Corporation¹⁵³ (MIHC) and John A. Cook the property in dispute. (See, *Id.* p.4).

Upon review of the documents submitted by the Appellant, one finds that these documents are absent evidence that Michael W. Cole had clear title for Lot #433, which is needed to transfer and record land with the SRMT Clerk's Office. Mr. Michael W. Cole alleges to have inherited the acreage in dispute. In a notarized document, signed by Michael W. Cole, signing over Lot#432 on December 10, 1999 to Fred Lazore there contains an interesting sentence that states: "Lot#433 should be included in this transaction as it was improperly removed from my land holdings on Lot#432." (See, M. Cole document dated 12/15/99 [underlined added for emphasis]). Clearly, one cannot convey an interest in land that is not in one's possession. Mr. Michael Cole needed to resolve the dispute prior to attempting to convey such an interest. Exacerbating the problem, on December 4th, 2001 Fred Lazore signed over all his rights for Lot#432 to Marlon Chubb and included the following statement: "Lot#433 should be included in this transaction as it was improperly removed from the land holdings of Michael W. Coles [Sic] holdings on Lot#432." (See, F. Lazore document dated 12/4/2001 [underline added for emphasis]). The same holds true for Fred Lazore, that he cannot sell lands that are not clearly in his possession, nor can Marlon (Mitch) Chubb assert claim to such an interest.

In reviewing the Tribunal's decision, their decision was based, in part, on the 2008 Tribal Council Land Dispute Resolution and the 1977 land transactions between Mary (Lazore) McGee Terrance and Mohawk Indian Housing and John A Cook. (See, Tribunal decision dated March 16th, 2011). Tribal Council's 2008 decision lifted a cease and desist order they previously issued to Marlon (Mitch) Chubb against the Mohawk Indian Housing Corporation (MIHC) to cease building until the ownership of Lot #433 was settled. (See, Council Land Dispute Resolution

¹⁵² See, Intra Fn. 151 p.36.

¹⁵³ The Mohawk Indian Housing Corporation works together with the community of Akwesasne in overseeing rental properties for low-income families, the elderly and the physically disabled. In addition to their rental services, the organization also, when possible, assists community members with renovations, transportation, emergency housing and other basic services.

dated May 2, 2008). In coming to their decision, Tribal Council gathered information and reviewed tribal recorded land transactions. Of these documents, they reviewed the tribally signed and recorded bills of sales/ agreements of July 25th, 1977 showing that Mary (Lazore) McGee Terrance sold 6 acres more or less to the Mohawk Indian Housing, through their agent John A. Cook. (See, Agreement dated 7/25/77 between Mary Terrance and MIHC). And in a separate transaction Mary (Lazore) McGee Terrance sold to John A. Cook, which he purchased for himself, the other 6 acres of her original 12 +/- acre parcel. (See, Tribal recorded Bill of Sale dated 7/25/77/ receipt #207). This bill of sale makes reference to an agreement between John McGee Terrence and John T. Terrence located on pages 175 & 176 in the Tribal Book, dated November 19th, 1946. In this 1946 agreement John McGee Terrance sells John Terrance about 30 acres,¹⁵⁴ formerly owned by Louie Terrance, to John T. Terrance and John T. Terrance releases to John McGee Terrance 12 $\frac{3}{4}$ acres of land formerly owned by the late Mitchell Terrance estate. (See, *Id.*). The 2008 Tribal Council Decision was as follows:

Mary Lazore inherited twelve (12) acres of land on McGee Road from her family. She later married John McGee Terrance but kept her land title. Any property that was owned or sold by John McGee Terrance did not include the 12 acres that belonged to Mary Lazore Terrance. ...Michael Cole received property through the Mitchell Terrance Estate. He sold an unspecified amount of land to Fred Lazore. Fred Lazore then sold the property to Marlon (Mitch) Chubb. Mr. Chubb was led to believe the land on which MIHC is located was part of the parcel he purchased from Fred Lazore. ...Mary Lazore Terrance's property was not part of the Mitchell Terrance estate. (See, Council Land Dispute Resolution dated May 2, 2008).

As a result, the Council held that the property was rightfully owned by the MIHC through a 1977 land sale between MIHC and Mary Lazore, who was the rightful owner of 12 acres of land on McGee road, which she inherited from her family. (*Id.*). In 1995, MHIC sold part of Lot#433 to Austin Cook containing 3.96 +/- acres of land now known as Lot#433-B-1. (See, SRMT Deed dated 4/28/95 between MHIC and A. Cook). This Deed carefully documents the history of land transactions.¹⁵⁵ On June 14, 1999, Eli Tarbell purchased from Austin Cook, 5 acres +/- part, of the property known as Lot#433, now known as Lot#433-A-2. (See, SRMT Use and Occupancy Deed dated 6/14/99 between E. Tarbell and A. Cook).

The Tribunal decided that the Appellant failed to provide evidence to prove that the land in dispute was part of the lands Mr. Cole inherited, and/or that Mary (Lazore) McGee Terrance did not have the authority to sell her family land. Thus, they decided that in 1977 Mary Lazore McGee Terrance sold 6 acres more or less of her family land, to MIHC, in 1995 MIHC sold a portion of Lot#433 (3.976 acres) to Austin Cook; and, in 1999 Austin Cook sold to Eli Tarbell (approx. 5 acres) known as 433-A-2.

¹⁵⁴ This land is bounded on the North by the Raquette River, east by Mike L. Tarbell, the south by Terrance lane, and the west by John T. Terrance.

¹⁵⁵ BEING a portion of the premises conveyed to the Mohawk Indian Housing Corporation by Mary Terrance by deed dated July 25, 1977, and by John A. Cook by deed dated July 11, 1984, and recorded in the Office of the clerk of the St. Regis Mohawk Tribal Council of the St. Regis Mohawk Reservation. (*Id.*).

Finally, the Appellant, Mr. Shawn Chubb Square was warned numerous times that his actions of not following SRMT Court procedural deadlines and failing to appear for scheduled Court dates could result in his case being dismissed due to failure to prosecute.¹⁵⁶ (*See*, Letter dated June 13, 2011 (notice of deadline to serve Defendant with the Complaint and 20 day summons) [on file with the Court]; *See*, 11- LND-00004 Court Record June 14, 2011 (Appellant failed to appeared) [on file with the Court]; *See*, Letter dated July 20, 2011 (Tribal Court Order to Appear on August 10, 2011 issued due to Appellant failure to appear on July 20, 2011) [on file with the Court]; *See*, Letter dated Oct 26, 2011 (On October 26, 2011 the Appellee was present; however, the Appellant Mr. Shawn Chubb Square was once again not present to prosecute a case that he initiated with the SRMT Court. The Court decided to proceed in making a decision on the motion) [on file with the Court.]

IV. CONCLUSION

The record before the Court shows an interesting history of land transactions concerning this lot with assumptions of ownership giving way to overwhelming evidentiary proof that weighs in favor of ownership falling clearly on the side of Appellee, Mr. Tarbell. The Appellee has provided well documented and notarized/witnessed evidence to show a chain of ownership for the property in dispute. Michael W. Cole's conveyance document to Fred Lazore for lot#430 with the inclusion of the statement: "Lot#433 should be included," does not constitute a conveyance of Lot#433, since one cannot convey an interest in property that one does not have possession. Nor, can Shawn Chubb Square rely on such as a claim to assert ownership of Lot#433. The Tribunal correctly found that the Appellant failed to prove his burden of ownership of Lot#433. While the case could have simply been dismissed due to Mr. Chubb square's failure to prosecute, the Court is of the opinion that the parties are better served by a detailed and reasoned legal decision, which will also provide better for the future generations than a dismissal for failure to prosecute.

Based upon the aforementioned the Court affirms the SRMT Land Dispute Tribunal, which held in favor or the Appellee, Mr. Eli Tarbell as the rightful owner of lot#433-A-2 consisting of five (5) acres more or less.

Entered by my hand on this the 31st day of August 2012



Peter J. Herne, Chief Judge
Saint Regis Mohawk Tribal Court SEAL

¹⁵⁶ (*See*, *Garrow v. SRMT Election Bd. et. al*, No. 11-CIV-00004, (SRMT Civ. Ct. August 11, 2011)[dismissed due to Plaintiff's failure to prosecute]; *See*, *SRMT v Ferrell*, No. 11-TRF-00288, (SRMT TRF. Ct. October 12, 2011)[Dismissed due to failure of Appellant to prosecute].