Donna Marie Loring

From: Donald Soctomah <
To: Donna Marie Loring
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The Passamaquoddy Tribe Fighting for Treaty Rights

February 6, 1891

Their weapons are the Law, Treaties and the Supreme Court, which are less dangerous to life but more powerful for the vindication of their rights and the redress of their wrongs

The Indians present a good case

Close upon the outbreak of war with the Sioux Indians in the west, there follows an outbreak of the Passamaquoddy Indians in the east, and Washington County is the scene of the conflict. Indians at war in both cases but with weapons altogether different. In the west the sturdy natives have donned war paint and feathers, have taken the trail and given demands. The Passamaquoddy have adopted a different tactic. They have declared war, grim face of war, but it is a legal war, and they propose to Marshall their forces in battle array in the arena of the courts of the law. Hostilities have actually begun. The cause of this outbreak is the attempted enforcement of the fish and game law on the Indians at Peter Dana Point (Indian Township), 30 miles from Calais. Game Warden French of Calais, has arrested 2 Indians, Peter Newell and Joseph Gabriel for the unlawful killing of deer. They were brought before Justice Dresser at Princeton, Feb. 3, found guilty and bound over to the Supreme Judicial Court to be held in Calais in April. There defense is truly an ingenious one and they base it on very solid foundations. They claim that they have the right to fish and hunt whenever and wherever they please, the fish and game law to the contrary not withstanding. An interesting question thus arises. Are the Indians amenable to our game laws? The Indians confidently asserts that he is not, and it cannot be denied that he presents cogent reasons for his claim. It is none other than a right derived from treaties, in 1725, again in1727, and finally in 1794 the Commonwealth of Massachusetts granted to this same Tribe of Passamaquoddy Indians by bounden and solemn treaty the right to fish and hunt forever. These treaties, the Indians say, neither the Legislature nor the courts have a right to vary, treaties which were made with them by commissioners of Massachusetts, before Maine became a State, which same treaties were not only ratified by the new State, but it was part of the agreement in the act of separation that the rights of the Indians by treaty and otherwise, should be protected. This treaty, the Indians claim, is to be considered like any other treaty as the supreme law of the State and any act of the legislature that conflicts with it are null and void. At any rate they propose to test it and confidently appeal to the courts for redress of what they consider wrongs done them by the game laws. They have appealed to the Legislature again and again, but to no purpose. They now seek the domain of the law for vindication and propose to fight it out on that line. This much is sure; the Passamaquoddy Tribe is stirred up to its very foundations. This question has excited a lively interest in Calais. Many of the city's prominent citizens have volunteered their aid and counsel to the Indians and the case will be presented at the next session of the Supreme Judicial Court in April.

State vs. Peter Newell

Washington. Opinion **April 19, 1892**

Indians. Treaties. Fish and Game

The Indian resident within the State are not "Indian Tribes" within the treaty making powers of the Federal government. Nor are they in a political life, or territory, the successors of any of the various "Eastern Tribes of Indians" with whom treaties were made with the crown, or the colonies, in colonial times, and, hence they cannot effectual claim any privileges or exemptions under such treaties. While they have a partial organization for tenure of property and local affairs, they have now no separate political organization, and are subject as individuals to all the laws of the State.

State vs. Peter Newell - 1892

ON REPORT.

This was an indictment charging that the defendant, one of the Passamaquoddy Tribe of Indians, did on the 14th day of January, 1891, during close time, at Township number 6, middle division, an unincorporated place in said county, with force and arms kill and destroy two deer, against the peace, & contrary to the statute in such case made and provided. Upon arraignment, the defendant pleaded that he was guilty of the offense charged against him, unless the court should be of opinion that he had a lawful right to do the acts with which he was accused by reason of the following treaties; Of 1725, 1713, 1717, of 1727, of 1749, of 1752, all printed in the Maine Historical Society's publications. Also treaty of 1794, and other treaties printed in Acts and Resolves of 1843; also treaty of 1780.

It was agreed by the parties that the case should be reported to the law court to be there decided as the legal rights of the parties might require. They also agreed that printed copies of the treaties above named might be referred to and used as contained in any publications of the States of Maine and Massachusetts, or in the publication of any one of the Historical Societies. Hanson, Attorney for the Defendant.

Littlefield, Attorney General, and Campbell, County Attorney, for the State;

The defendant admittedly killed two deer in this State contrary to the form, letter and spirit of the statute for the preservation of deer and other game animals. The only matter of fact he interposes in defense is that he is an Indian, one of the Passamaquoddy Tribe, a Tribe living on and near Lewey's Island (Indian Township) in the eastern part of the State. Whatever the status of the Indian Tribes in the west may be, all Indians of whatever Tribe, remaining in Massachusetts and Maine, have always been regarded by those States and by the United States as bound by the laws of the State in which they live. Murch v. Tomer, 21 Me., 535. Their position is like that of those Cherokees who remained in North Carolina. It was said of them by the United Sates Supreme Court, that they were inhabitants of North Carolina and subject to its laws. Indeed, the defendant concedes that he is bound by all the laws of the State, except those restricting the freedom to hunting and fishing. As to these restricting statutes, he contends they must give way as to him before certain "Indian Treaties", named in the report of the case. He claims that these treaties are made by the 5th section of the Act of Separation (incorporated into Maine constitution) a constitutional restraint upon the power of the Legislature, to limit the freedom of the Passamaquoddy

Tribe in hunting and fishing. The defendant's counsel, with much zeal and industry, has furnished us with many and interesting papers concerning the various treaties with the Indians of Maine and the East. The treaty of 1713 was "the submission and agreement of the eastern Indians" to and with Governor Dudley at Portsmouth. It purported to be executed by delegates from "all the Indian plantations on the rivers of St. John, Penobscot, Kennebec, Amascogon, Saco, & Merrimack". The conference of 1717 was simply a confirmation of the same treaty. The treaty of 1725 was after the French & Indian Wars of that period, and was between the Governors of Nova Scotia, New Hampshire and Massachusetts Bay on the other hand, and the several Tribes; Penobscot, St. Johns, Cape Sable and other Tribes inhabiting within

New England and Nova Scotia", on the other hand. This treaty was confirmed in 1727. In 1749, after another Indian war, commissioners from Governor Phipps made a treaty of peace with the Indians of the Tribes of Penobscot, Norridgewock, St. Francis & other Indians inhabiting within his Majesty's territory of New England. The conference of 1752 was only a confirmation of the Treaty of 1749. What is called in the report, the treaty of 1780, appears to be (so far as any papers or citations are furnished us) simply a letter of thanks & kind assurances from Governor Bowdoin to the different Tribes of Indians under Col. John Allan. It contains no mention of hunting & fishing. We do not find that the Federal government ever by statute or treaty recognized these Indians as being a political community, or an Indian Tribe, within the meaning of the Federal Constitution. The defendant's counsel calls our attention to the mission of Col. Allan, as an envoy from the Continental Congress to the Indians. Col. Allan was appointed by Congress in 1777, "Agent for the Indian Affairs in the Eastern Department", and held that office till 1784. He was instructed to visit the Tribes of Indians, inhabitants of St. John and Nova Scotia, and by threats, persuasions and arguments of various kinds, to endeavor to convince them it would be for their interest not to take part against the United States in the war then raging. He made his headquarters at Machias and assumed a general supervision and a quasi-control over the various Tribes of Indians from St. John to the Penobscot. Many of his letters have been preserved by the Indians, and by them submitted to the court. They are full of kindly assurances of protection, including hunting & fishing, but it cannot be seriously claimed that they amount to a treaty between two political communities, however savage one of them may have been. In the treaties of 1713, 1725, 1749, the contracting Indians reserved to themselves and their natural descendants respectively, the privilege of fishing, hunting and fowling as formerly. The crown made these treaties with actual political communities, which had an internal government, however rude, and an external responsibility, however unsatisfactory, which could wage war and make peace. But, whatever may have been the original force and obligation of these treaties, they are now functus officio. One party of them, the Indians, have wholly lost their political organization and their political existence. There has been no continuity or succession of political life and power. There is no mention in the treaties of a Tribe called "Passamaquoddy Tribe", and we cannot say that these present Indians are the successors in territory, or power of any Tribe named in the treaties, or are their natural descendants. Though these Indians are still spoken of as the Passamaquoddy Tribe, and perhaps consider themselves a Tribe, they have for many years been, without a tribal organization in any political sense. They cannot make war or peace, cannot make treaties; cannot make laws; cannot punish crime; cannot administer even civil justice between himself and herself. Their political and civil rights can be enforced only in the courts of the State; what tribal organization they may have is for tenure of property and the holding of privileges under the laws of the State. They are

subject to the State as any other inhabitants can be. They cannot now invoke treaties made centuries ago with Indians whose political organization was in full and acknowledged vigor.

What the report calls the treaty of 1794 was simply a grant by the commonwealth to the Passamaquoddy Tribe of Indians of certain lands and the privilege of fishing in the Schoodic River, in consideration of their releasing all claims to other lands in the commonwealth. Clearly the defendant gains no right to hunt under that grant. Judgement for the State.