

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

PARTICULARS IN RESPONSE
TO DEMAND FOR PARTICULARS

In response to the demand for particulars dated January 31, 1996 by the plaintiff, the defendant Her Majesty the Queen in right of Ontario ("Ontario") states that the particulars demanded therein are within the knowledge or records of or are available to the plaintiff and are not necessary to enable the plaintiff to plead by way of reply.

Without prejudice to Ontario's ability to rely on those facts Ontario provides the following in response to the demand for particulars.

The numbered sections herein correspond to the numbered paragraphs in the demand for particulars.

1. Ontario adopts the response of the defendant the Attorney General of Canada insofar as it concerns the allegations in the statement of defence of the Attorney General of Canada adopted and repeated by Ontario in paragraph 1 of the statement of defence of Ontario.

2. In 1784 the Mississauga Indians had occupied the lands in question in this action for nearly a century: C.M. Johnston, "The Six Nations in the Grand River Valley, 1784-1847" in E.S. Rogers and D.B. Smith eds., *Aboriginal Ontario: Historical Perspectives on the First Nations*, Toronto, Dundurn Press, 1994, 167 at 170. See also P.S. Schmalz, *The Ojibwa of Southern Ontario*, Toronto, U. of Toronto Press, 1991, especially 32, 71, 107-108, and H.H. Tanner ed., *Atlas of Great Lakes Indian History*, Norman and London, U. of Oklahoma Press, 1987, 58-59 (Map 13, Indian Villages and Tribal Distribution c. 1768), 75 (Map 15, Frontier in Transition 1770-1784 Pennsylvania, New York, Canada).

3. Particulars of the Six Nations' express denial that the lands that were granted to them by the Crown were inalienable by them otherwise than to the Crown and their assertion that the lands were not so inalienable are set out in Johnston, "The Six Nations in the Grand River Valley, 1784-1847", above, at 172-174 and in Johnston ed., *The Valley of the Six Nations: A Collection of Documents on the Indian Lands of the Grand River*, at xliv, xlvi. Such denial and assertion is also implicit in the long course of grants and

leases of portions of the lands by the Six Nations to private parties, and the controversies with representatives of the Crown concerning those transactions, recounted in the latter work at xli-xlvii, 1-lxviii.

Particulars of many occasions on which the Six Nations purported to grant or lease portions of the lands to persons other than the Crown notwithstanding the objections of the Crown are set out in the latter work at the pages last given. Particulars of another such grant or lease are set out in *Canada, Indian Treaties and Surrenders* vol. 1, Ottawa, 1891, Document 4 $\frac{1}{2}$. That there were subsequent such grants or leases is reported in Johnston, "The Six Nations in the Grand River Valley, 1784-1847", above, at 178, 179. Ontario has no particulars of the dates of such grants or leases, the lands contained therein, the parties to such grants or leases, the consideration therefor, or of documents pertaining to the purported grants or leases except the particulars set out in the sources mentioned.

4. On December 20, 1790 the Nassau District Land Board instructed Augustus Jones, Deputy Land Surveyor, "to ascertain the limits" of the Six Nations lands and to that end "to take the Course of the Grand River from its mouth, to the extent of the Indian Claims & to lay this before the Board that they might arrange the Division on the Justest Principles". On February 1, 1791, having completed the survey, Mr. Jones laid his plan of the tract before the Land Board and "Capt. Brant, Tekarihokea, Shascouanie, Agageghte,

Gonehsaneyonte, Kayendadirhon [i.e., the leading Mohawk and Cayuga chiefs] ... and several of the Principal chiefs". The arrangement was signed on the map by the members of the Land Board and the aforementioned chiefs. The map did not include any lands above the Township of Nichol.

Enclosed are copies of:

- i) Extracts from the Minutes of the Nassau District Land Board, December 20, 1790 and February 1, 1791, printed in Johnston ed., *The Valley of the Six Nations* as Document B26.
- ii) George Hillier to Alexander McDonell, March 31, 1819, printed in Johnston ed., *The Valley of the Six Nations* as Document B33.
- iii) Proceedings of an Indian Council at Hamilton, July 4, 1819, printed in Johnston ed., *The Valley of the Six Nations* as Document B34.
- iv) Lord Bathurst to the Chiefs of the Six Nations, September 28, 1821, printed in Johnston ed., *The Valley of the Six Nations* as Document B35.

5. The pleading that "The leaders of the Six Nations, from the time of Chief Joseph Brant in 1784, were knowledgeable sellers of their lands for monetary compensation" is founded on the fact that Brant was knowledgeable in that respect. Inasmuch as he was so knowledgeable it follows that his successors, living as they were in an area of steadily increasing agricultural and urban settlement

and in a market economy, were also so knowledgeable. Concerning Brant, see Johnston ed., *The Valley of the Six Nations*, at xxxv ("much better informed & instructed than any other Indians", educated at a school in Connecticut), xliii ("obviously a Europeanized entrepreneur"), xlvi ("Brant argued vainly that the Six Nations could no longer hope to survive on the hunt exclusively and that failing the speedy agricultural development of the tract, their only recourse was to sell portions of it in order to obtain some financial compensation"), xlvii ("Brant intensified his campaign to satisfy the prospective purchasers of Indian lands on the Grand", "he reiterated the Indians' need for an immediate assured income from land sales", "he conceived the idea of making sales of portions of his lands, for the creation of an immediate fund for the benefit of the nation, and of leasing other portions in such a manner as to ensure a perpetual revenue"), xlix ("the Mississaugas who had settled on the River Credit and adopted Brant as their chief had boasted that he 'is fittest to be their Chief because he alone knows the value of Land'").

6. The dispositions, transactions or uses referred to in the pleading that "all parts of the Six Nations Lands that were the subject of a disposition, transaction, or use other than trespass were the subject of a lawful and valid absolute surrender by the Six Nations or of a valid statutory provision authorizing the disposition, transaction or use" are all of the dispositions of portions of the lands by the Crown and all of the uses of portions

of the lands by any person subsequent to the several lawful and valid surrenders of portions of the lands by the Six Nations. Ontario has no particulars of those individual dispositions, transactions or uses except that:

- i) There were a total of five dispositions by Ontario after confederation. Particulars of them are as follows:
 1. Grant to The Corporation of the City of Brantford, April 27, 1893, of a 40 link strip of Park Lot 25.
 2. Grant to Canada Glue Company, Limited, March 30, 1931, of 7.82 acres in the Lovejoy Tract in the Township of Brantford.
 3. Quit claim grant to Richard Marshall Murphy, May 12, 1948, of two gore parcels of 17 and 1.6 acres respectively in Lots 25 and 26, Concession 3, Township of North Cayuga.
 4. Quit claim grant to 269711 Ontario Limited, June 12, 1979, of Lots 22, 23 and 24 north side of Norton Street, Town of Cayuga.
 5. Quit claim grant to His Majesty the King in right of the Dominion of Canada as represented by the Minister of Transport, May 22, 1948, of Lots 1, 3, 4, 6, 7, 8, 22, 23 and 31 on plan of subdivision of part of the Welland Canal Feeder Lands in the Town of Dunnville.
- ii) It is undoubtedly correct that portions of the lands were the subject of dispositions by the Crown before

confederation or by Canada after confederation, and that portions have been the subject of transactions involving many different persons including, in some cases Ontario, and that portions have been and are today used by many different persons including, in some cases, Ontario. Ontario has no particulars of such individual dispositions, transactions and uses and such particulars form no part of the quoted pleading in paragraph 26 of its statement of defence. The point of the pleading is simply that all of the dispositions, transactions or uses, whatever their individual particulars may be, were in respect of lands that had been lawfully and validly surrendered by the Six Nations earlier or, if not surrendered earlier, were the subject of a valid statutory provision authorizing the disposition, transaction or use.

The only such statutory provision known to Ontario is *An Act to Incorporate a Joint Stock Company, to Improve the Navigation of the Grand River, S.U.C. 1832, c. 13*. There may be others.

7. The acknowledgement by Chief Joseph Brant that the Six Nations had no right to any payment from Canby or anyone else in respect of the lands in Block No. 6 is contained in a Declaration respecting that Block by Brant addressed to "all men" on June 9, 1802. The

copy printed in Johnston ed., *The Valley of the Six Nations* as Document D37 is provided herewith.

8. The copy of the absolute surrender by the Six Nations dated January 18, 1841 printed in Johnston ed., *The Valley of the Six Nations* as Document D50 and the copy printed in Canada, *Indian Treaties and Surrenders* as Document 50 are provided herewith.

April 19, 1996

Ministry of the Attorney
General
Crown Law Office, Civil
720 Bay Street
8th Floor
Toronto, Ontario
M5G 2K1

J.T.S. McCabe
(416) 326-4127

Solicitor for the defendant Her
Majesty the Queen in right of
Ontario

TO: Blake, Cassels & Graydon
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Burton H. Kellock, Q.C.
Ben A. Jetten

Solicitors for the plaintiff

Department of Justice Canada
P.O. Box 36
3400 Exchange Tower
First Canadian Place
Toronto, Ontario
M5X 1K6

Charlotte A. Bell, Q.C.

Solicitor for the defendant
Attorney General of Canada

B 26 EXTRACTS FROM THE MINUTES OF THE NASSAU DISTRICT LAND BOARD²⁰

[P.A.O., Crown Land Papers, Surveyors' Letters, 1766-1800]

Niagara, 20 December 1790

- (a) Representations having been Made to the Board that the extension of the Settlement to the West-ward approached the Lands assigned to the Indians' Settlement on the Grand River, & might Soon without due Care, encroach on these, They thought it a matter of much Consequence, to ascertain the limits of this Settlement, and accordingly Directed Mr. Jones,²¹ Actg as D[eputy] L[and] Surveyor to take the Course of the Grand River from its mouth, to the extent of the Indian Claims & to lay this before the Board that they might arrange the Division on the Justest Principles & they requested Col. Gordon and Comm^r Officer to Assist him & his Party as Usual with Provisions to enable him to Compleat this—

Niagara, 1 February 1791

- (b) Mr. Jones having finished his Survey, laid a Plan of the Grand River before the Board, who having called in Cap^t Brant, Tekarihokea, Shascouanie, Agageghte [?], Gonehsaneyonte, Kayendadirhon²² . . . and several of the Principal chiefs to aid the Land Board with their advice & Council—It was unanimously agreed upon and Determined that the Bend of the River easterly nearly two Miles from its Mouth or issuc into Lake Erie, & the Mohawk Village shall be the two fixed Points & that a straight line drawn from one of these points to the other shall form the Center Line of the Indian Lands on the Grand River & that two Parallel lines to this Six Miles Distant on each Side of the Grand River Shall form the Bounds between them & the Settlement of Nassau—This arrangement is Signed on the Map of the Grand River by the Members of the Land Board & the Aforementioned Chiefs—²³

But though I cannot discern how the removal of the Indians to the Grand River can benefit either themselves, the King's Service or the Settlers in the Upper part of the province, and fear, that on the contrary it will occasion much inconvenience and distress, more particularly at the present time when there is a general scarcity of provisions, yet it is not difficult to perceive the advantage and convenience, which must result therefrom to those who have obtained grants of land in the Indian Country; and to them I impute the assertions of an attack upon Oswego and Niagara being in agitation; for I cannot easily persuade myself, our Neighbours really mean now to begin a War. . . .

²⁰Before the creation of Upper Canada and its county system in 1791, the region west of the Ottawa River had been divided into four districts, beginning from the east: Luneburg, Mecklenburg, Nassau, and Hesse. These units were formed on July 24, 1788.

²¹Augustus Jones (1763?-1836), a Loyalist from New York, was named a deputy surveyor in 1788. He later settled in Saltfleet Township at the head of Lake Ontario.

²²These were leading Mohawk and Cayuga chiefs.

²³This map is believed lost or destroyed.

B 33 GEORGE HILLIER³⁹ TO ALEXANDER MCDONELL⁴⁰
[P.A.C., *Indian Affairs, Correspondence, Military Secretary's Office,*
1816-1827, CDLXXXIX, 364-65]

York, 31 March 1819

His Excellency [Sir Peregrine Maitland]⁴¹ desires me to say you have mistaken his intention in listening a moment to any proposal of the Six Nations for Lands above Block Nichol.⁴² The Government never could have it in contemplation to grant them such lands—nay it could not grant them; for His Excellency perceives by the documents in the different Offices that the purchase from the Messengers extended no further than Block Nichol, & the Government could not part what did not belong to it—Moreover His Excellency observes that Sir Frederick Haldimand declares positively in his Speech to the Chiefs, & in his letter of Grant that the Lands he bestowed in the name of His Majesty were lands he had actually purchased for them, probably he thought the Grand River had its rise in the part he had purchased but whether he were in this error or not makes no difference as to the extent of the Grant—His Excellency therefore desires you undeceive the Six Nations upon this point immediately, & make it known to them that they can have no claim whatever to a part of land above Block Nichol. The Lieut. Governor desired the whole of the documents to be laid before the Executive Council, & their opinion perfectly coincides with His Excellency's. . . .

³⁹Major George Hillier was serving as the Lieutenant Governor's military secretary.

⁴⁰Alexander McDonell (1762-1842), a veteran of Butler's Rangers, settled in Canada in 1784. A legislative assemblyman for Glengarry, Upper Canada, from 1820 to 1823, he was also a member of the colony's Legislative Council. In addition he acted as Lord Selkirk's colonizing agent in Upper Canada.

⁴¹Sir Peregrine Maitland (1777-1854), a veteran of Waterloo, was Lieutenant Governor of Upper Canada from 1818 to 1828.

⁴²See map facing p. 128.

... On examining Documents at York respecting the Grand River Lands, it appears that in the year 1790 a Survey was made by M^r Jones, and at a Land Board at Niagara in 1791 of which Lieut. Col: Butler M^r Hamilton⁴³ and Col: TenBrook⁴⁴ were Members, it was agreed on by them and Captain Brant, Ojagethe, Goughsomyoute, Atewnoote, Aghsete, & Kayondoderhow, that certain lines that had been run by M^r Jones were to be the Indian Boundary, and it appearing to the Government that the Six Nations have misconceived the extent of their land, I am commanded to undeceive them by informing them that the Government from these Documents conceives that the Grounds above Block Nichol, Known as Block N^o 4 is now in the Crown by a Recent Purchase from the Messessagues for beyond that the King had not Purchased from those Indians, at the time of Sir Frederick Haldimands Gift consequently, Sir Frederick in behalf of the Crown had no Land to grant.—

I have now, my Brothers, communicated the Answer which I have received to Your Speeches and shall be ready patiently to hear whatever you may have to say in reply.—...

Tekarihoga [John Brant], a Mohawk Chief then Spoke—

... Brother. After the American War, we were at Niagara and did not know where to go. In our distress the Senecas offered us Lands on the Genesee River, but we did not wish to be near the Americans. ... During the Administration of General Simcoe⁴⁵ he wished to obtain from us, three Miles on each Side of Dundas Street on both Sides of the River. We replied that we would let him have the quantity required but that it should be for our benefit, he declined the Offer and the Matter dropt Sir John Johnson also wished us to Surrender Six Miles on each Side of the River at the Mouth, we complied with his request provided it was for our benefit, but that it should be for our benefit, but that also dropt without anything being done.—

I remember very well before the Lands were purchased by Colonel Butler that the Missessagues said "We do not wish to sell the lands, we will give you all the lands from the Grand River to the River Thames down to Lake Erie" The Government lessened the gift to Six Miles on each Side of the Grand River, from its mouth to its Spring. Yet we replied to the Mississagues "Since you have been so kind to us, we will divide our Presents with you". We are Surprised to find that Government says, that we own the Lands to the Falls only as we have Writings to prove otherwise. We have them here and are ready to produce them

The Original Deed from General Haldimand Produced by John Brant.⁴⁶—

Tekorihoga then turning to the Indians addressed them saying, it is reported that I have sold Lands let any man Step forward and say so; the Superintendant Knows whether I have Sold lands or Not.—

Little Peter, of the lower Mohawks, then got up and Said Brother I was always Present at different meetings, and though I did not interfere I listened to what was passing. When I came to See the land Settling by white people, it disturb my Peace. I am a lower Mohawk And belong to the Six Nations. The Land is a thing that concerns us all and our posterity. I have heard my Cousin (Tekorihoga) say that a Stop will be put to the Sale of lands. I am very glad of it it is a Custom among us to have Lands all in Common. We do not wish it to run out in lots to be Settled by the White People, which is the only thing that confuses us, by mixing with us, when I look around me, above and below, I see nothing but Whites around me, and we have nothing left but a Spot to Stand upon, and what is to be the next event. Are we to be Shoved off altogether? I am Surprised to See so many Settlers on different parts of the River. We deny having sold any Land to them.—...

⁴³Robert Hamilton (1750-1809), a leading merchant of Queenston, was appointed to the Legislative Council of Upper Canada in 1792.

⁴⁴Peter Ten Broeck, a Loyalist from Albany, was one of the first settlers in the Niagara district.

⁴⁵John Graves Simcoe (1752-1806), a native of Northumberland, was Upper Canada's first Lieutenant Governor, serving from 1791 to 1796.

⁴⁶Joseph Brant's youngest son, John Brant (1795-1832) succeeded his father as agent of the Six Nations. Toward the end of his life, ended untimely by a cholera epidemic, he represented for a brief period the county of Haldimand in Upper Canada's Legislative Assembly.

Downing Street, 28 September 1821

I have the honor to acknowledge the receipt of the letter which you addressed to me on the 7th instant, transmitting an Official Note, in which you complain of a decision of the Colonial Government of Upper Canada with respect to the extent of the lands which ought to be permanently reserved for the five Indian Nations who settled in the Province at the close of the first American War—

As the Indian Nations rest their claim entirely upon the terms used by General Haldimand in his proclamation of the 25th October 1784, I shall confine myself to a Statement of the reasons which convince me that it was never the intention of that Officer to grant them the extent of territory to which they now lay claim, of Six Miles on each side of the Ouse, or Grand River, from its mouth to its Source; and that the proclamation does not warrant such a claim—

It is evident from the proclamation, annexed to Your Note, that the land which General Haldimand intended to assign to the Indian Nations, was that which the Colonial Government had a few months before purchased from other Indian Nations resident within the Province of Canada; and that whatever disposition he may be presumed to have had to confer advantages on the five Nations by giving them lands belonging to His Majesty, he could not intend (for he had not the power) to make over any Indian Lands to which His Majesty had not then acquired a title.

The description therefore of the Land which is given in the close of the Proclamation must be taken with reference to what the King had at the time a power to grant.—It must be considered with reference to the general inaccuracy and contradiction of all geographical descriptions of America at that time, when the country was unsurveyed and unknown, and when information as to the course of Rivers was derived either from reports of individuals, or from other sources which afterwards proved altogether incorrect.—As the course of the Ouse, or Grand River became known, it was found that the head of the River was not within the purchase made from the Chippawas in 1784, and that that purchase therefore did not comprise the lands to which the five Nations now lay claim. I do not find indeed that any Claim of the Nature now advanced by the five Nations of this land, until the Colonial Government had many years afterwards, with a view to the Settlement of Emigrants, made a further purchase from these Indians which put His Majesty in possession of the Land lying between the head of the Grand River and that purchased in 1784, which is the Subject of Your present Application—

Under these circumstances His Majesty cannot but consider the Colonial Government justified in allotting to Settlers, instead of reserving for Your use, such part of the land now claimed by you as was not purchased in 1784, from the Chippawas—

That the Indian Nations never had originally in contemplation any Grant so extensive as that for which You now contend, is evident from the proceedings which took place in the Colony in 1791, respecting the limits of the Indian Lands, and the Agreement signed by Captain Brant, and the other Chiefs. The intention of General Haldimand must have been at that time perfectly well known; the extent of the grant was then the subject of discussion; and the Chiefs of the Nations voluntarily acquiesced in an arrangement which excluded the claim now under consideration—

I have only further to add that in coming to a decision upon this claim, adverse to the views which appear now to be entertained by the chiefs of the five Nations, His Majesty does not in any degree undervalue either the original Services which led to the Settlement of these Nations in the British Province, or those which they have subsequently rendered.

The present Question . . . depends entirely upon the true meaning of General Haldimand's proclamation.

For the reasons which I have stated, and others arising out of Contemporary documents, to which I have not adverted, that proclamation cannot warrant the Claim which has been advanced; and His Majesty has only without reference to the merits of the parties, to approve of the decision upon this point, to which the Governor of Canada has already come.

47 Lord Bathurst had performed various tasks under Pitt at the Admiralty, the Treasury, and the Board of Control. From 1812 to 1827 he served as Secretary of State for War, taking on in 1821 the management of colonial affairs as well.

D 37 BRANT'S DECLARATION RESPECTING BLOCK 6, JUNE 9, 1802
[P.A.C., *Indian Affairs, Records and Correspondence of the Deputy Superintendent General, XXVI (1802), 440 ff.*]

Know all men that I Joseph Brant as Agent for the Six Nation Indians in Upper Canada, do by these Presents declare, that a Tract of Land consisting of about nineteen thousand acres, adjoining to the Grand River, was originally given by the Six Nation Indians to Lieutenant John Datchsteder, as a mark of their affection for him and as a reward for his Services with them—and that no money as the price thereof or annual Rent as a compensation therefor was ever excepted by them from him—

I do further declare, that with the consent of the said Six Nations, and they having for this purpose ceded their right in the aforesaid Tract of Land to Government, the aforesaid John Datchsteder for a valuable consideration did sell unto Benjamin Canby the said Tract of Land, which was thereupon confirmed to him by a Deed under the Great Seal of the Province—

But whereas in this Deed (as in others not given as a free Gift) mention is made of a security given by Benjamin Canby for the payment of five thousand pounds unto the Honorable David William Smith, Captain William Claws and Alexander Stewart Esquire in trust for the said Indians as if that sum had been due by him to them—I do further declare that no such Security was ever taken or intended to be taken—Because the Land was designed to be a free Gift from the said Six Nations unto the aforesaid John Datchsteder and that he—John Datchsteder did receive from Benjamin Canby, a full compensation for the same without any regard to such security—in proof of which the Deed did issue in the same Benjamin Canbys name—Nothing being due by him to the said Six Nations for the same, or any part thereof. And these circumstances were the reason why the said Trustees did not take the Security alluded to, when they altogether, with Benjamin Canby and myself were present at Niagara and authorized the said Benjamin Canby to receive the Deed in his own name

²⁵Henry Dochsteder was probably the first white settler in Caistor Township, Lincoln County.

D 50 SURRENDER OF LANDS BY THE SIX NATIONS, JANUARY 18, 1841
[*Great Britain, Treaties, Indian Treaties and Surrenders, I, 122-3*]

The Chiefs and Warriors of the Six Nations Indians upon the Grand River in full Council assembled at Onandaga Council House, this eighteenth day of January, in the year of Our Lord one thousand eight hundred and forty-one, having maturely considered the proposal made to them by Samuel Peters Jarvis, Esquire, Chief Superintendent of Indian Affairs, contained in the annexed documents, dated the 5th and 15th January, 1841, in full reliance and confidence in Her Majesty's Government that they will dispose of the property of the Six Nations Indians, for the sole benefit of them and their posterity for ever, according to the intent and meaning of the said annexed documents, and for no other purpose whatsoever, to the best of their judgment, and also in

full confidence and reliance upon Her Majesty's Government, that they shall not sell, or dispose of in fee simple any portion of that tract called the Johnson Settlement, unless what is available to be sold as town lots in the immediate neighbourhood of the Town of Brantford, without the assent of those Indians for whom the same was formerly reserved first being obtained, have and do hereby assent to Her Majesty's Government disposing of the land belonging and formerly reserved upon the Grand River for the Six Nations Indians, for the benefit of the said Six Nations, and for full and valuable consideration according to the best of their judgment, so as to preserve the benefit thereof for them the said Six Nations and their posterity for ever, and for no other purpose, according to the intent and meaning of said annexed documents, dated the 5th and 15th January, 1841, respectively.

IN TESTIMONY WHEREOF, we, Moses Walker, John Smoke Johnson, Skanawate, Kanokaretini, Peter Green, John Whitecoat and Jacob Fish, being deputed by the said Six Nations in full Council assembled to assent to the same in their behalf, have hereto set our hands and seals this 18th January, 1841.

INDIAN OFFICE, TORONTO, 5th January, 1841.

The Lieutenant Governor has directed me to inform the deputation of Chiefs from the Grand River that he has maturely considered their speech to him, and particularly that important part of it which relates to the occupation of their lands by white people without authority.

The Lieutenant Governor is of opinion that very great difficulties will be found in any medium course between the expulsion of all intruders or non-interference, as experience has shown that with all the anxiety to do justice, and with all the care exercised to prevent injury to Indian interests, the interference of the Indians themselves, continually, has created new difficulties, to which there seems to be no end, and yet the Government is expected to compromise its own character by adjudging what is right and wisely recommended by the Indians, or what, on the other hand, may be capriciously or corruptly counselled by them.

The Lieutenant Governor is of opinion that there can be no remedy found for the continuance of this unsatisfactory and embarrassing state of affairs while the lands remain general property under circumstances which it is no reproach to the Indians to say that they cannot manage the estate for the general interests of the tribes.

The Lieutenant Governor therefore considers that it would be very much for the benefit of the interests of the Indians if they surrendered into the hands of Government the whole tract, with the exception of such part of it as they may choose to occupy as a concentrated body, so that the same may be disposed of by Government; and the Lieutenant Governor therefore strongly recommends that this course be adopted by them, that they immediately select a tract of sufficient extent to give each head of a family or grown up man a farm of one hundred or two hundred acres (as may be thought expedient), for cultivation in the most eligible situation on the river, together with a further quantity to be reserved for firewood and other contingencies; that the Indians then remove to this tract and live together as a concentrated body upon the farms assigned to them, and that the residue of the tract be surrendered to be disposed of for the exclusive benefit of the Indians.

The Lieutenant Governor is also of opinion that when the Indians are thus settled together there will be no difficulty in keeping away intruders, or summarily punishing them should they persevere in committing trespasses on their tract of land.

The Lieutenant Governor feels confident that the proceeds of the sale of the residue of the land and the timber growing upon it will retrieve the affairs of the Six Nations Indians, as well as confer on that section of the Province a lasting benefit, by bringing into cultivation a large tract of the finest description of land, which at present is not only unproductive to the Indians, but absolutely useless to them in every point of view, and which is considered by the public a bar to the improvement and prosperity of the districts in which it is situated, and in fact a nuisance which the public have a right to call upon Government to abate.

It is unnecessary for the Lieutenant Governor again to express the great anxiety felt by the Queen's Government to promote the interest of the Indians and to carry out such a system in the management of their affairs as may conduce to this end; and the Lieutenant Governor therefore trusts that every member of the community of the Six Nations Indians will believe him when he states that if he were not firmly convinced that the plan proposed in this communication was the most proper for their adoption he would not have recommended it.

SAML. P. JARVIS,

Ch. S. I. Affairs.

To

JOHN SMOKE JOHNSON,
PETER GREEN,
PETER FISHCARRIER,
THOMAS ECHO,

And others forming the deputation of Mohawk Chiefs.

SENECA, 15th January, 1841.

To the Chiefs of the Six Nation Indians:

Being convinced by conversation with several Indians of the Six Nations, since my arrival among them, that my communication to the Chiefs of the 5th January, 1841, relating to the Six Nations lands upon the Grand River is altogether misinterpreted by them, I have thought it necessary to submit the following in explanation of that document and of the intention of Government, in order to protect the true interests of the Indians.

The Government is of opinion that it would greatly conduce to the happiness, comfort and wealth of the Six Nations if all their land, with the exception of what

is necessary for their own cultivation and for firewood, should be disposed of, so as to create a fund continually increasing for the benefit of the Six Nations, and upon such a plan they are of opinion that the income of the Six Nations can be immediately increased by a sum varying from £3,000 to 5,000 per annum.

The Government, therefore, in the communication of the 5th January instant, proposed to the Chiefs and Warriors that the whole tract, with the exception of such part of it as they may choose to occupy as a concentrated body, should be surrendered, so that the same should be immediately disposed of for the benefit of the Indians, and to relieve the present embarrassed state of their affairs.

The Government were also of opinion that it would be for the benefit of the Indians, and proposed in the communication of the 5th instant, that they should remove to such tract as should be thus reserved and set apart for their exclusive benefit, and become pledged to protect the same from every species of injury or intrusion upon the part of the white man. But in expressing thus their opinion to the Chiefs and proposing that such a reservation should be made, it was by no means the intention of the Government, nor is it their intention, to desire the removal of any Indian from a farm at present in his occupation, and when the Indian himself is content to remain; but they deem it advisable to secure a tract permanently for their occupation in case any of the Indians should voluntarily desire to dispose of their improvements, under sanction of the Government, and to remove to such reservation where a home should be secured to him apart from the interference of the white man. And I wish it now to be thoroughly understood, that it is by no means desired to remove the Indians from lands at present in their occupation, nor at any time to press such a measure upon them, but that the removal in all cases should emanate voluntarily from themselves, if, at any future period, they should think it advantageous so to do, and that the white men who are now on the tract and who have almost without exception been invited and introduced into the tract by the Indians themselves, should be no longer suffered to remain upon these valuable lands without paying a single shilling to the Indian funds, but the Government shall immediately interfere to compel the payment of a fair value into the funds.

I wish it likewise to be understood, that in case any Indian (upon the proposed plan) should desire to dispose of his improvement, and to remove to the reserved tract, no bargain can be noticed or allowed which is not in the first instance proposed, as well by the purchaser as the Indian to the Department, and approved of, and that any further trespasses or intrusion, of any nature whatsoever, upon the reserved tract, whether committed without or with the approbation of the Indians, either singly or collectively, will meet with the strongest disapprobation of the Government, and that the party offending shall be immediately removed and punished according to the law.

From a careful enquiry into the nature of the claims of the white men to the lands in their occupation it is but too plainly apparent that they have been invited by the great majority of the Indians, and that the latter have received large sums of money which they are wholly incapable of ever refunding. So far, indeed, from the Government receiving any co-operation from the Indians, notwithstanding their repeated remonstrances and calls upon them for protection, they find every measure proposed thwarted by the conduct of the Indians themselves, by the repeated pretended sales of their public property, and that, too, not only within the last year, but if I am correctly informed, within the last fortnight, by some of the Chiefs and Indians who have been most urgent in their remonstrances.

Under such circumstances it cannot be expected, nor would it in any manner tend to the interests of the Indians, that upwards of 2,000 white persons nearly equal in number to the Indians upon the Grand River, should be utterly removed from their homes, for which in some instances they have paid so dearly to individual Indians; neither justice or policy, or a due regard to the Indian interests, requires or will permit of such a measure nor can any such be expected to be approved of by me, or recommended to the Government.

I am informed, and believe from my own observations, that the above plan proposed meets with the approbation of the most intelligent, industrious and worthy of the Indians, and I am fully satisfied that their true interest requires its adoption.

Those who are opposed to it must therefore reflect that any private division in the Council, from whatever cause proceeding, cannot prevent the Government from interfering in seconding the wishes of the industrious and from promoting the wealth and prosperity of the Nations as a body.

In case any further divisions should take place in Council, and by declining amicably to meet the views of Government, the Indians should continue to thwart the measures devised as most conducive to their interest, I am apprehensive that the Government will be compelled, however reluctantly, to take into their own hands the exclusive management of their affairs, and as Chief Superintendent it will be my duty, immediately upon my return, to recommend such a course, to prevent the public property of the Six Nations from being sacrificed to the avarice and rapacity of individuals.

I have made frequent applications to the British Government relating to the stock in the Grand River Navigation Company held by the Indians, and I think I can with safety say that measures will be soon adopted in relation to that matter advantageous to the Indians. In conclusion, I can only further assure you, that if the above measure proposed has not been maturely considered, and if it was not thought most calculated to promote the interests of the Six Nations, it never would have received the approbation of the Government, nor of myself as head of the Department.

I therefore recommend to the Indians in Council that they approve of the Government disposing for their exclusive benefit and advantage, either by lease or otherwise, of all their lands which can be made available, with the exception of the farms at present in their actual occupation and cultivation, and of 20,000 acres as a further reservation, and that the selection of this reservation be deferred until after a general survey of the tract, when the position most advantageous to the general interests and peculiar wants of the Indians can be more judiciously selected. I will merely add that I will meet the Chiefs in Council at the Onandaga Council House on Monday next, at 1 o'clock, to receive their answer.

SAM. P. JARVIS,
Ch. S. I. Affairs.

The Chiefs and Warriors of the Six Nations Indians upon the Grand River in full Council assembled at Onandaga Council House, this eighteenth day of January, in the year of Our Lord one thousand eight hundred and forty-one, having maturely considered the proposal made to them by Samuel Peters Jarvis, Esquire, Chief Superintendent of Indian Affairs, contained in the annexed documents, dated the 5th and 15th January, 1841, in full reliance and confidence in Her Majesty's Government that they will dispose of the property of the Six Nations Indians, for the sole benefit of them and their posterity for ever, according to the intent and meaning of the said annexed documents, and for no other purpose whatsoever, to the best of their judgment, and also in full confidence and reliance upon Her Majesty's Government, that they shall not sell, or dispose of in fee simple any portion of that tract called the Johnson Settlement, unless what is available to be sold as town lots in the immediate neighbourhood of the Town of Brantford, without the assent of those Indians for whom the same was formerly reserved first being obtained, have and do hereby assent to Her Majesty's Government disposing of the land belonging and formerly reserved upon the Grand River for the Six Nations Indians, for the benefit of the said Six Nations, and for full and valuable consideration according to the best of their judgment, so as to preserve the benefit thereof for them the said Six Nations and their posterity for ever, and for no other purpose, according to the intent and meaning of said annexed documents, dated the 5th and 15th January, 1841, respectively.

IN TESTIMONY WHEREOF, we, Moses Walker, John Smoke Johnson, Skanawate, Kanokaretini, Peter Green, John Whitecoat and Jacob Fish, being deputed by the said Six Nations in full Council assembled to assent to the same in their behalf, have hereto set our hands and seals this 18th January, 1841.

Signed, sealed and delivered in presence of us, being fully interpreted by Mr. Jacob Martin, a subscribing witness to these presents: J. MARTIN, I. I. Department, JAS. WINNIETT, S.I.A., JOHN W. GWYNN.	}	Moses Walker, [L.S.]
		John S. Johnson, [L.S.]
		SKANAWATE, X [L.S.] his mark
		KANOKARETINI, X [L.S.] his mark
		JOHN WHITECOAT, X [L.S.] his mark
		PETER GREEN. [L.S.]

PROVINCIAL REGISTRAR'S OFFICE, 1st Nov., 1841.

I hereby certify that the foregoing surrender, together with the documents therein referred to of the 5th and 15th Jan., 1841, respectively, have this day been entered on the records of this office, in Lib. A, folio 241.

R. D. TUCKER,
Registrar.

Court File No.: 406/95

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER
BAND OF INDIANS

- and -

ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO

Plaintiff

Defendants

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

Proceeding commenced at
Brantford

PARTICULARS IN RESPONSE TO
DEMAND FOR PARTICULARS

Attorney General for Ontario
Crown Law Office - Civil
720 Bay Street
8th Floor
Toronto, Ontario
M5G 2K1

J.T.S. McCabe
(416) 326-4127

Solicitor for the defendant
Her Majesty the Queen in right
of Ontario