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Wyandanch Pharaoh, Chief of Tribe, Plaintiff—Montauk Land Co. and Brooklyn Bensons, Defendants.

(Special to the Eagle.)

Riverhead, L. I., October 12—After trying for fourteen years to get their suit to regain possession of Montauk Point on trial, the Montauk Indians had the beginning of their innings in the Supreme Court here yesterday afternoon. Charles O. Mass of Manhattan is counsel for the Indians.

This is one of the most important actions ever arising in the courts of this county, for it affects a valuable section of land on the Montauk peninsula, the section still known as Indian Field, down near the point, about 200 acres in area, and worth in the market probably nearly $250,000.

Should the Indians win, however, they are not likely to come into actual possession of the tract, as far as being able to sell it goes. All the Indians want is the right to live on this tract, cultivate it and exercise all of the old Indian customs. They are barred from even setting foot upon it now.

If They Win, Indians Cannot Turn Land Into Money.

Should they win, it would be necessary for the Legislature to give them power to sell if they wanted to actually convert their winning into real money, and it is not at all likely that the Legislature will give this permission. Yet at the same time, the question is of the utmost importance to the present owners, the Montauk Land Company and the Bensons of Brooklyn, for it will rob them of very valuable realty.

It is contended by the plaintiff, King Wyandanch Pharaoh, that his ancestors could not legally sell the land without Legislature sanction, and that the deeds have never been sanctioned by the Legislature there seems to be no doubt. The earlier deeds to the whites were sanctioned or confirmed by the proper authorities—Governor Dongan, Governor Nicoll and Governor Francis.

Many ancient Indian deeds were produced in court yesterday. They are such documents. One of them an old Indian chief made his mark by drawing a rough sketch of an Indian face—at least it is supposed to represent his mark, showing his face.

Deed Dated in 1660 Shown in Court.

The oldest deed produced yesterday was dated in 1660. This conveyed from "Sachem Squa, late wife of Wyandanch, and her son, Wamsombone; Zoquahonc, Shohanow, Massaquit, Yoshamp, Sachem's man, the true and lawful proprietors of Montauk, Nonchaug, Manchonack" and to Mr. Thomas Baker, Mr. Robert Bond, Mr. Thomas James, Mr. Lion Gardiner, Mr. John Mulford, Mr. John Hand and Mr. Josiomas Price of the plantation of Hastampton, for 100 pounds sterling," the lands under dispute. The ancient deed specified that the "said grantors should have and do quietly hold and assigns should have and do quietly and peaceably hold and enjoy every year for ten years, either in Indian corn at the rate of 4 shilling a bushel, or else in good wampum peag "at six a penny." In consideration the Indians acknowledged to "have given possession and delivery unto the said purchasers, their aforesaid assignees of the premises, and in taking thereof have digged up a piece of the said earth and delivered it as our act and deed unto the hands of the inhabitants of Easthampton."

This is not the deed that Mr. Mass is suing under, his first deed being dated a year later. The reason why this later deed was given, covering almost the same premises, yet reserving some, so it is claimed, is not clear. There were several deeds, all dated quite close together, and it is argued that they were looked upon more as results with the whites, rather than a full-fledged sale of their rights.

How the Bensons Came to Own Montauk.

In 1857 the Easthampton people, who claimed in town the peninsula, had a partition suit. In this it was sworn that the Indians had rights there and the court was asked to determine them. The case was tried before the Referee, Hon. Jackson O. Dykeman. The Referee decided as to the rights of the Indians, the Indian rights as specified in the deeds of 1704 and 1754 were just, and that these rights were limited to the Indian Field and the North Neck.

In the partition the property was bid in by Arthur W. Benson, now deceased, of Brooklyn, for $1,000, and was conveyed to the late Agnes Corbin, and the latter conveyed to the Montauk Land Company, now the sixth defendant. This sale took place in the winter of 1870 when David Pharoah was the acknowledged king of the Montauks. He left several sons, one of whom is Wyandanch Pharaoh, the present head or king, or chief of the tribe.

Benson Bought Out Fowlers and Pharaohs.

Not satisfied with his title, Mr. Benson began, in 1885, according to papers introduced in evidence, to buy through quit claim deeds certain holdings, or supposed holdings, of the Fowlers and Pharaohs. Several deeds passed between the Fowlers and the Pharaohs to him. In all of them it was expressed that the families should have an annuity of $240 each, besides paying a consideration of from $10 up to $200 each, and in return they signed deeds conveying all rights to him, and he also gave them a lot in a section called Freetown, near the village of Easthampton, for life.

It is a fact that the Indians were then seated from the farther end of the peninsula, housed in *Freetown*, and from those been drawing their annuity from Mr. Benson. The last of these deeds, as was shown in their introduction yesterday, was given in 1893. So far as is known these deeds have not been sanctioned by the Legislature, hence it is contended they are of no value, as the Indians are wards of the state and could not legally sell their property. Numerous subjects will be introduced to show that when the present King Pharaoh signed his deed he was under age.

It is believed that the defense will contend that the Indians had abandoned their rights, but Mr. Mass holds that the rights were never abandoned and the possession was obtained, anyway, through fraud.

It is believed that the main defense will be that the Montauk Indian no longer exists, but that he is now mostly all African, and as such he was not a ward of the state and could legally dispose of any rights that Mr. Benson may have acquired. Yesterday, in addition to the great masses of documentary evidence placed on the record yesterday by Mr. Mass it tended to show that the Indians were regarded as having tribal rights down to 1877 at least.

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