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## Property—Indian Lands: Jurisdiction to Determine Title

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herein to be dependent on each other, the tenant had a right to rescind the contract for failure to perform. The question is, was there a reasonable time given by the tenant to the landlord in the letter dated April 27, 1954. It gave till June 30th for the landlord to comply, and it appears that this letter made time of the essence and if it could be shown that the time was reasonable in the light of all surrounding circumstances, then landlord breached his covenant and tenant had a right to rescind.

INDIAN LANDS; JURISDICTION TO DETERMINE TITLE

Section 8 of the New York Indian Law states:

Except as otherwise provided by law, no person shall settle or reside upon any lands owned or occupied by any nation, tribe or band; and any lease, contract or agreement permitting such residence shall be void. The county judge of the county in which the lands are situated, upon complaint made to him, of such illegal residence, shall if he thinks there is reasonable ground therefore, issue a notice directed to the person against whom complaint is made, requiring him to appear before such judge at a time and place therein specified, to answer the complaint. Such judge shall attend at the time and place mentioned in the notice, and upon proof of the personal service of the notice, shall take proof of the facts alleged in the complaint, and shall determine whether such person is an intruder upon the lands of such reservation. If he shall determine that such person is an intruder, he shall issue a warrant to the sheriff of the county commanding him, within ten days after the receipt thereof, to remove such person from such lands. The district attorney of any county in which reservation lands are situated, upon written application of the chiefs, councilors or head men of the nation, tribe or band owning such lands shall make complaint of any intrusions on such lands, and cause the intruders to be removed.<sup>43</sup>

Does Section 8 of the Indian Law give a County Court jurisdiction to decide right or title in land when an intruder proceeding is brought under it?

In the case of *Brenner v. Great Cove Realty Co.*,<sup>44</sup> a proceeding was brought by the District Attorney of Suffolk County pursuant to Section 8 of the Indian Law. The proceeding involved a nine acre parcel of land to which both the Indians and appellants claimed title. There was a disputed issue of fact as to where the boundary line of the reservation was situated. This issue was resolved in favor of the Indians. Appellants were adjudged intruders, and the County Court directed issuance of a warrant for their removal from the land. The Appellate Division affirmed the order, but in its decision stated that the order removing the appellants as intruders did not determine right or title in the land.<sup>45</sup> On appeal, the ruling of the Appellate Division concerning the right or title in the land was held to be erroneous, and as a result, the

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43. N.Y. INDIAN LAW § 8.

44. 207 Misc. 114, 137 N.Y.S.2d 570 (County Ct. 1955).

45. *Brenner v. Great Cove Realty Co.*, 4 A.D.2d 749, 165 N.Y.S.2d 143 (2nd Dep't 1957).

Court of Appeals<sup>46</sup> reversed the decision. In a four-two decision, the Court held that the County Court did have jurisdiction, under Section 8, to decide right or title in land. The case was then remitted to the Appellate Division for further proceedings not inconsistent with the Court's opinion.

In order to determine whether or not appellants were intruding upon Indian land, it was necessary for the County Court to determine the boundary line of the reservation. The Court's jurisdiction to issue the warrant depended upon whether the disputed parcel of land was Indian land, and it is well settled that a court has jurisdiction to determine the facts upon which its jurisdiction depends.<sup>47</sup> The Indians alleged that appellants were intruders upon Indian land. Section 8 commands the court to determine whether such person is an intruder, and in order to do so it obviously must determine whether the land is in fact part of the Indian reservation. Therefore, if Section 8 gives the Court power to do this, it does not appear to be so unreasonable or shocking in proceeding one step further in saying that in a proceeding brought under Section 8, the Court has the power to determine right or title in the land. In the instant case, the County Court would have lacked jurisdiction to oust appellants as intruders without a finding that the disputed parcel of land was, in fact, Indian land. Title and right to possession were inseparable. In short, the County Court, having jurisdiction of the parties and the proceeding, had power under Section 8 to decide the issue of ownership.

It is argued that the Court has reached a decision contrary to the established rule of New York. It is said that this decision is in conflict with that handed down in *People ex rel. Cutler v. Dibble*,<sup>48</sup> which involved a similar proceeding under the predecessor of Section 8. This case held, that the order of removal adjudicates upon no claim, and determines no right or title, but leaves the removed party to the usual remedies to assert and establish any title to the *locus in quo* which he may deem himself to possess. The judgment of the Court in the *Dibble*<sup>49</sup> case, did not determine right or title in the land because there was no dispute that the Seneca Indian Nation had conveyed the lands in question. All that case decided was, that under the treaties of conveyance the defendants had no right of entry onto the reservation lands until certain conditions precedent occurred. Under the peculiar circumstances of the *Dibble* case, the right to occupy the lands had not yet vested in the record owners of the fee. Since the Indians were not obliged to surrender possession until directed to do so by the United States government, it was possible to evict the defendants as intruders, notwithstanding the alleged title to the premises. As stated earlier, title and right to possession, were inseparable in the case at bar, and the trial court would have lacked jurisdiction to oust appellants as

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46. *Brenner v. Great Cove Realty Co.*, 6 N.Y.2d 435, 190 N.Y.S.2d 337 (1959).

47. *Consumers' Lumber Co. v. Lincoln*, 225 App. Div. 484, 233 N.Y. Supp. 530 (3rd Dep't 1929).

48. 16 N.Y. 203 (1857).

49. *Ibid.*

intruders without a finding that the disputed parcel of land was, in fact, Indian land.

In answer to the dissent, that too broad a meaning has been given to Section 8, it can be said that a broader interpretation has been given to the *Dibble* case than that intended. Therefore, the decision of this case is not contrary to the rule in New York, but rather, it merely gives to Section 8 the full interpretation it was meant to have. Thus, it can be concluded that this case does add somewhat to the prior rule by establishing the full powers of the County Court under Section 8.

It would be an unreasonable technicality to hold that Section 8 only gives the Court power to determine whether an individual is an intruder or not, and that the Court does not have power in making such a determination, to determine the right and title in the land intruded upon.

EMINENT DOMAIN—DENIAL OF INTEREST PRIOR TO FILING OF CLAIM

The constitutionality of New York Court of Claims Act, Section 19, Subdivision 1, which denies interest to a claimant for a period beginning six months after accrual of a claim until the claim is filed,<sup>50</sup> was upheld in *La Porte v. State*.<sup>51</sup>

Title to an unimproved strip of claimants' lot vested in the State for thruway use by an appropriation on June 1, 1953, pursuant to the New York Highway Law Section 347, Subdivision 5-2, when a map and description of the property was filed by the State with the County Clerk of the county in which the property was located. A claim for compensation was filed on April 7, 1955. Personal service on claimants was effected later in the same month. The Court of Claims allowed interest from June 1, 1953, until the claim was filed, upholding the claimants' contention that a denial of interest from the end of six months after the accrual until the claim was filed, was a failure to allow just compensation for the appropriation and was therefore unconstitutional.<sup>52</sup> The Appellate Division reversed and dismissed the claim holding that, "if nothing occurred to bring home knowledge of taking to claimants, they had the full use and benefit of the land during the interval and could not reasonably expect both interest and possession."<sup>53</sup> The Court of Appeals in a 4-3 decision affirmed on the same grounds and thereby held Section 19, Subdivision 1, constitutional. The dissenting opinion particularly challenged the "outrageous" twenty-two month delay in serving notice, rejected the proposition that full use and possession are a substitute for interest where claimant has no knowledge of the taking, argued that the New York Legislature intended a claim to

50. N.Y. Ct. Cl. Acr § 19 states:

If a claim which bears interest is not filed until more than six months after the accrual of said claim, no interest shall be allowed between the expiration of six months from the time of such accrual and the time of the filing of such claim.

51. 6 N.Y.2d 1, 187 N.Y.S.2d 737 (1959).

52. *La Porte v. State*, 5 Misc. 2d 419, 159 N.Y.S.2d 596 (Ct. Cl. 1957).

53. *La Porte v. State*, 5 A.D.2d 362, 172 N.Y.S.2d 249 (3d Dep't 1958).