

PENOBSCOT NATION  
INDIAN ISLAND, ss.

TRIBAL COURT  
CIVIL ACTION  
DOCKET NO. 7-31-03-CIV-04

PENOBSCOT NATION	]
	]
Plaintiff	]
	]
v.	]
	]
COURTNEY COFFMAN	]
and	]
RALPH COFFMAN	]
	]
Defendants	]

JUDGMENT

The Penobscot Nation has brought a verified complaint against Defendants Courtney Coffman (a tribal member) and her father, Ralph Coffman (not a tribal member), to recover approximately 60 partially sunken logs, known as “deadheads” that were removed from the Penobscot River by Defendants’ agents or employees and taken into Defendants’ possession. In its two count complaint, the Nation seeks a declaratory judgment stating that it is the lawful owner of the logs at issue and requests this court to issue a writ of replevin allowing the Nation to take possession of the logs. The Defendants have objected to these requests, claiming that the logs are abandoned property and can be claimed by the party who retrieves them. The Defendants also challenge the jurisdiction of this court to decide this case.

1. JURISDICTION OF PENOBSCOT TRIBAL COURT

The Defendants allege that this court does not have jurisdiction over the action before it both because Defendant Ralph Coffman is not a tribal member and because the deadheads in question are located in the Penobscot River, and not on reservation land. Defendants correctly point out that 30 M.R.S.A. §6209-B, the Maine statute that gives the

Penobscot Nation Tribal Court exclusive jurisdiction over certain cases, does not cover the case before the court.

Although 30 M.R.S.A. §6209-B specifies situations in which the Penobscot Tribal Court has been ceded exclusive jurisdiction by the State of Maine, the statutory section does not limit or define the tribal court's jurisdiction. The authority of the tribal court is not conferred by state statute; it is part of the "retained sovereignty" of the Penobscot Nation as a tribal government and recognized by federal common law. *See United States v. Wheeler*, 435 U.S. 313, 322-23 (1978). Indian tribes retain the inherent powers of a limited sovereign unless, by specific treaty provision, they yield that power to another sovereign, or that power is removed by an act of Congress. *Id.* (citations omitted). The United States Supreme Court has recognized that tribal courts retain jurisdiction over disputes arising on a reservation involving contract, tort and property rights between Indians and non-Indians. *See, e.g., Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987) (disputes involving non-Indian arising on reservation are under tribal court jurisdiction); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65-66 (1978) (tribal courts have jurisdiction over disputes affecting personal and property rights of both Indians and non-Indians); *Williams v. Lee*, 358 U.S. 217, 223 (1959) (tribal court has jurisdiction over non-Indian's claim against Indian arising from transaction arising on reservation). With respect to the Penobscot Nation, there is no record in treaty law to show that this inherent power of self government has been ceded to the state or federal government, and no evidence that it has been abolished by federal law. Thus, the Penobscot Tribal Court retains jurisdiction to decide property disputes arising on lands of the Penobscot reservation, even if the dispute involves a non-Indian party.

A second concern, also jurisdictional in this court's view, is whether the Penobscot Nation retains ownership over the Penobscot River. If the location of the deadheads is outside the Penobscot Reservation, then the dispute does not arise on reservation land.

In the 1818 Treaty between the Penobscot Tribe of Indians and the Commonwealth of Massachusetts, the Penobscots ceded to the Commonwealth all land on either of the Penobscot River in a specified area, but it did not cede ownership of the islands in the river or the river itself. The United State Department of the Interior has concluded that the Penobscot Nation retains its aboriginal ownership of the Penobscot River, from bank to bank, limited only by the right of the public to use the river for navigation. Letter from Deputy Solicitor Edward B. Cohen, United States Department of the Interior, to John P. DeVillars (September 2, 1997). On the facts and arguments presented in this litigation, this court adopts the interpretation of the Department of the Interior.

Thus, for the reasons set forth above, this court concludes that it has full jurisdiction to decide the matter before it.

## 2. MERITS OF THE COMPLAINT

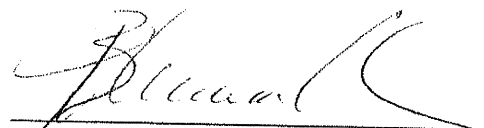
The deadhead logs at issue in this case are logs that have been left behind, either intentionally or accidentally, by loggers floating the logs downstream decades ago. The logs have remained in the area of the Penobscot River off Orson Island for many years, and in some instances have become a hazard to navigation. Whether for better or for worse, they have become part of the reservation environment and are not subject to be claimed as abandoned property by any individual wishing to retrieve them. The 1818

Treaty specifically provided that the Penobscot Nation grants citizens a limited public easement to pass up and down the river for the purpose of commercial transportation. There is no right granted to an individual to conduct any other enterprise without tribal permission.

Defendants' activity of collecting the logs for gain, either for sale or for use to build a structure, is an unlawful taking of tribal resources and constitutes trespass to tribal land. To rule otherwise would subject the Penobscot Nation to allowing its river resources to be freely raided by any individual wishing to enrich himself at the expense of the tribal community. It would also render meaningless the Nation's grant of a limited right of public passage on the river.

As between the parties to this action, this court hereby orders that the Penobscot Nation is the rightful possessor of the deadhead logs in question, and it hereby orders that the Nation may forthwith take possession of said logs and determine their disposition.

Date: *March 2, 2005*

  
Barbara A. Cardone, Judge  
Penobscot Tribal Court

A True Copy Attest:

*Cama Mitchell* Clerk