Johnson v. McIntosh

Matthew L.M. Fletcher
Wherefore, as best we can, **we ask and require** you that you consider what we have said to you, and that you take the time that shall be necessary to understand and deliberate upon it, and **that you acknowledge the Church as the Ruler and Superior of the whole world**, and the high priest called Pope, and in his name the King and Queen Doña Juana our lords, in his place, as superiors and lords and kings of these islands and this Tierra-firme by virtue of the said donation, and that you consent and give place that these religious fathers should declare and preach to you the aforesaid.
But, if you do not do this, and maliciously make delay in it, I certify to you that, with the help of God, **we shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses; we shall take you and your wives and your children, and shall make slaves of them, and as such shall sell and dispose of them as their Highnesses may command; and we shall take away your goods, and shall do you all the mischief and damage that we can, as to vassals who do not obey, and refuse to receive their lord, and resist and contradict him; and **we protest that the deaths and losses which shall accrue from this are your fault, and not that of their Highnesses, or ours, nor of these cavaliers who come with us.**
Indian Property Interests
Indian Property Interests

- Indian lands pre-contact
Indian Property Interests

Indian lands pre-contact

European "discovery"
Indian Property Interests

Indian lands pre-contact

European "discovery"

Aboriginal Indian title
Indian Property Interests

Indian lands pre-contact → European "discovery" → Aboriginal Indian title → Right of Occupancy
By the KING,
A PROCLAMATION.

GEORGE R.

Given at Our Court at Saint James’s, the Seventh Day of October, One thousand seven hundred and sixty-three, in the Third Year of Our Reign.

GOD save the King.

LONDON:
Printed by Mark Baskett, Printer to the King’s most Excellent Majesty; and by the Alligns of Robert Baskett. 1763.
Land speculation in colonial America
William Johnson
(Courtesy of the South Caroliniana Library,
University of South Carolina)
TOP LEFT
Buckskin map drawn by Englishmen relying on Native American informants.

TOP RIGHT
Diagram of places on the buckskin map.

ILLINOIS  Rivers labeled on map
(SALINE)  Unlabeled rivers on map
Probable negotiation boundary markers
Settlements or forts
WEA  Native Communities

Modern map showing locations on buckskin map.
Mr. McIntosh
Mr. McIntosh

Fur trader
Mr. McIntosh

Fur trader

Lawyer
JAMES MONROE, President of the United States of America,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That William Mcintosh, of

Vin cones,

having deposited in the General Land Office, a Certificate of the Register of the

Land Office at Natchez, Miss., whereby it appears that full Payment has

been made for the following described Tract of Land, viz., Sixty-four (64) acres, more or less, in the Town of New Orleans, Parish of Orleans, State of Louisiana, to-wit: To begin on the public line of section twenty-three, range four west, in said parish, and run due north to the north line of said section, thence due east to the public line of section twenty-three, thence due north to the public line of section twenty-four, thence due east to the south line of said section, thence due south to the public line of section twenty-five, thence due west to the west line of the same section, thence due north to the beginning, containing sixty-four (64) acres, more or less.

Seventy acres of Land, with the Appurtenances, unto the said William Mcintosh, his Heirs and Assigns forever.

In Testimony whereof, I have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my Hand at the City of Washington, the twenty-first day of July, in the year of our Lord one thousand eight hundred and eighteen, and of the Independence of the United States of America the forty-third.

By the President,

JAMES MONROE

Joseph Meijer, Commissioner of the General Land Office.
Feigned case
Bad legal history
Right of Occupancy
Right of Occupancy
Right of Occupancy

Rights retained
Right of Occupancy

Rights retained

- Farming
Right of Occupancy

Rights retained

• Farming
• Hunting and fishing
Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
Right of Occupancy

Rights retained

• Farming
• Hunting and fishing
• Gathering
• Exclusion
Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
- Exclusion
- Waste!
Right of Occupancy

Rights retained

• Farming
• Hunting and fishing
• Gathering
• Exclusion
• Waste
• Alienation to other Indians
# Right of Occupancy

<table>
<thead>
<tr>
<th>Rights retained</th>
<th>Rights divested</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Farming</td>
<td>• Alienation to other Indians</td>
</tr>
<tr>
<td>• Hunting and fishing</td>
<td>• Waste</td>
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<tr>
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</table>

- Alienation to other Indians
Right of Occupancy

Rights retained
• Farming
• Hunting and fishing
• Gathering
• Exclusion
• Waste
• Alienation to other Indians

Rights divested
• Alienation to non-Indians
Federal Preemption Right
Extinguishment of Indian Title
How often conquest?
INDIAN LAND FOR SALE

GET A HOME OF YOUR OWN

EASY PAYMENTS

PERFECT TITLE

POSSESSION WITHIN THIRTY DAYS

FINE LANDS IN THE WEST

IRRIGATED

IRRIGABLE

GRAZING

AGRICULTURAL

DRY FARMING

In 1910 the Department of the Interior sold under sealed bids allotted Indian land as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Acres</th>
<th>Average Price per Acre</th>
<th>Location</th>
<th>Acres</th>
<th>Average Price per Acre</th>
</tr>
</thead>
</table>
Legacy of Aboriginal Indian Title
Indian Property Interests

Indian lands pre-contact → European "discovery" → Aboriginal Indian title → Right of Occupancy
Aboriginal Indian Title
Aboriginal Indian Title

Extinguishment

• Treaties
• Acts of Congress
• Executive orders
• Conquest? (Ha!)
Aboriginal Indian Title

Extinguishment

- Treaties
- Acts of Congress
- Executive orders

Vested property rights
Aboriginal Indian Title

Extinguishment

- Treaties
- Acts of Congress
- Executive orders

Unvested property right

Vested property rights
Aboriginal Indian Title → Unvested property right → Extinguishment →
- Treaties
- Acts of Congress
- Executive orders → Vested property rights → Fifth Amendment takings clause
Aboriginal Indian Title

Unvested property right

Takings uncompensated

Extinguishment

• Treaties
• Acts of Congress
• Executive orders

Vested property rights

Fifth Amendment takings clause