

CV 08 4422

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 PEOPLE OF THE STATE OF NEW  
4 YORK,

5 Plaintiff,

6 - against -

7 GERROD T. SMITH,

8 Defendant.

) Case No.:

) Hon.:

) NOTICE OF REMOVAL

(NSD)

SEYBERT, J.

ORENSTEIN, M.

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

OCT 31 2008

★

LONG ISLAND OFFICE

10 NOW COMES the above named Defendant, Gerrod T. Smith, by  
11 and through his undersigned counsel, and pursuant to 28 U.S.C. §  
12 1443(1), gives notice of removing this criminal action from the  
13 Town Court of Southampton, County of Suffolk, 116 Hampton Road,  
14 Southampton, New York, 11968, where the action is now pending,  
15 to the United States District Court for the Eastern District of  
16 New York. Removal of this action is based on the following:

18 1. That the Defendant, Gerrod T. Smith, is a member of  
19 the Shinnecock Indian Nation, and resides on the Shinnecock  
20 Indian Nation Reservation, (a true and correct copy of the  
21 Tribal Certification is attached hereto as Exhibit A).

22 2. That the laws of the State of New York illegally  
23 purport to fix and regulate the voting and elections of the  
24 Shinnecock Indian Nation and its members, in, by, and through  
25 the Town of Southampton, under Chapter 26, Article 9, Section

1 120, of the Indian Law ["Election of trustees"], and New York  
2 State law further purports to otherwise regulate the affairs of  
3 the Shinnecock Indian Tribe and its members under Article 9, and  
4 the Defendant, Gerrod T. Smith, is thus denied and cannot  
5 enforce in the courts of New York State, a right under any law  
6 providing for the equal civil rights of citizens of the United  
7 States, or of all persons within the jurisdiction thereof, as  
8 further described herein.  
9

10 3. That on the 6<sup>th</sup> of October, 2008, Police Officer Brian  
11 Farrish, of the New York State Department of Environmental  
12 Quality, did board Gerrod T. Smith's vessel, seize fish, and  
13 issued three criminal citations, being Nos. BA8767496,  
14 BA8767474, and BA8767485, to Defendant, Gerrod T. Smith, for  
15 alleged illegal possession of eighteen (18) out of season summer  
16 flounder, sixteen (16) out of season porgy, and two (2)  
17 undersize blackfish, at the entrance to Heady Creek, in  
18 Shinnecock Bay, in violation of 6 NY ADC 40.1(b)(1)(i), (ii),  
19 (true and correct copies are attached hereto as Exhibits B, C,  
20 and D, respectively).  
21

22 4. That at all times incident to said three New York  
23 State criminal citations, the Defendant, Gerrod T. Smith, is,  
24 and was, a member of the Shinnecock Indian Nation, resided on  
25 the Shinnecock Indian Reservation, and did legally possess fish  
under protected Shinnecock rights.

1       5. Under color of law, Police Officer Brian Farrish did,  
2 by force or threat of force, willfully interfered with, and/or  
3 attempted to interfere with, the Defendant, Gerrod T. Smith,  
4 because he is or has been, or in order to intimidate the  
5 Defendant, Gerrod T. Smith, and other members of the Shinnecock  
6 Indian Nation, from participating in and enjoying a privilege  
7 and/or activity provided or administrated by the United States,  
8 a federally protected activity under 18 U.S.C. §  
9 245(a)(2)(b)(1)(B), to Wit:  
10

11  
12                   *Sovereign Immunity*

13       a. Violation of protected rights under the sovereign  
14 immunity of the Shinnecock Indian Nation and its  
15 members.  
16

17                   *The Fort Albany Treaty, 1664*

18       b. Violation of protected rights under the Free Trade  
19 Clause, Appended Article 3, of the Fort Albany  
20 Treaty, 1664, (*Documents Relative to the Colonial*  
21 *History of the State of New York*, III, pp. 67-68),  
22 (a true and correct copy is attached hereto as  
23 Exhibit E)  
24  
25

*Wyandanch's Deed*

c. Violation of protected rights on ceded territory under Wyandanch's Deed to John Ogden, dated the 12<sup>th</sup> of May, 1659, which retained hunting, fishing, and gathering rights on ceded territory, (*Records of the Town of Southampton, I*, p. 162), (a true and correct copy is attached hereto as Exhibit F).

*Contract Clause*

d. Violation of protected rights under the Contract Clause of the federal Constitution, U.S. CONST. Art. I, § 10 cl. 1.

*Indian Commerce Clause*

e. Violation of protected rights under the Indian Commerce Clause of the federal Constitution, U.S. CONST. art. I, § 8, cl. 3, and the Congress cannot validly delegate this exclusive grant of power to the states.

*Congressional Indian Policy*

f. Violation of protected rights under the policy of the Congress of the United States concerning Indians.

*Federal Trust*

g. Violation of protected rights under the trustee relationship of the government of the United States of America as trustee and guardian of Indians.

*CERD*

h. Violation of protected rights under the United Nations' International Convention on the Elimination of All Forms of Racial Discrimination, (CERD), 660 UNTS 195, entered into force in 1969 and ratified by the United States in 1994, and the Supremacy Clause, U.S. CONST. art. VI, cl. 2, to Wit:

i. Violation of the fundamental obligation of the United States under Article 2(1)(a) of the Convention to engage in no act or practice of racial discrimination against persons, groups or persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

ii. Violation of the fundamental obligation of the United States under Article 2(1)(b) of the Convention not to sponsor, defend or support

1 racial discrimination by any persons or  
2 organizations.

3 iii. Violation of the fundamental obligation of the  
4 United States under Article 2(1)(c) of the  
5 Convention to amend, rescind or nullify any  
6 laws and regulations which have the effect of  
7 creating or perpetuating racial discrimination  
8 wherever it exists.

9  
10 iv. Violation of the obligation of the United  
11 States under Article 4(c) of the Convention not  
12 to permit public authorities or public  
13 institutions, national or local, to promote or  
14 incite racial discrimination.

15 v. Violation of the obligation of the United  
16 States under Article 5(a) of the Convention to  
17 prohibit and to eliminate racial discrimination  
18 in all its forms and to guarantee the right of  
19 everyone, without distinction as to race,  
20 color, or national or ethnic origin, to  
21 equality before the law, notably in the  
22 enjoyment of the right to equal treatment  
23 before the tribunals and all other organs  
24 administering justice.  
25

*United Nations Declaration*

i. Violation of protected rights under the Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on the 13<sup>th</sup> of September 2007.

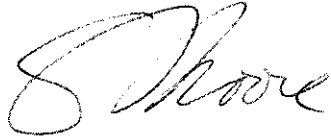
6. This notice of removal is filed within thirty days of service of the initial state citations on the Defendant, Gerrod T. Smith, in accordance with 28 U.S.C. § 1446(b). All pleadings served on the Defendant, Gerrod T. Smith, which consists of the three (3) heretofore described criminal citations, are attached hereto.

7. The Defendant, Gerrod T. Smith, will give written notice of the filing of this notice of removal to plaintiff and will file a copy of the notice with the state court as required by 28 U.S.C. § 1446(d).

WHEREFORE, the Defendant, Gerrod T. Smith, respectfully removes this action to the Federal District Court for the Eastern District of New York.

Dated this 30<sup>th</sup> day of October, 2008.

1 Respectfully submitted,

2 

3  
4 Scott Michael Moore, Esq.  
5 MOORE INTERNATIONAL LAW OFFICES  
6 A Professional Corporation  
7 45 Rockefeller Plaza, Suite 2000  
8 New York, NY 10111  
9 T. 212-332-3474  
10 F. 212-332-3475  
11 E. [smm@MILOPC.com](mailto:smm@MILOPC.com)  
12 Counsel for Defendant, Gerrod T. Smith  
13  
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23  
24  
25



404-337-5566

**SHINNECOCK NATION OF INDIANS**

*Shinnecock Indian Reservation*

*P.O. Box 39*

**SOUTHAMPTON, LONG ISLAND**

**NEW YORK 11969**

**(516)-283-6143**

**TRIBAL TRUSTEES**

*Kevin C. Eleazer*

*Peter E. Smith, Sr.*

*Lyle Smith*

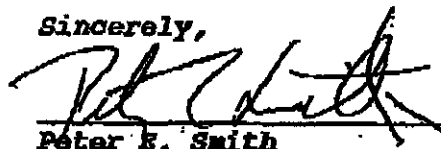
**May 12, 1994**

**TRIBAL CERTIFICATION**

**To Whom It May Concern:**

**This letter is to verify that Gerrard Smith, member of the SHINNECOCK INDIAN TRIBE OF NEW YORK STATE. Gerrard Smith resides at, Westgate Road, Shinnecock Reservation, Southampton, New York 11969.**

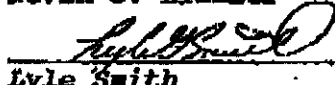
*Sincerely,*



**Peter E. Smith**



**Kevin C. Eleazer**



**Lyle Smith**



**BA8767496** New York State - Department of Motor Vehicles  
**UNIFORM TRAFFIC TICKET**

LAST NAME FIRST NAME M.I. POLICE AGENCY  
 LOCAL POLICE CODE

NUMBER & STREET ADDRESS APT. NO. PHOTO LIC SHOWN

CITY STATE ZIP CODE OWNER IS OPER. LIC CLASS/ID TYPE

I.D. NUMBER SEX DATE OF BIRTH (MMDDYY)

STATE LICENSE EXPIRES (MMDDYY) VEH. TYPE VEH. YR. VEH. MAKE VEH. COLOR

PLATE # REG. STATE REGISTRATION EXPIRES (MMDDYY)

**THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS**

TIME (24hour HHMM) DATE OF OFFENSE (MMDDYY)

IN VIOLATION OF: (SECTION AND SUBSECTION) TRAFFIC LAW TAXI LAW NY STATE ECL

OTHER LAW

DESCRIPTION / NARRATIVE

PLACE OF OCCURRENCE

IN THE City Town Village COUNTY OF: PRECINCT:

COMPLAINANT SIGN AND PRINT NAME/RANK Affirmed under penalty of perjury.

RADAR OPERATOR NAME (Print)

DATE AFFIRMED ARREST TYPE OFFICER ID# OFFICER'S COMMAND

THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW IN THE:

COURT OF: COUNTY OF: SUMMONS PART

ADDRESS CITY STATE ZIP CODE

RETURN BY MAIL BEFORE, OR IN PERSON ON: MUST APPEAR IN PERSON ON:

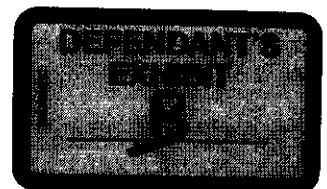
at M

"A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION ANY LICENSES, STAMPS, OR PERMITS ISSUED BY THE D.E.C. OR ANY INTERSTATE WILDLIFE VIOLATOR COMPACT MEMBER STATE MAY BE REVOKED AS PRESCRIBED BY LAW. YOUR FAILURE TO RESPOND MAY RESULT IN A WARRANT FOR YOUR ARREST."

BA8767496

MOTORIST COPY-TSLED

UT-50.4 (6/06)



BA8767474

New York State - Department of Motor Vehicles

## UNIFORM TRAFFIC TICKET

POLICE AGENCY

LAST NAME

FIRST NAME

M.I.

LOCAL POLICE CODE

NUMBER &amp; STREET ADDRESS

APT. NO.

PHOTO LIC SHOWN

CITY

STATE

ZIP CODE

OWNER'S OPER.

LIC CLASS/ID TYPE

I.D. NUMBER

SEX

DATE OF BIRTH (MMDDYY)

STATE

LICENSE EXPIRES (MMDDYY)

VEH. TYPE

VEH. YR.

VEH. MAKE

VEH. COLOR

PLATE #

REG. STATE

REGISTRATION EXPIRES (MMDDYY)

## THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

TIME (24hour HHMM)

DATE OF OFFENSE (MMDDYY)

TRAFFIC RULES ADMIN. CODE PRIOR. ETC.

IN VIOLATION OF: (SECTION AND SUBSECTION)

OTHER LAW

30GB

315-I

50P

1110A

1111D1

1225C2A

1229C3A

180

B

C

D

F

DESCRIPTION / NARRATIVE

MPH

IN MPH ZONE

COM VEH

SLD

HAZ MAT

US DOT#

PLACE OF OCCURRENCE

HWY #

LOCATION CODE

HWY TYPE

NOA

IN THE ☐ City ☒ Town ☐ Village

OF:

COUNTY OF:

PRECINCT:

COMPLAINANT SIGN AND PRINT NAME/RANK Affirmed under penalty of perjury.

RADAR OPERATOR NAME (Print)

DATE APPROVED

ASSIGNED

OFFICER'S ID #

OFFICER'S COMMAND

THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW IN THE

☐ City ☒ Town ☐ Village ☐ Criminal ☐ District

COURT OF:

COUNTY OF:

SURNAMING PART

ADDRESS

CITY

STATE

ZIP CODE

☐ RETURN BY MAIL BEFORE, OR IN PERSON ON:☒ MUST APPEAR IN PERSON ON:

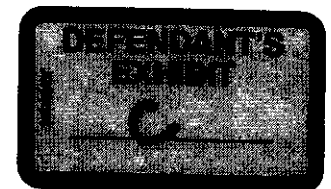
11/3/08 at 10:00 A.M.

A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION ANY LICENSES, STAMPS, OR PERMITS ISSUED BY THE D.E.C. OR ANY INTERSTATE WILDLIFE VIOLATOR COMPACT MEMBER STATE MAY BE REVOKED AS PRESCRIBED BY LAW. YOUR FAILURE TO RESPOND MAY RESULT IN A WARRANT FOR YOUR ARREST.

BA8767474

MOTORIST COPY-TSLED

UT-50.4 (6/06)



BA8767485 New York State - Department of Motor Vehicles  
UNIFORM TRAFFIC TICKET

POLICE AGENCY: [ ]  
LOCAL POLICE CODE: [ ]

LAST NAME: [ ] FIRST NAME: [ ] M.I.: [ ]  
NUMBER & STREET ADDRESS: [ ]  
CITY: [ ] STATE: [ ] ZIP CODE: [ ]  
APT. NO.: [ ] PHOTO LIC SHOWN: [ ]

OWNERS IS OPER.: [ ] LIC CLASS/ID TYPE: [ ]  
I.D. NUMBER: [ ] SEX: [ ] DATE OF BIRTH (MMDDYY): [ ]  
STATE: [ ] LICENSE EXPIRES (MMDDYY): [ ] VEH. TYPE: [ ] VEH. YR: [ ] VEH. MAKE: [ ] VEH. COLOR: [ ]  
PLATE #: [ ] REG. STATE: [ ] REGISTRATION EXPIRES (MMDDYY): [ ]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

TIME (24-hour HH:MM): [ ] DATE OF OFFENSE (MMDDYY): [ ]  
IN VIOLATION OF: (SECTION AND SUBSECTION) [ ]  
TRAF. CODE: [ ] ADM. CODE: [ ]  
NAV. LAW: [ ] TAX. LAW: [ ] TRANS. LAW: [ ] NYCPR. TITLE: [ ]  
OTHER LAW: [ ]

DESCRIPTION / NARRATIVE: [ ]  
PLACE OF OCCURRENCE: [ ]  
IN THE: [ ] City [ ] Town [ ] Village [ ]  
OF: [ ] COUNTY OF: [ ] PRECINCT: [ ]  
COMPLAINANT SIGN AND PRINT NAME/RANK: [ ]  
RADAR OPERATOR NAME (Print): [ ]

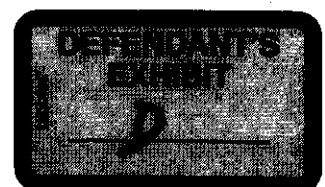
DATE AFFIRMED: [ ] ARREST TYPE: [ ]  
THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW IN THE: [ ]  
COURT OF: [ ] COUNTY OF: [ ]  
ADDRESS: [ ]  
CITY: [ ] STATE: [ ] ZIP CODE: [ ]  
RETURN BY MAIL BEFORE, OR IN PERSON ON: [ ]  
MUST APPEAR IN PERSON ON: [ ] at [ ]

A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION ANY LICENSES, STAMPS, OR PERMITS ISSUED BY THE DEC. OR ANY INTERSTATE WILDLIFE VIOLATOR COMPACT MEMBER STATE MAY BE REVOKED AS PRESCRIBED BY LAW. YOUR FAILURE TO RESPOND MAY RESULT IN A WARRANT FOR YOUR ARREST."

BA8767485

MOTORIST COPY-TSLED

UT-50.4 (6/06)



LONDON DOCUMENTS : I.

67

*Col. Nicolls to the Governor and Council of Boston.*

[ New England, I. 204. ]

To the Govern<sup>r</sup> and Council of Boston.

Gentlemen.

I have herewith sent yow a copy of a Cômmission from the L<sup>ds</sup> Commissioners of Prizes wherein I am empowered as one of the Sub-Cômmissioners for New England whilst His Ma<sup>y</sup> shall be in hostility with the Dutch. In prosecution of the trust reposed in mee as Sub-Cômmissioner I am oblig'd to give yow advertisement hereof, and that yow will please to give strict order in all your ports from time to time that seizure be made of all and every Dutch ship vessell or goods belonging to the States of the United Provinces of the Netherlands their subjects or inhabitants within any of their dominions, as also if any prizes shall be brought into any of your ports by any persons cômmissionated thereunto by his R. H<sup>y</sup> the Duke of Yorke, that yow will please to cause the same to be preserv'd entire without imbezlement, with all their papers, bills of lading or other writings, untill such a legall prosecution can be made as is directed by His Ma<sup>ties</sup> authority to the L<sup>ds</sup> Cômmissioners, and given at large in their L<sup>ds</sup> instructions to mee and Capt. Phillip Carteret, as Sub-Cômmissioners in N. England; wherein your assistance and concurrence is requisite for His Ma<sup>ties</sup> service, as also that some able and fitting persons be chosen in your Colony to sitt as a Court of Admiralty when occasion presents. Be pleased also to remitt unto me Yo<sup>r</sup> proceedings herein, according to the resolutions yow shall take; and if in this or any other quality I can render myselfe serviceable to yourselves you may cômmand mee as

[ About July, ] 1664.

Yo<sup>r</sup> aff<sup>te</sup> humble Servant

R. NICOLLS.

*Articles between Col. Cartwright and the New York Indians.*

[ New England, I. 207. ]

ARTICLES made and agreed upon the 24<sup>th</sup> day of September 1664 in Fort Albany between Ohgehando, Shanarage, Soachoenighta, Sachamackas of y<sup>e</sup> Maques; Anaweed Conkeeherat Tewasserany, Aschanoondah, Sachamakas of the Synicks, on the one part; and Colonell George Cartwright, in the behalf of Colonell Nicolls Governour under his Royall Highnesse the Duke of Yorke of all his territoryes in America, on the other part, as followeth, viz<sup>t</sup>—

- 1 Imprimis. It is agreed that the Indian Princes above named and their subjects, shall have all such wares and commodities from the English for the future, as heretofore they had from the Dutch.
2. That if any English Dutch or Indian (under the proteccôn of the English) do any wrong injury or violence to any of y<sup>e</sup> said Princes or their subjects in any sort whatever, if they complaine to the Governo<sup>r</sup> at NewYorke, or to the Officer in Cheife at Albany, if the person so offending can be discovered, that person shall receive condigne punishm<sup>t</sup> and all due satisfaccôn shall be given; and the like shall be done for all other English Plantations.
3. That if any Indian belonging to any of the Sachims aforesaid do any wrong injury or damage to the English, Dutch, or Indians under the protection of the English, if complaint be

DEFENDANT'S  
EXHIBIT

E

made to y<sup>e</sup> Sachims and the person be discovered who did the injury, then the person so offending shall be punished and all just satisfacc<sup>n</sup> shall be given to any of His Ma<sup>ties</sup> subjects in any Colony or other English Plantac<sup>n</sup> in America.

4. The Indians at Wamping and Espachomy and all below the Manbatans, as also all those that have submitted themselves under the protection of His Ma<sup>ty</sup> are included in these Articles of Agreement and Peace;

In confirmacion whereof the parties above mencioned have hereunto sett their hands the day and yeare above written

GEORGE CARTWRIGHT

In the presence of

T. Willett  
John Manning  
Tho. Breedon  
Dan. Broadhead

~~C~~ { Smith John  
his marke

X { Stephen an Indian  
his marke

THESE ARTICLES following wer likewise proposed by the same Indian Princes & consented to by Colonell Cartwright in behalfe of Colonell Nicolls the 25<sup>th</sup> day of September 1664.

1 That the English do not assist the three Nations of the Ondiakés Pinnekooks and Pacantekookes, who murdered one of the Princes of the Maques, when he brought ransomes & presents to them upon a treaty of peace.

2. That the English do make peace for the Indian Princes, with the Nations down the River.

3. That they may have free trade, as formerly.

4. That they may be lodged in houses, as formerly.

5. That if they be beaten by the three Nations above mencōned, they may receive accommodacōn from y<sup>e</sup> English.

*Col. Nicolls to the Secretary of State.*

[ State Paper Office, Trade Papers. XVI. 42. ]

Fort James in New Yorke  
this day of October 1664.

Right Hon<sup>ble</sup>

Since my last by Capt. Hill and Capt. Groves here is arrived Capt. Hyde, to whose more ample relation of the reducing Delaware Bay, I must referre my selfe. My instructions to Sir Rob<sup>t</sup> Carr tooke the effect which was design'd, for by a distinct treaty and agreement with the



## Wyandanch's Deed to John Ogden

May 12 1659 Be it knowne unto all men that by this present writing that I Wiandance Sachem of Paumanwche on Long Island have vpon deliberate consideration, and with my sonne Weeayacomboune, both of us together, given and granted unto Mr Iohn Ogden and his heirs for ever, I say freely given a certain tract of land, beginning at the westward end of Southampton bounds, which land is bounded, eastward with Southampton bounds, and with a small piece of meadow which I gave to Mr Iohn Gosmer, which he is to enjoy, Northward to the water of the bay and to the creek of Accaboucke, Westward to the place called Pehecannache, and Southerly to Potuncke, three miles landward in from the high water marke, and creeke of accaboucke, and soe to the west, But from this three miles bredth of land southward all the land and meadows towards the south sea, the beach only excepted which is sold to Iohn Cooper, I say all the lands and meadows I have sold for a considerable price unto Mr. Iohn Ogden for himself his heirs executors and assigns for ever upon conditions as followeth, first that Thomas Halsey and his associates shall have the privilege of the place of meadow called quaquanantuck, the term of years formerly granted to him or them, but the land lying betweene quaquanantuck and three miles, northward he shall or may possess and improve at present, but when the years of the aforesaid Thomas Halsey shall be expired, then shall the aforesaid Mr Iohn Ogden or his assigns fully possess and improve all quaquanantuck meadow with the rest aforesaid, and then shall pay or cause to be paid unto me Wyandance my heirs and assignes the summe of twenty-five shillings a yeare as a yearly acknowledgement or rent for ever, And it is also agreed that we shall keepe our privilege of fishing, fowling, or gathering of berries or any other thing for our use, and for the full and firme confirmation hereof we have both parties set too our hands markes and seals interchangably The date and year above written

IOHN OGDEN ]L. S. {

In the presence of us

DAVID GARDINER

LION GARDINER

