# A REPORT ON THE 1836 AND 1855 FEDERAL TREATIES WITH THE OTTAWA AND CHIPPEWA INDIANS OF MICHIGAN

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The treaty as proclaimed permitted the Indians to exercise the "usual privileges of occupancy, until the [ceded] land is required for settlement." The Articles of Assent referred to "actual survey and settlement." The meaning of these terms was early questioned by settlers, resulting in clarification of the time when Indians had to abandon hunting on the ceded lands.

# Part 5: Implementing the 1836 Treaty

## Significance of the Years, 1836-1841

No one understood the terms of the 1836 treaty better than the Michigan Superintendent of Indian Affairs, Henry Schoolcraft. Not only had Schoolcraft negotiated the treaty terms, but he was also the person who interpreted the Senate's amendments to the treaty in the Articles of Assent. As questions arose about the meaning of various parts of the final document, it was usually Schoolcraft who provided the initial interpretation, and it was Schoolcraft who was charged with implementing the treaty's provisions. Most of the important clarifications of the treaty's provisions occurred during the first five years after the treaty went into effect, and Schoolcraft, who was a meticulous record keeper, compiled an extensive record, unlike most of his successors, of the questions that arose and the decisions that were made.

In the course of implementing the treaty provisions, Schoolcraft encountered considerable opposition from the L'Arbre Croche Ottawas, particularly from Augustin Hamlin, Jr., who would challenge a number of his decisions. His determination to appoint many of his relatives, including his brother, James Schoolcraft, and his wife's relatives, the Johnston brothers, to government positions, while understandable from the point of view of obtaining literate subordinates who also spoke the Indians' language, as well as his partisan loyalty to the Democratic party at a time when its influence in Michigan was waning, drew increasing criticism from his detractors: Indians, disgruntled Métis relatives of the Indians, traders who believed that they had not been fairly compensated, and members of the Whig opposition in Michigan. Efforts to oust him from his position as superintendent mounted during the last years of his tenure, and as they did, Schoolcraft became increasingly intransigent. None of these efforts succeeded until the Whigs took control of the federal government in 1841. At that time, although none of the earlier charges against his administration had been proven, Schoolcraft was summarily sacked. His replacement, the trader Robert Stuart, was not inclined to maintain the voluminous correspondence that Schoolcraft did. As a result, the archival record becomes thinner after 1841, and our knowledge of what was occurring in treaty cession area correspondingly declines.

## Immediate Problems

Although Schoolcraft professed satisfaction with the treaty negotiations and the first distribution of benefits under the treaty, problems quickly surfaced.

As anticipated, the Grand River Ottawas did not attend the distribution of annuity goods at Michilimackinac in September 1836. Their payments were not made until the spring of 1837. The Grand River Ottawas thereafter requested annual payments near their homelands, and, as subsequent annuity payments were made later and later in the following years, these Indians were often not paid until winter had set in, further increasing their hardships and contributing to their disorientation.

Nor were the Indians given their allotments of salt, tobacco, or fish barrels at the 1836 distribution. These items had been "overlooked" when the Indian Office placed its order for goods to be assembled for the distribution at Mackinac. The Indians apparently made this omission known to Schoolcraft immediately and he entered a "verbal contract" to obtain the fish barrels and requested that the tobacco and salt be provided "at the earliest time." In December two Indians from Sault Ste. Marie, who reported that they still had not received the barrels, confronted Schoolcraft in Detroit. The record is not clear whether this obligation was met in 1836, but it appears that a contract was issued to "furnish two hundred barrels" in 1836 and the same number in the spring of 1837. Schoolcraft advised the Indian Office in December 1836, however, that the congressional appropriation for fish barrels was inadequate to meet the full treaty quota of four hundred barrels. [260]

At the distribution of annuity goods in September 1836, a specially appointed commissioner, J.W. Edmonds, who had been appointed to examine the "half-breed" claims, made the payment of treaty obligations to the relatives of the Indians. Schoolcraft was not, therefore, directly involved in these payments, although he was present. Immediately afterwards, however, Schoolcraft was confronted with "repeated applications" from Indians and their relatives who expressed dissatisfaction with the decisions made by Judge Edmonds about who was a "half breed" and who was not. Since the "half breed" payments were larger than those given to

[260] Harris to Major Henry Whiting, September 30, 1836 [HRA014018]; M21, roll 19, p. 493. Schoolcraft to Harris, December 6, 1836 [HRA003272]; M1, roll 37, p. 111. Schoolcraft to Cobbs, December 7, 1836 [HRA003273]; M1, roll 37, p. 112. Schoolcraft to Harris, December 3, 1836 [HRA003251]; M1, roll 37, p. 57.

"Indians" as annuitants, Edmond's decisions, made without prior experience of Chippewa and Ottawa culture, led to bad feelings, particularly among the Sault Chippewas who complained that "many poor persons of this place" were not only were denied payments as "half breeds" but actually received "nothing." Schoolcraft forwarded some of these complaints to Washington saying that since he did not make the decisions and the distributions had already been made, he did not "perceive any practicable method" by which Edmonds awards could be rectified. I found no response to his notification that errors had been made, but the Indians continued for years afterwards to express the belief that they had been unfairly treated in this matter.[261]

It was also in the aftermath of the annuity distributions that Schoolcraft made two fateful decisions about personnel. In November 1836 he recommended the appointment of his brother-in-law, William Johnston, as "keeper of the dormitory" that was to be erected at Mackinac Island under article seven of the treaty. In this capacity, Schoolcraft urged, Johnston could also serve as subagent at Mackinac without additional cost to the government. Within days after Johnston's nomination, Captain John Clitz, the military commander at Fort Mackinac died suddenly and Johnston took charge of Indian affairs at Mackinac during the period of Schoolcraft's residence in Detroit. At this same time John Johnston, another of Schoolcraft's brothers-in-law, was appointed interpreter at Sault Ste. Marie. Both brothers subsequently had problems with their superiors, William Johnston with Schoolcraft and John Johnston with Major Cobbs, the military commander at Sault Ste. Marie, that resulted in both being dismissed from their offices. The bad blood occasioned by the dismissal of William Johnston led to William Johnston becoming an embittered and very vocal critic of Schoolcraft's administration.[262]

## The Meaning of Article Thirteen of the 1836 Treaty

Article thirteen of the 1836 treaty specified that the Indians were to maintain the "right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement." In the Articles of Assent to the Senate amendments, this right was

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[261] Shawwano to Schoolcraft, October 11, 1836, and Schoolcraft to Harris, November 28, 1836, M234, roll 770, f. 207. [HRA015046]

[262] Schoolcraft to Harris, November 11, 1836 [HRA003263]; M1, roll 37, p. 56. Schoolcraft to Cobbs, November 5, 1836 [HRA003252]; M1, roll 37, p. 66. Schoolcraft to Harris, November 2, 1836 [HRA003250]; M1, roll 37, p. 90. Schoolcraft's appointment of his relatives to office and the subsequent difficulties that these appointments occasioned are examined in detail in Bremer, *Indian Agent and Wilderness Scholar*, pp. 175-176, 181-182, 186-187, 198-208.

extended to the reservations that the Indians agreed to give up at the end of five years with the further clarification that they would maintain the privileges of occupancy on these lands until they were "required for actual survey and settlement." Additional clarification of the meaning of the words "settlement" and "sale" were demanded almost immediately after the treaty was proclaimed.

In February 1837 Schoolcraft was approached by two different groups of settlers who wanted to know at what point in time the Indians' right to hunt on ceded land ceased to exit. The first request concerned former Potawatomi land in Branch county which was governed by the 1821 treaty that Cass had negotiated in Chicago with Schoolcraft in attendance. Schoolcraft told the settlers that under the terms of the 1821 treaty, the Potawatomis retained the right to hunt on the ceded lands until "the lands are entered, at the land office by settlers…." When settlers entered their claims, the Potawatomis' right to hunt on those lands "ceases." [underlining in original] However, Schoolcraft also informed these settlers that the Indians' right to hunt "appears to apply to lands surveyed & not sold." [underlining in original][263]

The second request, dated just a few days after the inquiry about the Potawatomi lands, came from a group of citizens at Grand Rapids who were concerned about the hunting rights of Ottawas on land just north of the Grand River. They wanted to know if the Ottawas maintained "an exclusive right to the occupancy of these lands" until they were "surveyed and offered for sale" and whether the Ottawas possessed a further right to "demolish" buildings erected by "squatters" on those land and to "drive them [the squatters] off" these lands.[264]

In his reply, Schoolcraft stated that he would refer their question to Washington for a definitive reply but in the meanwhile he had "no hesitation in expressing my private opinion" which was that the "right secured to the Indians by the 13th article of the treaty applies to the lands while they remain the property of the United States, and ceases the moment any part of it becomes private property." The Indians, however, had "no right to offer any impediment to settlement by pulling down or otherwise injuring fences, or buildings." Instead, where the Indians "conceive their lands to be prematurely occupied," they should bring their "remonstrance

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[263] Schoolcraft to Thomas G. Holden, February 16, 1837 [019838]; M1, roll 37, p. 164.

[264] Letter from three citizens at Grand Rapids to Schoolcraft, February 20, 1837 [004262]; M234, roll 422, f. 635.

to the government." Until the Indian Office rendered a decision, he cautioned a "course of prudence and forbearance on both sides...."[265]

The same day that Schoolcraft replied to the three citizens from Grand River, he wrote to Indian Commissioner C.A. Harris requesting a ruling on the topic of the Indians rights to ceded land under article thirteen.[266] The immediate question, he stated, was "local and temporary." It would pass away once the Indians' improvements were appraised and paid and they were removed to the reservation on the Manistee River, but the "principal involved, is an important one" and would undoubtedly arise again as white settlements moved northward from Grand River.

The cession made in the 1836 treaty could not have been obtained without guaranteeing to the Indians a right "to hunt upon, and occupy the lands, ceded, until they were required for settlement," Schoolcraft continued. Because this right was of such great concern to the Indian treaty negotiators, he had explained this provision "carefully...stating that as fast as the lands were surveyed and sold, thus converted into private property, this right would cease." At another place in this same letter, Schoolcraft wrote that until the land was sold their right to hunt "on all portions of the territory ceded, not surveyed and sold" remained intact. This view, he said**,** was again conveyed at the time the Indians were asked to approve the Articles of Assent. In this letter, Schoolcraft also wrote, "It was believed from the best information then extant, that portions of the large and imperfectly explored territory ceded, were uninviting to agriculturalists, and would be chiefly valuable for lumber and mill purposes, and to these tracts the Indians adverted as places of temporary residence."[267] In one respect, Schoolcraft's analysis of the situation at Grand River was in error. The problem that brought about the request for a ruling was occasioned not by the Indians, he correctly reported, but rather by "the conflicting interests of white men" who had crossed "over into the Indian country, before it is surveyed and offered for sale."[268] He believed that the problem would soon disappear because the Indians "expect to

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[265] Schoolcraft to "Gentlemen," February 27, 1837 [HRA001632]; M234, roll 422, f. 635-637. It should be noted that the version of the February 20, 1837, letter used in the *U.S.A. v. Michigan* trial, Exhibit 84-A [004262], was based upon *a copy* of that letter recorded in M1, roll 41, p. 177 [HRA014019], which *incorrectly transcribed* portions of the original letter.

[266] Schoolcraft to Harris, February 27, 1837 [019843]; M1, roll 37, p. 168 and M234, roll 422, f. 631 [HRA001627].

[267] Ibid [019843], [HRA001627].

[268] Ibid [019843], [HRA001627].

leave that portion of country the present season." In this assumption, Schoolcraft was wrong. The Grand River Indians would neither emigrate west of the Mississippi River nor move north to the Manistee River.

Commissioner Harris regarded the question about article thirteen of sufficient importance that, rather than rule on it himself, he submitted it to the Attorney General of the United States, Benjamin F. Butler. In April Butler ruled, agreeing with the interpretation that Schoolcraft had placed on the meaning of article thirteen. Article thirteen, Butler wrote, "must be regarded as reserving the use of the ceded lands, for all purposes of Indian occupancy as it existed prior to the treaty, until such lands have been actually disposed of to individuals, by the United States." Disposition could be made by sale under the federal land laws or "in any other way that Congress may direct" but only when "an actual disposition of any particular tract should be made," and only then, would "the usufructuary right of the Indians...cease as to such tract." [underlining in original] Neither the federal government nor a citizen could interfere with the Indians' right until the land passed into private hands. In informing Schoolcraft of the Attorney's General's opinion, Indian Commissioner Harris advised him to "give it publicity."[269] This he did by having Butler's opinion published in newspapers throughout the state.[270]

At the time of this controversy over the Indians' usufructuary rights in the newly ceded area north of Grand River, federal land law provided that land had to be surveyed before it could be sold and settlement was authorized only on purchased land. Federal land policy envisioned a sequence of events for the passage of land from federal to private ownership. First, the federal government had to obtain a land cession from the Indians. Next, the ceded land had to be surveyed. Only then could the former Indian lands be offered for sale to white settlers. However, the law was so often violated in practice by persons who established a claim to lands before they were surveyed that Congress was forced to recognize the right of these "preemptionists." In 1841 Congress capitulated to the preemptionists and approved the principal of preemption on "surveyed land." Thirteen years later it agreed to recognize preemption rights on "unsurveyed

[269] B.F. Butler to J.R. Poinsett, Secretary of War, April 20, 1837 [HRA001554]; M234, roll 422, f. 394Harris to Schoolcraft, April 21, 1837 [HRA002378]; M1, roll 42, p. 343.

[270] Schoolcraft to Harris, May 4, 1837 [HRA003302]; M1, roll 37, pp. 205 and 210.