

the terms of this treaty there was ceded to the United States lands which had been reserved in the treaty of September 24, 1819 (7 Stat. 203; 2 Kapp. 185) comprising 16 separate tracts, and of approximately 102,400 acres of land.

4. (1) Article 2 of the treaty of January 14, 1837, provided that the Indians should have the right to reside on two of the ceded tracts (227 and 235) for a period of five years.

(2) Article 3 provided:

The United States agree to pay to the said Indians, in consideration of the lands above ceded, the net proceeds of the sales thereof, after deducting the expense of survey and sale, together with the incidental expenses of this treaty. The lands shall be surveyed in the usual manner, and offered for sale, as other public lands, at the land offices of the proper districts, as soon as practicable after the ratification of this treaty. A special account of the sales shall be kept at the Treasury, indicating the receipts from this source, and after deducting therefrom the sums hereinafter set apart, for specified objects, together with all other sums, justly chargeable to this fund, the balance shall be invested, under the direction of the President, in some public stock, and the interest thereof shall be annually paid to the said tribe, in the same manner, and with the same precautions, that annuities are paid. * * *

(3) Article 4 provides for payment of \$5,000 to the principal chiefs; \$40,000 for the payment of the debts of the Indians; "for vaccine matter, and the services of a physician," \$500; and Article 8 provides for payment of \$1,000 to certain chiefs.

5. Prior to the ratification of this treaty of January 14, 1837 by the Senate, and its proclamation on July 2, 1838, two other treaties were concluded with the Indians, one of December 20, 1837 (7 Stat. 547;

2 Kapp. 501), and another of January 23, 1838 (7 Stat. 565; 2 Kapp. 516), by the provisions of which subsequent treaties the terms of the original treaty of January 14, 1837, were considerably modified. all three treaties were proclaimed simultaneously and are, therefore, to all intents and purposes, one composite agreement.

By act of Congress of January 16, 1844 (5 Stat. 680), it was provided that no lands ceded by the treaty of 1837 should be sold after September 1, 1843, for less than \$2.50 per acre.

6. (1) Under the terms of the treaty of January 14, 1837, as modified by the treaties of January 20, 1838, and of January 23, 1838, the lands ceded to the Government for sale for the benefit of the Indians were to be surveyed in the usual manner and offered for sale, as other public lands, as soon as practicable after ratification of the treaties. Following ratification of the treaties, the General Land Office, in 1838, ordered these lands surveyed preliminary to their being offered for sale.

(2) Article 1 of the Treaty of December 20, 1837, (7 Stat. 547) provides:

It is agreed, that the sum of fifty cents per acre shall be retained out of every acre of land ceded by said tribe, by the treaty of the 14th of January 1837, as an indemnification for the location to be furnished for their future permanent residence and to constitute a fund for emigrating thereto.

7. Defendant has accounted for the sale of 42,235.59 acres of land involved, and for the proceeds thereof in the sum of \$110,104.17, and also for lighthouse site sold for \$320.00, making a total of \$110,424.17.

8. By treaty of August 2, 1855 (11 Stat. 633; 2 Kapp. 733), the Saginaw Indians ceded to the United States all the lands within the State of Michigan theretofore owned by said tribe as reservations, and whether held for them in trust by the United States or otherwise, and released and discharged the United States from all liability to them for the price and value of all such lands previously sold and the proceeds of which were unpaid.

Said treaty further provided for the surrender by the Indians of all permanent annuities secured by them by former treaty stipulations, and "all claims, legal and equitable on the part of said Indians, jointly and severally, against the United States for land, money, or other thing guaranteed to said tribes, or either of them, by the stipulations of any former treaty or treaties." (See article 3 of said treaty).

9. As a consideration for the cessions and relinquishments made in said treaty of August 2, 1855, by Articles 1 and 2 thereof, the defendant provided for said grantors as follows, to-wit:

Article 1. The United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands within the State of Michigan embraced in the following description, to-wit:

First. Six adjoining townships of land in the county of Isabella, to be selected by said Indians within three months from this date, and notice thereof given to their agent.

Second. Townships Nos. 17 and 18 north, ranges 3, 4, and 5 east.

The United States will give to each of the said Indians, being a head of a family, eighty acres of land; and to each single person over twenty-one years of age, forty acres of

land; and to each family of orphan children under twenty-one years of age, containing two or more persons, eighty acres of land; and to each single orphan child under twenty-one years of age, forty acres of land; to be selected and located within the several tracts of land hereinbefore described, under the same rules and regulations, in every respect, as are provided by the agreement concluded on the 31st day of July, A.D. 1855, with the Ottawas and Chippewas of Michigan, for the selection of their lands.

And the said Chippewas of Saginaw and of Swan Creek and Black River, shall have the same exclusive right to enter lands within the tracts withdrawn from sale for them for five years after the time limited for selecting the lands to which they are individually entitled, and the same right to sell and dispose of land entered by them, under the provisions of the Act of Congress known as the Graduation Act, as is extended to the Ottawas and Chippewas by the terms of said agreement.

And the provisions therein contained relative to the purchase and sale of land for school-houses, churches, and educational purposes, shall also apply to this agreement.

Article 2. The United States shall also pay to the said Indians the sum of two hundred and twenty thousand dollars, in manner following, to wit:

First. Thirty thousand dollars for educational purposes, to be paid in five equal annual installments of four thousand dollars each, and in five subsequent equal annual installments of two thousand dollars each, to be expended under the direction of the President of the United States.

Second. Forty thousand dollars, in five equal annual installments of five thousand dollars each, and in five subsequent equal annual installments of three thousand dollars each, in agricultural implements and carpenters' tools, household furniture and building materials, cattle, labor, and all such articles as may be necessary and useful for them in removing to the homes herein provided, and getting permanently settled thereon.

Third. One hundred and thirty-seven thousand and six hundred dollars in coin, in ten equal installments of ten thousand dollars each, and in two subsequent equal annual installments of eighteen thousand and eight hundred dollars each, to be distributed per capita in the usual manner for paying annuities.

Fourth. Twelve thousand and four hundred dollars for the support of one blacksmith-shop for ten years.

The United States will also build a grist and saw mill for said Indians at some point in the territory, to be selected by them in said county of Isabella, provided, a suitable water-power can be found, and will furnish and equip the same with

all necessary fixtures and machinery, and will construct such dam, race, and other appurtenances as may be necessary to render the water-power available: Provided That the whole amount for which the United States shall be liable under this provision, shall not exceed the sum of eight thousand dollars.

The United States will also pay the further sum of four thousand dollars for the purpose of purchasing a saw-mill, and in repair of the same, and in adding thereto the necessary machinery and fixtures for a run of stone for grinding grain-- the same to be located on the tract described in clause 'second,' Article 1.

The United States will also pay the further sum of twenty thousand dollars, or so much thereof as may be necessary, to be applied in liquidation of the present just indebtedness of the said Indians; Provided, That all claims presented shall be investigated under the direction of the Secretary of the Interior within six months, who shall prescribe such rules and regulations for conducting such investigation, and for testing the validity and justice of the claims as he shall deem suitable and proper. And no claim shall be paid except on the certificate of the said Secretary that, in his opinion, the same is justly and equitably due; and all claimants, who shall not present their claims within such time as may be limited by said Secretary, or, whose claims having been presented, shall be disallowed by him, shall be forever precluded from collecting the same, or maintaining an action thereon in any court whatever; And, provided also, That no portion of the money due said Indians for annuities, as herein provided, shall ever be appropriated to pay their debts under any pretence whatever; Provided That the balance of the amount herein allowed as a just increase for the cessions and relinquishments aforesaid, after satisfaction of the awards of the Secretary of the Interior, shall be paid to the said Indians, or expended for their benefit in such manner as the Secretary shall prescribe, in aid of any of the objects specified in this treaty.

10. The Saginaw Chippewas and the defendant executed the treaty of October 18, 1864 (14 Stat. 657; 2 Kapp. 868), providing among other things, the following:

(1) Article 1. The said Chippewas of Saginaw, Swan Creek, and Black River, for and in consideration of the conditions hereinafter specified, do hereby release to the United States the several townships of land reserved to said tribe by said treaty aforesaid, situate and being

upon Saginaw Bay, in said State. (Referring to the treaty of August 2, 1855).

The said Indians also agree to relinquish to the United States all claim to any right they may possess to locate lands in lieu of lands sold or disposed of by the United States upon their reservation at Isabella, and also the right to purchase the unselected lands in said reservation, as provided for in the first article of said treaty. (Referring to the treaty of August 2, 1855).

(2) Article 2. In consideration of the foregoing relinquishments, the United States hereby agree to set apart for the exclusive use, ownership, and occupancy of the said Chippewas of Saginaw, Swan Creek, and Black River, all of the unsold lands within the six townships in Isabella County, reserved to said Indians by the treaty of August 2, 1855, aforesaid, and designated as follows, viz:

The north half of township fourteen, and townships fifteen and sixteen north, of range three west; the north half of township fourteen and township fifteen north, of range four west, and townships fourteen and fifteen north, of range five west.

(3) Article 3. So soon as practicable after the ratification of this treaty, the persons who have heretofore made selections of lands within the townships upon Saginaw Bay, hereby relinquished, may proceed to make selections of lands upon the Isabella reservation in lieu of their selections aforesaid, and in like quantities.

After a reasonable time shall have been given for the parties aforesaid to make their selections in lieu of those relinquished, the other persons entitled thereto may then proceed to make their selections, in quantities as follows, - viz:

For each chief of said Indians who signs this treaty, eighty acres in addition to their selections already made, and to patents in fee-simple.

For one head-man in each band into which said Indians are now divided, forty acres, and to patents in fee simple.

For each person being the head of a family, eighty acres.

For each single person over the age of twenty-one years, forty acres.

For each orphan child under the age of twenty-one years, forty acres.

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For each married female who has not heretofore made a selection of land, forty acres.

And for each other person now living, or who may be born hereafter, when he or she shall have arrived at the age of twenty-one years, forty acres, so long as any of the lands in said reserve shall remain unselected, and no longer.

* * *

The United States agrees to issue patents to all persons entitled to selections under this treaty, as follows, viz: To those belonging to the class denominated 'competents,' patents shall be issued in fee simple, but to those belonging to the class of 'those not so competent,' the patent shall contain a provision that the land shall never be sold or alienated to any person or persons whomsoever, without the consent of the Secretary of the Interior for the time being.

(4) Articles 4,5,6 and 7 of the treaty provide for the expenditure by the United States for the benefit of the Indians various sums of money for various purposes, and reference is made to the text of said Articles for the details.

11. Under the terms of the treaties of 1855 and 1864 the Saginaw Indians received individual allotments and patents to lands aggregating more than 98,000 acres; also under Article 2 of the treaty of 1855 provision was made for the payment to said Indians of \$220,000 to be expended for their benefit; and also provided for the expenditure of not exceeding \$32,000 for grist and sawmills and the liquidation of Indian indebtedness, making a total money expenditure provided for the benefit of said Indians of \$252,000.

12. (1) The annuities and benefits accruing to the Indians relinquished by the terms of Article 3 of the treaty of 1855 amounted to the following:

Under treaty of Aug. 3, 1795,	\$ 1,000
Under treaty of Nov. 17, 1807,	800
Under treaty of Sept. 24, 1819,	1,000
For blacksmith provided by treaty of Sept. 24, 1819,	2,000
For education provided by treaty of Aug. 5, 1826,	<u>1,000</u>
Total.....	\$ 5,800

(2) Assuming that the United States would have continued to make the discretionary appropriations for blacksmith and for education as provided by the above treaties, and that all said annuities as provided were due to the Saginaw band, a capitalization of said annuities and benefits surrendered at the rate of 6%, same would have had a value of \$96,666.66.

(3) The treaty of August 5, 1826, was executed by many bands of Chippewas, the Saginaw Band of Chippewas, plaintiff in the present suit, not being a party thereto. Although the annual appropriation for \$1,000 for education had been paid for years to the Saginaw Chippewas, such payments were discretionary with Congress under the terms of the treaty and other tribes of the Chippewas might have made claim for all or part of such appropriations if and when made. If this discretionary appropriation should have been stopped by Congress or claimed by other tribes, if made, and it should be eliminated as a basis for the capitalization of the annuities released by the Saginaw Chippewas, the commuted value of the remaining annuities and benefits would have been approximately \$80,000.

(4) Considering the commuted value of the annuities and

benefits released at the amount of \$96,666.66, the net money consideration received by the Indians under the terms of the treaty of 1855, over and above the annuities released, was the sum of \$155,333.34.

13. (1) Article 10 of the treaty of January 14, 1837, provided for the advancement of moneys by the defendant in the event proceeds from the sales of land had not provided funds for the objects set out in Article 4 of the treaty, and that any such advancement "shall be refunded to the Treasury by said tribe with interest." This Article, however, was abrogated by Article 4 of the treaty of December 20, 1837, and it therefore seems that the item of interest in the amount of \$3,051.66 should not have been charged to the Indians.

(2) Article 3 of the treaty of 1837 provides that the net proceeds of the sale of land provided for in the treaty shall be paid to the Indians "after deducting the expense of survey and sale, together with the incidental expenses of this treaty." The item of \$3,020, as to which plaintiff claims a right of reimbursement, is shown by Defendant's Exhibit No. 1 as having been incurred as "expenses of examination of claims" against the Indians and therefore would seem to be one of the incidental expenses of carrying out the treaty, and is therefore properly chargeable against the plaintiff.

(3) The items of \$5,000 and \$1,000 charged to the plaintiff, and which plaintiff claims to have been "special inducements or bribes paid to chiefs" and therefore should be refunded to it, are provided

as items to be charged against the plaintiff in the fourth paragraph of Article 4 of the treaty of January 14, 1837, and reaffirmed by Article 5 of the treaty of December 20, 1837, and by Article 8 of the treaty of January 14, 1837. There is no proof that said payments were made as bribes.

(4) The items of \$113.15 and \$386.15 are shown to have been incurred for medical attention and it seems are authorized by Article 4 of the treaty of January 14, 1837.

14. (1) There was advanced by the defendant under the treaty of January 14, 1837, the following items ((a) and (b)) which were not reimbursed to the Government out of proceeds of land sales, to-wit:

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|--|-----------|
| (a) A double credit for the sale
of 40 acres for lighthouse
purposes (Tr. p. 25) | \$ 320.00 |
| (b) Expenses of exploration
(Tr. p. 86) | 2,018.25 |

(2) Subsequent to the treaty of August 2, 1855, lands which had been conveyed by said treaty to the plaintiff were sold and the proceeds of such sales (which were not due to the plaintiff) were credited to it (Defendant's Exhibit No. 24) in the amount of \$11,136.69; making the total credits to which defendant is entitled.....\$13,474.94

15. Even if all the items, aggregating \$13,195.49 (or a lesser amount as appears from the brief), or any one of the same, were erroneously charged against plaintiff's tribal funds and not offset by refunds due the defendant (as listed in Finding No. 14), nevertheless the de-

fendant was released and discharged from any duty to account for the same by the release provided in Article 3 of the treaty of 1855.