

THE BURT LAKE BAND: AN ETHNOHISTORICAL
REPORT ON THE TRUST LANDS OF
INDIAN VILLAGE

By

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CHAPTER I

THE ACQUISITION OF THE TRUST LANDS

On a map the Great Lakes reach placidly into the interior of the continent. They seem ideal waterways. But maps don't show the short violent summer storms that easily swamp canoes nor the long brutal fall storms of the western lakes that even now snap giant ore ships and send them to the bottom. The waters of the lakes can be treacherous, and to avoid them, as well as to save distance, the Ottawas and Chippewas who lived along their shore, often detoured their canoes inland through rivers and lakes. In Michigan perhaps the most important of these passages began at the Straits of Mackinac and followed a series of rivers, lakes, and portages to Little Traverse Bay on the western Lower Peninsula. Chaboiganing was an Algonquin word for portage or passing through, and the Indians gave this name to the largest lake on the route through the interior. The mixed band of Ottawas and Chippewas who lived in a small peninsula in the lake took the same name. In time Americans would corrupt the name to Cheboygan, and the Chaboiganing band became the Cheboygan band. And later still, in 1840, Lake Chabogiganing would be given the name of a White surveyor called Burt, and the Americans came to

identify the Indians simply as the Burt Lake band.¹

Although often identified as Chippewas, most Burt Lake band members were actually Ottawas with some Chippewas intermarried amongst them.² The band belonged to a loose confederation of Ottawas centered on the L'Arbre Croche area near Little Traverse Bay, the original center of Ottawa settlement in western Michigan.³ This confederation was little more than a group of neighboring villages joined together by intermarriage and common interest. They acted together in matters of mutual concern, but for all practical purposes each band retained virtually complete autonomy. The United States government ignored the realities of this loose political system and created a new and artificial entity: the Ottawa and Chippewa tribe.

The Americans created the Ottawa and Chippewa Tribe specifically for the Treaty of 1836 which ceded the remaining Indian lands in the Lower Peninsula of Michigan as well as part of the Upper Peninsula to the United States. The Indians retained reservations in Michigan and received a grant of land west of the Mississippi. The new "tribe" was an American invention, the most expeditious way to organize the various band leaders gathered in Washington for the treaty. The Americans hoped to avoid disputes between the bands over territory, but conflict between the Ottawas and Chippewas emerged during treaty negotiations. The Americans could create a "tribe" but

they could give it neither harmony nor unity.

The treaty the leaders of the new "tribe" signed in 1836 anticipated removal of the Indians, but it did not require it. In its original draft the treaty provided for permanent reservations for the Ottawas and Chippewas in Michigan, but the Senate amended it to limit these reservations to five years, still, however, not clearly requiring removal at the end of that time.⁴ Among the chiefs who signed this treaty was Chingassimo, or Big Sail, of the Burt Lake band, and the treaty permitted him to select a 1,000 acre reservation for his people.⁵

The story of the trust land of the Burt Lake band really begins with the selection of this reservation. The band had probably always intended to locate their 1,000 acre reservation on what is now Colonial Point, a peninsula that juts into the western part of Burt Lake. Here, in 1836, the Ottawas had their homes, fields, and a small Catholic church. Because of delays in surveying, however, the actual selection could not be made until 1840. The band requested the site in council, and the commissioner of Indian affairs that year recommended that it be withdrawn from the public domain and reserved for the band until it left Michigan. In November of 1840 Henry Schoolcraft, the superintendent of the Mackinac Agency, requested the surveyor general to locate the reservation at the "Cheboygan Village."⁶

It appears, however, that the actual surveying of the

reservation and its entry on government plat books never took place. In June of 1841 officials of the U.S. Land Office requested that Schoolcraft, with the aid of the chiefs, locate the reservations so that they conformed to section lines. When Schoolcraft left office and turned over his papers to his successor, this apparently still had not been done. There is no indication in the records that any of his successors even performed the task either. As a result, it appears that the reservation was confirmed, ordered removed from lands to be offered for sale, but never specifically located. The Bureau of Indian Affairs argued in a similar case in 1846 that those reservations granted, but not specifically located under the 1836 treaty, remained reservations nonetheless and were not open to entry by Whites.⁷ Nevertheless, on the land books they remained unidentified and open for sale.

The Ottawas, themselves, remained unaware of this failure to specifically locate their reservation, but they had abundant other reasons for anxiety. By limiting the reservations to five years and anticipating removal, the Treaty of 1836 created an atmosphere of uncertainty and anxiety among the Indians of northern Michigan that would persist for years. The Ottawas had no desire to leave Michigan, but they had little security if they remained. By the late 1830s the Ottawas seem to have settled on two responses to this dilemma--flight and the purchase of land. Given the brutal removal of other

Indian peoples during this period, flight to Canada may have seemed the safest response.

In the late spring of 1839 rumors of forced removal west of the Mississippi were circulating around the northern Great Lakes. The government, according to the stories, would send troops and steamboats to round up the Indians and move them west. All of this was quite plausible in the 1830s. It had, after all, already happened to many Indian peoples. By summer Ottawas and Chippewas were fleeing to Canada for safety. Among those who went was Chingassimo, the Chief of Burt Lake band, and his most prominent headmen and their families.⁸ This was the first exodus. In 1841 the five year limit on reservations expired and with it, so contended Governor William Woodbridge of Michigan, federal power over the Indians. He claimed that the Intercourse Act of 1834 no longer applied and the Indians now came under state laws.⁹ The claim was ominous, paralleling that of the state government of Georgia when it asserted jurisdiction over the Cherokees-- a claim of authority that had brought suffering and disaster in its wake. Following the Governor's message, rumors once more began to circulate among the Indians that they would be forced west of the Mississippi at the point of a bayonet.¹⁰

Robert Stuart, the superintendent of the Mackinac Agency, sought to stop this exodus. He asked permission of the commissioner of Indian affairs to assure the Indians

that they would be given due warning on removal.¹¹ The commissioner decided the government could promise them that they would be given due warning, but officials should make no guarantees on how long the Indians would be permitted to remain in Michigan.¹² In the face of what now seemed certain forced removal, the flight continued and grew. In 1842 roughly half the Ottawa population of the Little Traverse region moved to Canada.¹³

For those Ottawas who remained in Michigan the tension continued unrelieved. The government's only concession was to promise them new lands outside of Michigan since they found the lands already selected so repugnant.¹⁴ But something more had to be done. As a missionary informed Stuart, "if something be not done to quiet the apprehensions and unsettled feelings of the Indians they must either sink in despondency or seek a refuge and home beyond our borders."¹⁵

It was in this atmosphere of apprehension and despair following the flight of Chingassimo that Kie-she-go-way became chief of the Burt Lake band. He and the remaining members of the band ardently desired to stay in Michigan, and there were Whites who sympathized with them. The most influential of these were Rev. Francis Pierz, the Catholic missionary who lived at Cross Village in L'Arbre Croche in the Little Traverse region; Justin Rice, the keeper of the Indian dormitory at Mackinac, and the Indian superintendent himself, Robert Stuart.¹⁶ It is unclear

how Kie-she-go-way and other Ottawa leaders came to decide that purchasing land in Michigan was their best hope of remaining. Certainly sympathetic Whites encouraged them, but whether they were the first to suggest the tactic is not so clear. Some Ottawa bands began purchasing land in 1839, the year of the first great flight; others continued to buy land throughout the 1840s.¹⁷ By 1844, actively encouraged by Fr. Pierz, who already held land in trust for the Little Traverse bands, and indirectly encouraged by Robert Stuart, the Burt Lake band too had decided to buy land.¹⁸

In the fall of 1844 members of the Burt Lake band went to Justin Rice at Mackinac to inquire about the possibility of buying the area surrounding their village. He told them, although he himself was not positive, that the land was for sale. As Rice reported to Stuart, they asked him:

Whether an Indian who has \$100 or more, had better purchase in his own name or unite with others, and purchase in the name of their chief, as has been done in the purchase made this fall? I would take the subject into consideration, and also write you, and give an answer at a future time. What answer shall be given to this answer?¹⁹

Rice was not yet ready to advise them on the best method of purchase, but he was ready to give them one important piece of advice. If Indians bought land, he warned them, and then went into debt to the traders, they could be sued for debt and "the Sheriff or Constable, will take their house and lands, and horses and crops away from them

for half of what they may be worth, and have them worse off than ever."²⁰

It is significant that Rice, sympathetic to the Ottawas, whom he regarded as "a community of sober, industrious men," was concerned not only that the Indians should receive land, but that they should be able to keep it. It was an interest others shared. Coincidentally, the same day Rice wrote Stuart about the desire of the Burt Lake band to purchase their lands, W. Norman, a representative in the state Legislature from Michilmackinac, also wrote the Superintendent. Norman believed that a recent influx of squatters threatened to deprive the Indians of their reservation land and that even their purchases were in danger because of the possibility of their seizure for debt. He suggested that Stuart urge the governor of Michigan to set aside a few acres for the bands that could not be taken in debt actions. He promised to talk to the governor and to give Stuart whatever aid he could. Stuart, meanwhile, was thinking along much the same lines.²¹ In late November of 1844 Stuart replied to Rice's letter about the visit from Burt Lake band members, and Ottawa land purchases in general, writing:

I am glad the Indians have purchased lands and will in the course of the winter try to think of some way in which they can be secured from them, else they will, I fear, be ere long taken for debts, etc.²²

A few days later Stuart wrote Pierz on the same topic. He told the missionary that he hoped to get special legislation

passed in Michigan to protect Indian lands. He, however, doubted that this would be successful. If he failed, he wrote Pierz, "You and I must next summer consult and try to get their lands secured in some other way."²³

There is no record of any of the conversations Pierz and Stuart may have had, but it is almost certain that the two men agreed that deeding land in trust to the governor of Michigan was the best way to secure title to the Indians. It was this tactic that Stuart's successors in office would follow. As the preceding correspondence shows, the main concern of Stuart, Rice, Pierz, and Norman was loss of land through debt actions, primarily those brought by traders, but still debt actions of any kind, including tax delinquencies. These men wanted more than just Indian ownership of land; they also wanted special protection for these lands.

The decision to put the land in trust to the governor of Michigan, rather than the president of the United States, simply followed the logic of the events of the past fifteen years. In the South states had successfully extended their laws and jurisdiction over Indian peoples, and in Michigan the governor was now asserting the same right. Although jurisdiction over those Indians who remained on temporary reservations on ceded lands within state boundaries was still contested, too many people believed authority over such Indians belonged to the states. Both Pierz and Stuart were already adapting to this new situation by seeking state

citizenship for the Indians.²⁴ If government protection was to be secured, therefore, it was logical that these men would look to the governor of Michigan as the future guardian of the Indians within the state's boundaries. As late as 1855, as will be discussed in the following chapter, federal agents recommended that jurisdiction over Michigan Indians be turned over to state officials, thus making the governor the final authority on Indian affairs. Stuart and Pierz in 1845 merely anticipated a development which they thought was inevitable. Although direct evidence is lacking, it seems certain that either Stuart or Norman, perhaps both, discussed the subject with the governor.

The certainty that the decision to put land in trust to the governor was a decision of officials of the Indian Office in cooperation with state officials is buttressed by the circumstances surrounding the first purchase of land made for the Burt Lake band. In 1845 William Richmond, Stuart's successor as superintendent, acted as the intermediary in the purchase of land for the bands. Because the following letter from F.H. Stevens, the acting agent at Mackinac, to Richmond demonstrates the extent of federal involvement in the purchase, it will be quoted in full.

I send you this day \$355.00, money left this day by the Chief, Kie-sie-go-way, of the Cheboygan Band of Indians, for the purpose of purchasing lands on or near Cheboygan Lake for the use of said band of Indians, according to a memorandum taken by you at the time of payment. I sent also a profile and explanation left with me. I have given the Chief a receipt for the money to be applied as above.²⁵

Richmond apparently went ahead and made the first, and largest, land purchase for the band in April of 1846. Other purchases followed in August of 1847 and in January of 1849. Between February 1, 1848 and April 1, 1850 the government issued six patents, numbers 5697, 5698, 5699, 5700, 6293, and 7095, to the Indians for 375 acres of land in sections twenty-eight and twenty-nine of Township 36 North, Range 3 West.²⁶ Technically this was all reservation land and supposedly not open for purchase. Other reservations that had been located remained unavailable for purchase even by the Indians living on them. Because the Burt Lake reservation had never been precisely defined by section lines, however, it apparently was still listed at the land office as being available for entry. The purchase, therefore, seems to represent a transfer of land still under federal trusteeship to the trusteeship of the governor of Michigan. The patents read, in part, as follows:

. . . Where as the Governor of Michigan In Trust for the Cheyboygan Indians of whom Kie she go way is Chief has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Ionia, where by it appears that full payment has been made by the said The Governor of Michigan In Trust for the Cheboygan Indians of whom Kie she go way is Chief according to the provisions of the Act of Congress of the 24th of April 1820, entitled "An Act making further provision for the sale of public lands," . . . which said tract has been purchased by the said Governor of Michigan In Trust for the Cheyboygan Indians of whom Kie she go way is Chief--Now Know Ye, that the United States of America in consideration of the Premises, and in conformity with the several acts of Congress, in such case and provided, have given and granted,

unto the said The Governor of Michigan In Trust for the Cheboygan Indians of whom Kie she go way is Chief and to his successors in Office the said tract above described. To Have and to hold the same together with all the rights, privileges, immunities, and thereunto belonging, unto said--The Governor of Michigan In Trust for the Cheboygan Indians of whom Kie she go way is Chief and to his successors in office for ever. . . .²⁷

Since Crawford and later purchasers apparently bought the land with Indian annuity money received from the federal government, the Indians were, in effect, translating trust funds into trust land on the advice and with the aid of federal officials. The land purchased was within the 1,000 acre reserve secured under the Treaty of 1836 and contained the site of the band's village. The trust status of the land can probably best be summed up as a device of federal officials who, fearing the fate of those Indians who remained in Michigan if a removal policy was pursued and jurisdiction fell to the state, sought to guarantee them protection from the loss of their land through debt action by making the governor the trustee. Since both the superintendent and at least one state representative attempted during the winter of 1845-1846 to persuade state officials to guarantee special protection of Indians lands, it is almost inconceivable that the governor of Michigan did not know about and agree to the final plan.²⁸ In putting this land in trust it is clear that Kie-she-go-way did not act alone. The Cheboygan band decided to put the lands at Burt Lake in trust on the advice of federal officials in Michigan, and the Indians made the

actual purchase with the aid of these officials.

The irony of all this, of course, is that the situation this trusteeship was supposed to compensate for, removal, never developed. The Indians would remain in Michigan; they would negotiate a new treaty with the government; and the lands they had purchased would again, technically fall within a reservation set aside for their use. The federal government, not the governor of Michigan, remained the primary guardian of the Ottawas in the years following the purchases. And so for a quarter of a century after they bought the land, little attention would be paid to their village site at Burt Lake. The period intervening between purchase and the first questions concerning these lands in the 1870s was not without pertinence to the ultimate tenure of the Indians. Since these lands belonged to the band as a whole, and "were placed in trust for the entire band," it is necessary to deal with the controversy surrounding the status of the band under the Treaty of 1855 before resuming an account of the land itself.

Footnotes

¹Wilbert B. Hinsdale, Archaeological Atlas of Michigan (Ann Arbor, 1937), 6.

²National Archives, Record Group 75, Records of the Bureau of Indian Affairs, M 1, Records of the Michigan Superintendency of Indian Affairs, Michigan Superintendency and Mackinac Agency, Letters Received, 17:168-170, Rice to Stuart, 11/12/44. In future cited as NA, M 1, MI. Suptcy., LR Letters Sent will be abbreviated as LS.

³Andrew Blackbird, History of the Ottawa and Chippewa Indians of Michigan (Petoskey, Michigan, 1967, reprint of 1887 edition), 27; W. Vernon Kinietz, The Indians of the Western Great Lakes, 1615-1760 (Ann Arbor, 1965), 230.

⁴"Treaty with the Ottawa, etc., 1836," 7 Stat., 491 in Charles Kappler, Indians Affairs: Laws and Treaties (Washington, 1904-1941, 6 volumes), 2:450-454; NA, M 1, MI. Suptcy. LR, 1:9-10; Commissioner of Indian Affairs to Schoolcraft, July 6, 1836. For the specific changes made by the Senate see Public Statutes at Large of the United States of America, Volume VII: Indian Treaties (Boston, 1861), 497, 1789-1845.

⁵"Treaty with the Ottawa . . .," 7 Stat., 491, Kappler, Laws and Treaties, 2:451.

⁶NA, M 1, MI. Suptcy., LR 9:415-416, Crawford to Schoolcraft, 11/4/40; NA, M 1, MI. Suptcy, LS, 2:400, Schoolcraft to Crawford, 10/16/40. This church was probably one of the two located in small villages near Arbre Croche served by Fr. Baraga in 1833, P. Chrysostomus Verwyst, Life and Labors of Rt. Rev. Frederic Baraga (Milwaukee, 1900), 136; NA, M 1, MI. Suptcy., LS 2:433-34, Schoolcraft to Harris, 11/22/40.

⁷NA, M 1, MI. Suptcy., LR 10:491, Whitcomb to Crawford, 6/1/41. LR 11:43, CIA to Supt., 6/19/41; NA, M 1, MI. Suptcy., LS 4:97-99, Richmond to CIA, 5/1/46, Charles Royce, Indian Land Cessions in the United States, U.S. Bureau of American Ethnology, Eighteenth Annual Report, part 2 (Washington, 1899) 757.

⁸NA, M 1, MI. Suptcy., LS 1:718, Schoolcraft to CIA, 6/26/39. "Burt Lake Band," Totem Pole 37:2.

⁹George N. Fuller (ed.), Messages of the Governors of Michigan (Lansing, 1925, Four volumes), 1:380; NA, RG 75, Records of the Bureau of Indian Affairs, Michigan

Superintendency, file C:443, Michigan Superintendency 1841, Box 339, 14 E, Vol. 30, Coe to Bell, 6/24/41. Copy also in Michigan State Archives, Vertical Files, Indians, Burt Lake, Cheboygan Co., Brief, Jonas Shawanase.

¹⁰NA, M 1, MI. Suptcy., LS 2:508-512, Stuart to Crawford, 6/25/41; NA, M 1, MI. Suptcy., LR 10:601, Reuben Turner to Stuart, 6/22/41.

¹¹NA, M 1, MI. Suptcy., LS 2:508-512, Stuart to Crawford, 6/25/41.

¹²NA, RG 75, Records of the Bureau of Indian Affairs, Office of Indian Affairs book 2:472, Crawford to Bell, 7/27/41, copy also in Michigan State Archives, Vertical Files, Indians, Burt Lake, Cheboygan Co., Brief, Jonas Shawanase.

¹³Blackbird, History of the Ottawas and Chippewas, 98.

¹⁴NA, RG 75, Records of the Bureau of Indian Affairs, Michigan file 1759, Michigan Superintendency, 1842, Box 304, Bell to Stuart, 7/30/41; copy also in Michigan State Archives, Vertical Files, Indians, Burt Lake, Cheboygan Co., Brief, Jonas Shawanase.

¹⁵NA, MI. Suptcy., LR 10: 601, Reuben Turner to Stuart, 6/23/41.

¹⁶Verwyst, Life of Baraga, 386. NA, M 1, MI Suptcy., LR 17:212, Rice to Schoolcraft, 10/26/44.

¹⁷NA, M 1, MI. Suptcy., LR 7:225-226, Slater to Schoolcraft 8/8/39; LR 17:212, Rice to Schoolcraft, 10/26/44/

¹⁸NA, M 1, MI. Suptcy., LS 3:527, Stuart to Pierz, 11/30/44; NA, M 1, MI. Suptcy., LR 17:168-170, Rice to Stuart, 11/12/44, LR 17:172-173, W. Norman to Stuart, 11/12/44.

¹⁹NA, M 1, MI. Suptcy., LR 17:168-170, Rice to Stuart, 11/12/44.

²⁰Ibid.

²¹Ibid; NA, M 1, MI. Suptcy., LR 17:172-173, W. Norman to Stuart, 11/12/44.

²²NA, M 1, MI. Suptcy., LS 3:524, Stuart to Rice, 11/25/44.

²³NA, M 1, MI. Suptcy., LS 3:527, Stuart to Pierz, 11/30/44.

²⁴ Ibid.

²⁵ NA, M 1, MI. Suptcy., LR 19:224, Stevens to Richmond, 10/1/45.

²⁶ For copies of patents and certificates see, Michigan State Archive, Vertical File, Indians, Burt Lake, Cheboygan, Patents:5697, 5698, 5699, 5700, 6293, 7095.

²⁷ Ibid.

²⁸ NA, M 1, MI. Suptcy., LS 3:527, Stuart to Pierz, 11/30/44.

CHAPTER II

THE TREATY OF 1855

The Treaty of 1855 stands as a critical document in the history of the Ottawas. It is an agreement which the United States eventually came to interpret as extinguishing the Ottawa Nation in Michigan--something it not only did not do, but was never intended to do. This treaty, as did virtually all treaties, foresaw eventual assimilation, but assimilation was the goal of the treaty, not its achievement. The treaty merely set up the mechanisms for furthering acculturation. As the letters leading up to the negotiations of 1855 make clear, the Americans did not plan to dissolve Ottawa political organization, but instead intended to grant the bands continued recognition and services.

To be understood, the treaty of 1855 has to be placed in context. Without examining its background and American purposes in negotiating it, the treaty is easily misinterpreted. Before even discussing the negotiations, three critical issues must be resolved. What was the status of the Ottawa and Chippewa Tribe that the treaty dissolved? What was the real nature of Ottawa political organization? And what were the reasons that the Americans

negotiated the treaty to begin with, since they had already acquired most of the holdings of the Ottawa and Chippewa bands they met at Detroit in 1855 and could unilaterally terminate their remaining reservations under the amendments the Senate had added to the Treaty of 1836?

The "Ottawa and Chippewa Tribe" that was dissolved by the Treaty of 1855 was an entirely American creation. The "tribe" had been born in 1836 when the government had gathered the various Ottawa and Chippewa band chiefs of the western Lower Peninsula and the eastern Upper Peninsula in Washington to cede most of their remaining lands in Michigan. To avoid territorial disputes between the bands and to settle the cession with one treaty instead of many, the government dealt with the Ottawas and Chippewas as a single group. This group, the Ottawa-Chippewa Tribe, was created for only one purpose--to cede land. It never exercised any political sovereignty outside the treaty councils.

Real political power among the Ottawas lay with the bands, although even here coercive power was very weak by American standards. When Fr. Frederic Baraga, a Catholic missionary who worked among both the Ottawas and Chippewas, described Chippewa political organization for the Indian Office in 1847, he was also describing the Ottawa system.

The Chippewa Indians form but one tribe. . . . They live in larger or smaller camps or Indian villages very thinly over an immense tract of land. Every village, camp or band of Indians has one or more chiefs. There is no general chief over the whole tribe.¹

Baraga emphasized that there was no formal union between the Ottawas and Chippewas:

The Chippewa Indians call, in their council speeches, the Ottawas their younger brothers and vice versa, the Ottawas call them their older brothers.²

The two people were, in other words, friendly and inter-married, but quite distinct. Above the band level the Ottawas might unite in loose regional confederations such as those at Little Traverse, Grand Traverse, and Grand River, but these temporary unions were usually directed toward specific ends. They became much stronger after the treaty than they were before it. Only on the most extraordinary occasions, such as a treaty council, would the Ottawa nation, or at least the greater part of it, operate as a unit. And even then the bands often acted independently.

The Ottawa and Chippewa preparations for the treaty council at Detroit in 1855 illustrate the independence of the various bands and the extent to which the "Ottawa and Chippewa Tribe" was a legal fiction rather than a functioning political entity. In January and February of 1855 the Ottawa bands of the Lower Peninsula met in council at Grand Traverse and Grand River to discuss the contemplated negotiations with the Americans.³ They agreed to ask for a permanent home in Michigan, continued government trusteeship over their financial affairs, and a clarification of their rights under previous treaties, but beyond this they could not agree. When the Grand River bands, Little Traverse bands, and Burt Lake band proposed that a

delegation be sent to Washington D.C. to negotiate directly with the federal government, the Grand Traverse bands dissented and refused to authorize any such mission. A few people of no prominence from Grand Travers departed to Washington with the Grand River and Little Traverse leaders anyway, but the Grand Traverse bands disavowed both them and the entire mission.⁴

This delegation met with George Manypenny, the Commissioner of Indian affairs, before a letter from Agent Gilbert of the Mackinac agency denying that they were either an authorized or a representative body reached Washington. Manypenny promised them a treaty by early summer.⁵ A month later a new delegation came to Washington. The new envoys were Chippewas from the Mackinac band, and they arrived with Gilbert's approval and accompanied by G.T. Wenzel, a member of the Michigan Legislature.⁶ As if two delegations within a month were not confusing enough, rumors now began to spread in Michigan that the Ottawa delegation was actually negotiating a treaty in Washington. This rumor brought further splits among the Ottawas.⁷ In June of 1855 twelve "chiefs of a tribe of Indians occupying this region known as the Ottawas" wrote to the secretary of the interior from Grand River disavowing anything the delegation might have proposed or agreed to in Washington. The returned delegation had refused to inform these leaders what they had done in the capital, and the chiefs presumed the "mission to be fraught with evil consequences to their interests."

These chiefs wanted an account of the meetings held in Washington, a summary of current treaty provisions, and government permission and funding to visit Washington themselves.⁸

In the face of this obvious fragmentation along band lines, competing delegations, splits within bands, and direct references to the "Ottawa tribe of Indians," a strong American belief in an actual political organization known as the Ottawa and Chippewa Tribe demanded an almost invincible faith in the government's own creations. The Indians were obviously approaching the prospective treaty as separate bands. And, in fact, the American government recognized and understood this distinction between the paper "Ottawa-Chippewa Tribe" and the actual organization of the Ottawa bands. In his annual report for 1853 George Manypenny referred to "seperate communities" and a race "scattered" throughout Michigan," not to tribal organizations.⁹ When Henry Gilbert of the Mackinac Agency and Manypenny mentioned specific groups of Indians in their correspondence, they talked of the Ottawas and the Chippewas, or of specific bands of Ottawas or of Chippewas, or of Ottawas and Chippewas in a sense synonomous with the Indians of northern Michigan. They did not speak of the Ottawa-Chippewa tribe, the group they would dissolve in the 1855 treaty.¹⁰

When government officials used the word tribe, they usually meant the Ottawa tribe or the Chippewa tribe.

Thus Gilbert wrote "The Indians of Michigan are principally of the Chippewa tribe--there are also remaining small remnants of the Ottawas and Potawatomes."¹¹ He recognized the Ottawas as a distinct group. "I also propose to commute with the Ottawa tribe (who are also parties to the treaty of March 28, 1836 and entitled to all its benefits for the small permanent annuities to which they are entitled under the treaties of 1795, 1807, 1818, and 1821 . . .)." ¹² Manypenny referred to Ottawas and Chippewas, but it is clearly in the sense of all the Indians residing in northwestern Michigan, not as a tribal entity.¹³

To the government the Ottawa and Chippewa tribe had such a tenuous existence that during the planning that led up to the treaty councils officials rarely spoke of them as the political unit with whom they would eventually negotiate the treaty. Indeed, virtually on the eve of the treaties, Gilbert confessed to Manypenny that he had no idea how to make meaningful tribal distinctions between the various bands of Ottawas and Chippewas with whom he would negotiate.¹⁴ When Gilbert convened the bands as the Ottawa and Chippewa Tribe, he did so only because of the precedent set in 1836.

The government in reality then had little interest in the Ottawa and Chippewa Tribe except as a vehicle for ceding land; once the United States had obtained title to the territory of the Ottawas and Chippewas, they had no more use for the tribe than did the Indians themselves.

The dissolution of the tribe, which as we shall see came at the insistence of the Indians themselves, was essentially a meaningless act, since it dissolved a political entity which possessed neither substance nor authority.

If the treaty was not designed to eliminate the political existence of the Indians nor to gain further large cessions, what were its aims and intentions toward the Ottawas? The major American interest in the treaty was as an instrument for setting up a "civilization program," a purpose for which the continuance of the "tribe" was irrelevant but which did involve continued recognition of and services to the bands whose members were to be transformed into duplicates of White Christian farmers. The government realized that complete acculturation would not occur overnight, and the treaty set up a program of education and technical aid under which the Indians would be prepared for eventual assimilation. The treaty represented a continued attempt at assimilation rather than a commemoration, through the dissolution of the "tribe," of its achievement. There is no indication that the United States intended the Treaty of 1855 to be their last negotiations with the Ottawas, and as shall be discussed later, the Americans would actually prepare for new treaties in the 1860s. Because it is so important to establish that the government officials foresaw future services to the bands and sought to avoid a dissolution of Ottawa political ties which they believed would dump the Indians poor and helpless

upon the state, it is necessary to look in some detail at the correspondence leading up to the treaty council of 1855.

In his annual report of 1855 George Manypenny recommended that in the face of increasing white settlement the government make new treaties in Michigan. He advocated concentration of the Indians on new reservations where acculturative measures could be pursued instead of renewing the old policy of removal.

Suitable locations, it is understood, can be found for them in the State, where they can be concentrated under circumstances favorable to their comfort and improvement, without detriment to the State or individual interests, and early measures for that purpose should be adopted.¹⁵

In Michigan Henry Gilbert, the head of the Mackinac Agency, immediately seconded Manypenny's suggestion of new treaties. With settlers rapidly claiming Michigan lands, Gilbert feared they would soon invade the old reservations, leaving the Indians destitute and landless. He foresaw a series of catastrophes: the expiration of annuities due under the 1836 treaty; a government decision to exercise its option on the old reservations and thus eliminate the Indian's land base; the loss of the lump sum payment of \$200,000 due the Indians for their lands under the 1836 treaty through intimidation, liquor, and fraud. If nothing was done, the "United States having no further transactions with them, they will be turned over to the State in the condition of paupers and will be from year to year a continued source of annoyance to her citizens and expense to

her Treasury."¹⁶ Gilbert's vision of the future was grim.

In March of 1854 Gilbert wrote a nine page letter to Manypenny noting with "much satisfaction" the concern the commissioner had expressed several months earlier. After quickly reviewing the treaty obligations the United States already had toward Michigan Indians, the Indian agent began pushing for new treaties which he believed would transform relations between the various Indian peoples and the United States. Gilbert's actual language in this letter is deceptive.

I am of opinion that all their claims of every description may be settled and compromised with the Indians, with great benefit and to them and advantageously to the United States, so that within three or four years all connections with and dependence upon Government on the part of the Indians may properly cease.¹⁷

Gilbert's intentions to sever federal connections with the tribe seemingly jarred with Manypenny's desires to interpose federal services, not remove them, and his plan to concentrate the Indians for a "civilization" program. The differences, however, were not so stark. Gilbert wanted only to substitute state for federal supervision, not to disavow all government responsibility for the Indians. When Gilbert outlined specific proposals, they called not for a removal of government services, but rather their more effective and economical organization.

What Gilbert proposed was a reservation system similar to those just coming into existence in the West but under state, not federal, supervision.¹⁸ The government

would select suitable lands "as far removed from white settlements as possible" and no whites "would be permitted to locate or live amongst them. . . . except teachers, traders and mechanics specially authorized by rules and regulations to be prescribed by the state Government." The reservation lands would be distributed by family, but they would be inalienable until a rather vague future decision was reached by the state and federal government.¹⁹

Under Gilbert's plan the payments due various groups of Michigan Indians from more than a half century of treaties would be eliminated and replaced by a distribution of "cattle, agricultural implements, mechanics tools, building materials, cooking utensils and such other articles as may be needed by them," over a period of two to three years. Other funds invested by the United States for the Indians would be paid "in the same manner as annuities." Gilbert recommended that the government place the \$200,000 due the Indians for the surrender of their old reservation lands in trust with the state of Michigan to be used as an educational fund when the annuities expired.²⁰

What motivated Gilbert was not the belief that Indians had been successfully absorbed into white communities, thus rendering further federal supervision unnecessary, but rather exactly the opposite view. The Indian peoples of Michigan had not been assimilated; and the agent believed his plan was necessary because of the failure at previous attempts at total acculturation.

It is the only plan offering any reasonable ground of hope for the improvement of this race in civilization--they are now scattered throughout the whole central and northern portions of the lower peninsula of Michigan and cannot be effectively reached by teachers and missionaries unless they are colonized and have permanent homes with an interest in the soil.²¹

Despite Gilbert's fears that settlers were rapidly claiming all the best land of northern Michigan, Manypenny waited a year before recommending new treaties to the secretary of interior.²² When he finally did propose treaties in the spring of 1855, he had discarded Gilbert's plans for the assumption of services to the Indians by the state of Michigan. The federal government would retain supervision, providing new reservations either within the old reserved lands or else on land withdrawn from the public domain. The value of the new reservations would be deducted from the \$200,000 to be paid the Indians; the remaining money would then either be distributed as annuities or else invested for the bands. Finally, Manypenny recommended the policy that would be a hallmark of his treaties--the substitution "for their claim to lands in common, titles in fee to individuals for separate tracts." The commissioner put off other questions and suggestions raised by Gilbert to a later date.²³

When read closely, these documents, since they are products of an evolving policy, not a finished one, are often contradictory and inconsistent. Nevertheless, some basic common intentions and assumptions do surface. The

primary assumption is that the scattered independent Indian communities in Michigan have to be concentrated and controlled so that native patterns of life could be undermined. Only then could the government proceed to make the Indians Christian farmers. Cessation of services and the end of federal guardianship were exactly what Manypenny and Gilbert most feared and sought to avoid. The treaties then were designed to provide government supervision and services, not eliminate them. The only real differences between the plans of Gilbert and Manypenny was over whether the state or the federal government should provide supervision. Manypenny, as commissioner of Indian affairs, decided it would be the federal government.

With the United States entering the treaty prepared to increase the services and guardianship it offered the Indians, not decrease them, it is not surprising that the negotiation of the Treaty of 1855 reflected these concerns. The business of the council that met at Detroit from July 25, 1855 until July 31, 1855 focused on settling claims arising out of the 1836 treaty, providing the Indians with new reservations, and reorganizing relations between the Ottawa and Chippewa bands and the United States so as to forward the civilization program.

Since the Indians, too, actively pursued their interests during these negotiations, how they organized themselves at the treaty council deserves some explanation. Each individual band selected one or more delegates to go

to Detroit. These delegates were usually, but not always, the chiefs and headmen of the band. As-sa-gon, the delegate of the Burt Lake band of Ottawas, for example, does not appear to have been either a chief or a headman, but instead was selected for his skill as a negotiator. The delegates did not come as sovereign heads of state, but rather as emissaries with limited power. As As-sa-gon explained to Manypenny:

Father, the chiefs here present are delegates appointed by those they have left behind them. They were sent to get as far as possible the views of Government relative to this treaty. They got as it were a power of Attorney to come here and transact business. And so it is with you--you are the agent of the Great Father.²⁴

After the various bands selected delegates, the delegates grouped themselves by regional confederacies for the negotiations. Thus the Americans confronted five groups: the Sault Ste. Marie bands (Chippewas), the Mackinac bands (Ottawas and Chippewas), the Grand River bands (largely Ottawas), the Grand Traverse bands (Ottawas and Chippewas), and the Little Traverse bands (Ottawas). The various bands, with the exception of the Burt Lake band which refused to approve the document at Detroit, would sign the treaty under the name of one of these regional confederations. The confederacies operated largely behind the scenes, agreeing on reservation sites and other common problems. The public negotiations took place primarily along tribal lines.²⁵

The Ottawas and Chippewas each delegated a speaker

to carry on actual negotiations with the Americans. It is quite significant that there was no speaker for the Ottawa and Chippewa Tribe as such; instead the Ottawas and Chippewas chose separate negotiators. Waub-o-jeeg, a chief from Sault Ste. Marie, acted as speaker for the Chippewas and As-sa-gon of Cheboygan, or Burt Lake, was selected as speaker for the Ottawas.²⁶ These speakers handled most of the negotiations. The chiefs and headmen present at the council usually spoke only when discussion touched a peculiar problem of their band or confederation of bands. Actual Ottawa participation in the treaty was thus somewhat complex. They selected delegates on the basis of bands, signed the treaty according to regional confederation, and negotiated the treaty as a tribe.

The actual negotiation of the treaty of 1855 was long and complicated. Issues arose, were dropped, and arose again. Only a few of the issues discussed during the sessions concern us here, however. These are the dissolution of the Ottawa and Chippewa Tribe, the question of taxation of Indian lands, and the refusal of As-sa-gon to sign the treaty for Burt Lake.

The clause that supposedly ended Ottawa political organization is Article 5 of the treaty. This section deserves to be quoted in full before its adoption is discussed.

The tribal organization of said Ottawa and Chippewa Indians, except so far as may be necessary for the purpose of carrying into effect the provisions of

the agreement, is hereby dissolved; and if at any time hereafter, further negotiations with the United States, in reference to any matters contained herein, should become necessary, no general convention of the Indians shall be called; but such as reside in the vicinity of any usual place of payment, or those only who are immediately interested in the questions involved, may arrange all matters between themselves and the United States, without the concurrence of other portions of their people, and as fully and conclusively, and with the same effect in every respect, as if all were represented.²⁷

From the beginning of negotiations Waub-o-jeeg, the Chippewa speaker, took pains to separate the "Sault Ste. Marie Indians"²⁸ from the Ottawas. He emphasized they had conferred separately in preparation for the treaty and that their interests were not identical.²⁹ On July 27 he was even more explicit concerning distinctions between the Chippewas of the Sault and the Ottawas:

At the Treaty of 36, our fathers were in partnership with the Ottawas, but now the partnership is finished and we who come from the foot of Lake Superior wish to do business for ourselves.³⁰

Waub-o-jeeg emphasized that ties of friendship held the Sault Ste. Marie bands and the Ottawas together, not any political union.

My father I have spoken to our friends the Ottawas saying that we have been brought up together & are merely friends. I can make no laws for them. I can only make laws for myself & my people.³¹

When no direct reply was made to Waub-o-jeeg's speeches, he returned to the matter on the last day of the treaty.

I told you when I first came that I wanted to be separated from the Ottawas, & you have not answered me. We have sat here & heard you talk to the Ottawas--while you paid no attention to us.³²

Manypenny's reply to Waub-o-jeeg makes clear both the origin and the purpose of Article 5.

Under the provisions of this treaty you will get your share of the money. The very case you suggested is met in the treaty--you are separated as you desire. This treaty you & the Ottawas must sign together because the old treaty of 36 was made in that way, but here we have followed your suggestion & provide that the money shall be paid to the different bands & that no general council shall be called.³³

The article thus did not end Indian political organization: it merely recognized the return of political jurisdiction to units where it had in reality resided all along--the bands. And this was done at the request of the Sault Ste. Marie chiefs. It was a minor concession for the government. As the events leading up to the treaty had demonstrated, the bands were the real political units of the Michigan Indians, and it was with the bands that the Americans would negotiate in the future.

The Americans agreed to Article five as a concession to the Indians; they would later reinterpret it and use it against them. During the negotiations they would also make concessions on taxation; these they would later simply ignore. Nah-me-wash-ko-lay and Ke-no-shance of Manistee, two Ottawa leaders, asked that all lands granted them under the treaty, as well as the lands they had previously purchased, be exempt from taxes.³⁴ Manypenny hedged on the tax question, asserting that the tax burden was insignificant, but adding he wanted "to look at the question a little."³⁵ After giving the matter some thought,

he announced that on "the question of taxes" he was "disposed to manage it for your benefit."³⁶ This certainly seemed a promise of exemption from taxation and thus a promise of special status for Indian lands.

The final issue in the negotiations that pertains directly to the Burt Lake band came to the head on the last day of negotiations: As-sa-gon, speaker for the Ottawas and delegate from Burt Lake, refused to sign the treaty. As-sa-gon had come from Cheboygan with specific instructions to get cash from the government, not land. The speeches during the negotiations revealed that the Ottawas had no faith in the security of reserved lands; they felt that the Americans could at any time unilaterally eliminate such reservations just as they had under the 1836 treaty. Mene-a-du-pe-na-se, an Ottawa delegate, stated this objection most succinctly.

. . . our white brethren tell us that if we do not settle upon lands at once, you will take them back, & we understand that we can keep the land we buy, do what we please with it, give it to our children or relations when we die. We are displeased that we cannot hold this land in the same way. It seems as if you hold the land by a big string ready to pull it from us.³⁷

Lands the Ottawas purchased and deeded back to the government in trust seemed safer than reservations. The Americans eventually persuaded the chiefs of the other bands of the strength of their title to the reservations, but As-sa-gon, as delegate from Burt Lake, refused to agree. "I must obey my instructions," he told Manypenny. "I was

told to ask for money I cannot make a different request. At next payment I will tell Mr. Gilbert."³⁸

Manypenny and Gilbert, however, did not understand As-sa-gon's dual role as speaker for the Ottawas and delegate from Burt Lake. When As-sa-gon, as Speaker, pressed for larger reservations and allotments, Manypenny and Gilbert thought he had come around to accepting reservations when in fact he was merely presenting the position of the other chiefs as his office demanded.

As-sa-gon thinks that there will be ought to be, 160 acres to each person--that would be too much, especially for his band, who before dinner, he told us, had enough land & didn't want any more. I am glad though that they have come around & will give them what I give the rest.³⁹

Manypenny here obviously took As-sa-gon's fulfillment of his duties as speaker as an acceptance of land for the Burt Lake band and had reservations for that band written into the treaty.

Neither As-sa-gon nor Ke-she-go-whe, the chief of the Burt Lake band, signed the treaty, however. Instead the band detached itself from the other Ottawas, all of whom signed the treaty at Detroit. As As-sa-gon had said he would during negotiations, he returned to Cheboygan and consulted with the band. That fall Gilbert met with the band and a reservation of two townships adjoining Indian Village was agreed to. Not until July of 1856, when Agent Gilbert brought the treaty to Little Traverse to have the band chiefs consent to the amendments made by

the Senate, did Ke-she-go-whe (Ke-he-go-ne-way), representing Burt Lake, sign the treaty for the first time.⁴⁰ This delayed approval is significant. The Burt Lake band entered the treaty separately from the other Ottawas and agreed to its terms as an independent unit. For all Ottawas before the treaty the band was the basic political unit, but all the other band leaders signed the treaty at Detroit as representatives of the regional confederations of Little Traverse, Grand Traverse, and Grand River. Burt Lake remained apart, regarding themselves as a sovereign unit and signing the treaty as one a year later.

At first sight the issues outlined here may not seem relevant to the eventual loss of the land deeded in trust to the governor of Michigan in 1848. All of them are, however. The retention of band organizations by the treaty shows that Ottawas did not become detribalized, and thus state citizens like any other state citizen in Michigan. Because of the treaty they retained a special status. And not only did the bands survive under the treaty, the actions of As-sa-gon demonstrate the particular independence of the Burt Lake band which entered the treaty separately from the other Ottawa bands. Furthermore, it was clearly the intention of the treaty to provide special services to the Indians as the Manypenny and Gilbert correspondence shows. For the Burt Lake band this guardianship would come to be most critical in regard to land, especially taxation of land, and Manypenny seems to have specifically promised

the Ottawas exemption from such taxation. This was of immense concern to the Indians, who throughout the negotiations expressed repeatedly their desire for a strong inalienable title to their land.

Before going on to explain how these issues became critical ones for the Burt Lake band during their struggle to retain the lands which they had deeded in trust to the governor of Michigan, it is necessary to examine how what seemed clear in the treaty became obscured later on.

Footnotes

¹Frederick Baraga, Chippewa Indians as Recorded by Reverend Frederick Baraga in 1847 (Studia Slovenica, New York and Washington, 1976), 21.

²Ibid.

³NA, M 234, Mack., R 404, f 561-562, Chiefs at Grand Traverse to CIA, 1/16/55; R 404, f 562-563, Chiefs at Grand River to CIA, 2/7/55.

⁴NA, M 234, Mack., R 404, f 594-596, Gilbert to CIA, 3/1/55.

⁵Ibid; NA, M 234, Mack., R 404, f 554, Delegates to CIA, 2/28/55.

⁶NA, M 234, Mack., R 404, f 608, Gilbert to CIA, 3/28/55.

⁷NA, M 234, Mack., R 404, f 989-991, Wendell to CIA, 4/2/55.

⁸NA, M 234, Mack., R 404, f 664-667, Ottawa Chiefs to Secretary of Interior, 6/7/55.

⁹CIA, Report, 1853, 3-4.

¹⁰NA, M 234, Mack., R 404, f 369, 371-372, Gilbert to CIA, 3/6/54; R 404, f 845-847, Manypenny to Secretary of Interior, 5/21/55; CIA, Report, 1853, 3-4.

¹¹NA, M 234, Mack., R 404, f 369, Gilbert to CIA, 3/6/54.

¹²NA, M 234, Mack., R 404, f 372, Gilbert to CIA, 3/6/54.

¹³NA, M 234, Mack., R 404, f 845-47, Manypenny to Secretary of Interior, 5/21/55.

¹⁴NA, M 234, Mack., R 404, f 706-707, Gilbert to CIA, 6/9/55.

¹⁵CIA, Report, 1853, 4.

¹⁶NA, M 234, Mack., R 404, f 375-376, Gilbert to CIA, 3/6/54.

¹⁷NA, M 234, Mack., R 404, f 369-371, Gilbert to CIA, 3/6/54.

¹⁸ Robert Trennert, Alternative to Extinction (Philadelphia, 1975), 40-93, gives the most recent discussion of the origins of the reservation system.

¹⁹ NA, M 234, Mack., R 404, f 371-372, Gilbert to CIA, 3/6/54.

²⁰ Ibid.

²¹ NA, M 234, Mack., R 404, f 370, Gilbert to CIA, 3/6/54.

²² NA, M 234, Mack., R 404, f 626-627, Gilbert to CIA, 4/12/55; R 404, f 845-47, Manypenny to Secretary of Interior, 5/21/55.

²³ NA, M 234, Mack., R 404, f 845-847, Manypenny to Secretary of Interior, 5/21/55.

²⁴ NA, RG 123, Proceedings of a Council with the Chippewas and Ottawas of Michigan Held at the City of Detroit . . . July 25, 1855, 49. Hereafter, Treaty Journal.

²⁵ "Treaty with the Ottawa and Chippewa, 1855," 11 Stat. 621, Article 5 in Charles Kappler, Indian Affairs: Laws and Treaties (Washington, 1904-1941, 6 volumes) 2: 730.

²⁶ NA, RG 123, Treaty Journal, 1.

²⁷ "Treaty with the Ottawa and Chippewa, 1855," 11 Stat. 621, Article 5 in Kappler, Indian Affairs: Laws and Treaties, 2:729.

²⁸ NA, RG 123, Treaty Journal, 18.

²⁹ NA, RG 123, Treaty Journal, 17-18.

³⁰ NA, RG 123, Treaty Journal, 26-27.

³¹ NA, RG 123, Treaty Journal, 28.

³² NA, RG 123, Treaty Journal, 69.

³³ NA, RG 123, Treaty Journal, 65.

³⁴ NA, RG 123, Treaty Journal, 30-31.

³⁵ NA, RG 123, Treaty Journal, 33.

³⁶ NA, RG 123, Treaty Journal, 42.

³⁷ NA, RG 123, Treaty Journal, 39-40.

³⁸NA, RG 123, Treaty Journal, 37.

³⁹NA, RG 123, Treaty Journal, 45.

⁴⁰"Treaty with the Ottawas and Chippewa, 1855," 11 Stat. 621, Approval of amendments at Little Traverse, July 2, 1856 in Charles Kappler, Indian Affairs, Laws and Treaties (Washington, 1904-1941, 6 volumes), 2:731; NA, M 234, Mack., R 404, f 816-820, Gilbert to CIA, 11/24/55.

CHAPTER III

THE STATUS OF THE BURT LAKE BAND

The Treaty of 1855 dissolved the artificial entity known as the Ottawa and Chippewa Tribe and restored political sovereignty to the bands, where in reality it had resided all along. But in time this basic accomplishment of the treaty would be misinterpreted and distorted until government officials would eventually contend that the treaty had dissolved all political organization among the Ottawas. This was patently false. Nevertheless, it was accepted, and, because Michigan Indians became state citizens after 1855, it led to the contention that the Ottawas, including the Burt Lake band, had ceased to exist in any corporate sense in the State of Michigan.

To refute this contention and to understand the actual political position of the Burt Lake band, two separate lines of inquiry are necessary. The first is simply an examination of the changing status of all the Ottawa bands in the eyes of the Bureau of Indian Affairs following the Treaty of 1855. The second is a study of the persistence of the Burt Lake band as an identifiable Ottawa community continuously recognized by federal officials during the late nineteenth and early twentieth centuries. Taken together

these approaches demonstrate that the Burt Lake band never legally lost either its political sovereignty or its existence as a functioning community.

When the Treaty of 1855 dissolved the tribe at the request of the Indians, the federal government recognized the bands as the basic political unit of Ottawa society. The treaty, however, was so poorly written and the preparations for its execution so shoddy that its actual implementation became an administrative nightmare. In time each of the political appointees who ran the sprawling Mackinac agency would be left to read the treaty and interpret its clauses. Eventually such interpretations were little more than the opinions of an agent on a document in whose negotiation he had taken no part and of whose background he had no knowledge. To a lesser extent, the same pattern prevailed in Washington. New administrators occasionally took the treaty totally out of context and made pronouncements that did not reflect the reality of actual Indian government relations.

The actual relationship between the Ottawa bands and the government under the treaty of 1855 was based on what the government did as much or more as on what the government said. If an historian were to rely solely on the annual reports of the commissioner of Indians affairs with their annual summaries by the agents, for example, the resulting account would be hopelessly distorted. In these reports the opinions of agents, many of whom, because of

the huge turnover in the position, had little experience with Indians, are frozen as fact. To avoid the obvious pitfalls of such simpleminded credulousness, the actual operation of the agency must be examined. Much more than what the agents wrote in their annual reports, what they did in day to day administration reflects the reality of government-Indian relations.

Status of the Ottawa Bands

Ironically, this whole tangled problem of the status of the Ottawa bands under the treaty of July 31, 1855 stems less from the treaty itself than from the Michigan Constitution of 1850, which reads:

. . . every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe, shall be an elector and entitled to vote . . .¹

To some federal officials this clause seemed to make members of all the Ottawa and Chippewa bands citizens of Michigan no different from other citizens of the state and to eliminate any claims they had to special status. The intention of the constitution was not, however, the incorporation of the Native Americans of Michigan into American political life on an equal status with Whites. Instead it represented a simple recognition of the fact that most of the population of the Upper Peninsula of Michigan, excluding Indians still living in native villages, were of mixed Indian and White ancestry. In 1860 the attorney general of the state of Michigan would argue that the

framers of the constitution intended to enfranchise only this mixed blood, non-tribal population, not the entire Ottawa, Chippewa, and Potawatomie population of the state. The language of the constitution was designed only to distinguish between acculturated mixed-bloods and the remainder of the Indian population--not to provide an avenue for the enfranchisement of the majority of the Indian people of Michigan.²

When taken in conjunction with Article five of the Treaty of July 31, 1855 (the article dissolving the tribal organization of the Ottawas and Chippewas), this section of the constitution offered possibilities the framers of the constitution had never dreamed of. The treaty dissolved the tribe but retained the band, and thus kept the Indians under federal supervision at the same time as it technically made them eligible to vote in state elections. Since in many areas of northern Michigan the Indians formed either a majority or a sizeable minority of the local population, the Indian agent, himself a political appointee, could use his power over Indian annuities and services to control their vote for the party that had given him his position.

The Indians themselves had demanded the clause dissolving the Ottawa-Chippewa tribe so Manypenny and Gilbert clearly did not conspire at the treaty to create a political machine in northern Michigan. They did, however, recognize that one consequence of the treaty would be the

creation of Indian voters, and Gilbert and his subordinates quickly took advantage of the language of both documents to parade Indians to the polls.³ Government employees argued that since the treaty dissolved tribal relations the Indians should be permitted to vote.⁴

Armed with the Indian vote, Indian agents became potent political figures in northern Michigan. The suspected defection of a Democratic agent, Andrew Fitch, to the Republicans just prior to the Civil War brought accusations from his subordinates that he was "ruining the democratic party in the northern Peninsula of Michigan (sic)."⁵ According to William Johnston, Fitch penalized "our Democratic villages" by withholding annuity payments. Fitch's defense against such accusations was equally revealing: he contended that he had indeed delivered the Indian vote to the Democrats.⁶ He forwarded to Washington copies of the letters he wrote to local employees of the agency instructing them to place copies of the Democratic ticket in Indian hands.⁷ Nevertheless, accusations that Fitch was a secret abolitionist Republican persisted; the Democratic State Committee demanded his dismissal on the grounds that if Fitch had really delivered the Indian vote, the northern congressional district would have gone Democratic.⁸

Control of the Indian vote thus clearly depended on both the dissolution of the tribe to meet the technical requirements of the constitution and the maintenance of

both the band structure and active government supervision to direct the vote. Without federal supervision and government funds, the Indian vote could not be controlled by the agents. Local politicians, especially members of the party out of power in Washington, quickly realized this. In 1860 an open letter from the attorney general of Michigan, Jacob Howard, to local registrars of voters offered interpretations of the law that might serve to disenfranchise Indians. Howard recommended that registrars consider any Indian not engaged in agriculture as uncivilized and any Indian receiving an annuity as a member of a tribe and thus a 'subject of a foreign power.'⁹ In either case the Indian would be ineligible to vote. Implicit in such criteria was the belief that the Indians remained a distinct unassimilated group and that they were members of a separate native political organization. Howard's recommendations would have disenfranchised virtually every Indian in northern Michigan, and this clearly was his intention.

In Michigan, therefore, the Ottawa-Chippewa bands slid into state citizenship through politics and corruption within the Indian Bureau. For different reasons both political parties in Michigan recognized the continued existence of the bands. By maintaining the bands and dissolving the tribe, the party in power sought to control the Indian vote; the party out of power, in turn, contended the band was an independent political unit and

thus the Indians were not entitled to vote. The fact that the Indians were voters and citizens of the state of Michigan was not a result of the 1855 treaty alone. It was more the result of the loose language of the Michigan constitution and expediency dictated by local politics. Unless it is recognized that state citizenship and band organization existed side by side, the subsequent course of government relations with the bands becomes impossible to fathom.

Federal officials opportunistically took advantage of the Indian vote, but their assertion of state citizenship for Indians did not disturb their longstanding treatment of the Ottawa bands as a distinct group dependent on the United States. Indians might be citizens of Michigan for voting purposes, but federal officials continued to rule that they were not citizens of the United States.

Government actions and rulings during the 1860s and 1870s make it clear that neither the 1855 treaty, nor their failure to obtain new treaties, made the members of the Burt Lake band ordinary citizens. The Bureau repeatedly either freed Indians from the obligations of citizenship or denied them its' privileges. During the Civil War, for example, the Office of Indian Affairs successfully contended that the Indians party to the 1855 treaty were not citizens and could not be drafted.¹⁰ In another decision, in 1871, the government ruled that Michigan Indians could not take

up lands under the Homestead Act.¹¹ In 1872 the Interior Department briefly modified this position; Secretary of Interior Columbus Delano argued that when final payments under the provisions of the 1855 treaty were made all tribal relations would cease and the Indians would become citizens, and thus eligible to use the Homestead Act in acquiring public lands.¹² This particular interpretation of Indian status proved shortlived, however. In response to inquiries from Agent George Betts, the commissioner of the General Land Office ruled in 1875 that Michigan Indians could not take up land under the Homestead Act.¹³ In practice, therefore, the members of the Burt Lake band were obviously not considered citizens equal in rights and responsibilities to other citizens. They maintained a special status.

Furthermore, the federal government continued to recognize the legitimacy of the bands as semi-sovereign units despite the state citizenship of their members. In the 1860s the government reemphasized this position by preparing to negotiate a new set of treaties with the Ottawa and Chippewa bands of northern Michigan. In April of 1864, with the ten year provisions of the treaty of 1855 about to expire, agent D.C. Leach had suggested to the commissioner of Indian affairs that new treaty councils be held in Michigan.¹⁴ Identical problems seemed to plague government dealings with all the Ottawa bands: the collapse of the "civilization" programs, the failure of the 1855

treaties to provide land for minor children, and the need to compensate for the disastrous combination of incompetence in the Indian office and fraud and trespass by settlers that threatened to make the fulfillment of the land provisions of the 1855 treaty impossible. Leach's solution to these problems was treaties that would concentrate the various bands on larger reservations.¹⁵

The commissioner of Indian affairs responded to Leach's suggestions by requesting that the agent draw up some draft treaties; Leach acceded to the request quickly, mailing off a sample document in early May. He was ready to begin negotiations with the Saginaw, Swan Creek, and Black River bands of Chippewas immediately, but he wanted to delay negotiations with the Ottawa and Chippewa bands until he could "more fully ascertain their wants and views."¹⁶ By early June Leach had not only conferred with the Ottawa and Chippewa bands, he had promised them new treaties.¹⁷ The treaties Leach proposed would concentrate the bands on the enlarged Burt Lake and Little Traverse reservations. There, they would become the objects of new "civilization" programs.¹⁸

In 1865 the federal government clearly believed that the Burt Lake band, along with the other Ottawa and Chippewa bands, were autonomous units with whom new treaties could be made. Leach intended to negotiate with most of the Michigan bands during his annual journey around the state to pay annuities, but his fellow treaty commissioner,

Dr. Henry Alvord, failed to arrive by late summer. Leach, eager to miss the dangerous fall storms on the Great Lakes, left without him. Alone, neither commissioner had power to negotiate the treaties, and, while Leach toured the lake, Alvord, having finally reached Michigan, could only await his return. By the time the two commissioners met in October, it was too late to reach most of the Indians in the state. Leach, however, did talk Alvord, now impatient to return to Washington, into beginning negotiations with the Saginaw, Swan Creek, and Black River bands of Chippewas.¹⁹ These bands were chosen for negotiations largely because of local political considerations.

We hope to make the proposed changes in the treaty of some political use to us. Our Indians, . . . are voters and their votes (particularly those of the Chippewas of Saginaw) may be of great importance to us at the approaching election. They reside in the closest Congressional District in the State & hence, anything fair and honorable that we can do to put them in good humor, & to favorably dispose them towards the Government we wish to do.²⁰

The decision to negotiate first with the Chippewa bands of the Lower Peninsula seemed meaningless enough at the time, but it would have grave repercussions. The Saginaw, Swan Creek, and Black River bands had signed a treaty in 1855 containing the same clause disbanding tribal organization as did the treaty with the Ottawas and Chippewas.²¹ Because in 1864 they possessed the crucial votes in a local election, however, they would get a new treaty that would later spare them questions as to their status as a recognized band or tribe. The Chippewas of the Lower

Peninsula got the treaty intended for all the bands; the Ottawas got only delays.

Just as local politics had speeded the negotiations with Saginaw band and their neighbors, national politics would delay and finally eliminate the treaties with the other Indians of Michigan. Without the pressure of close elections and with little enthusiasm among most bands for a move to Little Traverse, preparations for the treaties lagged during 1865 and 1866. The government withdrew a large tract from the public domain near Little Traverse for use as a reservation and in 1866 sent out Dr. Alvord once more, this time as a special agent to determine the condition of the various bands.²² His report was sobering. The "civilization" program was a mismanaged travesty and the land provisions of the 1855 treaty remained unfulfilled.²³ The various bands meanwhile had become more importunate in their demands for new treaties; treaties they claimed had been promised them in 1864.²⁴ In January of 1866 the chiefs of the Grand Traverse, Little Traverse, and Cross Village Ottawas asked permission to visit Washington. They wanted new treaties which would provide continued government services, government trusteeship over the money still due them, and enough land to provide for their children as they came of age.²⁵ By May delegates from Grand Traverse had reached Washington ready to negotiate.²⁶ The other bands applied similar pressure. In August the Grand River bands asked in council that U.S.

commissioners meet them in Grand Rapids or some other point for new treaty negotiations. They claimed that their agent had promised them a treaty by the previous spring.²⁷ Late in 1866 or early in 1867 the chiefs of the Sault bands sent still another petition for a new treaty to Washington.²⁸

Early in 1867 the government still planned to negotiate the treaties. In March the commissioner of Indian affairs reiterated his plans for treaties, but the department had delayed too long. On March 29 Congress passed new legislation depriving the Bureau of Indian Affairs of the right to negotiate treaties without prior congressional approval and appropriations.²⁹ The commissioner still felt treaties were desirable, but he believed them to be impossible without first going to Congress.³⁰

The Ottawa and Chippewa bands were not to be put off so easily, however. At the annuity payments in the fall of 1867 Agent Richard Smith could only prevent them from dispatching delegations to Washington by promising to arrange a general council himself.³¹ With the coming of spring, the bands were unwilling to wait any longer for the new treaties. The Grand River Ottawas prepared to send delegates to Washington, complaining that "we have laid this matter before our agent year after year but no answer yet. While other tribes of Indians are making treaties with the government every year (sic)."³² When the government withheld permission to come to Washington, the band dispatched a delegation authorized to make a new treaty

anyway.³³ This delegation failed to get a treaty, but they believed they had gotten a promise that a general treaty commission would visit Michigan.³⁴

The insistence of the Grand River Ottawas on new treaties finally did lead to the appointment of Agent Richard Smith and T.W. Ferry, a Michigan member of the House of Representatives, as treaty commissioners. Ferry was supposed to accompany Smith on his annuity rounds and the pair, beginning at Grand River, would negotiate treaties with the various bands. Unfortunately, Smith departed to pay the annuities before instructions ordering him to wait for Ferry arrived.³⁵ Even after this fiasco, reminiscent of the similar failure of commissioners to meet in 1864, the Bureau of Indian Affairs remained willing to proceed with the treaties. The commissioner of Indian affairs, N.G. Taylor, ordered Smith to have the Grand River band put into writing such demands as would form the basis of treaty negotiations and to elect delegates to send to Washington. The band would, however, have to pay the expenses of the delegation itself.³⁶ Similar instructions were sent out to other bands.

The failure of Ferry and Smith to make connections would be one of those accidents, minor enough at the time, that would cost the various Ottawa and Chippewa bands dearly. By January of 1869 the commissioner of Indian affairs had changed his mind on negotiations. He wrote the secretary of interior:

The Ottawas and Chippewas have for several years been anxious to make some new arrangement whereby they can procure allotments of land for their children for whom no provision was made by the treaty of 1855, which omission they say was an oversight. The same oversight occurred in the treaty with the Chippewas of Saginaw, Swan Creek, and Black River of August 2, 1855 which was remedied by the treaty with those Indians of October 18, 1864. This desire on the part of the Indians seems but just and proper, but in as much as the terms of the 5th article of the treaty of 1855, dissolves the tribal organization of the Ottawas and Chippewas negotiations with them can now only be had with the individual bands of said Indians, as provided for by said article, therefore, should it be determined to accede to the wishes of the Indians in this respect, it is suggested that this end can be more readily accomplished by Congressional enactment than by treating with the numerous bands of these Indians, and certainly with far less expense to the Government.³⁷

The Indian office in 1869 still recognized the bands as intact, still saw them as capable of negotiating new agreements with the United States, and still saw their demands as just. The commissioner rejected new treaties solely on the ground of convenience and expense.

Even as the commissioner of Indian affairs was turning against new treaties, the various bands were meeting in council to appoint delegations to visit Washington according to the commissioner's earlier invitation.³⁸ The decision of the commissioner to rely on legislation rather than treaties to solve problems facing the bands, and the failure of the government to pay the expenses of Indian delegations, aborted the councils proposed for 1869. The Little Traverse band continued to ask for funds to visit Washington, but none were forthcoming.³⁹ It would

be two more years before the last request by the Grand River band for a new treaty, but most of the bands appear to have become resigned to the American reluctance to negotiate.⁴⁰ They seem to have come to rely on Indian homestead legislation to solve their land problems.⁴¹

These abortive negotiations have been covered in such detail because they clearly demonstrate that government did not believe that the 1855 treaty had dissolved the political organization of the Ottawa and Chippewa bands. The government was willing to negotiate treaties identical to that made with the Saginaw, Swan Creek, and Black River bands; the American failure to do so never stemmed from any belief that the political organization of the bands had been disbanded. If accidents and policy changes had not intervened, the Burt Lake band would have signed a treaty nearly identical to the treaty of 1864 negotiated with the Saginaw, Swan Creek, and Black River bands and any question as to their status as recognized bands would have been avoided.

The failure of the government to execute the planned treaties with the Burt Lake and other Ottawa and Chippewa bands introduced an additional element of confusion into their relationship with the federal government that has persisted until the present day. To understand subsequent relations of the Burt Lake band with the United States government it is necessary to briefly examine the

roots of this confusion. Misconceptions about the actual status of the bands lie largely in the reports of a few officials unfamiliar with the background of the treaty and the context of Article five. Recognizing that the Indians were citizens of Michigan, they simply read the 1855 treaty and presumed that all native political organization had vanished under its terms. Thus Agent James Long claimed in 1871 that with the last annuity payment the Indians "become citizens and lose their tribal character--the tenure under which the U.S. has been their trustee is vitiated and rendered a nullity."⁴²

Agent Long, however, recognized certain logical inconsistencies in his position and was troubled by them. How, he inquired of Washington, if the government had dissolved the tribal relations of the Chippewas of Saginaw, Swan Creek, and Black River in 1855 could those bands negotiate a new treaty in 1864?⁴³ The obvious answer was, of course, that their band organization, like that of the Ottawas and Chippewas, had remained intact. As Long recognized, the theory of total dissolution sometimes voiced after 1870 never meshed with government practice.

Nevertheless, uninformed readings of the treaty continued to give rise to similar positions. In 1872 Secretary of Interior Delano argued that Article 5 of the Treaty of 1855 meant that with the last annuity payments the tribal organization of the Ottawas and Chippewas would disappear and they would become citizens like any

other citizen. Delano's interest in the dissolution of tribal ties and the bestowal, ipso facto, of United States citizenship was well-intentioned. He wanted to counteract the failure of the land provisions of the treaty and give the Indians homestead rights on the public lands of Michigan.⁴⁴ His logic, however, was fallacious and was rejected implicitly in June of the same year when Congress passed special legislation giving the Ottawa and Chippewa limited homestead rights⁴⁵ and explicitly in 1875 when the General Land Office ruled that the Indians were not entitled to the benefit of homestead laws.⁴⁶

Another formulation of this position occurred in some of the annual reports of the Mackinac Agency during the 1880s. In 1887, for example, Agent Mark Stevens maintained that "As has heretofore been stated in former reports of this agency the Indians do not maintain any tribal relations and are not known or treated as having tribal relations but in all respects are citizens on an equality with whites, exercising the right of suffrage, and many of them holding local offices."⁴⁷ As noted previously, the government had never considered state citizenship incompatible with wardship and band status. To say they were state citizens was never proof of their loss of band status. Years later lawyers within the Bureau of Indian Affairs would, in effect, pronounce Stevens' opinion incorrect. The members of the Ottawa-Chippewa bands did not have equal status with the Whites;

they were not citizens of the United States until at least 1887 and, given their band status, probably not until 1924.⁴⁸

Despite the weakness of their premises, opinions such as Long's and Stevens' would gradually pervade the Bureau. A quick and superficial reading of the Treaty of 1855 seemed to support the belief in the dissolution of all Ottawa political organization, and no one within the Bureau investigated the matter much further. Bureau officials apparently never consulted the minutes of the treaty council which made the actual meaning of Article five, the clause that dissolved the Ottawa and Chippewa Tribe (not the bands themselves), quite clear. As a result, the belief in the dissolution of the bands took on a legitimacy within the Bureau that it never deserved. This legitimacy was not total, however.

The treaty had, after all, also involved the Ottawas and they stubbornly retained their own band and community organizations. In 1878 Special Agent E.J. Brooks reported that the Indians had never recognized the dissolution of the bands and many Ottawas contended that American officials had no power over them.

It is without doubt the fact that at the date of the treaty the Indians had no conception of the position in which they were placed by the dissolution of their tribal relations. I know that they accepted the conditions and obligations of citizenship reluctantly and even now many among them claim that the constituted authorities have no jurisdiction over them.⁴⁹

Whenever the government had to deal with the Ottawas, they inevitably gave de facto recognition to the continued existence of the bands by negotiating with authorized chiefs, headmen, or band delegates. The result was a basic contradiction between policy and practice in which the practices of the Bureau of Indian Affairs occasionally reflected the realities of the situation while Bureau policy statements often were grounded only in the misreading of the treaty. For example, Agent Mark Stevens, whose assertion of the dissolution of tribal relations has already been quoted, nonetheless reported in 1886 that:

While no tribal relations exist, yet the Indians annually elect certain of their number, whom they call chiefs or headmen, whose duty it is to transact all business with the Government or the Indian agent, sign all papers and stipulations, which they consider as binding upon the band.⁵⁰

At Burt Lake this persistence of an Indian community under traditional native leadership is especially clear.

The Burt Lake Community

The refusal of As-sa-gon to sign the Treaty of 1855 without permission of his band demonstrated the considerable independence of the Burt Lake people within the Ottawa confederation centered on Little Traverse. The result of As-sa-gon's refusal was that the Burt Lake band came under the treaty independent of the other bands. Not until July of 1856, after having consulted with their fellow band members, did As-sa-gon and Ke-che-go-we, the chief of the band, consent to the terms of the treaty and sign the

amended treaty at Little Traverse.

The independence the Burt Lake band demonstrated in the treaty councils would change little in the years following the treaty. When the band shared a common interest with the other Ottawas, however, local leaders would still often act in concert with the other groups around Little Traverse. As-sa-gon died in the Civil War, one of the numerous Ottawas who enlisted or who were paid as substitutes to join the Union Army, but Ke-che-go-we continued to represent the Burt Lake Band in negotiations with the government that affected all the Ottawas. He joined the Ottawa efforts to secure new treaties in the 1860s, and asked that the final money due them under the Treaty of 1855 be held in trust by the federal government.⁵¹ Other band members signed multi-band petitions against the diversion of annuity money to build unneeded sawmills for the Indians, and for the distribution of land patents under the treaty.⁵²

This political cooperation with other bands was supplemented and sustained by considerable intermarriage, but still the Burt Lake band, more than any other Ottawa band, managed to remain separate and distinct. In other areas of Michigan the numerous independent bands that had made up the confederations of Ottawas at Grand Traverse, Little Traverse, and Grand River gradually lost their distinctive identity. They merged into larger units, forming the present Grand Traverse band, Little Traverse

band, and Grand River band. At each of these places the old band structures evolved into new communities composed of the mixed descendents of formerly independent bands. But this did not happen at Burt Lake.

The Burt Lake band remained separate from what became the Little Traverse band. Agents consistently referred to them as the Burt Lake or Cheboygan band while the other bands faded from the record.⁵³ Partly this was due simply to geographical location; they were an inland band while the other bands lived on the shores of Lake Michigan or along its bays. Because of their location the agents rarely saw them, and of all the Ottawa bands they are mentioned the least in the records of the Bureau of Indian Affairs. Partly, too, their independence resulted from their foresight in purchasing the lands around their village in the 1840s and deeding it in trust to the governor of Michigan. During the nineteenth century this gave them a certain stability and did not force them to face the choice between migration to other Ottawa communities or the landless poverty that members of other Ottawa bands confronted. In any case, this retention of old band identity and independence was unusual and set them apart from the other Ottawas.

Just as band organization persisted much longer at Burt Lake than elsewhere, so did traditional band chieftanship. Ke-che-go-we remained band chief into the 1860s and then was succeeded by Joseph Wa-bwe-dom.⁵⁴ The agents

continued to recognize these men as chiefs and referred to them as such in their correspondence during the 1880s.⁵⁵ In the early twentieth century, after the band was burned out from Burt Lake, chieftanship appears to have become more diffuse; the 'chiefs' now formed something of a council. When in 1908 Horace Durant was compiling rolls of the Ottawa and Chippewa bands for the payment of claims case money, he consulted the leadership of the Burt Lake band to determine band membership.

The Chiefs of the Burt Lake Band of the Traverse Indians say that Elizabeth Harris was a Canadian Indian who was enrolled with them in 1870, but afterwards returned to Canada and she has not been heard from for thirty years or more.⁵⁶

Durant's note reveals that the government still recognized the persistence of both the band and its native leadership. The government also acknowledged the right of the band to determine its own membership.

The center of the Burt Lake band for all the nineteenth century remained the old village site on sections 28 and 29, Township 36 N, 3 W near the present Colonial Point, formerly Indian Point, on Burt Lake. Here were the Indian homes, a Catholic church, and for a while after the treaty, a government schoolhouse. For most of the half century following the treaty anywhere from a dozen families to thirty families lived on this land with more people scattered nearby on the allotments they eventually received under the treaty of 1855. In the 1870s, before extensive white settlement began and taxation of Indian

lands increased, the village, known simply as Indian Village throughout the period, was fairly prosperous. The Catholic priest at Harbor Springs, Edward Jacker, gives the most complete description of the village during this period.

My host in Indian Village, Joseph Windegowish Webwetan, keeps four horses, five cows, pigs, geese, ducks, chickens and raises feed for them and cereals and potatoes for his family and sells stock to provide for other necessities including such luxuries as tea and coffee. He plays the organ and reads English and Ottawa (sic). The dozen of families belonging to that settlement built a good sized church with their own hands. They have a good choir that sings masses in Latin and vespers in Ottawa, . . . the proportion of those that read--one teaching the other--by far exceeds that among the Canadians or the Irish of the older generation. On Sundays they dress well, even elegantly.⁵⁷

Twenty years later, when the land at Indian Village was about to be seized for taxes, the houses burned, and the villagers driven away, little sign of this prosperity remained.

Governor Pingree recommended that the State appropriate money for the purpose of buying land sold for taxes and giving back to Cheboygan Indians. There are many people who have an idea that the Indians referred to are a tribe named "Cheboygan," numbering about 200, who have earned their living by selling fancy baskets and berries, and lived on their reservation on the shores of Burt Lake. Indian Village, comprised about a dozen houses scattered on either side of the street, with no attempt at adornment, although one or two houses were equal to many in this City, underbrush grew between the houses and the fence, and paint was evidently no more used on their buildings than war paint on their faces or bodies. There are some Indians who have farms a short distance from the Village, who are industrious and make a living, but the report of the Superintendents of the poor shows a long list of Indians' names.⁵⁸

The decline of the Burt Lake band into poverty reflected in these quotations parallels that of many other Ottawa communities in Michigan. In time this poverty, and the exploitation which accompanied and caused it, would deprive the band of its land and the band members of their homes. But before dealing with this, it is best to emphasize a few points covered so far that would later be widely misunderstood and cause the Burt Lake band numerous legal and political problems. First, the Treaty of 1855 did not dissolve the bands. The government recognized this in theory for nearly two decades after the treaty, and in practice for much longer. Second, the confusion over the status of the Indians in Michigan arose more from the Michigan State Constitution of 1850 than from the Treaty of 1855. Indian citizenship in Michigan represented the result of political opportunism and corruption within the Indian Bureau; it was not the result of any desire of the Indians to forsake their own communities and assimilate into White society. Finally, the Burt Lake band persisted as a separate political unit with its own leadership, land, and community throughout the nineteenth century. Local whites had even come to regard them as separate tribe--the "Cheboygan Tribe."

The Burt Lake band lived in Indian Village for nearly half a century following the treaty. Then, in the fall of 1900, white men came, routed them from the village, burned their homes, and seized their lands. The band survived,

but Indian Village lay in ashes, not be rebuilt. The story of how this came to happen, centers on land, the land bought in the 1840s when the Burt Lake band, under the old chief Ke-che-go-we, had purchased the property on which Indian Village once stood and had it placed in trust to the governor of Michigan.

Footnotes

¹Constitution of 1850, Article 7 - Elections, in Michigan Compiled Laws, Annotated; Volume I: Organic Laws . . . Constitution of Michigan (St. Paul, 1967) 315.

²NA, M 234, Mack., R 407, f 298, Jacob Howard in Detroit Daily Advertiser, 10/9/60.

³NA, RG 123, Letter of Transmittal, Treaty of July 31, 1855, Manypenny and Gilbert to Acting CIA, 8/7/56.

⁴NA, M 234, Mack., R 404, f 269, G. Johnston to CIA, 10/3/56.

⁵NA, M 234, Mack., R 406, f 531-34, W. Johnston to CIA, 1/19/59.

⁶NA, M 234, Mack., R 406, f 652, Fitch to Greenwood, 3/20/60.

⁷NA, M 234, Mack., R 406, f 659, Fitch to Johnston, 1/2/58.

⁸NA, M 234, Mack., R 406, f 783-84, Petition of Democratic State Committee to the President, 2/22/60.

⁹NA, M 234, Mack., R 406, f 298, J. Howard in Detroit Daily Advertiser, 10/19/60.

¹⁰NA, M 234, Mack., R 407, f 713, D.C. Leach to Cole, 1/21/65; f 639, Mix to Usher, 1/26/65; f 642, N. Miller to Lt. Col. Hill, 2/18/65.

¹¹NA, M 234, Mack., R 409, f 628, Secretary of Interior to CIA, 7/24/71.

¹²NA, M 234, Mack., R 410, f 433-36, Delano to Walker, 2/27/72.

¹³NA, M 234, Mack., R 411, f 591, Commissioner of Land Office to Betts, 1/12/75.

¹⁴NA, M 234, Mack., R 407, f 402, Leach to CIA, 4/22/64.

¹⁵Ibid.

¹⁶NA, M 234, Mack., R 407, f 488, Leach to CIA, 5/10/64.

¹⁷NA, M 234, Mack., R 407, f 1061-1062, Smith to CIA, 2/12/66.

¹⁸NA, M 234, Mack., R 407, f 517-519, Leach to CIA, 6/14/64.

¹⁹NA, M 234, Mack., R 407, f 539-540, Leach to CIA, 10/4/64.

²⁰Ibid.

²¹"Treaty with the Chippewa of Saginaw, Etc., 1855," Article 6, 11 Stat., 633, Kappler, Laws and Treaties, 2: 735.

²²NA, M 234, Mack., R 408, f 865, Leach to CIA, 10/19/69.

²³NA, M 234, Mack., R 407, f 855-65, Alvord to CIA, 11/16/66.

²⁴NA, M 234, Mack., R 407, f 1061-1062, Smith to CIA, 2/12/66.

²⁵NA, M 234, Mack., R 407, f 1035, Head Chiefs of Grand and Little Traverse to CIA, 1/20/66; f 1061-1062, Smith to CIA, 2/12/66.

²⁶NA, M 234, Mack., R 407, f 834-835, Chiefs of Grand Traverse to CIA, 5/17/66.

²⁷NA, M 234, Mack., R 407, f 978-981, W.T. Howell to Secretary of Interior, 8/4/66; f 982-983, Petition of Grand River Chiefs, 8/1/66.

²⁸NA, M 234, Mack., R 408, f 79, CIA to Secretary of Interior, 5/8/67.

²⁹NA, M 234, Mack., R 408, f 810-812, CIA to Secretary of Interior, 5/11/67.

³⁰NA, M 234, Mack., R 408, f 79, CIA to Secretary of Interior, 5/8/67.

³¹NA, M 234, Mack., R 408, f 323, Smith to CIA, 12/2/67.

³²NA, M 234, Mack., R 408, f 544-45, Chiefs of Grand River to CIA, 5/8/68.

³³NA, M 234, Mack., R 408, f 562, Smith to CIA, 6/12/68; f 434-435, Declaration of Chiefs and Headmen, Grand River, 6/3/68.

³⁴NA, M 234, Mack., R 408, f 431, Foster to CIA, 8/26/68.

³⁵NA, M 234, Mack., R 408, f 574-75, Smith to CIA, 10/29/68.

³⁶NA, M 234, Mack., R 408, f 814, Taylor to Smith, 10/21/68.

³⁷NA, M 234, Mack., R 408, f 489-497, CIA to Secretary of Interior, 1/27/69.

³⁸NA, M 234, Mack., R 408, f 945-47, Smith to CIA, 1/25/69.

³⁹NA, M 234, Mack., R 408, f 912-913, Louis MacSauler to CIA, 5/20/69.

⁴⁰NA, M 234, Mack., R 409, f 1024-1025, Grand River Chiefs to CIA, 6/21/71.

⁴¹NA, M 234, Mack., R 409, f 927, Grand Traverse Chiefs to President, 3/22/71.

⁴²NA, M 234, Mack., R 409, f 761-765, Long to CIA, 4/3/71.

⁴³NA, M 234, Mack., R 409, f 185-188, Long to CIA, 4/14/70.

⁴⁴NA, M 234, Mack., R 410, f 433-36, Delano to CIA, 3/27/72.

⁴⁵"An Act for the restoration to market of certain Lands in Michigan . . ." (June 10, 1872, Statutes, 11, page 621) copy with Circular, NA, M 234, Mack., R 411, f 214-215, Circular, July 5, 1872.

⁴⁶NA, M 234, Mack., R 411, f 591, Commissioner of General Land Office to Betts, 1/12/75.

⁴⁷CIA, Report, 1887, 127.

⁴⁸NA, RG 75, Bureau of Indian Affairs, Classified Files, 1907-1939, Sault Ste. Marie, file 96000-1919-013, Memorandum, Chief Counsel, Land Division, 6/8/35.

⁴⁹NA, M 234, Mack., Brooks to CIA, 1/4/78, p. 6.

⁵⁰CIA, Report, 1886, 165.

⁵¹NA, M 234, Mack., R 408, f 608, Petition to CIA from Little Traverse, n.d.

⁵²NA, M 234, Mack., R 409, f 383-387, Petition to CIA from Ottawas, Duncan, Michigan, 1/12/1870; R 411, f 531-532,

Petition of Ottawa and Chippewa to Secretary of Interior, 7/24/71.

⁵³See for example, NA, M 234, Mack., R 413, f 260-261, Secretary of Interior to Commissioner of Indian Affairs, 7/25/___ (sic).

⁵⁴NA, RG 75, BIA, Tract Books of the Ottawa and Chippewa Bands in Michigan, Treaty of July 31, 1855, Tract Book 46-A, Cheboygan Band; Michigan State Record Center and Archives, Executive Office Box 139, file 1, Kishizoo to Governor, 6/12/85. Hereafter cited as SRC, Ex. Box 139, f 1, . . .

⁵⁵NA, M 234, Mack., R 415, Lee to Hayt, 1/5/80; SRC, Ex. Box 139, f 1, Enos Kishizoo and Joseph Webetum to Gov. Alger, 1/12/85.

⁵⁶NA, RG 75, BIA, Special Agent Files, 45533-1908-053, Henry B. Durant, Durant Roll, p. 31, Burt Lake, note on Elizabeth Harris, no. 28, by Durant 10/24/08.

⁵⁷Edward Jacker Manuscript Collection, Burton Historical Collection, Detroit Public Library, Jacker to Sister, 6/21/77.

⁵⁸Michigan State Archives, Vertical Files: Indians, Burt Lake, Cheboygan County, Cheboygan Democrat, 12/22/1900.

CHAPTER IV

THE BURN-OUT

Indian Village, located on the trust land purchased in the 1840s, had always remained the center of the Burt Lake band. The band had, however, also acquired title to additional lands under the Treaty of 1855. The treaty allowed band members to select allotments in severalty from lands reserved for the Indians in Townships 35 and 36 North, Range 3 West.¹ Not all the land within these reserved townships were available for allotment. The lands in and immediately around the village were already held in trust by the governor, and a much larger area within the two townships were part of swamp land grants made before the treaty had been approved.² Despite a great deal of government incompetence and fraud by American settlers, the Indians did obtain allotments from these lands in the 1870s; in some cases, these tracts bordered the lands of Indian Village proper.³ The allotment of land to individual band members thus created two separate kinds of land tenure around Indian Village--band ownership of land deeded in trust to the governor of Michigan and individual ownership of allotted lands. The Indian allotments were held in

trust by the United States and remained untaxable until a final patent was issued. The Indians at Burt Lake received the first of these patents in 1875.⁴ Only then, according to the United States, which never observed Many-penny's promises made during the treaty sessions, did the land become taxable. These two kinds of title--one providing for permanent trust status, the other for a temporary trust, represented a potential source of confusion for local, state, and federal authorities.

The Indians themselves always distinguished between these two types of tenure. They clearly knew that they held Indian village in common and that the governor was their trustee--because this arrangement became a source of controversy within the band. The first indication that some band members wanted to dissolve the trust relationship came in 1860 when Joseph Risicoe, claiming to act on behalf of the band, wrote the governor of Michigan to ask that the land be divided and individual deeds issued.⁵ The governor, as trustee, did not consent to the division, and the lands remained undivided. The impetus for Risicoe's request became clearer in 1872 when the governor received another request to divide up the lands from Andrew Porter, who lived in Emmett County, Michigan. Porter reported that the question of division was of "old standing among the Indians." The Cheboygan band members living at Indian Village had no desire to alter their present title to the land, but those members

who had married into the Little Traverse bands and moved away from the village wanted the common lands divided and distributed. Porter suggested a council between the two groups with "a good white man on each side." If a decision was reached, "then should you approve it," and their deeds could be "all made out for you to sign."⁶ Again the governor refused to dissolve the trust. No division took place. This correspondence clearly demonstrates that the Indians recognized that title to their land lay in trust with the governor and his approval was necessary before any division of the lands could take place. Twice governors were approached to divide the land by factions within the band, and twice they did not act.

The failure to secure the cooperation of the governor of Michigan did not end attempts to dissolve the trust status of the land. In 1877 the Commissioner of Indian Affairs apparently received a request from the same people Porter had represented asking for a division of the land.⁷ He ordered Agent George Lee to investigate the situation. Since the federal government was deeply committed to a policy of individual allotments, the Commissioner eventually approved the division. He recommended to the secretary of the interior that money be appropriated to hire a surveyor and divide the common lands. The secretary, however, ruled that the lands were beyond the jurisdiction of the department and the expenditure of funds to divide them would be "without warrant of law." He denied the

request.⁸

Although attempts to divide the land proved abortive, other actions undertaken on the advice of federal employees proved more pernicious to the welfare of the Indians. Under the 1855 treaty the government had built a schoolhouse at Burt Lake. During part of the 1860s the Mackinac Superintendency stationed a schoolteacher named John Heaphy there. Heaphy, whose name and activities entered the oral tradition of the band and were remembered seventy years later, became the federal employee closest to the Burt Lake band.⁹

As the federal representative at Burt Lake, Heaphy participated in the patronage system that arose after the Treaty of 1855 to secure Indian votes. Heaphy's duties included insuring that the Indians voted for Republican candidates. He secured the necessary votes through his control of annuities under the 1855 Treaty, annuities which, because of various delays and controversies, were still being paid in the late 1860s. Those Indians who voted as they were told got their annuities; those who did not vote, or voted for the wrong people, got nothing. In 1865, for example, two men, Nouquiskon and Webwetum, the chief of the band, asked Heaphy for a harness. Heaphy admitted Nouquiskon needed the harness, but "if any distinction is to be made between the supporters of the administration and opponents," Nouquiskon's claim was weak and Webwetum's, who was loyal to the party, quite strong.¹⁰

If a band member wanted harnesses or if he wanted to be sure of his annuities, he voted as Heaphy told him.

It was this system that apparently first involved the trust land with local taxes. When the Township of Burt was organized, Indian lands were assessed for taxes. This was a common practice in Michigan, not only on lands placed in trust to the governor of Michigan, but also on Indian lands still in trust to the federal government. In 1869, for instance, Agent James Long wrote the auditor general of Michigan to ask him to prevent assessors from taxing Indian lands for which no patents had been issued. Such lands were clearly defined as trust lands, but the auditor general refused, asserting that he knew of no law by which lands for which certificates (that is proof of selection and a promise of the eventual issuance of a patent) had been issued were exempt from taxation.¹¹ Indians often refused to pay such taxes, and Indians often lost their land. Heaphy persuaded the Burt Lake band to pay taxes on their trust land.

Heaphy's motives in this decision to pay taxes seem transparent enough. He wished to control Burt township through Indian votes and sought to avoid any challenge to Indian voting based on their exemption from taxation. With the majority of the voters in the township Indian, Heaphy, by his control of federal annuities, could insure that "loyal" Indians would hold office in the county. Joseph Webwetum, for example, was township treasurer during the

1860s, and other Indians held similar township offices.¹² Because the Indians held the land in common and the deed listed the governor of Michigan as trustee, deciding who should pay the taxes on them proved difficult. The actual assessment was made by listing the land under the name of ten individual Indians in 1860 and 1862. In 1863 through 1866 the lands were assessed to Joseph Webwetum, the chief.¹³ Webwetum was no longer listed as the owner in 1867; the lands were assessed as "Indian Company Lands," a practice that was continued until 1868.¹⁴ During these years, except in 1862, the Indians, still following Heaphy's advice, initially given when the schoolteacher controlled the annuities, paid the taxes.¹⁵ In 1870, for the first time since 1862, the band did not pay their taxes, and then, in 1871, the county stopped assessing the lands. The county did not resume assessing them until 1874 when they were once more assessed to the "Indian Company" and paid by the Indians. In 1875 the assessor followed the same procedure. In 1876 and 1877 the lands were not assessed. In 1878 for the first time they were assessed to "Non-Resident" and a long series of tax delinquencies on the land began.¹⁶ It was in 1878 that the county began offering tax titles on the trust land, and all of it was eventually sold for taxes.¹⁷

This erratic tax history appears quite confusing. But just as the traditions of the band and surviving records explain why the Indians began paying taxes, so they

explain why they stopped. According to old band members in the early twentieth century, one year, when Joseph Webwetum went to pay taxes on the land, W.H. Maultby, the county treasurer, refused to accept the money. He said the land was not taxable. According to Enos Cabenaw, "The Band was not called upon to pay taxes there-after (sic) and we supposed that the matter was settled. The next I heard of it was in connection with the sale of the land several years later for unpaid taxes."¹⁸ Mr. Maultby served as county treasurer from November of 1870 until 1878, and so the date of this incident was probably 1871, Maultby's first year in office and the first year the land was not assessed.¹⁹

Why this land was briefly returned to the tax rolls in 1874 and 1875 is not clear, but its permanent return to the rolls in 1878 is explicable. In 1878 Watts S. Humphrey, a lawyer who would be sporadically associated with the band in a variety of contexts until his death, was elected county treasurer.²⁰ His election marked the return of the lands to the tax rolls, now assessed to "Non-Resident." What is particularly interesting about Mr. Humphrey's election and the decision to tax their land once more is Humphrey's history as a speculator in tax deeds. Humphrey bought the 1873 tax title to Lot 5, section 28, T 36 N, R 3W, one of the lots adjoining Indian Village and part of the trust land. Because of confusion in the original surveys, this was the only lot in

Indian Village assessed for taxes with any consistency during the 1870s.²¹ Mr. Humphrey would continue to acquire other tax titles on this lot in the 1880s.²² Any conflict between speculating in tax titles, serving as county treasurer, and deciding to take required tax payments on trust lands apparently escaped Mr. Humphrey.

The renewal of taxation in 1878 marked the turning point in the history of the trust land. Part of the land had been sold for taxes and the land deeded in 1860, but the sale had been cancelled. And, except for lot 5 in section 28, and two instances where Indians themselves had purchased tax titles, the band's hold on the land had never been clouded.²³ After 1878 the county regularly sold tax titles on the land, and from 1882 through the 1890s portions of the land would be deeded to tax speculators, mainly Edwin Perkins, Robert Patterson, and John McGinn.²⁴ Initially, the Indians remained unaware that their lands were being taxed and purchased out from under them. In Cheboygan County when lands were to be sold for taxes, they were advertised in a local newspaper for the statutory period. The owners were not identified nor notified; the land was listed only by description.²⁵

Not until 1885 did the Burt Lake band begin to have doubts about the security of their village. When people began trespassing on the land, Enos Kishigo, son of the old chief, and Joseph Wabwetum, the chief of the band wrote and asked the governor, R.A. Alger, their trustee,

to assist them. The record of this correspondence is unfortunately incomplete. Although the State Archives of Michigan have a fairly complete record of incoming correspondence, the outgoing correspondence of the governors was destroyed in a fire in the 1950s. What action the governor took in this and other cases is unknown.²⁶ It is only clear that Alger wrote the register of deeds in Cheboygan County and inquired about the title of the land. H.W. McArthur, the register, informed him that the land was recorded on the tract books of the county as being deeded in trust to the governor of Michigan.²⁷

Kishigo's and Wabewtum's letter was not directly concerned with taxes, but it may have been instrumental in raising doubts among some state officials that the land was taxable at all. In January of 1887 H.R. Pratt, the state auditor general, raised this question with Governor Luce.²⁸ Again the reply of the governor is lost. It appears, however, that the matter was not clearly settled since in 1894 a letter from A.J. Blackbird, a prominent Ottawa from Little Traverse, raised the whole issue once more. Blackbird asked the governor's assistance against timber thieves who were operating on the land and selling the timber to dealers in Cheboygan. These men merely hooted at Wabwetum's attempts to stop them. Blackbird, however, then proceeded to raise basic questions about the status of the land: "Can this land which is (held) in trust by the Governor of the State, be & lawfully

assessed for the purpose of collecting taxes thereon? As the said band from time to time been compelled to pay taxes on the said premises. Please inform them as early as possible for they are in great trouble (sic)."²⁹

The governor forwarded the letter to the state land commissioner who assigned it to Burton Parker the deputy state land commissioner. Parker acted promptly.

I have this day instructed Mr. Swart to examine the alleged trespass, and have also written the Secretary of the Interior to learn what the nature of the grant was, the quantity of land involved and its present status. If it shall be found that the lands are held in trust by the State, we shall at once proceed to collect trespass for whatever damages have resulted to the lands by reason of the cutting reported by Mr. Blackbird.³⁰

The letter from the General Land Office that came in response to Parker's inquiry became the basis for many subsequent state decisions. Because it is so important, and since almost this whole letter consists of unsubstantiated hypotheses, it deserves to be quoted and examined in some detail. The letter from A.W. Lamoreaux, commissioner of the General Land Office, reported that the patents to the land had been issued "in trust for the Cheboygan Band of Indians of whom Kee-she-go-way is Chief, to the Governor of Michigan, and his successors, in trust for said Indians," (italics in original) and that the land had not patented or purchased under any special act of Congress. This much is correct, but Lamoreaux went on to write:

It is my opinion, which is coninsided (sic) in by the Commissioner of Indian affairs, in a personal interview, -that the individual members of this Band of Indians not having a sufficient sum of money to purchase a forty (40) acre tract of land each, made up a purse, and purchased the below described lands; paying the government price therefor; and in order to protect the interests of all concerned agreed, among themselves, to have the land purchased by, and patented to, some one in trust for them, and that they selected the Governor of Michigan as the proper person. While it is not common, still it is not an uncommon occurrence, and there is no reason, that I know of, why it should not have been done.³¹

Lamoreaux listed the land involved as the N 1/2 of SW 1/4, and Lots 3 and 4 Section 28, and E 1/2 of NE 1/4, NW 1/4 of NE 1/4 and Lots 1 and 2, Section 29 Town 36 N, Range 3W."³²

As Lamoreaux admitted, his version of the band's acquisition of the land was merely an unsubstantiated opinion. Neither the Land Office nor the Bureau of Indian Affairs made any investigation into the records to see how and why Indians had come to put the land in trust. Officials merely voiced hypotheses. In the twentieth century, when the land had been lost, the Bureau would finally investigate and realize too late that Lamoureaux's version was without substance. The purchase had not been made by a group of Indians individually short on cash. The purchase had been made with the advice and assistance of the Superintendent of the Michigan Superintendency and the agent in charge of the Mackinac Agency. It had not been made with individual funds, but with annuities due the band. The Indians didn't purchase the land "to protect

the interests of all concerned," but rather as part of a larger strategy to remain in Michigan and to protect the common land from seizure for debts and taxes.³³

Lamoreaux's letter formed the basis of the letter Governor John T. Rich solicited from Burton Parker on the tax question. After admitting that the question probably should be answered by the attorney general, Parker quoted the core of Lamoreaux's letter as reproduced above. He seconded this version of events adding no more substantiation than Lamoreaux had. He then went on to argue that the governor of Michigan had been selected as trustee simply because he could always be identified, and that the governor, as trustee:

. . . was not acting in his official capacity for and in behalf of the State, and the State has no interest in the lands by reason of the patent running to the governor in trust for the Indians. The position of the State with regard to the lands is just as it would be if the patent had run to "John Smith" or any other person besides the governor of the State of Michigan."³⁴

Parker's reasons why the Indians had selected the governor of Michigan as trustee contained the same kind of imaginary history as Lamoreaux's. Parker added to this reasoning a short discussion of passive trusts and concluded:

For the reason, therefore, that the legal title to the land is in the Indians, and the trust deed does not vest in the State of Michigan any rights, title or interest of the character contemplated by the statutes relative to trespass upon lands "owned or held in trust" by the State, I am of the opinion that we cannot maintain action for trespass; and that the lands, not being specially exempt, are subject to taxation.³⁵

Parker's letter represents the first rejection by officials of the state of Michigan of the governor's status as trustee and the first official state rationale for taxation of the trust land. It was composed of equal parts ignorance and imagination.

The response of the Burt Lake band to this decision was to retain legal counsel. In a move that reveals how little they realized the depth of their victimization, they retained the firm of Humphrey and Grant of Saginaw, Michigan. One of the partners in the firm was Watts S. Humphrey, ex-county treasurer of Cheboygan County and speculator in tax titles, including titles to Lot 5, Section 28 in Indian Village. Humphrey and Grant nevertheless wrote to Governor Rich inquiring about the title to the land, informing him that it was covered with tax titles and that the twenty or thirty families on the land "have been threatened with ejectment by some tax title sharks who have got hold of those tax titles, . . . It does not seem right that these lands should be seized for taxes, they being held in trust for the Indians by the Governor."³⁶ In reply Rich sent the attorneys a copy of Parker's letter of the year before. Watts S. Humphrey replied that Parker's letters answered his questions fully and apparently dropped the case. This was not the kind of vigorous legal aid the Indian's case demanded.³⁷

One of the tax sharks Humphrey referred to when he wrote the governor in 1895 was John McGinn who had bought

tax titles on Indian land which dated back to 1882.³⁸ In 1893, however, Michigan had passed the Decree Law which changed the way tax titles could be acquired. The new law provided that in cases of nonpayment of taxes the auditor general of Michigan would file a bill in chancery in the county where the lands were located; the application would then be advertised and open to challenge for a set period. Then, if all due procedures had been followed, the county court would grant the bill and a tax sale would follow. The owners would have a year to redeem their land from the purchasers after the sale. At the end of that time, if the land had not been redeemed, the purchaser could serve notice on the owners and, if necessary, get a writ of assistance to evict them. The statute provided that no tax deed could be attacked after five years.³⁹

McGinn took full advantage of the new law. In 1894 he purchased at a tax sale title to all the trust land except lot 5 of section 28.⁴⁰ And in 1895 he began to have this land deeded to him, a practice he continued in 1896, 1897, and 1898.⁴¹ He took no action during this time to evict the band members, however, until December of 1897 when he served notice upon the Indians of his ownership of the land.⁴² One band member, Moses Hamlin, then wrote Governor Hazen Pingree for assistance.⁴³ Pingree turned the matter over to the attorney general, who referred back to Parker's letter of 1894 for evidence that the lands were not exempt for taxation. He also cited the

tax history of the land as demonstrating the owners acknowledgment of liability for taxes. The assistant attorney general, Henry Chase, did, however, apparently have some doubts about the case, since he mentioned that he could find no conveyance by a governor of Michigan returning title to the Indians. He wrote the prosecuting attorney of Cheboygan County to ascertain if such a conveyance was on record there.⁴⁴ It, of course, was not. It is interesting that during this period the treasurer of Burt Township still did not regard the land as taxable and made no attempt to collect taxes from the Indians.⁴⁵

Despite the attorney general's opinion, the Indians refused to leave the land when McGinn served them notice in December of 1897. As a result, McGinn filed for a writ of assistance in January of 1898.⁴⁶ On September 12, 1898 he went to court to obtain a writ ordering the sheriff to help him evict the Indians. The writ he eventually obtained, however, bore the footnote, "Countersigned, May 24, 1902, Nunc Protunc as of Sept. 12, 1898," so a final decree was apparently not rendered until 1902.⁴⁷ McGinn obtained this writ over the objections of B.T. Halstead who acted upon the request of a lawyer from Indiana named Samuel Alden. Alden had vacationed in northern Michigan, knew members of the band, and desired to help them.⁴⁸ On December 8, 1898 McGinn returned to court and obtained a writ of possession for these same lands. This appears to be the writ he used in evicting the Indians.⁴⁹ In all

of these cases the writs were aimed at Indian band members living on the land, not the governor of Michigan to whom the land was deeded in trust for the band as a whole.⁵⁰ The Indians apparently knew nothing of these proceedings and had no role in the retention of Halstead.⁵¹ Their only contact with McGinn during 1898 seems to have been during an attempt by McGinn and some off duty soldiers to bully them off the land. McGinn retreated when the Indians again refused to leave.⁵²

McGinn continued to threaten and harass the Indians in 1899, breaking into their houses and taking possession while they were away, but he refrained from further legal action for most of the year.⁵³ In December of 1899, however, he once more served notice upon individual Indians of his ownership of the land and demanded possession. He threatened to go to court and obtain a writ of assistance. Since a final decree had never been served on McGinn's prior writ of assistance, and since he had refrained from further action, he may have feared Halstead's challenge to his ownership. In any case, his threat here was probably a bluff because he does not appear to have ever returned to court before the burn-out. His threat, however, was enough to prompt members of the band to write President Theodore Roosevelt for assistance, once more putting forth their claim to the trust status of the land.⁵⁴ The letter was referred to the Bureau of Indian Affairs, where, after a brief investigation it was decided that it

should be sent to the governor of Michigan and information solicited on the exact nature of the trust.⁵⁵

The commissioner wrote to Governor H.S. Pingree who in reply sent him Burton Parker's report of 1894, which the governor regarded as factually correct, and an account by the auditor general of the back taxes paid on the land by McGinn. The federal government, too, accepted Parker's old report as a sufficient statement of the facts. The acting commissioner of Indian affairs ordered a copy of the report sent to the Indians at Burt Lake.⁵⁶

The receipt of this report, announcing as it did the refusal of both the federal and state governments to aid them, in combination with McGinn's threats, led a few Indians to leave the village in the spring of 1900. By fall, however, most were back.⁵⁷

And in the fall of 1900 McGinn acted cruelly and decisively. Using the writ of possession obtained two years before, he got the aid of Sheriff Fred Ming and some deputies and on October 15, 1900 went to the village for the last time. Most of the men of Indian Village were away at the time. They had gone to Cheboygan to cash the checks given them for work in the neighboring lumber camps. McGinn and the posse arrived at a village of old men, women, and children.⁵⁸ The sheriff and his deputies removed the household goods from the homes. They offered the Indians the windows and doors of the houses, but the people refused them. The band members just sat patiently

on their goods in the road, waiting for the deputies to leave so they could move back into their homes. But late in the afternoon McGinn systematically moved from house to house dousing each one with kerosene and, as the Indians and the posse watched, set them on fire. He spared only the church.⁵⁹

The fire, remembered to this day among band members as the burn-out, destroyed the village, but it did not destroy the band. For the moment the people of Indian Village dispersed to neighboring Indian towns, some of them like Negonee, a woman of more than a hundred years of age, who had to walk all the way to Middle Village, only to die there,⁶⁰ but most to regroup and try to regain their land. Band ties remained strong and with them the conviction of band members that the land at Indian Village was still theirs--that it was trust land, untaxable, and that, somehow, they would regain possession of it.

Footnotes

¹"Treaty with the Ottawa and Chippewa, 1855," 11 Stat. 621, Kappler, Laws and Treaties, 2:726.

²NA, M 234, Mack., R 404, f 820, Gilbert to CIA, 11/24/55.

³NA, RG 75, Records of the Bureau of Indian Affairs, Tract Book 46 A, Ottawa and Chippewa Bands in Michigan, Treaty of July 31, 1855, T 46 N, R 3 W, Section 28, lots 1 and 2, Joseph, Aw-say-go.

⁴NA, RG 75, BIA, Tract Book 46 A, Ottawa and Chippewa Bands.

⁵Michigan, State Archives and Record Center, Executive Office, Box 139, file 1, Risicoe to Governor, 8/8/60. Hereafter cited as SARC, Exec. Office, Box 139, f 1 . . .

⁶SARC, Exec. Office, Box 139, f 1, Andrew Porter to Governor, 9/7/72.

⁷NA, M 234, Mack., R 411, f 977-984, CIA to Lee, 1/10/77.

⁸NA, M 234, Mack., R 413, f 260-261, Secretary of Interior to CIA, 7/25/78.

⁹Bentley Historical Collection, University of Michigan, Reports, Cheboygan Indian School, Heaphy to Smith, 9/1/65, 9/18/65; NA, M 234, Mack., R 415, f 83-84, Blackbird to Lee, 6/1/80; NA, RG 60, Department of Justice, File no. 158012, Sections 1 & 2, 1-49, Burt Lake File, Affidavits of E.P. Cabenaw and Mrs. Jane Grant, 7/10/14.

¹⁰Bentley Historical Collection, Reports, Cheboygan Indian School, Heaphy to Smith, 9/18/65.

¹¹NA, M 234, Mack., R 408, f 859, Long to Auditor General, 9/29/69.

¹²NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Affidavits of E.P. Cabenaw and Mrs. Jane Grant, 7/10/14; SRC, Record Group 69-45, Records of Cheboygan County, Assessment Rolls for the Township of Burt, 1861, 1866, Box 7.

¹³SARC, RG 69-45, Records of Cheboygan County, Assessment Rolls for Township of Burt, 1860-1866.

¹⁴SARC, RG 69-45, Records of Cheboygan County, Assessment Rolls for Township of Burt, 1866-1868.

¹⁵SARC, RG 69-45, Records of Cheboygan County, Assessment Rolls, for township of Burt, 1860-1868, Box 1-119; NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Affidavits of E.P. Cabenaw and Mrs. Jane Grant, 7/10/14.

¹⁶SARC, RG 69-45, Records of Cheboygan County, Assessment Rolls for Township of Burt, 1870-1878, Box 1-119.

¹⁷SARC, RG 54-9-A, Records of Cheboygan County, Tax History, volume 24 (D), 1856-1881, p. 135; NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Howell To CIA, 5/14/14, p. 13.

¹⁸NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Affidavits of E.P. Cabenaw and Mrs. Jane Grant, 7/10/14.

¹⁹SARC, RG 54-9-A, Records of Cheboygan County, volume 11, Statements of Board of County Canvassers, 1855-1889, Election for County Treasurer, 1878; SRC, RG 69-45, Records of Cheboygan County, Assessment Rolls for Township of Burt, 1870-1878, Box 1-119.

²⁰SARC, RG 54-9-A, Records of Cheboygan County, Volume 11, Statements of Board of County Canvassers, 1855-1889, Election for County Treasurer, 1878.

²¹SARC, RG 54-9-A, Records of Cheboygan County, Tax History, Volume 24 (D), 1856-1881, p. 135. Lot five was considered part of Lot 3 in the original patents. NA, RG 60, Department of Justice File no. 158012, Burt Lake, S.V. Proudfit, Asst. Comm. of General Land Office to CIA, 12/15/1911.

²²SARC, RG 54-9-A, Records of Cheboygan County, Tax History, Volume 26 (E), p. 127.

²³SARC, RG 54-9-A, Records of Cheboygan County, Tax History, Volume 24 (D), p. 135.

²⁴Ibid.

²⁵NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Howell to CIA, 4/14/14, p. 15.

²⁶SARC, Exec. Office, Box 139, f 1, Kishigo and Wabwetum to Alger, 12/12/85.

²⁷ SARC, Exec. Office, Box 139, f 1, McArthur to Alger, 12/22/85.

²⁸ SARC, Exec. Office, Box 177 f 5, Pratt to Luce, 1/10/87.

²⁹ SARC, Exec. Office, Box 139, f 1, Blackbird to Governor, 4/10/94.

³⁰ SARC, Exec. Office, Box 188, f 11, Parker to Rich, 4/14/94.

³¹ SARC, Exec. Office, Box 176, f 6, Lamoreaux to French, 5/15/94.

³² Ibid. Lot 5 of section 28 is not listed because it was part of lot 3 in the original survey.

³³ See the first chapter of this report for how the the land was acquired. For the government's later investigation see NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Asst. Sec. of Interior to Attorney General, 2/17/16.

³⁴ SARC, Exec. Office, Box 188, f 11, Parker to Rich, 5/19/94.

³⁵ Ibid.

³⁶ SARC, Exec. Office, Box 139, f 1, Humphrey and Grant to Rich, 5/27/95.

³⁷ SARC, Exec. Office, Box 139, f 1, Humphrey to Rich, 6/1/95, Box 188, f 11, French to Rich, 5/28/95.

³⁸ Sarc, RG 54-9-A, Records of Cheboygan County, Tax History, Volume 26 (E), p. 127.

³⁹ NA, RG 60, Department of Justice, File no. 158012, Burt Lak, Clyde Webster to U.S. Attorney General, 2/4/14.

⁴⁰ NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Writ of Assistance in Circuit Court for Cheboygan County, 9/12/98.

⁴¹ SARC, RG 54-9-A, Records of Cheboygan County, Tax History, Volume 26 (G).

⁴² NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Statement of John McGinn and Notice, 1/18/98.

⁴³ SARC, Exec. Office, Box 176, f 6, Hamilin to Pingree, 12/11/97, Chase to Pingree, 12/20/97.

⁴⁴SARC, Exec. Office, Box 176, f 6, Chase to Pingree, 12/20/97.

⁴⁵NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Petition of McGinn to the Circuit Court for the County of Cheboygan in Chancery, 1/8/93, Case 385.

⁴⁷NA, RG 60, Department of Justice, File no. 158012, Burt Lake, In the Circuit Court for Cheboygan County in Chancery, In the matter of the Petition of John W. McGinn for a writ of assistance, 9/12/98, Case 385.

⁴⁸NA, RG 60, Department of Justice, File no. 158012, Burt Lake, The Circuit Court for the County of Cheboygan in Chancery, In the Matter of the Application of John W. McGinn, n.d. filed by B.T. Halstead; Howell to CIA, 4/14/14.

⁴⁹NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Writ of Possession, Circuit Court for Cheboygan County in Chancery in the Matter of John McGinn vs. Frank Mixany et al., 12/8/98.

⁵⁰NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Howell to CIA, 4/14/14.

⁵¹Ibid.

⁵²NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Millard to CIA, 10/31/11.

⁵³Ibid.

⁵⁴NA, RG 60, Department of Justice, File no. 158012, Burt Lake, CIA to Secretary of Interior, 1/11/1900, LS, L 561-1900.

⁵⁵Ibid.

⁵⁶NA, RG 75, BIA, Correspondence, Land Division, Volume 220, Letter Books, 439-440, L.S., L 12686-1900, Tanner to Secretary of Interior, 5/17/1900.

⁵⁷Michigan, State Archives, Vertical File, Indians, Burt Lake, Cheboygan County, Cheboygan Democrat, 12/22/1900, p. 1; "Sad Story of the Burt Lake Band," The Totem Pole 37 (March 5, 1956), 5.

⁵⁸NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Register of Deeds Office, Cheboygan County, Writ of Possession, Circuit Court for Cheboygan County in Chancery in the matter of John McGinn vs. Frank Mimancy et al.; Jonas Shawanese Papers, Statements of old band

members, in possession of Burt Lake band members, 1/16/ 53; "Sad Story of Burt Lake Band," 5.

⁵⁹NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Joseph Brady to Attorney General, 2/9/17; Michigan, State Archives, Vertical File, Indians, Burt Lake, Cheboygan County, Cheboygan Democrat 12/22/1900; "Sad Story of Burt Lake band," 5.

⁶⁰"Sad Story of Burt Lake Band," 5.

CHAPTER V

EPILOGUE AND CONCLUSION

The destruction of the Indian Village at Burt Lake prompted, a bit belatedly, official expressions of concern from the Governor Pingree of Michigan. In December of 1900 the governor asked a special session of the Legislature to pass legislation for the relief of the band. The Senate declined, supposedly because it would cost \$8,000 to print and publish the laws in newspapers as required by the constitution of Michigan. Governor Pingree, however, took the matter up again in his message to the Legislature of 1902.¹

Pingree, in his message, gave the standard Lamoreaux-Parker version of the acquisition of the lands. He then added what it appears to be a misconception of his own, one which would explain his own reluctance to act earlier. In discussing the dispossession of the Indians he said that:

It appears that subsequently, under the treaty of July 31, 1855, with the Ottawa and Chippewa Indians, townships 35 and 36 north, range 3 west, were reserved for the Cheboygan Indians for a definite period, and were then patented directly to the Indians according to their several selections. These lands were then held by the Indians precisely as real estate is held by other citizens of the State. They were accordingly taxed the same as other lands.²

It appears from this quote that Pingree mistakenly believed that the trust lands had been allotted under the Treaty of 1855. Pingree then went on to argue that, even though the lands were thus taxable, the Indians did live as if tribal relations were intact, and they resided on a reservation. Although he thought they were mistaken, Pingree also admitted that the Indians had no idea that their lands were subject to taxation. What he failed to perceive was that the Indian's version of the status of their lands and how they had come to obtain them was substantially correct, while his own was riddled with mistakes and misconceptions.

Pingree was, however, honestly moved by the situation of the Burt Lake Indians, and he declared that the State of Michigan had "at least a moral obligation" to restore their land to them. The Indians were "living together practically as a tribe, and should be treated as such by the State." The should "not be dealt with the same as citizens of the State generally."³ He added that Judge Oscar Adams, who ordered their eviction, told him that if he had been aware of the 'Utmost good faith' clause of the Ordinance of 1787, he would not have signed the writ of possession.⁴ Such sentiments, if expressed a few years earlier and accompanied by a real investigation into the status of the land, would have saved the people of the Burt Lake their village and their land. Pingree then asked the Legislature to buy back the land

from McGinn, who was willing to sell, and rebuild the Indian homes. He estimated the whole cost at \$7,700.⁵

If they did so, Pingree suggested that they create

. . . a commission of three persons, whose duty it shall be to secure a re-conveyance to the Indians, or the Governor of Michigan for them, from the present owner of these lands; and I further recommend that the law which you enact exempt these lands from taxation forever.⁶

The Legislature did not adopt Pingree's suggestions in toto, but in 1903 they did pass a joint resolution conveying lands to the band in lieu of those lost by taxation.⁷ In the resolution the legislators repeated Pingree's misconception that the lands lost had been allotted under the 1855 treaty and were properly subject to taxation but they also asserted that the Indians still remained "wards of the State."⁸ Several families from Burt Lake moved to this land on Mullet Lake, while others remained around the small town of Brutus. But the new land was poor and isolated. The desire to regain their old village did not die.⁹ By 1914 most families had moved off the state land on Mullet Lake, and, under the terms of the grant it reverted to the state five years after abandonment.¹⁰

In 1911 Antoine Shawawwanonquet, Isaac Shawawwanonquet, Jonas Shawawwanonquet, Moses Nonquestaw and Paul Wasson renewed the band's attempts to regain title to their original village. They wrote to the attorney general of the United States, once more reciting the facts of the case.

"Sooner or later you will know that we are the right party," they assured him. This attempt to regain the land would persist for years, but eventually it too would prove unsuccessful.¹¹

Still the band refused to die. Band members remained around Burt Lake supporting themselves by logging and, when that declined, by basket weaving and other Indian art work. There were twenty Indian families in Burt Township in 1935, poor but still an identifiable community.¹² In 1935 Oswald McGinn, son of the man who had dispossessed them, would briefly try to get them federal aid. The same year McGinn interceded for them, the band itself, under the leadership of Peter Shawanisigo of Brutus, tried to reorganize under the Indian Reorganization Act.¹³ This attempt to get federal recognition would falter when the Bureau decided to halt reorganization among the Ottawas because of lack of funding.

The band survived this failure, too, and in the early 1950s, with the help of Jonas Shawanese, resumed efforts to regain their old village. Shawanese and various band members would meet with state officials in 1956, but they received little sympathy and less help.¹⁴ Shawanese continued his efforts into the 1960s, and after his death band members retained the results of his research, eventually using it to begin yet another attempt to regain their lands.

Footnotes

¹George N. Fuller (ed.), Messages of the Governors of Michigan (Lansing, 1927, Four volumes) 4:271.

²Fuller (ed.), Messages, 4:272.

³Fuller (ed.), Messages, 4:273.

⁴Fuller (ed.), Messages, 4:274.

⁵Fuller (ed.), Messages, 4:273.

⁶Fuller (ed.), Messages, 4:274.

⁷State of Michigan, Journal of the House, 1903 (Lansing, 1903), 423, 2002; State of Michigan, Journal of the Senate, 1903, (Lansing, 1903), 1629.

⁸Public Acts of the Legislature of the State of Michigan, Passed at the Regular Session of 1903 (Lansing, 1903), Joint Resolution Number 20, 444-446; NA, RG 60, Justice Department File no. 158012, Burt Lake, Howell to CIA, 5/14/14.

⁹NA, RG 60, Department of Justice, File no. 158012, Burt Lake, Howell to CIA, 5/14/14.

¹⁰Jonas Shawanese Papers, Statement of Albert Shenoquet, in possession of Burt Lake band members; Public Acts . . . 1903, Joint Resolution 20, 446.

¹¹NA, RG 60, Department of Justice File no. 158012, Burt Lake, Antoine Shawawwanouquet et al. to Attorney General, 7/20/11.

¹²NA, RG 75, BIA, Classified Files, 23241-1935-723, McGinn to Brown, 5/26/35.

¹³Ibid.; BIA, Field Office Records, Sault Ste. Marie, Classified Files, Tomah, 17413-1938-310, filed in Northern Michigan Ottawa Association file, Blakeslee to Burns, 8/8/35.

¹⁴Michigan, State Archives, Vertical File, Indians, Burt Lake, Cheboygan County, Speech of Jonas Shawanese, 3/12/56; Lansing State Journal, 3/13/56.

¹⁵Shawanese Papers, Shawanese to Editor, Cheboygan Daily Tribune, 5/26/65, Papers in the possession of individual band members.