

REPORT  
OF THE  
SECRETARY OF THE INTERIOR,

RELATIVE

*To the claim of the Brotherton Indians.*

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FEBRUARY 10, 1855.—Read, and ordered to lie on the table, and be printed.

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DEPARTMENT OF THE INTERIOR,  
*Washington, February 9, 1855.*

SIR: By the ninth section of the act of Congress approved July 31, 1854, the Secretary of the Interior was "authorized to investigate the claim of the Brotherton tribe of Indians against the United States, and report the facts to Congress at its next session, or earlier if practicable, together with an estimate for such amount as may be found justly due the said Indians."

The investigation thus ordered has been made, and the facts are embodied in the accompanying report of the Commissioner of Indian Affairs. I have carefully examined that report, and, finding it sustained by the documentary evidence referred to, am unable to perceive that any amount is justly due said tribe of Indians by the United States.

I have the honor to be, very respectfully, your obedient servant

R. McCLELLAND,

*Secretary.*

Hon. JESSE D. BRIGHT,

*President of the Senate of the U. S.*

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DEPARTMENT OF THE INTERIOR,  
*Office Indian Affairs, January 25, 1855.*

SIR: Having received your letter of the 22d November last, asking for a report in relation to a claim of the Brotherton Indians against the United States, mentioned in the ninth section of the act of Congress of the 31st July last, inasmuch as there was not on file here any claim

such as appeared to be referred to in the law, I addressed a letter to the Clerk of the House of Representatives, and received from him, on the 24th ———, the memorial which had been presented to the House of Representatives, at the last session of Congress, by William Fowler, delegate of the Brotherton tribe.

The memorial presents the case of these Indians in a light very favorable to them, and with great skill and brevity. I therefore quote it entire, as follows:

*“To the honorable the Senate and House of Representatives of the United States in Congress assembled.*

“The memorial of the Brotherton tribe of Indians, by the undersigned, their legally authorized agent, respectfully represents:

“That, in the year 1821, the Six Nations, St. Regis, Stockbridge, and Munsee tribes, residing in New York, purchased of the Menomonees 737,280 acres, by metes and bounds, by a treaty negotiated under the superintendence of C. C. Trowbridge, an agent appointed and paid by the United States; said treaty having been permitted, authorized, and encouraged, by Mr. Crawford, Secretary of War, in his letter dated February 12, 1816, and by Mr. Calhoun, in his letters of the 9th February, 1820, and 21st June, 1821, (the originals of which are on file in the Indian bureau.) The treaty thus made was approved by President Monroe on the 9th of February, 1822, and the original, with the endorsed approval, returned to the New York Indians by the Secretary of War, in his letter of the 13th February, 1822.

“That, in the year 1822, another treaty was made between the same parties, John Sergeant being the United States agent to conduct and superintend the negotiation, and Mr. Calhoun having sanctioned the same in his letters of February 13, 1822, and May 8, 1822, by which treaty 691,200 acres were bought. This treaty was approved by President Monroe on the 13th March, 1823, and by Mr. Calhoun in his letter of October 27, 1823, who, in answer to a request that the treaties might be laid before the Senate for their approval, wrote as follows:

“I am much pleased that the delegates have succeeded in the mission to their brethren in the vicinity of Green Bay. The treaty concluded by the delegates with the Menomonees and Winnebagoes, is approved by the President, which is all the ratification that is necessary, *as those treaties only to which the United States are a party require the addition of the sanction of the Senate.*”

“Your memorialists further represent that on the 8th day of January, 1825, the Brotherton Indians bought, by treaty, of the Six Nations, St. Regis, Stockbridge, and Munsee tribes, a tract 30 miles long by eight miles wide—the Six Nations, &c., &c., reserving to each one a tract of equal extent, and ceding to the Brothertons *an equal undivided interest in all the balance of all the lands bought of the Menomonees and Winnebagoes*; that from this date—viz: January 8, 1825—the Brothertons have been recognised by the United States as a portion of the New York Indians, *owning lands and interests arising from the treaties of 1821 and 1822.* (Vide treaties of 1831, 1832, and 1838.)

"Your memorialists beg respectfully to call your attention to the fact that this claim of the New York Indians, by purchase from the Menomonees and Winnebagoes, is recognised in every law and treaty referring to the subject since 1822; and that the Brothertons, as stated, bought in, and have also been recognised. Else why, it might be asked, was a township given them in 1832, and special provision made in Gillet's treaty, at Buffalo, in 1838? Your memorialists ask your earnest attention also to another fact, viz: that, by the treaty of 1827, the United States bought of the Menomonees the very tract sold in 1825 by the Six Nations, &c., &c., to the Brothertons.

"Your memorialists represent further, that, by the treaties of 1831 and 1832, (so far as the Brothertons were concerned,) the United States acquired from the Menomonees *all* the Brotherton estate, with the exception of one township on Lake Winnebago, which township they were compelled to take, in consequence of a proposition made to them without any alternative. They were driven to accept this proposition by the joint action of the Menomonees and the United States, in opposition to the action of Monroe, Crawford, and Calhoun, and in violation of treaties, which were known to exist, made between the Indian tribes under the superintendence of agents of the United States. (See appendix to the treaty of 1832.) Your memorialists declare that they did not ask the Senate to give them, in their amendment to the treaty of 1831, the one township; that they did not take it until forced to do so, (see accompanying statements and affidavits of J. W. Quinney and others;) and that they have in no act absolved the United States from indebtedness from this wrongful seizure of their land. The land was originally purchased of the Menomonees by permission, and under the superintendence of the United States agents, and ratified by the President; and your memorialists submit that if the treaties of 1821 and 1822 were in violation of the just rights of the Menomonees, the United States were *particeps criminis*.

"Your memorialists further state that the treaty of 1831 gave to the Six Nations Indians 500,000 acres. The Harris treaty of 1838 grants to the Oneida tribe (numbering, according to the census taken in 1827, and appended to Gillet's treaty at Buffalo in 1838, *six hundred souls*) 65,000 acres; while to the Brothertons, having an equal interest with the Oneidas, (and numbering, by the same census, three hundred and eighty,) only 23,000 acres were given. And by the third article of the Harris treaty of 1838 \$33,500 were given to the Oneidas '*in reimbursement of moneys paid and expended in acquiring and securing the title of the Menomonees.*' By the act of 1846 the United States paid the Stockbridge tribe \$5,000, as indemnification for their expenses and outlays for these Menomonee purchases and their interest in them; and by the treaty of 1848 the same tribe received on the same account \$28,000.

"The Stockbridge tribe, numbering (by admission of the United States in 1838) 217, get one township, while the Brothertons, numbering 360 souls, *get the same quantity*.

"The Brothertons have never received a dollar, save \$1,600 given by the treaty of 1832 to three individuals for improvements. Thus, the United States give them one-third less in land than the Stockbridges,

and two-thirds less than the Oneidas, although holding an equal claim to the land; and, while the Oneidas get \$30,000, and the Stockbridges \$30,000 indemnity, the Brothertons have not received one cent, notwithstanding their exertions in acquiring and securing the title from the Menomonees, and the payment by them of their proportion of the original consideration to the Menomonees under the treaties of 1821 and 1822.

"Your memorialists now pray that they may be placed in as good a condition as they were in New York and before they bought their lands, nearly every dollar which they received therefor having been expended in expeditions to explore Green bay lands, in paying expenses of treaties, buying the land and removing to it. But if Congress in its wisdom shall not think proper to do this, your memorialists pray that they may be placed upon an equal footing with their neighbors, the Oneidas and Stockbridges, for whom provision has been made as stated above, and that a final settlement may now be made in order that they may not be under the necessity of applying to Congress again for a settlement of their just rights.

"Your memorialists respectfully state, that they have not the pecuniary ability to press their claims year after year at their own expense. They believe their claims to be just, and they submit them now to Congress for final action.

"And your memorialists will ever pray.

"WILLIAM FOWLER,

"*Delegate from the Brotherton Indians.*

"WASHINGTON, D. C., May 3, 1854."

The ninth section of the act of 31st July, 1854, referred to above, requires from you a report of the facts in relation to this claim; and it shall be my object, in this communication, to spread them out with such fullness as to give a fair exhibit of the entire case, and refer you to such sources of information for further details as will assist you in the discharge of the duty imposed by the act.

In the year 1815, the sachems and chiefs of the Six Nations of New York presented a memorial to the Department of War, in reference to their removal from the State of New York "to a more distant part or the country;" alluding in the memorial to the "repeated proofs of their friendship and attachment to the United States," and expressing the "hope that the representations they will be able to make to their western brethren, of the friendly disposition of the people (of the United States) to the natives under their protection, and of the *honor and good faith always observed* by the government in its dealings with us, will greatly tend to render their friendship permanent, and their fidelity secure."

"The object of this memorial" (say the memorialists) "is, therefore, to inquire, *First*, whether the government will consent to our leaving our present habitations, and removing into the neighborhood of our western brethren.

"*Secondly*, whether, if we should obtain, by gift or purchase from our western friends, a seat on their lands, the government will acknowl-

edge our title in the same manner as they now acknowledge it in those from whom we receive it. And, *thirdly*, whether our removal will be considered as changing, in any manner, the relations now subsisting between our tribes and the government."

To this memorial Secretary Wm. H. Crawford replied on the 12th February, 1816 :

"**BROTHERS OF THE SIX NATIONS:** The memorial which you have sent to your Great Father, the President, by your friends General Porter and Mr. Granger, has been presented by them. In this memorial you made known to your Great Father your desire to remove from your present settlements in New York, with a view to settle upon lands in the West, and wish to be informed whether the government will consent to it; whether, if you obtain a seat upon the lands of your western brethren, your title will be acknowledged by the government in the same manner that it now does that of those from whom you receive it; and whether your removal will, in any manner, change the relations now subsisting between your several tribes and the government; whether existing treaties will still remain in force, and the annuities be paid as heretofore.

"Brothers: Your Great Father, the President, having duly considered all your requests, and extremely desirous of giving to his children of the Six Nations *a particular mark of his friendship*, and attention to their interests, has directed me to inform the sachems of the Six Nations that all their requests are granted." \* \* \* \*

The attention of the New York Indians being thus directed to a settlement in the West, in the winter of 1819-'20, the Rev. Eleazer Williams, on their behalf, made arrangements at Washington city to receive the assistance of the government, in sending a delegation to explore the region of country around Green Bay, with a view to making arrangements with the Indians there for a seat among them for the New York tribes. Secretary Calhoun, on the 20th January, 1820, addressed a letter to Mr. Williams, and another to Governor Cass and General Macomb, at Detroit, by which directions were given for furnishing an exploring party of ten persons, during the coming summer, with rations at military posts, blankets, powder, and lead, and \$300 in money. By a letter of the 21st of June, 1821, the previous order was enlarged, and the Commissary General of Subsistence instructed to direct the assistant commissaries at Detroit, Mackinac, and Green Bay to furnish provisions to Mr. Williams and his party, not exceeding fourteen rations per day. On the 21st June, 1821, Solomon U. Hendricks and his three companions were provided for by a similar order of the Secretary of War, as delegates for the Stockbridge Indians, and provision was likewise made for one Munsee delegate.

The deputies, on arriving, in the summer of 1821, at Detroit, were there joined by C. C. Trowbridge, who had been appointed to superintend and assist in the negotiations, and thence the party proceeded to Green Bay, in the then Territory of Michigan, and held a council with the chiefs and headmen of the Menomonee and Winnebago tribes residing in that vicinity, which resulted in the execution of articles under date of the 18th August, 1821, by which the Menomonees and

Winnebago nations, in consideration of two thousand dollars, agreed to "*cede, release, and quit claim* to the Six Nations, and the St. Regis, Stockbridge, and Munsee tribes," a tract of country lying on both sides of the Fox river, in the present State of Wisconsin, described by the following boundaries:

"Beginning at the foot of the rapids on the Fox river, usually called the Grand Kaccalin; thence up said river to the rapids at the Winnebago lake, and from the river extending back, in this width, on each side to the northwest and to the southeast, equidistant with the lands claimed by the Menomonee and Winnebago nations;" the said last-named tribes reserving the right to hunt and fish within these limits, but agreeing to abstain from waste and depredations on said lands. (See Senate document 189, 2d session 27th Congress; page 15; series of Senate documents 1841-'42, vol. 3.) The tract embraced within these boundaries is estimated to be of about 800,000 acres in extent, having bases along and on both sides of Fox river, of about eighteen miles.

These articles were approved, in a qualified manner, by President Monroe, but never submitted to the Senate for its action. The approval of President Monroe is in these words:

"The within arrangement entered into between the Six Nations, the St. Regis, Stockbridge, and Munsee nations, of the one part, and the Menomonees and Winnebagoes of the other, is approved, with the express understanding that the lands thereby conveyed to the Six Nations, the St. Regis, Stockbridge, and Munsee nations, are to be held by them in the same manner as they were previously held by the Menomonees and Winnebagoes. February 9, 1822. James Monroe."

The New York tribes being dissatisfied, as it appears, with the tract thus provided for their occupancy, solicited, through Solomon U. Hendricks, permission for another deputation to visit Green Bay, with a view to procure an extension of the limits of the tract described in the articles of August 18, 1821; and on the 13th of February, 1822, the Secretary of War addressed a letter to Mr. Hendricks, granting the permission desired. I quote from his letter, as follows:

"I regret that any portion of the Six Nations is dissatisfied with the treaty; but as one of the causes of dissatisfaction appears to be the distance of the country ceded thereby from Green Bay, and may be obviated by procuring an extension of the cession as proposed, the permission which is solicited for another deputation from the Stockbridge and other tribes of the Six Nations to visit the country again for that purpose, is granted.

"The country the Six Nations have, or may acquire from the Menomonees and Winnebagoes, *will be held by them in the same manner as it was by the Indians who previously owned it.* The deputies that may be appointed to make the arrangement, (not exceeding six in number,) will be provided with letters similar to those given to them last year; and orders will be given for them to be furnished with one ration each while on their journey, and engaged in effecting the object of their visit."

A deputation accordingly proceeded in the summer of 1822 to Detroit, and thence, with John Sergeant, jr., to Green Bay, he having

been appointed by Governor Cass to "superintend" the contemplated negotiations.

On the 23d day of September, 1822, additional articles were entered into by the deputies of the New York tribes, and the chiefs of the Menomonees. By these articles the Menomonees, in consideration of \$3,000, stipulated to "*cede, release, and quit claim*" to the said New York tribes "all the lands and islands" comprehended within the following boundaries, exclusive of any embraced therein that might have been theretofore ceded to the United States; that is, "beginning at the foot of the rapids on Fox river, usually called the Grand Kaccalin; thence southeast, (or on the lower line of the lands last season ceded by the Menomonee and Winnebago nations of Indians to the Six Nations, St. Regis, Stockbridge, and Munsee nations,) to, or equidistant with, the Manawahkia river emptying into Lake Michigan; thence on an easterly course to and down said river to its mouth; thence northerly on the borders of Lake Michigan to and across the mouth of Green bay, so as to include all the islands of the Grand Traverse; thence from the mouth of Green bay aforesaid, a northerly course to a place on the northwest shore of Lake Michigan, generally known and distinguished by the name of Weyohqua-tonk by the Indians, and Bayde Noque by the French; thence a westerly course on the height of land separating the waters running into Lake Superior, and those running into Lake Michigan, to the head of the Monomonee river; thence continuing nearly the same course until it strikes the northeastern boundary line of the lands ceded, as aforesaid, by the Menomonee and Winnebago nations to the Six Nations, St. Regis, Stockbridge, and Munsee nations of Indians, in eighteen hundred and twenty-one; thence southerly to the place of beginning"—the said Menomonees receiving the right of occupying and residing on the tract, but agreeing not to infringe on the settlements and improvements of the said New York tribes.

The region within the boundaries just quoted embraced all the lands on Green bay and Lake Michigan claimed by the Menomonees, and not within the boundaries specified in the articles of 1821; an extent of country, indeed, greater than was then, or has since been conceded as properly belonging to the Menomonees, and which is estimated to exceed 6,000,000 of acres of land.

On the submission of these "*articles*" to President Monroe, he, on the 13th March, 1823, approved them with the same restrictions as to title ("that the lands are to be held by them in the same manner as they were held by the Menomonees") as he had approved the former articles; and with an additional restriction as to limits, confining his approval to the conveyance in the manner as above of that part of the tract "which lies between Sturgeon bay, Green bay, Fox river, that part of the former purchase made on the 18th August, 1821, which lies south of Fox river, and a line drawn from the southwestern extremity of said purchase to the head of Sturgeon bay, and no further, that quantity being deemed sufficient for the use of the first before-mentioned (New York) tribes and nations of Indians." (See Doc. last quoted, pages 19 and 20.)

Secretary Calhoun seems to have regarded, at the time, the acquisition of the New York tribes to have been valid to the extent of the Menomonee claim to the entire tract described, as against the Menomonees; but not as a valid title against the United States, having in mind, no doubt, that provision of the law of 30th March, 1802, then in force, whereby "purchases or other conveyances of lands, or of any title or claim thereto, from any Indian or nation, or tribe of Indians, within the bounds of the United States," were declared to be of no "validity in law or equity, unless the same be made by treaty or convention, entered into *pursuant to the constitution*." (See Doc. last quoted, page 23; and U. S. Statutes at Large, vol. 2, page 143, sec. 12.)

The object of the government seemed, then, to be to aid the New York tribes in obtaining a location among the western Indians, but to restrict the former to the acquisition of a mere right of occupancy there for the time being.

The grasping policy of the New York tribes, in regard to acquisitions west, appeared thus early to excite the suspicion of the very administration that had aided their deputies with provisions and money to make arrangements for the removal of their tribes from New York, and their settlement among the western Indians. Hence the refusal of President Monroe to approve the settlement of those tribes except within the limits of the purchase of 1821, or on that part of the purchase of 1822 between Sturgeon bay, Green bay, Fox river, &c.; which is but a small part of the tract within the boundaries mentioned in the body of the conveyance of September, 1822.

With these arrangements in this condition, (the articles of agreement between the tribes as above not having been submitted to the Senate,) parties from the New York tribes, particularly the First Christian party of Oneidas and the Stockbridges, commenced removing to the lands in the vicinity of Fox river and the head of Green bay.

The Menomonees, however, became dissatisfied soon after this emigration set in. In 1824 their chiefs protested against its continuance, and repudiated the agreements of 1821 and 1822. On the 16th of June, 1824, they signed a memorial to the President on the subject, and accompanied it with affidavits tending to show that the Menomonees who signed the articles of August, 1821, were not the chiefs of the nation; that the principal chief sent in a protest against them to the council at which they were signed; and that the articles were not properly interpreted to the Menomonees at the time. (See series of "Senate Docs.—Indian removals," 1833-'34, vol. 8, pages 536, 537, 538, 539.) The dissatisfaction between the Indians on the opposite sides of this controversy became such as to elicit the attention of the citizens of Green Bay; and in September of the same year (1824) twenty-two citizens of that region also addressed a letter to the President of the United States, in which they say that the principal chiefs of the Menomonees alleged that they had made no sale of their lands, and refused to receive goods offered by the New York Indians in part payment of stipulations of 1822; and that said goods were delivered to persons of no note among the Menomonees; and that the chiefs then protested against the articles of 1821 and 1822.

The excitement became so great between the friends of the parties opposed in interest, as to lead to an order from the Adjutant General, in March, 1825, for the "commanding officer at Green Bay to co-operate with the Indian agent at that place, should it be necessary, in carrying into effect the instructions he has received," &c.

Whilst this dissatisfaction was existing, the Brotherton Indians, by articles dated at New Stockbridge, Hogansburg, and ———, on the 8th and 27th days of January, and the ——— day of August, 1825, purchased their interest in the claim which the other New York tribes had acquired by the articles of 1822. By the articles between the Brothertons, on the one part, and the Oneida, Stockbridge, St. Regis, Tuscarora, and Munsee tribes, on the other part, the first party for a consideration of \$950 to be paid, stipulated with the second party for a tract on the southeast side of Fox river, below the Grand Kaccalin, having a base of eight miles along the river, and extending thirty miles therefrom in a southeast course; which tract is included within the limits set forth in the articles of 1822. After reserving to the Oneida, Stockbridge, St. Regis, and Tuscarora tribes, each, a tract of land equal to that granted to the Brothertons, to be located in any part of the country granted by the articles of 1822, the party of the second part also sold to the Brothertons an undivided interest of one-half in all the residue of the cession of 1822. (See Senate Doc. 189, second session 27th Congress, page 25, volume 3 of series.)

If I have read this document and the articles of 1821 and 1822 aright, the Brothertons took, by the conveyance to them, an interest only in the tract described in the articles of 1822; and no interest whatever in that described in the articles of 1821. The memorial under review is thus greatly in error, in representing the interest of the Brothertons as extending to "an equal undivided interest in all the balance of the lands bought of the Menomonees and Winnebagoes." The memorial alleges that the first purchase, in 1821, embraced 737,280 acres; and the second purchase, in 1822, 691,200 acres. If the estimate of quantity in the purchase of 1822 be correct, after giving 153,600 acres (8 by 30 miles) to the Brothertons, and a like quantity to each of the four other tribes last above named, there would be no residue in which the Brothertons could acquire an undivided interest of one-half.

By the 11th article of the treaty of August 19th, 1825, with the Chippewas, Menomonees, Winnebagoes, and others, concluded at Prairie du Chien, the United States agreed "to convene, whenever the President may think it necessary and proper, such of the tribes, either separately or together, as are interested in the lines left unsettled herein, and to recommend to them an amicable and final adjustment of their respective claims," &c. (See U. S. Stat., vol. 7, page 275.) This provision was designed to cover the case of the Menomonees and Winnebagoes, in regard to the boundaries of their possessions in Michigan Territory. Accordingly, in 1827, Secretary Barbour addressed, under date of March 27, a letter of instructions to Governor Cass and Thomas L. McKenney, as commissioners, and from this letter I quote as follows:

"I enclose for your government a copy of the treaty of Prairie du Chien, which fully illustrates the object of the council to be held, and the ends to be attained by it." \* \* \* "It is presumed that at some point

on Green bay or Lake Michigan, this council may be held with most convenience to all concerned. This is referred to, but left in your discretion." \* \* \* \* \* "Two memorials, both of the 27th January, 1827, having been received by the President of the United States from the Brotherton Indians, of Oneida county, in the State of New York, setting forth, among other things, that they have purchased a certain tract of land on Fox river, eight miles wide and thirty miles long; and that they have, in other respects, an interest with other tribes of Indians of the State of New York, in the country in the vicinity of Green Bay, and to which country they have a prospect of removing; and as the Indians, of whom it is represented they purchased said country, will doubtless form part of the general council; and as exceptions have been taken to the occupancy of said country, so represented to have been purchased by the Brotherton Indians, by citizens of Green Bay; and as, with a view of a final adjustment of the object of said memorials, leave has been given to the Brotherton Indians to send a deputation to said council, you will receive them accordingly, and examine the subjects of the memorials, copies of which are herewith enclosed, and report the result to the department, with your opinions, for the sanction of the department, and the reasons for any decision you may come to, whether for or against the prayer of the petitioners, with a plan, (if in your opinion it may be proper to consent to their settlement, and the settlement of their friends in the Green Bay country,) for their several settlements, so as to guard, as far as may be, against any future rupture between them, or between them and their Menomonee and Winnebago and other neighbors, or discontents among the white settlers at Green Bay.

"I have the honor, &c.,

"JAMES BARBOUR."

The commissioners, under these instructions, convened the council on the 6th August following, at Butte Des Morts, on Fox river, near the outlet of Winnebago lake. The Chippewa, Menomonee, and Winnebago tribes, are recited as parties to the treaty of August 11, 1827, which was there concluded, (U. S. Stat., vol. 7, page 303;) but the New York tribes, including the Brothertons, were apparently represented in the council, and an important step of progress was made (Art. 2 of the treaty) toward effecting an adjustment of their claims, although a full and final adjustment could not then be agreed on.

The claims of the New York tribes were presented to the commissioners during the council by their own delegates, and by their friend, Mr. Dean. The remonstrances of the Menomonees against these claims were declared by their chiefs, and their friend, Mr. Doty.

By reference to Senate document Indian Removals, 23d Congress, 1st session, pages 540, 541, and 542, it will appear that the Menomonee chiefs denied the cessions—at least in the meaning and intent claimed for them by the New York Indians. They stated that the papers signed in 1821 and 1822 were not understood by them, and they refused to acknowledge the claims presented against them by the New York tribes. The commissioners deemed it best to close the council, and embody in the treaty the beneficial provisions in regard to boundaries

that had been agreed on with and between the Chippewa, Menomonee, and Winnebago tribes. By the fifth article, the New York Indians, including the Brothertons as such, were admitted as part recipients of a perpetual annuity for education; and by the second, the Menomonees and Winnebagoes agreed to refer the matter of difficulty with the New York tribes to the President of the United States, who was thereby empowered to establish such boundaries between the Winnebagoes and Menomonees and the New York Indians, as he might consider equitable and just.

The memorial of the delegate, Mr. Fowler, to the House of Representatives, at the last session of Congress, claims that, by the treaty of 1827, the United States bought of the Menomonees "the very tract sold in 1825 by the Six Nations, &c., &c., to the Brothertons." The tract acknowledged to belong to the United States by the boundaries defined in the third article of the treaty of August 11th, did indeed include a small part of that sold in 1825 by the New York Indians to the Brothertons, as the tract named in the treaty extended six miles in a southeast direction from Fox river, with a southeastern boundary nearly parallel to said river, whilst the Brotherton tract extended in the same direction thirty miles southeast from the river, and thence eight miles to the northeast, &c.

The Senate ratified the treaty of 1827, with the proviso that "the said treaty shall not impair or affect any right or claim which the New York Indians or any of them have to the lands, or any of the lands mentioned in the said treaty." The question now arises, how far did the treaty affect and impair the claim of the Brothertons to the 153,600 acres sold to them by the other New York tribes in 1825? It is to be observed that the third article of the treaty of 1827 declares and defines the boundaries of a tract theretofore belonging to the United States—a tract acquired by conquest from Great Britain, and not purchased of the Menomonees; a tract owned by the United States before the articles of 1821 and 1822 were concluded; and, by the terms of the articles of 1822, under which alone the Brothertons have claim, it was declared that the Menomonees "do not cede to the Stockbridge, Oneida, Tuscarora, St. Regis, and Munsee nations, any lands in the vicinity of Fort Howard, or near the mouth of Fox river, the title of which may have been heretofore extinguished by the American government." President Monroe, in his partial endorsement of those articles, under date of March 13, 1823, evidently had in view this tract, at the head of Green bay, on Fox river, in draughting his endorsement, a part of which is in these words: "It is to be understood," &c., \* \* \* \* "and that the title which they have acquired is not to interfere in *any manner whatever* with lands previously acquired or occupied by the government of the United States or its citizens."

One of the principal objects in view, in negotiating the treaty of Prairie du Chien, and the treaty of Butte Des Morts, as indicated by the instructions given by the War Department, and by the terms of the treaties, and the reports of Commissioners Cass and McKenney, was to define the boundaries between various tribes named, and between them and the United States; those boundaries having been unsettled, to a considerable extent, by the events of the then recent war

on the frontier. One of the acquisitions of that war, on the part of the United States, was the settlement at Green bay, originally made by the French, then captured by the English, and finally wrested from the English by the United States.

General Cass, in his address to the Indians on opening the council at Butte Des Morts, presented the matter in this light to the Indians there assembled, and this view of the matter was then apparently coincided in by them. General Cass said: "A great many years ago the French came into this country, and they established a settlement upon Fox river, and at Green bay. After awhile the red-coats drove the French away, and after awhile we drove the red-coats away. Now our people have settled in the country, and we are anxious that boundaries be established between them and the Indians. They were never established while the French or English had the country. We want to know what is theirs and what is ours," &c., &c.

Now, as the 3d article of the treaty of Butte Des Morts only defined, between the United States and the Indians, the boundaries of the lands that had long before belonged to each, and as the New York Indians had excepted out of their purchase by the articles of September, 1822, such lands about Fort Howard as were already in possession of the United States and its citizens, it is difficult to perceive what right the New York Indians had to sell to the Brothertons any lands that belonged to the United States at the time of the sale, (1825,) or what legal or equitable claim the Brothertons could acquire against the United States, by reason of the failure of the title they purchased to that part of the tract described in their conveyance, that the New York Indians had never owned. If any further argument or reference is necessary to render it conclusive that the region on Fox river, above its mouth, and that around the head of Green bay, was considered and known to belong to the United States before the articles of 1822 were entered into, it is afforded by reference to the legislation of Congress.

Congress having, in the year 1812, (April 23,) passed an act (U. S. Stat., vol. 2, page 710) "authorizing the issuing of patents for land, and to grant donation rights to certain claimants in the district of Detroit," who shall file their claims by the 1st December following, by the act of March 3, 1817, (vol. 3, page 390,) extended the time for entering donation rights to the 1st day of December, 1818; and by the act of May 11, 1820, (vol. 3, page 572,) revived the powers of the commissioners under the act of April 23, 1812, for the purpose of "settling the claims to land at Green Bay and Prairie du Chien, in the Territory of Michigan;" and, by this last-dated act, authorized the appointment of a person "capable of translating the French language," as an agent for the said commissioners, who should give public notice at Green Bay and Prairie du Chien of the time that he would attend at each of those places, to receive "notices and evidence of titles and claims to lands within the same;" and who should remain at those places for a time sufficient to give the inhabitants full opportunity for presenting such notices and evidence.

It is inferred, from the wording of the 1st section of the act last quoted, requiring the commissioners "to perform the duties therein"

(act 1812) "prescribed in relation to the claims that have been filed, &c., in pursuance of the act" of 1817, above mentioned, that under the act of 1817 sundry claims from Green Bay and Prairie du Chien had been filed, and were then (in 1820) not yet acted on. This act evidently being in force only till the following session of Congress, by a subsequent act—February 21, 1823—(vol. 3, page 724) the provisions of the act of May 11, 1820, were revived and continued in force to the 1st of November following, with some provisos and additions. The 5th section of this last act made provision also for the confirmation of tracts to "every person who, on the first day of July, 1812, was a resident of Green Bay," &c., and occupied a tract that he cultivated, or had previously cultivated, lying within the settlement, and who has continued to submit to the authority of the United States. It thus appears that the legislation of Congress had recognised claims, and had provided for the confirmation of titles to lands in the Green Bay settlement, before any of the negotiations of the New York tribes with the Menomonees had commenced.

In the negotiations, therefore, the rights of the United States and its citizens in that quarter were kept in view, and provision was made to save them from the operation of the conveyance of 1822; and hence, also, from being affected by the conveyance of 1825. The first time the relation of the Brothertons to these articles of 1821 and 1822 came before the government and its commissioners the invalidity of their claim to the region on Fox river was discovered, and their title publicly disregarded, as void to the extent of its conflict with the acquisitions of the United States.

It appears to me, therefore, to be erroneous to say that the United States acquired of the Menomonees, by the 3d article of the treaty of 1827, any of the lands of the Brothertons, or that any injustice was done them by that treaty.

The New York Indians presented their case on the council ground; and these facts were evidently then known to them, if not before. To insure good feeling among all parties, however, in view of the satisfactory adjustment of the boundaries of the Green Bay settlement by that treaty, immediately thereafter the commissioners distributed presents to the Indians assembled, of the value of \$15,682; and an article (No. 5) was inserted in the treaty providing for an appropriation of \$1,500 per annum for an indefinite period of time thereafter, for the education of the children of the tribes parties to the treaty, and the children belonging to the New York tribes.

The report of Commissioners Cass and McKenney, with which the treaty of 1827 was transmitted to the War Department, in that portion relative to the difficulties between the Menomonees and the New York Indians and their confederates, and in the portion relative to the boundaries agreed upon at the council, as those of the settlement on Fox river and at the head of Green bay, are so much to the purpose in this inquiry that I incorporate them in this report.

"TREATY GROUND, BUTTE DES MORTS, FOX RIVER,

*August 11, 1827.*

"SIR: We have the honor to transmit you a treaty this day concluded with the Chippewa, Menomonee, and Winnebago tribes of Indians.

"The various subjects embraced in our instructions—namely, the continuation of the Chippewa boundary, the establishment of the limits of the reservation embracing the Green Bay settlement, and the adjustment of the matter in difference between the New York Indians and the Menomonees and Winnebagoes—have been particularly attended to, and settled as far as circumstances permitted.

"The first article requires no explanation. It provides for a final determination of the Chippewa boundary, and, so far as regards that tribe, it carries into full effect the principles of the treaty of Prairie du Chien.

"It is well known to the government that for some years the various tribes of Indians in the State of New York have contemplated removing to, and establishing themselves in, this region. By the permission of the government, negotiations were opened between them and the Menomonee and Winnebago Indians, and in the year 1821 an instrument was signed purporting to be a treaty between these parties. In 1822 another instrument was executed, containing a great addition to the original grant. Copies of these treaties are herewith transmitted, and we must refer you to the files of the department for the instructions in relation to this matter, which have been given from time to time by the government, and for the reports which have been made. Much dissatisfaction has prevailed among the Menomonees and Winnebagoes from the period of the execution of these contracts, and we were very desirous of amicably adjusting the business, and terminating all causes of difficulty. We have found this, however, impracticable, and no course was left for us but to ascertain the facts as far as possible, and report them to the government. Copies of all the papers submitted are herewith transmitted, and the various statements made have been embodied in the journal of our proceedings. Some facts necessary to a clear understanding of the case have been publicly agreed upon by the parties, and others are disputed.

It has been agreed, as the clear understanding of both parties, that the Menomonees were to remain joint owners with the New York Indians of all the land ceded to the latter. This understanding is not, however, expressed in the treaties.

"It is contended by the Menomonees, that the persons who signed the papers on their part were not authorized to do so.

"We believe, from an examination of the various facts, that the Menomonee tribe was not sufficiently represented on those occasions. Without undertaking to determine how many chiefs must be present to carry with them the authority and influence of their tribe, it is sufficient to know that the representation, when these papers were executed, appears to have been inadequate to the objects to be effected.

"It is also contended by the Menomonees, and we think with justice, that the terms and extent of the cession were not understood by

their people. That this allegation is in part true, has been already shown by the admission of both parties in the tenure of the land. That it is true with respect to the extent of the cession is probable, from a comparison of this with the amount of the consideration, and with the residue of the country left for that tribe. If the subject was fairly understood, it is an instance of improvidence not often to be found even among the Indians.

"Besides, the cessions extend beyond the acknowledged limits of the Menomonee country, north to the Chippewas, and south to the Manitowalk and Milwaukie Indians. And it will also be perceived that there is some difference respecting the boundary upon the Fox river of the second cession.

"It is presumed that the government is free to take any course with respect to this second cession. The act of acceptance required by the conditional approval of the President has not been performed by the New York Indians, and the whole subject is therefore open for examination and decision. Nothing will be gained by longer delay. The question will become more difficult as the feelings of the parties are excited, and their rights committed. The New York Indians are now migrating to the country; and where they establish themselves, and make valuable improvements, there they will look for permanent and secure titles. A common interest in a country between an agricultural and a hunting people is impossible, for as one advances, the other must recede. The New York Indians are emphatically a farming people, and nothing would be gained for themselves, or for the great cause of Indian melioration, by the cession of an extensive country disproportioned to their numbers, and which would lead, almost necessarily, to a relapse into their former habits of life. What use have they for 2,000,000 acres of land? A generation would not pass away before the plough would give place to the rifle, and, independent of other considerations, we should lose the benefit of the example of industry and prosperity, which forms a principal reason for their establishment in this region. Much is certainly due to those Indians for the attachment they have displayed to the cause of the United States, and their permanent residence here would add to our physical strength, and place upon the borders a body of people of whose fidelity there can be no doubt. They have come here upon the faith of the arrangements they have made, and with the permission of the government. No one will question the propriety of securing to them a district sufficiently extensive and productive for their wants and their numbers. But neither the one nor the other require such a wide-spread territory as they have endeavored to procure. Its confirmation would strip the Menomonees of the larger portion of their country; it would lead to a resumption of the habits of savage life, and it would place beyond the control of the United States the most valuable section of this extensive country, and the key, in fact, of our communication between the lakes and the Upper Mississippi.

"We believe that good land enough may be found on the south side of Fox river, and beyond the limits of the reservation, described in the third article of the treaty; and we recommend that these Indians be located in that quarter. Almost all the improvements they have made

are there, and in fact we understand that seven locations, at most, have been made upon the opposite side. It would be proper to ascertain with reasonable certainty the number who will probably remove here from New York, and then to determine the quantity of land which ought to be apportioned to each individual. This might be upon the most liberal scale, as well with relation to the present generation, as to that which will succeed it. The country should then be examined by some competent person, and a tract laid off and assigned to these people, fully adequate, both in quantity and quality, to their support. We cannot but think that this process would be just to them and the Menomonees, and proper and expedient in itself. We may add, that a severance of title between the New York Indians and the Menomonees is earnestly desired by a portion of the former, and we believe that all hopes of improvement not founded on this measure, will be utterly fallacious.

"We have made provision in the second article for establishing the boundaries of the reservation upon the Fox river. Our right is derived from that of the French and the British governments, and no documentary evidence exists of its extent. It is well known that the French authorities, when in possession of this country, took possession of such land as was wanted for their purposes, without the formality of a treaty. They merely declared to the Indians that their great father, the King, desired such a piece of land, and, after distributing such presents as they thought proper, they took possession of it. In this manner their rights, as well of jurisdiction as of soil, was acquired, and it was doubtless in this manner that possession was obtained of the country upon Green bay. The settlement was so remote, that it is not probable the British ever took any important step respecting it, and to this day the question of jurisdiction is unsettled, and the boundaries of the reservation left to be determined by such facts and recollections as have survived the period of the settlement. Questions of jurisdiction have arisen, which have called for judicial decisions, and many more may be expected to arise, in a district where the provisions of the intercourse law with the Indians are in constant and active operation.

"To provide a remedy for this state of things, we deemed it proper to establish the lines of separation by definite boundaries, and in doing this we limited the tract on the west side, by the most remote private claim of land, and on the south and north sides by the probable extent of other private claims. The reservation now embraces within it all these claims, and is as small as it can be, to attain that object, and to be bounded by straight and parallel lines. About 200,000 acres of land are contained within its limits, and it is a very valuable tract of land.

"The provisions we have inserted, to save harmless the claims of the New York Indians, and to avoid any opinion respecting the private land claims, require no observation. We have so framed the treaty, that the whole matter is within the control of the President, and the sooner all the questions in relation to it are determined, the better will it be for us, and for the Indians." \* \* \* \*

The quotations and references hereinbefore made, it is presumed, establish the fact of the remonstrances of the Menomonees, commencing as early as 1824, against the instruments executed in 1821 and 1822,

and indicate that either the Menomonees did not understand the purport of those instruments at the time of execution, or that there was some deep-laid scheme in 1822, set on foot by the New York tribes or their advisers, to acquire a title to lands in the then Territory of Michigan, both as to quantity and nature of tenure, such as it was not the policy of the government to sanction, and it was not possible, whilst the act of 1802 was in force, for them or any other tribe or nation of Indians or white men to obtain, without the sanction of the President and Senate of the United States.

In pursuance of the second article of the treaty of 1827, instructions were issued, June 9, 1839, by Secretary John H. Eaton, to General Erastus Root, James McCall, and John Y. Mason, commissioners, appointed to establish the boundaries of a country for the New York Indians, within the limits of the lands claimed and owned by the Menomonees and Winnebagoes. The two principal objects they were instructed to have in view, were: "*First*, the providing a country and a home for the New York Indians, that shall be acceptable to them in extent and soil, and wood and water, &c. *Second*, in consulting the views and feelings, and condition, of the Menomonees and Winnebagoes, who have generously given the permission to do so, it is important that you harmonize these interests."

The instructions then proceed to state the general views that should guide the commissioners in their action. I deem it unnecessary to quote them further, but solicit a perusal of them, as published, (Senate Doc. Indian Removals, 23d Congress, 1st session, vol. 8, 1833-4, pages 10, 11, 12, and 13.) These instructions develop the definite policy of the United States at that period of time, in regard to the New York tribes; and the sensible object of giving to them a suitable country, of limited extent, by a confirmed title, in lieu of their claims to a large extent of country, in common with the Menomonees, and not well defined as to boundaries, or conveniently arranged as to the various shares of the parties having interest therein. This object was one, manifestly for the interests of all the parties in any way concerned—the United States, the Menomonees and Winnebagoes, and the New York tribes; for the latter, at the time of their removal, "were in an advanced state of semi-civilization, and were good farmers and herdsmen." (Schoolcraft's Notes on the Iroquois, page 31. Account of the conduct of the Society of Friends towards the Indian tribes—London, 1844—page 169.)

The commissioners, after some time employed therein, were not successful in fully accomplishing the objects of their appointment. They arrived at Green Bay on the 10th August, 1830, and spent the time intervening, to the 1st day of September, in endeavoring to settle all matters of difficulty mentioned in their instructions. The report, signed by two of the commissioners, dated Detroit, September 21, 1830, and the journal of their proceedings, throw much light on the controversies between the Menomonees and Winnebagoes, on the one part, and the New York Indians and their confederates, on the other; and I would respectfully refer to them, as printed in Senate Doc. Indian Removals, 23d Congress, 1st session, 1833-4, vol. 8, pages 123 to 168, inclusive.

The speeches of the various chiefs on each side, the memorials and arguments presented to the commissioners during their stay at Green Bay, indicate that both parties to the controversy had become more determined and more bitter, and that claims and denials had become more extended and positive, since the council at Butte des Morts.

The New York Indians at first (August 28) offered to accept a tract embraced within parallel lines—one crossing the foot of Winnebago lake at the rapids at its outlet; the other crossing Fox river at the Rapids des Pere, or Lower rapids, and having a line at right-angles to these as the northwest boundary—drawn to be thirty miles, in a direct course from the foot of the Grand Kaccalin, and having the boundary to the southeast as far as the Menomonees and Winnebagoes claimed. This tract would embrace an immense body of valuable farm and timbered land, (page 159.) If the Oneida settlement was not within these lines, a piece on Duck creek was to be added.

The Monomonees and Winnebagoes would not agree to this. They offered to grant a tract on the northeast side of Fox river, having a base on Fox river from the small island above the Grand Kaccalin to the Little Butte des Morts, and extending northwest thirty miles. With the hope of “a final adjustment of differences,” the New York Indians—August 30—(page 161) abated their claim in part; but the probable quantity covered by their abated proposition is, say 1,200,000 acres.

The commissioners thereupon proceeded to “establish boundaries for the New York Indians,” (page 162,) assigning to the tribes of the Six Nations 275,000 acres of valuable farm lands on Duck creek, and extending to the east side of Fox river; to the Stockbridges, 6,000 acres on the southeast side Fox river, having a base on the same from the Grand Kaccalin to the Little Chute; and to the Brothertons, 20,000 acres on the southeast side of Fox river, between Plum creek and the Little Kaccalin. As all these tracts trenched on the lands of the United States according to the boundaries agreed upon in 1827 between the government and the Menomonees, the commissioners proposed to accept from the latter, in exchange, a quantity of land on the east side of Fox river, between the Grand Kaccalin and Winnebago lake, equal to that proposed to be relinquished by the United States to the New York Indians.

This arrangement the Menomonees and Winnebagoes would not agree to, (pages 164 and 168;) nor was it satisfactory to the other parties to the controversy. It further appears from the memorial of John W. Quinney, “in behalf of the Stockbridge and Munsee tribes,” presented to the President December 14, 1830, (Senate Doc. Indian Removals, 23d Congress, 1st session, vol. 8, page 199,) that “to this arrangement” (say they) “we have to oppose the strongest objections.” The Stockbridges (same memorial) asked for a large tract having a base on Fox river, from the rapids at the Winnebago lake, to a point two miles below the Grand Kaccalin, and extending southeast fifteen miles from said river.

The Brothertons also formally objected to the tract allotted them by said commissioners, although the 20,000 acres proposed to be set a part for them was a part of the land claimed by them under the arti-

cles of 1822; and also required a part of the lands confirmed to the United States by the treaty at Butte des Morts. Their memorial, numerously signed, will be found in document last quoted, page 207, &c., dated December 27, 1830; and therein they ask for 61,000 acres having a base of eight miles on Fox river, and extending southeast for quantity.

Immediately after the adjournment of the council held by the last-mentioned commissioners at Green Bay, the Menomonees requested permission to visit the President of the United States and lay their grievances before him.

Permission having been obtained, and a delegation of their chiefs having reached Washington and conferred with President Jackson, he, on the 1st February, 1831, directed the Secretary of War, John H. Eaton, and the Indian agent at Green Bay, S. C. Stambaugh, "to enter into some amicable arrangement with the Menomonee tribe of Indians now at the city of Washington, for a settlement of their dispute with the New York Indians," &c., (same Doc., page 504.)

The New York Indians had also sent delegations to Washington, as indicated above. The latter delegations, between the 14th and 27th of December, 1830, as above, and the 22d of January, 1831, made some further abatement of their claims. On the 22d of January, 1831, the various New York delegations (Oneida, Brotherton, St. Regis, and Stockbridge and Munsee) addressed a memorial to the President, stating that they had received "instructions and powers from the tribes they respectively represent to repair to the seat of government, and make such arrangement and disposition of their claims to lands at Green bay, in the Territory of Michigan, with the Executive and Congress of the United States, as to them, the said delegates, may seem proper and right." Under their powers and in furtherance of the objects of their appointment, they proposed to accept two tracts—one of about 161,000 acres on the southeast side of Fox river, and another of about 697,000 acres on the northwest side. (See said vol. 8, pages 396, 397, 398, and 399.)

It was with this favorable prospect of an adjustment, under the full powers possessed by the delegates for the New York tribes, that the order of February 1, 1831, to "enter into negotiations," &c., appears to have been given to Commissioners Eaton and Stambaugh.

In pursuance of that order, the treaty of February 8, 1831, (U. S. Statutes, vol. vii, page 242,) was negotiated. By the introductory part of the treaty the territorial claims of the Menomonees, as then existing and admitted, were defined. By the first article, the Menomonees, still denying their obligation to recognise the claims of the New York Indians, &c., nevertheless provided for them a region "to be held by those tribes under such tenure as the Menomonee Indians hold their lands," &c., defined by boundaries therein stated, viz: "Beginning on the west side of Fox river, near the 'Little Kaccalin,' at a point known as the 'old mill-dam;' thence northwest forty miles; thence northeast to the Oconto creek, falling into Green bay; thence down said Oconto creek to Green bay; thence up and along Green bay and Fox river to the place of beginning," excluding therefrom confirmed private land claims and the military reservation at Fort Howard, and reserving also timber and firewood for the garrison at Fort Howard off said

granted lands, and so much of said lands as might be needed for public roads and highways. (U. S. Statutes, vol. vii, page 343.)

By the supplemental articles, dated February 17, (page 347,) it was provided, "That the President of the United States shall prescribe the time for the removal and settlement of the New York Indians upon the lands thus (1st art. treat.) provided for them; and, at the expiration of such reasonable time, he shall apportion the land among the actual settlers in such manner as he shall deem equitable and just. And if, within such reasonable time as the President of the United States shall prescribe for that purpose, the New York Indians shall refuse to accept the provisions made for their benefit, or, having agreed, shall neglect or refuse to remove from New York, and settle on the said lands within the time prescribed for that purpose, that then, and in either of these events, the lands aforesaid shall be and remain the property of the United States, according to said first article, excepting so much thereof as the President shall deem justly due to such of the New York Indians as shall actually have removed to and settled on the said lands."

The treaty first quoted was ratified by the Senate in 1832, with the following proviso, (vol. vii, page 347:)

"*Provided*, That for the purpose of establishing the rights of the New York Indians on a permanent and just footing, the said treaty shall be ratified with the express understanding that two townships of land on the east side of Winnebago lake, equal to forty-six thousand and eighty acres, shall be laid off (to commence at some point to be agreed on) for the use of the Stockbridge and Munsee tribes; and that the improvements made on the lands now in possession of the said tribes, on the east side of the Fox river, which said lands are to be relinquished, shall, after being valued by a commissioner to be appointed by the President of the United States, be paid for by the government.

"*Provided, however*, That the valuation of such improvements shall not exceed the sum of twenty-five thousand dollars, and that there shall be one township of land, adjoining the foregoing, equal to twenty-three thousand and forty acres, laid off and granted for the use of the Brotherton Indians, who are to be paid by the government the sum of one thousand six hundred dollars for the improvements on the lands now in their possession, on the east side of Fox river, and which lands are to be relinquished by said Indians; also, that a new line shall be run, parallel to the southwestern boundary line, or course of the tract of 500,000 acres described in the first article of this treaty, and set apart for the New York Indians, to commence at a point on the west side of the Fox river, and one mile above the Grand Chute on Fox river, and at a sufficient distance from the said boundary line as established by the said first article, as shall comprehend the additional quantity of 200,000 acres of land, on and along the west side of Fox river, without including any of the confirmed private land claims on the Fox river, and which 200,000 acres shall be a part of the 500,000 acres intended to be set apart for the Six Nations of the New York Indians and the St. Regis tribe; and that an equal quantity to that which is added on the southwestern side shall be taken off from the northeastern side of the said tract, described in that article, on the Oconto creek, to be deter-

mined by a commissioner to be appointed by the President of the United States; so that the whole number of acres to be granted to the Six Nations and St. Regis tribe of Indians shall not exceed the quantity originally stipulated by the treaty."

Before the Senate had acted on the original and supplemental articles, and attached the foregoing proviso thereto, they had been, by direction of the Secretary of War, communicated and fully explained to the Menomonee nation, in full council, by S. C. Stambaugh, U. S. agent, and by them approved. (See pages 553 and 554.) Agent Stambaugh's report, accompanied by sundry documents, and the journal of the proceedings, &c., at the council, will be found in Senate Doc. Indian Removals, 23d Congress, 1st session, vol. 8, 1833-4, pages 523 to 554 inclusive. All of these are of interest as connected with the matter now under investigation, and are therefore referred to for further details. (See, also, pages 655 to 676 inclusive.)

Between the date of the negotiation of the treaty and its ratification, the matter of difficulty had otherwise elicited the anxious concern of the President of the United States; and during the winter of 1831-'32, at Washington, efforts had been made to reconcile the New York Indians to some proper terms of arrangement. So far as the Stockbridge, Munsee, and Brotherton Indians were concerned, a basis had been then agreed on. (See report of P. B. Porter, dated February 3, 1832, and accompanying documents; same series of Senate Docs., vol. 9, pages 173 to 188 inclusive.) But the Oneidas and St. Regis insisted on terms that the United States could not fix in their behalf, without additional negotiations with the Menomonees. By the treaty of 1831, the United States having acquired of the Menomonees the regions east of Winnebago lake, Fox river, and Green bay, extending to the shore of Lake Michigan, and including all islands of the waters mentioned, the commissioner, Governor Porter, assisted by Mr. Irwin, then in communication with delegations of the New York tribes, agreed with the delegates of the Stockbridges and Munsees, and the delegate for the Brothertons, that those tribes should have reservations on the east shore of Winnebago lake. On the 26th December, 1831, the Stockbridge and Brotherton delegates proposed to Governor Porter and Mr. Irwin, "to relinquish their present possessions on the southeast bank of Fox river, and to accept three townships, to be located by them on the east shore of the Winnebago lake, on receiving an indemnity for the full value of their improvements, and the expenses of their removal." (Page 176.)

On the 27th, the commissioners proposed to those tribes that had "made improvements on the east side of Fox river," that they should accept a tract of 46,080 acres on the east side of Winnebago lake, and be paid for their improvements at their valuation, not to exceed in all \$25,000. (Page 177.)

The Stockbridges and Munsees, by their delegates, on the 28th, demanded two townships, and \$25,000 indemnity for removal and improvements; and the Brothertons one township, and \$2,000 indemnity. On the 29th the commissioners acceded to the demand as to quantity of land, but declined to agree to the indemnity asked, reiterating his views of indemnity expressed on the 27th.

As regarded the Oneida and St. Regis tribes, there was not so near an approximation to a settlement.

On the 9th January, 1832, the deputies of the New York tribes had an interview with President Jackson—(pages 180, 181)—John Metoxen and John W. Quinney on behalf of the Stockbridges and Munsees, assisted by Mr. Beale, their counsel, and David Toucee for the Brothertons, assisted by Mr. Dean, as counsel. These delegations then agreed to the proposition of the commissioners, in the presence of President Jackson. Metoxen said, "We are perfectly satisfied with the offer made to us."

After the conference, David Toucee again demanded \$2,000 indemnity for his tribe, as an absolute sum, in lieu of a valuation of improvements. The commissioners then offered \$1,600 as the indemnity to the Brothertons; "which," says Governor Porter, "*being acceded to*, this tribe was satisfied." (Page 182.)

It will thus be seen, that, so far as the Brothertons were concerned, the basis of a settlement to be made that should be satisfactory to them, was agreed on between them and the executive department of the government before the Senate had acted on the treaty of 1831. That basis was within \$400 of what they had voluntarily proposed to accept, and the Senate accordingly embodied the arrangement in the proviso above quoted.

The adjustment, however, made by the proviso, for the St. Regis and Oneida tribes, was of such a nature, that it required the sanction of the Menomonees. Accordingly, on the 11th of September, 1832, the necessary instructions were given by Secretary Cass to Governor Porter.

It is deemed unnecessary here to quote those instructions, inasmuch as the substance of them appears in the report and journal of Governor Porter, which will be found in volume 10 of the series of documents quoted above, (23d Congress, 1st session,) pages 25 to 55 inclusive. The result of Governor Porter's mission was the treaty of 1832. (U. S. Statutes, volume vii, pages 405 to 409.) Governor Porter remarks, in regard to the articles of that treaty, in his report: "It will appear that an arrangement has been effected satisfactory to them, (the New York Indians,) and just to the government."

It may be well to sketch the outlines of Gov. P.'s proceedings very briefly. The Menomonees, when he first met them, October 1832, would not agree to the proviso of the Senate. Their principal speaker opposed it in a very forcible address; (pages 31 and 32.) They would concede nothing to the New York Indians. They denied all their claims. It was to the United States that the Menomonees had conceded a tract for the benefit of the New York Indians, and for this the Menomonees were to be paid by the United States. (Consideration \$20,000; see 2d article treaty of 1831, U. S. Statutes, volume vii, page 343.) Throughout the council, commencing October 22, 1832, and lasting more than a week, the Menomonees refused to concede anything to the New York tribes. However, they assented to a proposition to give, in exchange for 200,000 acres on the northeast side of the tract of 500,000 acres, 200,000 on the southwest side of said 500,000 acres, having a base on Fox river, from the old mill-dam to the Big

Kaccalin, (pages 43 and 44.) To this the Stockbridges and Brothertons agreed, "for the purpose of settling and adjusting this long protracted dispute;" (page 47.) The Oneidas and St. Regis dissented.

On Saturday, the 27th, however, the Rev. Eleazer Williams said: "We are willing to make a sacrifice for the sake of having this dispute settled." \* \* \* \* "I am instructed by the New York Indians to make this as their last and final proposition, viz: The New York Indians will agree to settle this controversy, on condition that they have granted to them in exchange for 200,000 acres on the northeastern side of the tract of 500,000 acres described in the treaty, an equal quantity on the southwest side, to be laid off as follows: beginning at the old mill-dam, and thence extending up Fox river to the Little Rapide Croche; thence running back from the river three miles; thence in the direction of the course of Fox river, keeping back three miles from the same, until it shall intersect the first stream which empties into Fox river above the Grand Chute; and thence running on a line parallel with the southwest boundary line of the tract of 500,000 acres described in the treaty; the necessary distance to include 200,000 acres."

This proposition was, with slight modification, the basis of the treaty of 1832. (See journal, page 50; see treaty, volume vii, pages 407 and 408, section 2.) We thus see that the settlement resulting as embodied in the proviso of the Senate to the treaty of 1831, and repeated in the treaty of 1832, so far as the Stockbridges and Munsees and the Brothertons were concerned, severally, was based on propositions made by them long before the Senate acted on either of those treaties, and concurred in constantly and repeatedly. The Stockbridges and Munsees asked, at Washington, for two townships, and indemnity, and it was conceded by the Senate. The Brothertons asked for one township and \$2,000; agreed for one township and \$1,600, and this was granted. So far as the tract of 500,000 acres, as fixed by the treaty of 1832, is concerned, its boundaries were made finally to correspond with a proposition tendered by the New York Indians, "for the purpose of having the dispute settled."

The proviso attached to the resolution of the Senate, by which the treaty of 1831 was ratified, was attached, as therein declared, "for the purpose of establishing the rights of the New York Indians on a permanent and just footing."

The modification of the proviso made by the second article of the treaty of 1832, was "in lieu" of the proposition contained in the proviso.

The New York Indians, in giving their formal assent in writing to the treaty of 1832 with the Menomonees, (U. S. Stat., vol. vii, page 409,) recite that, "whereas a tedious, perplexing, and harassing dispute and controversy have long existed between the Menomonee nation of Indians and the New York Indians, more particularly known as the Stockbridge, Munsee and Brotherton tribes, the Six Nations, and St. Regis tribe," \* \* \* \* "being asked to signify an acceptance of the modifications proposed as aforesaid by the Menomonees, we are compelled, by a sense of duty and propriety, to say that we do hereby accept the same. So far as the tribes to which we belong are concerned, we are perfectly satisfied that the treaty should be ratified on the terms proposed by the Menomonees." \* \* \* "For the purpose

of putting an end to strife, &c., we signify an acceptance of the modification;" \* \* "and we most respectfully request that the treaty, as now modified by the agreement this day entered into with the Menomonees, may be ratified and approved by the President and Senate of the United States.

"For and on behalf of the Brothertons,

"WILLIAM DICK.

"DANIEL DICK.

"ELCANAH DICK.

"OCTOBER 27, 1832."

It may be remarked that the appendix to the treaty of 1832, just quoted, alludes to the new basis of settlement, constantly, as an adjustment *proposed by the Menomonees*, and accepted by the New York Indians.

The history of the negotiations, as stated, and as referred to, in the journals quoted, shows that the propositions which were engrafted in the treaties, with slight modifications, came, however, from the New York tribes. This fact is not deemed material, except as it tends to show that the Brothertons were not forced to accept the basis of settlement embodied in the treaties of 1831 and 1832. but did so deliberately and with apparent cheerfulness, and with a full knowledge of all the details of the settlement.

On a review of all the matters hereinbefore discussed, the facts appear to me to be briefly these: The Brothertons, in 1825, in consideration of \$950, obtained an agreement from certain New York tribes that the latter would cede to the former a tract, eight by thirty miles in extent, southeast of Fox river, in the then Territory of Michigan, and having one (the northwest) side thereof resting on said river, commencing two miles below the Grand Kacalin, and extending down the river; and also the undivided one-half of all the interest of said certain New York tribes, in their purchase of September 23, 1822, from the Menomonees, after reserving for the Stockbridge, Oneida, St. Regis, and Tuscarora tribes or nations, each, a tract as large as the above recited Brotherton tract.

The said agreement had reference to the articles of 23d September, 1822, in which the Menomonees had excluded from their sale to the New York tribes such lands, within the boundaries named in said articles, as belonged to the United States and its citizens. That it became known and fixed, by the treaty of 1827, that a large part of the tract specifically claimed by the Brothertons had not been sold by the Menomonees to the New York Indians, and that a valuable tract below the same, on Fox river and Green bay, was also the property of the United States. Moreover, the President refused to confirm the tract named in the articles of 1822, except as to an inconsiderable part. That the Menomonees, before payment in full had been made, under the articles of 1822, protested against them, and continued ever thereafter to protest; and their protest was based on charges of fraud in the New York Indians, insufficiency of consideration, (\$3,000 for 6,000,000 of acres,) want of authority in chiefs signing the articles, &c., &c.

That the law of 1802 expressly prohibited the purchasing of lands from Indians and Indian tribes, and declared such purchases, when not approved by the President and Senate, void and of no effect. That a difficulty hence arose between the Menomonees and Winnebagoes and the New York tribes. That, to settle the matter on a just basis, the United States bought a tract of 500,000 acres, on the northwest side of Fox river, for \$20,000, and three townships on the east side of the Winnebago lake, for other valuable considerations, annuities, &c., (treaty of 1831,) for the purpose of establishing the rights of the New York tribes on a just and permanent footing, and providing for them a country to occupy; and (same treaty) bought also of the Menomonees all their lands on the east of Fox river and Winnebago lake.

That, in the winter of 1831-2, at Washington city, the Brothertons agreed, before the treaty of 1831 was ratified, to accept one township of land and \$1,600 indemnity, in lieu of their claims; and their delegate "seemed much distressed" at the "unfortunate termination of the conferences" with the Oneidas, because the arrangement in behalf of his tribe was likely to be defeated thereby. That in October, 1832, the Brotherton Indians were perfectly satisfied with the same provision in their favor, when presented to them at Green Bay by Governor Porter, and accordingly requested the ratification of the articles of October 27, 1832, with the Menomonees.

It is thus plain, that if the Brothertons acquired any rights in 1828, they were very ill-founded and precarious. That both the Executive and the Senate, in 1831 and 1832, having all the reports and documents, and all the claims and difficulties fully before them, endeavored to make a full and final adjustment of all the matters in controversy, on what was designed to be a just and permanent footing—a footing evidently regarded by the parties on all sides interested as equitable and fair.

It is but fair to presume that, the transactions being fresh, and the information on all points full, the President and Senate were well prepared then to determine an equitable basis of adjustment. No new facts, bearing on the facts as then existing, have since been developed, and the wisdom of disturbing now the adjustment then made, in my opinion, may, therefore, well be questioned.

It was, at the time, evidently the policy of the United States to obtain and set apart a country near Green Bay for the accommodation of all the Indians of the Six Nations—about 6,000 in number, including as well those remaining in New York as those near Green Bay—and reserving to the United States such parts of the tract as shall not be actually settled on by them. Hence the purchase of 500,000 acres of the Menomonees, to be appropriated to the use, so far as needed, of those New York tribes that would remove there.

As to quantity of land, therefore, the provision made for the Brothertons by the treaties of 1831 and 1832, in proportion to their population, was nearly as liberal as that made for the tribes of the Six Nations. The difference may be accounted for, when we consider that the Brothertons had invested less money in the transactions of 1821 and 1822, than the Six Nations. They also would have taken an

interest in a much less quantity of lands in the purchase of 1822, as described in the President's approval to the articles, than the tribes of the Six Nations would have taken by the two approved purchases of 1821 and 1822, had those purchases been recognised by the Menomonees, and enforced by the United States, as the New York tribes interested at first claimed they should be. I would here remark, as the memorial is likely to mislead the reader, in regard to the allowances made by Congress to the Stockbridges in compensation for their interest in these matters of 1821 and 1822, that the 3d section of the act of August 6th, 1846, (U. S. Statutes, vol. ix, page 56,) appropriated \$5,000 "in consideration of moneys paid by said Stockbridge nation of Indians to the Winnebagoes and Menomonees, in the years 1821 and 1822, and *all other claims.*"

The treaty of 1848 makes special reference in the supplement, (vol. ix, page 964,) to "a claim against the United States, for indemnity for certain lands on White river, in the State of Indiana, and for certain other lands in the State of Wisconsin," \* \* \* "in consideration of the relinquishment by them of said claims, and all others except as provided in this treaty." \* \* \* "The United States do further stipulate" \* \* \* "to pay to the sachems or chiefs of said Indians, on the ratification of this article by them, with the assent of their people, the sum of five thousand dollars; and the further sum of twenty thousand dollars, to be paid in ten annual instalments, to commence when the said Indians shall have selected and removed to their new homes, as contemplated by the 7th article of this treaty."

The \$5,000 appropriated in 1846, and the \$5,000 appropriated 3d March, 1849, to fulfil the supplemental stipulation of the treaty of 1848, are the only sums as yet paid to the Stockbridges, the \$20,000 being withheld till they shall remove; and as to the \$10,000 thus already paid, it is on account of, as well these claims, based on transactions in 1821 and 1822, as of all others. I should be at a loss, therefore, to know how to divide this sum of \$10,000, or to form an opinion as to how much was allowed for the claim to lands on White river, how much for the claim to lands in Wisconsin, and how much for all other claims.

The latter part of the memorial of Mr. Fowler, delegate for the Brotherton tribe, alleges that the United States made more ample provision in lands and money for the Oneidas and Stockbridges, because of their participancy in the transactions hereinbefore reviewed, than for the Brothertons; and therefore asks that an equally liberal course be taken towards the tribe he represents. If this statement be true, there may have been some good reason for it. It is enough for me to say that the Executive and the Senate, in 1831 and 1832, aimed at a just settlement, and they had then all the facts before them.

It may here be remarked, that no other Indian tribe, within the bounds of the United States, could probably be found, with which the government has dealt more liberally than with the Oneidas and Stockbridges. If the principle of an equality in liberality be admitted as applicable to the Brothertons, as compared with the Stockbridges and

Oneidas, then must it also be applicable to the Stockbridges and Oneidas, and other Indians within our jurisdiction, as compared with the most favored tribe. To carry out this principle, it will be at once perceived, would introduce confusion throughout our entire Indian relations. Solemn treaties, heretofore made, would be valueless, and the liberality of Congress would be solicited to relieve the treasury of its present surplus, and to substitute a deficiency for abundance in the revenue.

There is another idea introduced into the memorial, in connexion with which I deem it proper to add a remark. The idea is, that inasmuch as it is usual for the United States to defray the expenses of removing Indian tribes to new homes, the government should make some compensation to the Brothertons for removing themselves. It should be observed, that those tribes generally have been removed at the cost of the government, of which it has purchased their old homes and haunts.

The Brothertons, however, did not sell lands to the United States; and when they removed west, they were good farmers; and it would appear from the statements and references hereinbefore made, that at least some of them were men of good business capacity. Their removal appears to have been undertaken to better their circumstances, and to have attained its object in this respect.

The Indian title to the 500,000 acre tract having been extinguished by subsequent treaties, excepting the 65,400 acres allotted in severalty to Oneidas, it is deemed unnecessary to transmit any maps of the region of country, or of the various tracts hereinbefore mentioned.

The Brothertons having selected the township of land secured to them by the treaties of 1831 and 1832, on the 7th of January, 1839, (House Journal, 25th Congress, 3d session, page 209,) "Mr. Doty presented a petition of the tribe of Indians called the Brotherton Indians, praying to be acknowledged citizens of the United States, and for an equal division of their lands." This resulted in the passage of the act of Congress of March 3, 1839, (U. S. Statutes, vol. v, pages 349, 350, and 351,) by which provision was made for the division of their lands among the individuals of the tribe, "to be held by them separately and severally in fee simple after such division shall have been made," &c., and also for the recognition of those Indians as citizens of the United States.

The division having been made, Congress also, by the act of 21st July, 1840, (U. S. Statutes, vol. vi, page 813,) appropriated the sum of \$1,830 to defray the expenses that had been incurred in effecting it.

A question is submitted in the memorial of Mr. Fowler, delegate, &c., as follows: "Why, it might be asked," \* \* \* "was special provision made (for the Brothertons) in Gillet's treaty at Buffalo in 1838?"

An examination of that treaty suggests this remark: The policy of the government in 1838 was to remove all Indians east of the Mississippi to the Indian country west. This policy embraced the removal of the tribes near Green bay. (See report of Secretary of War to the Senate, March 7, 1836, S. Doc., 1st session 24th Cong., vol. iii, page

229.) By the 2d and 15th articles of the treaty of 1838, (U. S. Statutes, vol. vii, pages 551 and 555,) ample provision was made for the removal of the Brothertons to the west of the Mississippi. But they did not wish to go. They petitioned Congress (January 7, 1839) for fee simple titles to their lands at Green bay, and for the privileges of citizenship, and their request was granted. Could they reasonably expect to obtain the pecuniary advantages at once of a settlement as citizens at Green bay, and a removal to the Indian country west?

The act of March 3, 1839, having been fully executed, the Brotherton Indians became citizens of the United States, and in that capacity have lost and merged their relations to the government as an Indian tribe. Since the allotment of their lands, the department has not exercised any supervision over them; its only connexion with them being such as arose from the application, during a few years of the period since elapsing, of a portion of the \$1,500 for education, appropriated annually in pursuance of the stipulations of the 5th article of the treaty of 1827, through the sub-agent at Green Bay, to the education of their children. (For remarks respecting the Brotherton Indians see paper No. 27, accompanying the annual report of the Commissioner of Indian Affairs in 1846; paper No. 5, accompanying annual report of 1847; paper No. 20, accompanying the annual report of 1848; paper No. 2, independent, accompanying annual report of 1849, page 215; and paper No. 20, accompanying my annual report of 1854.)

The facts in regard to the claim of the Brotherton Indians, presented to Congress in the memorial hereinbefore quoted, being, as I believe, correctly stated above, I am at a loss to discern any principle to which to refer you that would assist you in preparing an estimate for submission to Congress of an amount to be paid them by the United States in satisfaction thereof.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,  
*Commissioner.*

Hon. R. McCLELLAND,  
*Secretary of the Interior*