Journal Title: The Old Northwest

Volume: 2
Issue: 2
Month/Year: 1976
Pages: 131-140

Article Author: Rubenstein, Bruce A.

Article Title: Justice Denied: Indian Land Frauds in Michigan, 1855-1900

Imprint:

[40]Duncan McArthur to James Taylor, 14 April 1815, in Taylor, "Documents," CHS; Taylor to Robert Brent, 28 January 1816, LL; James Taylor, "Statement Before the Committee on Claims," CHS.

[41]Leonard D. White, *The Jeffersonians: A Study in Administrative History, 1801-1829* (New York: Macmillan Company, 1951), pp. 171-77.

[42]War Department, "Statement of Differences on Settlement of the Accounts of James Taylor," 11 April 1820; Peter Hagner to James Taylor, 4 January 1821, both in Taylor, "Documents," CHS. In *House Docs.*, 17th Cong., 2 Sess., no. 32, p. 106, the debt is listed as $18,378.89. The difference of $157.67 later became the basis of a separate suit filed by the government against Taylor, which he referred to as "a pitiful sum." See Taylor, "Statement Before the Committee of Claims," CHS.

[43]Peter Hagner to Henry Clay, 14 March 1821, *The Papers of Henry Clay*, ed. James F. Hopkins (Lexington: University of Kentucky Press, 1963), III, 69-70; Stephen Pleasanton to George M. Bibb, 5 September 1823, in Taylor, "Documents," CHS. The flurry of counter claims by Taylor at this time probably resulted from the 1823 Congressional ruling that the auditor could accept claims without appropriate vouchers, if the claims were supported by other evidence. It might be pointed out that not only was James Taylor fighting the government over his own accounts, but that he was contesting a claim of over $2000 against his deceased nephew, James T. Eubanks.

[44]S. Maxey to Thomas B. Monroe, 1 October 1830; Maxey to William Barry, 13 July 1831; Maxey to Monroe, 13 July 1831, 1 October 1831; Maxey to Roger Taney, 3 April 1832; all of these letters, as well as the supportive statements, are in Taylor, "Documents," CHS.

[45]E. Whittling to Peter Hagner, April 1832; James Taylor to House Committee on Claims, 28 December 1834; Third Auditor's Office [Peter Hagner], to A.K. Parris, 2nd Comptroller of the Treasury, 20 December 1844; Seth Bartow, Solicitor of the Treasury, to P.S. Soughborough {?}, U.S. Attorney for Kentucky, 8 May 1847; all in Taylor, "Documents," CHS. Also see *Sen. Docs.*, 23 Cong., 1 Sess., no. 107; 27 Cong., 3 Sess., no. 110; *House Reports*, 26 Cong., 1 Sess., no. 422.

[46]Duncan McArthur to James Taylor, 14 April 1815; Thomas D. Carneal, "Statement"; George M. Bibb to Mr. Thornton, 2nd Comptroller, War Department, 29 May 1833; all in Taylor, "Documents," CHS. Thomas S. Jessup, "Statement," in James Taylor, "Narrative," 18-20.

[47]James Taylor to M. St. Clair Clark, 5 January 1848, LL.

[48]James Taylor, "Statements Before the House Committee on Claims," CHS. In this sometimes arrogant, frequently splenetic, and occasionally humble petition to the House Committee, Taylor compared himself to John Piatt. He pointed out that at least a contractor (Piatt) had a chance "to make something handsome," but queried what chance, on $50 a month, a paymaster had.

JUSTICE DENIED: INDIAN LAND FRAUDS IN MICHIGAN, 1855-1900

BRUCE A. RUBENSTEIN

INDIANS surrendered land title to Michigan in several treaties with the United States during the first half of the nineteenth century; in return, the government set aside areas exclusively for Indian occupancy. As increased numbers of settlers entered Michigan, they began to clamor for the government to open all unused reservation land for white purchase. Because sale of the public domain was the major revenue source for the government, it agreed to reduce reservation holdings by allowing Indians to possess limited amounts of private property, with all unclaimed land then being restored to open market for purchase by white settlers.

Michigan's Indians received the right to own private property in fee simple, with eventual power of alienation, beginning with the Treaty of LaPointe (1854). This agreement set aside all unsold lands, amounting to 58,249 acres, in four Upper Peninsula townships, for entry as eighty-acre selections by "each head of a family or single person over twenty-one years of age" belonging to the L'Anse and Vieux Desert bands of the Chippewa of Lake Superior.

Treaties were negotiated the following year at Detroit with the Ottawa and Chippewa and Chippewa of Saginaw, Swan Creek, and Black River tribes by which the Indians ceded their reservations in return for the right to select free land in areas designated by the federal government. The Ottawa and Chippewa tribe received 776,320 acres near their existing homes along Lakes Michigan and Superior. Heads of families and families with two or more orphan children were entitled to eighty acres; single persons over, and single orphans under, twenty-one years of age could select forty acres. A list of eligible recipients was to be compiled by the Indian Agent and submitted to the Indian Department no later than 1 July 1856; after the deadline no applications would be accepted. Selections were to be completed within five years, after which

time all unallotted land would be restored to open market. Indians making selections were promised certificates and patents, with power of alienation granted after ten years. Six townships in Isabella County, totalling 138,240 acres, chosen by the Indians, were set aside for exclusive entry by the Chippewa of Saginaw, Swan Creek, and Black River; terms for selection and sale were identical to those granted the Ottawa and Chippewa.[1]

Unfortunately, the allotment system did not function smoothly. Few Indians had made selections by the 1856 deadline, and the government felt compelled to extend the deadline indefinitely. Then the Civil War further delayed the selection process, and following the war the Indian Department ordered an entirely new list of eligible recipients to be compiled. As a result of these delays, by 1871 only 399 deeds had been delivered. Such token deliveries appeased neither Indians nor whites. Indians were hostile over long issuance delays, while white settlers and speculators angrily claimed that according to treaty provisions Indian reservations should have been opened for public entry in 1861. By 1871 congressmen, senators, and Indian Department officials were beset with complaints.[2]

In an attempt to placate both whites and Indians, Senator Thomas W. Ferry of Michigan introduced a bill to restore certain lands in Michigan to market. This bill, enacted 10 June 1872, provided for an Indian Homestead Act. For six months following enactment of the bill all undisposed reservation land set aside by the 1855 treaties would be opened exclusively for homestead selections of eighty or 160 acres to Indians who either were entitled to make entry under the treaties but had not done so, or had come of age since the treaties had been made. The recipients would be subject to all provisions of the 1862 Homestead Act. After six months undisposed land would be restored to market. Once again the Agent would compile a list of eligible recipients, but this time he had to classify them as either "competent" or "not so competent." Those classified "competent" were granted immediate power of alienation of property, while all others had to receive government authorization before selling their homesteads. Unfortunately for the state's Indians, all but twenty-four eligible recipients were listed as "competent."[3]

Indians and concerned whites were displeased with this act. Indians feared more lengthy delays in receiving deeds, while white friends worried about fraud. Concerned whites believed that Indians had no conception of the word "homestead" and that strict compliance with the terms of the act would harm Indians because they neither lived nor farmed like whites; many reminded government officials that Indian habits and customs had not been changed, as had their political status, by the mere wording of a treaty.

Within five years of the bill's enactment the dire predictions of fraud came true. Daily reports of fraud reached the Indian Agent. In fact, fraud was so extensive that the agent reported that he was investigating as many as sixty-four cases each month during 1876-1877.[4]

Speculators and land-sharks who stole Indian land were unscrupulous persons willing to use every available means to achieve their goal. Cheap sewing machines and parlor organs, which missionaries and teachers had taught Indians to accept as symbols of civilization, were sold with land mortgages taken as collateral; when Indians failed to meet payment deadlines, the goods were repossessed and the land seized as payment. Some speculators would induce Indians to borrow fifty or one hundred dollars to improve their property, citing a prosperous white neighbor as an example of what Indians could achieve by agreeing to the loan. Mortgages served as collateral and repayment dates were set for winter months when Indians were least likely to be able to meet payment; if payment was made, Indians still lost their land, for whites showed them a clause in the contract stating that they were obligated to pay a large attorney's fee for handling the arrangements. Another method for acquiring land was to loan drunken Indians money and demand repayment, with interest, the following day. Creditors threatened imprisonment for Indians refusing to sell their property to cover the debt; one agent reported that lots worth five hundred dollars were often thus obtained for fifty. In 1878 the prosecuting attorney of Mason County reported that local loan-sharks were merciless with Indians who fell into their power; one man acquired nearly an entire township in Mason County through foreclosure of twenty-dollar loans to Indians. Widows with dependent children were special targets for swindlers; a favorite

ploy was to purchase timber from widows and have them sign what was claimed to be a receipt, but was actually a warranty deed. A similar ploy was for whites claiming to be agents of charitable institutions to go among starving Indians in winter, give them five dollars to buy food, and ask them to sign receipts which were actually deeds to their property. Many Indians were simply taxed off their land. In the Little Traverse region in the late 1870's Indians paid twice as much taxes as whites for the same amount of land, and local officals promised that they would pay even more until every Indian was driven out. Occasionally physical violence was used to force recalcitrant Indians to sell their land; men were hired to burn Indian houses and bludgeon the owners with clubs and iron rods.[5]

If unable to acquire desired land through private dealings, speculators often bribed land officers to assist them. The most flagrant fraud involving Land Office officials was against Lucy Penaseway, an Ottawa widow with four dependent children. She had filed her homestead entry in 1872; in accordance with requirements she resided upon and improved the property, building a house, clearing a field, and planting fruit trees and vegetable gardens. During the summer of 1876 she and her children left to pick berries. While they were gone, a white land speculator bribed the land office clerk at Traverse City to advertise her property as abandoned; when she did not contest, he made homestead entry. Upon returning, the Indian family found their furniture broken and strewn outside, the vegetable garden ploughed, and every fruit tree uprooted; all proof of improvement and residence was destroyed. The Indian Agent protested this case for more than three years, claiming that Mrs. Penaseway had been "treated as bad as the most heartless treatment of the ex-slaves of the South through scheming and rascality done at the Land Office." Ironically, after five years the white speculator forfeited the land for lack of improvement, but by then all the valuable pine timber had been stripped and sold, leaving a barren waste where a home and garden once stood.[6]

Even when Land officials were honest, General Land Office requirements for contesting abandonment claims were prohibitive for most Indians. Indians were obligated to reply to printed newspaper advertisements of abandonment; since

claims usually were filed while they were absent, most Indians were unaware of them and did not contest, which resulted in a loss of their land through *ex parte* hearings. This procedure was illegal under both Michigan law, which strictly prohibited *ex parte* hearings unless a defendant "had absconded or was about to abscond from the State," and a General Land Office regulation that notices must be "personally served in every case where such service is practicable." Speculators bribed land officials to ignore the laws so they could continue to rob victims who were usually ignorant of their rights and too poor to contest.[7]

Hardship was great for those Indians who did contest. Most Indians lived more than seventy-five miles from a land office; yet they were required by law to provide transportation to, and housing at, the land office site for themselves and their three witnesses. Minimum cost was fifty dollars plus expenses for an interpreter and attorney—too great a financial burden for most Indians to bear.[8]

Land office hearings were often a farce. Speculators bribed witnesses to refute Indian testimony. The arbiter was the land office register who had been bribed to file the original abandonment claim. Few Indian contestants saved their homesteads. Even in victory Indians lost, however, for they were compelled by General Land Office regulations to bear the cost of the hearing which they had requested.[9]

Occasionally Indian Agents were actively involved in fraud as in the case of George I. Betts. Betts, a Presiding Elder in the Methodist Episcopal Church, was appointed Agent in late 1871 and soon afterward became a partner of five real estate dealers in the Saginaw area; this partnership resulted in one of the greatest land frauds in Michigan's history.

In the spring of 1872 Betts held a council with the Chippewa of Saginaw, Swan Creek, and Black River to inform them of the possibility of making new land selections. He informed them that all applications for such selections were to be filed with his deputies, Alexander and Peter Andre, two of his partners. Indians thought Betts's word was final and agreed. When they tried to make entries, however, they were told that no selections would be recorded unless they agreed to permit the Andres to choose the land for them and purchase all the timber on it; these terms would apply also to future Indian acquisi-

tions of land. Subsequent investigation found that of those complying "not one in twenty had the remotest idea of the site of the land selected."

Since many Indians refused to make selections under such conditions Betts was forced to utilize other schemes to seize their land. He informed his half-blood government interpreter that five dollars, plus costs, would be paid for every Indian deed he could obtain; the interpreter earned several hundred dollars by furnishing the Agent titles purchased for twenty-five dollars from aged, illiterate, impoverished widows. Other land was acquired by forging applications in the names of minors or deceased persons and hiring Indians for five dollars to impersonate eligible applicants, sign the deeds, and transfer them to Andre.

Several chiefs protested these irregular procedures to Secretary of the Interior Columbus Delano, who ordered an investigation. Infuriated that complaints had been sent to Washington, Betts convened another council and threatened chiefs with physical harm unless a new letter, stating that the original charges were false, was sent. When this was refused, Betts, using his official discretionary power, removed all obstinate chiefs and replaced them with men who would do his bidding. Soon Washington officials received a letter praising Betts as the best agent Michigan Indians ever had and declaring that all accusations made against him were false. This letter is highly suspect, however, since it was translated by Betts's interpreter, transcribed by Peter Andre, and witnessed by Alexander Andre.

In April 1875, Betts began compiling his offical allotment list. This list was submitted for Indian Department approval 27 November 1875, accompanied by a letter from Betts recommending that patents be immediately issued, inasmuch as he had "exercised unusual care in investigating the correctness of the list" and was satisfied that each party was entitled to the land assigned. Approval was given by Secretary of Interior Zachariah Chandler 16 December 1875. On 25 February 1876, Chandler, having been furnished proof of irregularities in Betts's administration, suspended the agent; the following 30 August, Betts's land list was cancelled as fradulent.[10]

After the cancellation Indians were granted permission to reselect land, but former choice property was unavailable. In early 1877 Michigan's Supreme Court ruled that Indian deeds were valid upon approval of the Secretary of the Interior; accordingly, it declared legal all transactions, which were recorded at land offices after 16 December 1875, and before 30 August 1876, between Indians and the white real estate dealers. As so often happened, Indians were victimized both by land-sharks and by "white justice."[11]

Lumbermen and their agents were as ruthless as the land-sharks in dealing with Indians; any devious tactic was acceptable to achieve success. The most flagrant incident of timber fraud was the "Rust Purchase" of 1864. In this case two half-blood Chippewa illegally purchased 15,000 acres of choice Isabella County pine land and immediately transferred title to Ezra Rust, a prominent Saginaw lumberman. The Chippewa of Saginaw, Swan Creek, and Black River protested the sale, claiming that it encompassed all unallotted land they had set aside for their children, but no action was taken either by the Indian Department or by the General Land Office.

In 1870, six years after the sale, two Saginaw lumbermen, George F. Williams and Timothy Jerome, whose brother David was a state senator and later became a member of the Board of Indian Commissioners and governor of Michigan, joined Reverend George Bradley, the Methodist missionary at the Isabella reservation, in a scheme to further defraud these Indians. Jerome met with Secretary of Interior Delano and was informed that the United State District Attorney at Detroit was about to receive orders to prosecute Rust and restore stolen Indian land. Jerome requested that public notice of the impending suit be delayed for several weeks and that the Indian Agent not be notified. Delano agreed and Jerome returned to Michigan. The lumberman then told Bradley to meet with the Indians and announce that Jerome would prosecute Rust and restore Indian property, free of cost, if they would sign a contract authorizing the action. The chiefs asked Bradley to read the contract to them but he refused; they were eager, however, to have their land returned, and knowing that Bradley was a "minister of God" they did not think that he would do anything wrong and signed the agreement. Subsequently they discovered that they had agreed to allow Jerome and Williams to choose land for them on the restored property, to prohibit all Indian improvements on these selections for ten years, and to

retain exclusive timber privileges during this ten year period.[12]

Proud of his transaction, Jerome went to Detroit and told the Indian Agent. The Agent was furious and, having verified that Rust was going to be prosecuted by the government, wrote Commissioner of Indian Affairs Ely S. Parker requesting that he annul the contract.

Fearful of losing their ill-gotten spoils the conspirators began a campaign to dissuade the Agent from continuing his efforts to thwart them. Jerome visited the Agent again and warned him that the Jerome family "controlled Michigan" and that his brother "would fix him up"; he further reminded the Agent that his predecessor had been removed from office because he had tried to prosecute lumber cases against the Jeromes and that a similar fate awaited him if he persisted. Undaunted the Agent again wrote Commissioner Parker informing him of these threats and asking him not to sanction the contract. Parker, however, did nothing. Within the year the agent was removed from office.[13]

After nearly four years of litigation, the contract was nullified; but, as in so many cases, most of the valuable timber was removed before a court decision was reached. Justice moved too slowly to protect "savage" Indians from exploitation by "civilized" whites.

A turning point for Michigan's 10,000 Indians seemed to occur in 1885 when Grover Cleveland became President. A new agent was appointed, and within two years he began lawsuits against land-sharks and lumbermen who had stolen Indian property; for the first time a Michigan Indian Agent was supported by Washington officials in his efforts to rectify frauds recognized, if not sanctioned, by the Interior Department during the preceding twenty-five years. In 1888 the Agent reported that he had brought to court ten cases for the return of Indian property and timber and had been successful in seven of them. While he admitted that only a small amount of the stolen property was involved in these cases, he noted that the mere bringing of suits had practically ended all "willful trespasses." He expressed hope that even more prosecutions would be obtained the following year.[14]

The Agent's hope was never fulfilled, however, since the state's Indian Agency was closed 30 June 1889, because the

Indian Appropriation Bill, written in committees which included several prominent lumber senators and congressmen, failed to allocate funds to operate the agency. Commissioner of Indian Affairs Thomas Jefferson Morgan expressed his disappointment at the action and said that he thought the closing was questionable but that he was powerless to reverse it. Having felt the pressure and humiliation of legal action against them, Michigan's lumbermen and land speculators had used their political influence effectively and were once again free to deal with their unfortunate victims.[15]

Blame for Indians' losing much of their land and timber ultimately must be laid on the federal government's insistence that Indians receive land in severalty with power of alienation. Most of Michigan's Indians were not able at any time during the nineteenth century to protect themselves from the schemes of unscrupulous whites. The government could soothe its conscience by prosecuting men for their past crimes and offering Indians cash settlements or alternate selections, but these things could not restore to the Indians the thing most precious to them—choice land for their descendants.

NOTES

[1]*Statutes-at-Large*, XI, pp. 220, 621-23, 633-34.

[2]James W. Long to Ely S. Parker, Commissioner of Indian Affairs, 24 March 1870, National Archives Microcopy 234, *Letters Received by the Office of Indian Affairs From the Mackinac Agency*, Record Group 75, Roll 409, Clark Historical Collections, Central Michigan University (hereafter referred to as N.A.); James S. Wilson, Commissioner of the General Land Office, to Ely S. Parker, 22 October 1870, N.A. Roll 409; William Martin to John P. Usher, Secretary of the Interior, 9 April 1864, N.A. Roll 407; Petition of forty-eight citizens of Ionia County to Congressman Thomas W. Ferry, 16 December 1865, N.A. Roll 407; Thomas W. Ferry, Zachariah Chandler, John Driggs, Jacob Howard, et al. to Orville H. Browning, Secretary of the Interior, 5 June 1868, N. A. Roll 408; Jacob M. Howard to Orville H. Browning, 15 June 1868, N.A. Roll 408.

[3]"An Act of Congress to Restore Certain Lands in Michigan," N.A. Roll 411.

[4]Edwin J. Brooks to Ezra A. Hayt, Commissioner of Indian Affairs, 4 January 1878, N.A. Roll 413; George W. Lee to John Q. Smith, Commissioner of Indian Affairs, 16 October 1876, N.A. Roll 412; Lee to Smith, February 1877, N.A. Roll 412.

[5]Edwin J. Brooks to Hayt, 12 January 1878, N. A. Roll 413; George W. Lee to Smith, 16 October 1876, N.A. Roll 412; R.P. Bishop to Lee, 18 December 1878, N.A. Roll 413; Lee to Commissioner of Indian Affairs, 16 March 1880, N.A. Roll 413; Brooks to Hayt, 5 May 1878, N.A. Roll 413; C.K. Williams to Lee, 6 December 1879, N.A. Roll 414; Margaret Boyer to Hayt, June 1877, N.A. Roll 412.

[8]Lee to Hayt, 14 May 1879, N.A. Roll 414; Lee to Hayt, 23 May 1879, N.A. Roll 414; Andrew J. Blackbird to Lee, 23 April 1879, N.A. Roll 414; Lee to Hayt, 13 December 1879, N.A. Roll 414.

[7]*The Compiled Laws of the State of Michigan*, II, 1269; Edwin J. Brooks to J.A. Williamson, Commissioner of the General Land Office, 27 December 1877, N.A. Roll 413.

[8]Lee to Hayt, 13 December 1879, N.A. Roll 414; Andrew J. Blackbird to the Commissioner of Indian Affairs, 28 March 1877, N.A. Roll 412.

[9]Edwin J. Brooks to J.A. Williamson, 27 December 1877, N.A. Roll 413; J.M. Armstrong, Acting Commissioner of the General Land Office to Register at Marquette Land Office, 5 March 1880, N.A. Roll 415; Lee to Hayt, 15 January 1878, N.A. Roll 413.

[10]Edwin J. Brooks to Hayt, 25 October 1879, N.A. Roll 414; Lee to John Q. Smith, 28 March 1877, N.A. Roll 412; Petition of Chippewas of Saginaw, Swan Creek, and Black River, 27 August 1875, N.A. Roll 411; Petition of twelve chiefs of Chippewa of Saginaw, Swan Creek, and Black River to the Secretary of the Interior, [n.d.], N.A. Roll 410; George I. Betts to the Commissioner of Indian Affairs, 27 November 1875, N.A. Roll 411; Brooks to Williamson 27 December 1877, N.A. Roll 413; Zachariah Chandler to the Commissioner of Indian Affairs, 25 February 1876, N.A. Roll 411. Many of the deeds acquired in this fraud are in the Peter C. Andre Papers in the Michigan Historical Collections of The University of Michigan.

[11]Brooks to Hayt, 7 May 1878, N.A. Roll 413.

[12]George Bradley to Ulysses S. Grant, 31 October 1870, N.A. Roll 409; Contract Between the Chippewas of Saginaw and T.P. Jerome and George F. Williams, N.A. Roll 409; James W. Long to Ely S. Parker, 4 February 1870, N.A. Roll 409.

[13]Long to Parker, 11 August 1870, N.A. Roll 409.

[14]*Annual Report of the Commissioner of Indian Affairs, 1888* (Washington: Government Printing Office, 1888), p. 144.

[15]*Annual Report of the Commissioner of Indian Affairs, 1889* (Washington: Government Printing Office, 1889), p. 48.

THE HALF-BREED IN SNELLING'S *TALES OF THE NORTHWEST*

WILLIAM J. SCHEICK

WILLIAM Joseph Snelling's *Tales of the Northwest* (1830) is a very neglected literary work of the American frontier. It suffers from various aesthetic limitations and disproportions of the sort which irritate contemporary critical sensibilities; and so, if the book is mentioned at all, the reference is generally confined to literary histories.[1] I would like to suggest, however, that Snelling's volume is significant in ways as yet undisclosed by critical commentary, that it is not only a noteworthy classic of the Old Northwest but also a fascinating documentation of cultural conflict with important artistic ramifications. Explicitly *Tales of the Northwest* relates numerous details about early nineteenth-century frontier life; but of greater interest to the student of American culture and art is the work's implicit revelation of a tension between Snelling's intent and his achievement in the book, between attempted imaginative design and the momentum of literary convention. This tension alerts us to certain peculiar problems confronting the artist of the frontier and, as well, functions as a dynamic feature in Snelling's book.

Conflict within the work has not been entirely overlooked. Roy Harvey Pearce has observed that despite Snelling's expressed intention to describe Indian life apart from any theory, he in fact uses civilization as a measure of the differences between the cultures and thereby demonstrates that "savage gifts are gifts of loss."[2] Pearce is, of course, correct as far as he goes; what warrants further scrutiny is the degree to which this conflict arises from a deeper cultural and artistic tension in the work, from Snelling's struggle with specific aspects of what Edwin Fussell, who never mentions *Tales of the Northwest*, has described as a characteristic ambivalence informing American attitudes toward the frontier.[3] In the book this ambivalence particularly surfaces in Snelling's search for a character who will adequately represent and dramatize the