No. 06-429

IN THE
Supreme Court of the United States

ROBERT NAFTALY, *et al.*,

Petitioners,

v.

KEWEENAW BAY INDIAN COMMUNITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did both courts below err in concluding that the 1854 Treaty with the Chippewa at La Pointe, in light of its unique language and history, precludes taxation of Indian lands allotted and made alienable under the treaty, and that Congress has never abrogated that treaty right?

2. Did both courts err in concluding that, as both parties had conceded, there were no genuine issues of material fact precluding resolution of this case on summary judgment?

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INTRODUCTION

Petitioners argue that the decision below misapplies this Court's precedent, conflicts with a decision of the Ninth Circuit, and raises questions of general importance. On the contrary, both lower courts agreed on the interpretation of language and history unique to a single Indian treaty. Their decisions apply well-established legal principles, create no conflict with other courts, and involve the property tax status of a small part of a single reservation. There is no reason for further review.

TREATY PROVISIONS INVOLVED

The text of the Treaty with the Chippewa at La Pointe, Sept. 30, 1854, 10 Stat. 1109 (the "1854 Treaty"), is set forth in the Appendix to this brief.

STATEMENT

The court of appeals' holding that the State of Michigan cannot impose its *ad valorem* property tax on land owned in fee by the Keweenaw Bay Indian Community (the "Community") and its members within the L'Anse Reservation rests upon the court's interpretation of a unique 1854 treaty as it applies to land in one reservation. The Community, a federally recognized Indian tribe, is the successor in interest to the L'Anse band of Lake Superior Chippewa, for which the L'Anse Reservation was established. The fee land at issue encompasses approximately 6% of the 59,840-acre Reservation.[1]

1. The fee land consists of approximately 2,947 acres owned by the Community and approximately 688 acres owned by Community members. Affidavit of Susan LaFernier ¶ 6, R. 26, 6th Cir. App. 72, 74.

1. Pursuant to the Treaty with the Chippewa at La Pointe, Oct. 4, 1842, 7 Stat. 591 (the "1842 Treaty"), the Chippewa of Lake Superior and the Mississippi ceded the western half of Michigan's Upper Peninsula as well as portions of northern Wisconsin to the United States. *Keweenaw Bay Indian Community v. Michigan*, 784 F. Supp. 418, 421 (W.D. Mich. 1991). Most of the Chippewa continued to live and reside within the ceded area, however. Article II of the 1842 Treaty guaranteed to the Chippewa the right to hunt within the ceded area with the usual privileges of occupancy unless and until required to remove by the President, as well as the protection of the federal Indian trade and intercourse laws. *Id.* By the late 1840s the United States had surveyed and begun to sell land in the Keweenaw Bay area, causing fear among the Chippewa that they would be forced to remove from their residences and villages in the ceded area. *Id.* The Chippewa leaders sent numerous petitions and letters to the President and Indian agents asking for the creation of permanent reservations. *Id.* The local Indian agent remarked that removal was "'the great terror of [the Indians'] lives and I hazard nothing in saying they will sooner submit to extermination than comply with it.'" *Id.* "A consistent Indian theme throughout the period . . . prior to the 1854 Treaty was an ardent desire for permanent homes for the Indians in their present locations." *Id.* at 422.

As a result of the petitions and letters from the Chippewa, the United States agreed to negotiate another treaty with them in 1854. The 1854 Treaty created permanent homes for the Chippewa on reservations that encompassed their actual dwelling places. *Keweenaw*, 784 F. Supp. at 424. For the L'Anse and Vieux De Sert bands, the United States "agree[d] to set apart and withhold from sale" the lands that became known as the L'Anse Reservation. 1854 Treaty, art. 2. In

exchange for these reservations, the Chippewa ceded to the United States over seven million mineral-rich acres located in the Arrowhead region of present-day Minnesota, portions of which are known today as the Iron Range. 1854 Treaty, art. 1; *see also* Pet. App. 9a, 20a, 48a.

The court of appeals' decision rests primarily on Article 11 of the 1854 Treaty, which provides in pertinent part that "the Indians shall not be required to remove from the homes hereby set apart for them." 1854 Treaty, art. 11. Also relevant is Article 3, which provides the President with authority to make allotments of land to each head of a family or single person over twenty-one years of age and "at his discretion, . . . issue patents therefore to such occupants, with such restrictions of the power of alienation as he may see fit to impose." 1854 Treaty, art. 3. The record demonstrates – and Petitioners have conceded – that all of the allotments within the L'Anse Reservation were made, and that such allotted lands were made alienable, by the President or his delegates pursuant to the 1854 Treaty. Pet. 5; Pet. App. 32a-33a.

In 1991, in other litigation between the Community and the State of Michigan, the United States District Court for the Western District of Michigan held that all of the fee land within the exterior boundaries of the L'Anse Reservation formed part of the Community's Reservation and constituted "Indian country" within the meaning of 18 U.S.C. § 1151. *Keweenaw*, 784 F. Supp. 418. As the court noted, "Since earliest times, [the vicinity of L'Anse, Baraga, and the Keweenaw Bay] has been an uninterrupted residential community of Chippewa Indians whose identity has been well-known and frequently asserted." *Id.* at 428. The court held it would "def[y] common sense to conclude that Indians would seek a treaty to create a permanent home for

themselves and exclude the Indian villages and the property upon which many of their own residences were located." *Id.* at 424. The record in *Keweenaw* "was fully developed during eight days of trial," *id.* at 420, and the State did not pursue an appeal.

2. In 1994, pursuant to the terms of a stipulated consent judgment, the Community and the affected local governments resolved a dispute over the taxable status of fee land owned by the Community and its members within the L'Anse Reservation. The consent judgment acknowledged that all of the fee land owned by the Community and its members within the L'Anse Reservation was nontaxable, and the Community agreed to make (and made) payments in lieu of property taxes to the affected local governments for governmental services provided to the Community and its members. Pet. App. 12a.

In 1999, however, Petitioners or their predecessors, acting in their capacity as officials of the Michigan State Tax Commission, directed all local property tax officials throughout Michigan to place all real property owned by Indian tribes and their members on the tax assessment rolls, based on their reading of this Court's decision in *Cass County, Minnesota v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998). Pet. App. 12a. The Community subsequently brought this action against Petitioners and the assessing units of local government to prevent state taxation of the fee land owned by the Community and its members within the L'Anse Reservation. The Community based its complaint on several grounds, including that state taxation of the fee land was impermissible under the particular terms of the 1854 Treaty, and that in any event the taxation had not been authorized by Congress, either directly or by a statute making the land alienable, as required under *Cass County*.

After Petitioners had conducted written discovery and the parties had exchanged expert reports, Petitioners filed a motion for summary judgment contending that there were no genuine issues of material fact having a bearing on the taxability of the land at issue and that the Community's complaint should be dismissed. The Community filed a cross-motion for summary judgment. The district court held that the 1854 Treaty precluded state taxation. Considering the text of the Treaty, in particular the Article 11 provision that "the Indians shall not be required to remove from the homes hereby set apart for them," and its purpose to create permanent reservations for the Chippewa at the location of their existing homes, the court concluded that the State could not require the Indians to be removed from their homes for non-payment of property taxes, and hence (under this Court's precedents) the taxes themselves could not be imposed. Pet. App. 42a-43a, 45a-48a; *see*, *e.g.*, *The Kansas Indians*, 72 U.S. 737, 760 (1866) ("taxes must first be levied, and they cannot be realized without the power of sale and forfeiture, in case of non-payment); *The New York Indians*, 72 U.S. 761 (1866) (striking down New York statute that imposed property taxes on an Indian reservation but purported to preserve the Indians' continued right to occupy such lands).

The court also examined the thorough treatment of the historical record in the previous *Keweenaw* decision, as well as in the expert reports and briefs, and determined that there was no evidence that the signatories to the Treaty – the Indian Tribes and the United States – intended by the allotment provision in Article 3 to negate the provisions of Article 11 and subject the allotted lands to state or local taxation upon the removal of alienation restrictions. Pet. App. 37a-40a, 45a-48a. Finally, the court applied the longstanding requirement that Indian treaties must be interpreted in the sense

in which they would naturally be understood by the Indians, with ambiguities resolved in the Indians' favor. Pet. App. 47a-48a. Echoing the previous *Keweenaw* decision, the court concluded that "[i]t defies logic to believe that the Indians would have signed a treaty ceding over seven million acres to the United States, knowing that they could lose the land they kept as a reservation the following year, due to non-payment of taxes." Pet. App. 48a.

The court also held that state taxation was precluded under the federal common law rule that "Indian reservation land is generally exempt from state and local taxation absent cession of jurisdiction or other federal statute[s] permitting it." Pet. App. 48a (citing *Cass County* and *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 254 (1992)). The court noted that in *Cass County*, the Supreme Court held that "'when Congress makes reservation lands freely alienable, it is unmistakably clear that Congress intends that land to be taxable by state and local governments, unless a contrary intent is clearly manifested.'" Pet. App. 49a (quoting *Cass County*, 524 U.S. at 113). The district court then held that, unlike in *Cass County*, the land here was made alienable not by an Act of Congress but pursuant to the terms of the 1854 Treaty, which preserved tax immunity through the Article 11 non-removal provision. The court concluded that because Congress had not acted to override the Treaty and make the land taxable, either expressly or by making it freely alienable through a later congressional act, there was no congressional authorization to supersede otherwise applicable general principles and permit state taxation of Indian-owned reservation lands. Pet. App. 50a-53a.

3. The United States Court of Appeals for the Sixth Circuit affirmed. Pet. App. 1a-35a. The court recognized that

this Court's decisions interpreting Indian treaties from *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), to *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), require that treaty language must be evaluated in light of the history and context of the particular treaty at issue. Pet. App. 16a-17a. It concluded that the particular guarantee against removal in Article 11 of the 1854 Treaty precluded any involuntary alienation of Indian-owned property, including tax sales. Pet. App. 17a, 20a, 22a. Like the district court, the court of appeals held that: "The Chippewa Indians envisioned land set aside for them permanently; it simply does not make sense that the Chippewa Indians would disapprove of the mass removal of their society but would sanction a gradual removal of individuals through involuntary alienation." Pet. App. 22a. The court of appeals also noted that any ambiguity in an Indian treaty must be resolved in favor of the Indians. Pet. App. 16a-17a, 22a.

The court of appeals then addressed whether Congress had ever clearly expressed an intent to abrogate the Community's rights under Article 11 of the Treaty or had otherwise clearly authorized state taxation of the fee land at issue. Pet. App. 23a-28a. The court rejected Petitioners' contention that the alienation provisions of the 1854 Treaty itself demonstrated congressional intent to permit taxation sufficient to abrogate the negotiated, immunity-preserving terms of the Treaty. It explained that a treaty, while it has the force of law, is quite different from an Act of Congress. Pet. App. 28a-29a. The court also considered and rejected, Pet. App. 29a-30a, Petitioners' reliance on cases from other circuits, including the Ninth Circuit's decision in *Lummi Indian Tribe v. Whatcom County, Washington*, 5 F.3d 1355 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994), which

had permitted state taxation of land that was ultimately made alienable in accordance with the provisions of a different treaty and later congressional enactments. Moreover, the court explained that there was no basis for concluding that any land within the L'Anse Reservation had been allotted or made alienable under the General Allotment Act, 24 Stat. 388 (1887), or any other federal statute that might have evinced a clear congressional intent to override the Treaty and permit taxation. Accordingly, the court held that the Indian-owned lands within the Reservation were immune from state property tax, under both the 1854 Treaty and federal common law. Pet. App. 31a-33a.

In a brief dissent, Judge Guy noted that "[t]he court has accurately set forth the facts . . . [and t]he result reached is certainly plausible." Pet. App. 34a. He disagreed, however, with the majority's interpretation of the 1854 Treaty to include preservation of the tax immunity of allotted land that became freely alienable. Pet. App. 35a. He would instead have construed the treaty to have "nothing to do with what might happen when freely alienable land was under individual ownership." *Id.* In the absence of any treaty immunity, Judge Guy would have followed what he understood to have been the Ninth Circuit's approach in *Lummi* and held that even on the L'Anse Reservation the "alienable status" of reservation fee land, whatever its source, "determines its taxability." 5 F.3d at 1357.

Petitioners did not seek *en banc* review of the court of appeals' decision.

REASONS FOR DENYING THE PETITION

The court of appeals' holding results from its straightforward application of this Court's longstanding and well-established precedents to the particular language and history of the 1854 Treaty and to land allotted and made alienable under that Treaty. The decision below does not conflict with this Court's cases or with the Ninth Circuit's decision in *Lummi* – in which the relevant treaty, unlike here, expressly contemplated potential alienation and forfeiture of allotted land in accordance with the specific consent of Congress, which was subsequently obtained. Nothing about the lower courts' application of settled legal principles to the unique facts of this case merits this Court's review.

1. A treaty is a negotiated agreement, the meaning of which is governed by the intentions and "shared expectations of the contracting parties." *Air France v. Saks*, 470 U.S. 392, 399 (1985); *accord Mille Lacs Band*, 526 U.S. at 206. Because each treaty is a unique agreement created in different factual circumstances by different parties, treaty language must be analyzed in light of the particular facts and circumstances surrounding its making in order to ascertain the intentions of the contracting parties. *Mille Lacs Band*, 526 U.S. at 202 ("[T]he State's argument that similar language in two Treaties involving different parties has precisely the same meaning reveals a fundamental misunderstanding of basic principles of treaty construction."); *Air France*, 470 U.S. at 400-03; *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 431-32 (1943). An Indian treaty, moreover, must be interpreted "to give effect to the terms as the Indians themselves would have understood them." *Mille Lacs Band*, 526 U.S. at 196. Finally, Indian treaties must be construed liberally in favor of the Indians, with any

ambiguities resolved in their favor. *Id.* at 200; *Worcester*, 31 U.S. (6 Pet.) at 582 ("The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense.").

Carefully applying these principles, both lower courts interpreted the 1854 Treaty to preclude state taxation of the land at issue based on the Treaty's unique language, purpose, negotiations, and historical context. Pet. App. 14a-22a, 42a-48a. There is nothing about the courts' application of settled law to construe a particular Indian treaty that would warrant review by this Court.

2. Contrary to the Petitioners' contention (Pet. 5-7), the court of appeals' holding is consistent with both the holding and the rationale of *Cass County*. There, the Court recited the well-established common-law rule that "[s]tate and local governments may not tax Indian reservation land absent cession of jurisdiction or other federal statutes permitting it." 524 U.S. at 110 (citing *County of Yakima*, 502 U.S. at 258, and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973)) (internal quotations omitted). The Court also noted that it has "consistently declined to find that Congress has authorized such taxation unless it has made its intention to do so unmistakably clear." 524 U.S. at 110 (citing *County of Yakima*, 502 U.S. at 258, and *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985)) (internal quotations omitted). The Court held that "[w]hen Congress [by statute] makes reservation lands freely alienable, it is 'unmistakably clear' that Congress intends that land to be taxable by state and local governments, unless a contrary intent is 'clearly manifested.'" 524 U.S. at 113 (quoting *County of Yakima*, 502 U.S. at 263).

As Petitioners acknowledge (Pet. 5), *Cass County* found the requisite "unmistakably clear" indication of congressional intent to override common-law Indian tax immunity in an Act of Congress, the Nelson Act, 25 Stat. 642 (1889), which authorized and effectuated the sale and alienation of Indian reservation land within Minnesota. 524 U.S. at 108, 113. The Court relied on two earlier decisions which also concerned the interpretation of congressional statutes that rendered Indian reservation land alienable, *County of Yakima*, 502 U.S. at 258 (involving the General Allotment Act and the Burke Act, 34 Stat. 182 (1906)), and *Goudy v. Meath*, 203 U.S. 146, 147 (1906) (involving the Act of Mar. 3, 1893, ch. 209, 27 Stat. 612, 633 (1893)). Each case addressed the intent of *Congress*, in enacting a statute making Indian reservation land alienable (or consenting to a state statute with that effect), to override otherwise applicable rules of immunity from state taxation. *E.g.*, *Cass County*, 524 U.S. at 106, 110, 113, 114, 115; *County of Yakima*, 502 U.S. at 258-59, 263-64, 267; *Goudy*, 203 U.S. at 147, 148, 149, 150.

The situation here is different. The lower courts construed the 1854 Treaty to assure the Indian parties their traditional tax immunity, even if land was allotted and became voluntarily alienable pursuant to the Treaty's terms. *Cass County* and its predecessors do not affect that interpretation. It makes no sense to argue that a treaty that preserved tax immunity (through its non-removal provision in Article 11) embodied, at the same time, an "unmistakably clear" intent to override that same immunity. The *Cass County* cases would be relevant in construing a later congressional Act that expressly modified a treaty or made reservation land alienable. Neither of those situations is present here. The court of appeals properly rejected Petitioners' attempt to identify any such later statute below

(Pet. App. 31a-33a), and Petitioners do not renew that attempt here. There is thus no basis for Petitioners' claim of a conflict with *Cass County*.[2]

3. There is likewise no conflict with the Ninth Circuit's decision in *Lummi*. The *Lummi* court described the issue before it in broad terms as involving the status of land "patented under a treaty," and concluded that the land in question in the case was "taxable if it is alienable." 5 F.3d at 1357, 1358. But the Treaty of Point Elliott at issue in *Lummi*, like the treaty before this Court in *Goudy v. Meath*, was "patterned after the Treaty with the Omahas," which permitted allotment, but provided that "restrictions on alienation would remain until the state legislature, *with Congressional consent*, removed them." *Lummi*, 5 F.3d at 1357-58 (emphasis added).[3] The fee land at issue in *Lummi* (like the land in *Goudy*) was thus made alienable pursuant

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2. Nothing in the court of appeals' decision questions "the accepted constitutional position of self-executing treaties . . . as law of the land." Pet. 6. To the contrary, the courts below construed the treaty and, finding no superseding congressional enactment, enforced it in accordance with its terms.

3. Article 7 of the Treaty of Point Elliott (Treaty with the Dwamish, Suquamish *et al.*, Jan. 22, 1855, 12 Stat. 927) incorporated by reference Article 6 of the Treaty with the Omaha, Mar. 16, 1854, 10 Stat. 1043, which provided that allotments

> shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such land within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress.

to specific later Acts of Congress. *Id.*; *see also id*. at 1356-57 (citing 25 U.S.C. § 372); *id*. at 1360 (Beezer, J., dissenting) (same). *Lummi* did not consider a case like this one, where the treaty itself preserves immunity from taxation, and land became alienable under the terms of the treaty itself rather than pursuant to any later congressional action. There is no reason to assume that the Ninth Circuit, faced with facts similar to those here, would reach a result different from the one reached by the Sixth Circuit in this case.

4. Petitioners argue secondarily that the courts below somehow erred in resolving this case on summary judgment. Pet. 9-11. That is incorrect. Contrary to Petitioners' suggestion, the parties' experts disagreed only about the legal conclusion of how the 1854 Treaty should be interpreted in light of an undisputed historical record. Pet. App. 20a-22a. Indeed, Petitioners themselves initiated the cross-motions for summary judgment that led to the decisions below. In their brief in support of their motion in the district court, Petitioners asserted that "[s]ummary judgment under Fed. R. Civ. Pro. 56 is . . . appropriate as a matter of law on whether [the] state can impose an *ad valorem* property tax on the land in this case," that its claims involved "a pure question of law," that "[s]ummary judgment is appropriate on these types of issues because there is no genuine issue of material fact," and that "the Community has failed to raise a genuine issue of material fact sufficient to avoid dismissal with prejudice." *See* Defs.' Br. Supp. Mot. Dismiss and/or Summ. J. at 3, 11, 19, R. 62, 6th Cir. App. 361, 363, 371, 379. Likewise, during the hearing on the cross-motions, Petitioners informed the court that no fact issues remained that would prevent the issuance of summary judgment. Transcript of 2005 Motion Hearing at 61-62, R. 105, 6th Cir. App. 727, 787-88. Reviewing the summary judgment record

submitted by the parties, each lower court applied established legal rules of treaty interpretation and explained why those rules supported the Community's interpretation as a matter of law. Pet. App. 13a-22a, 40a-48a. Petitioners' procedural argument provides no basis for further review.

5. Even if there were grounds to question the outcome below (which there are not), this case is not of sufficient general importance to warrant review. The court of appeals' decision is unlikely to have any impact beyond the L'Anse Reservation. The vast majority of the fee land within Indian reservations in the United States – even land that was originally allotted pursuant to the terms of a treaty – became alienable pursuant to the General Allotment Act or other post-treaty congressional enactments.[4] Moreover, so far as the Community's counsel are aware (after substantial inquiry), the guarantee against involuntary removal provided in Article 11 of the 1854 Treaty, which the courts below properly construed to preserve tax immunity even for land made alienable under the Treaty, is unique among extant Indian treaties. While Congress no doubt has the power to modify or abrogate the Community's treaty immunity should it choose to do so, there is no reason for intervention by this Court.

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4. *See* <http://www.indianlandtenure.org/ILTFallotment/specinfo/specinfo.htm> (detailed charts available by clicking map) (visited Oct. 25, 2006).

CONCLUSION

The petition for a writ of certiorari should be denied.

October, 2006

Respectfully submitted,

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APPENDIX

TREATY WITH THE CHIPPEWA, 1854.

Articles of a treaty made and concluded at La Pointe, in the State of Wisconsin, between Henry C. Gilbert and David B. Herriman, commissioners on the part of the United States, and the Chippewa Indians of Lake Superior and the Mississippi, by their chiefs and head-men.

ARTICLE 1. The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary-line, to wit: Beginning at a point, where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, running thence up the said branch to its source, thence nearly north, in a straight line, to the mouth of East Savannah River, thence up the St. Louis River to the mouth of East Swan River, thence up the East Swan River to its source, thence in a straight line to the most westerly bend of Vermillion River, and thence down the Vermillion River to its mouth.

The Chippewas of the Mississippi hereby assent and agree to the foregoing cession, and consent that the whole amount of the consideration money for the country ceded above, shall be paid to the Chippewas of Lake Superior, and in consideration thereof the Chippewas of Lake Superior hereby relinquish to the Chippewas of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the above boundry-line.

Appendix

ARTICLE 2. The United States agree to set apart and withhold from sale, for the use of the Chippewas of Lake Superior, the following described tracts of land, viz:

1st. For the L'Anse and Vieux De Sert bands, all the unsold lands in the following townships in the State of Michigan: Township fifty-one north range thirty-three west; township fifty-one north range thirty-two west; the east half of township fifty north range thirty-three west; the west half of township fifty north range thirty-two west, and all of township fifty-one north range thirty-one west, lying west of Huron Bay.

2d. For the La Pointe band, and such other Indians as may see fit to settle with them, a tract of land bounded as follows: Beginning on the south shore of Lake Superior, a few miles west of Montreal River, at the mouth of a creek called by the Indians Ke-che-se-be-we-she, running thence south to a line drawn east and west through the centre of township forty-seven north, thence west to the west line of said township, thence south to the southeast corner of township forty-six north, range thirty-two west, thence west the width of two townships, thence north the width of two townships, thence west one mile, thence north to the lake shore, and thence along the lake shore, crossing Shag-waw-me-quon Point, to the place of beginning. Also two hundred acres on the northern extremity of Madeline Island, for a fishing ground.

3d. For the other Wisconsin bands, a tract of land lying about Lac De Flambeau, and another tract on Lac Court Orielles, each equal in extent to three townships, the

boundaries of which shall be hereafter agreed upon or fixed under the direction of the President.

4th. For the Fond Du Lac bands, a tract of land bounded as follows: Beginning at an island in the St. Louis River, above Knife Portage, called by the Indians Paw-paw-sco-me-me-tig, running thence west to the boundary-line heretofore described, thence north along said boundary-line to the mouth of Savannah River, thence down the St. Louis River to the place of beginning. And if said tract shall contain less than one hundred thousand acres, a strip of land shall be added on the south side thereof, large enough to equal such deficiency.

5th. For the Grand Portage band, a tract of land bounded as follows: Beginning at a rock a little east of the eastern extremity of Grand Portage Bay, running thence along the lake shore to the mouth of a small stream called by the Indians Maw-ske-gwaw-caw-maw-se-be, or Cranberry Marsh River, thence up said stream, across the point to Pigeon River, thence down Pigeon River to a point opposite the starting-point, and thence across to the place of beginning.

6th. The Ontonagon band and that subdivision of the La Pointe band of which Buffalo is chief, may each select, on or near the lake shore, four sections of land, under the direction of the President, the boundaries of which shall be defined hereafter. And being desirous to provide for some of his connections who have rendered his people important services, it is agreed that the chief Buffalo may select one section of land, at such place in the ceded territory as he may see fit, which shall be reserved for that purpose, and conveyed

by the United States to such person or persons as he may direct.

7th. Each bead of a family, or single person over twenty-one years of age at the present time of the mixed bloods, belonging to the Chippewas of Lake Superior, shall be entitled to eighty acres of land, to be selected by them under the direction of the President, and which shall be secured to them by patent in the usual form.

ARTICLE 3. The United States will define the boundaries of the reserved tracts, whenever it may be necessary, by actual survey, and the President may, from time to time, at his discretion, cause the whole to be surveyed, and may assign to each head of a family or single person over twenty-one years of age, eighty acres of land for his or their separate use; and he may, at his discretion, as fast as the occupants become capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he may see fit to impose. And he may also, at his discretion, make rules and regulations, respecting the disposition of the lands in case of the death of the head of a family, or single person occupying the same, or in case of its abandonment by them. And he may also assign other lands in exchange for mineral lands, if any such are found in the tracts herein set apart. And he may also make such changes in the boundaries of such reserved tracts or otherwise, as shall be necessary to prevent interference with any vested rights. All necessary roads, highways, and railroads, the lines of which may run through any of the reserved tracts, shall have the right of way through the same, compensation being made therefor as in other cases.

ARTICLE 4. In consideration of and payment for the country hereby ceded, the United States agree to pay to the Chippewas of Lake Superior, annually, for the term of twenty years, the following sums, to wit: five thousand dollars in coin; eight thousand dollars in goods, household furniture and cooking utensils; three thousand dollars in agricultural implements and cattle, carpenter's and other tools and building materials, and three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village. The United States will also pay the further sum of ninety thousand dollars, as the chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of six thousand dollars, in agricultural implements, household furniture, and cooking utensils, to be distributed at the next annuity payment, among the mixed bloods of said nation. The United States will also furnish two hundred guns, one hundred rifles, five hundred beaver-traps, three hundred dollars' worth of ammunition, and one thousand dollars' worth of ready-made clothing, to be distributed among the young men of the nation, at the next annuity payment.

ARTICLE 5. The United States will also furnish a blacksmith and assistant, with the usual amount of stock, during the continuance of the annuity payments, and as much longer as the President may think proper, at each of the points herein set apart for the residence of the Indians, the same to be in lieu of all the employees to which the Chippewas of Lake Superior may be entitled under previous existing treaties.

ARTICLE 6. The annuities of the Indians shall not be taken to pay the debts of individuals, but satisfaction for depredations committed by them shall be made by them in such manner as the President may direct.

ARTICLE 7. No spirituous liquors shall be made, sold, or used on any of the lands herein set apart for the residence of the Indians, and the sale of the same shall be prohibited in the Territory hereby ceded, until otherwise ordered by the President.

ARTICLE 8. It is agreed, between the Chippewas of Lake Superior and the Chippewas of the Mississippi, that the former shall be entitled to two-thirds, and the latter to one-third, of all benefits to be derived from former treaties existing prior to the year 1847.

ARTICLE 9. The United States agree that an examination shall be made, and all sums that may be found equitably due to the Indians, for arrearages of annuity or other thing, under the provisions of former treaties, shall be paid as the chiefs may direct.

ARTICLE 10. All missionaries, and teachers, and other persons of full age, residing in the territory hereby ceded, or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price whenever the surveys shall be completed to the amount of one quarter-section each.

ARTICLE 11. All annuity payments to the Chippewas of Lake Superior, shall hereafter be made at L'Anse, La

Pointe, Grand Portage, and on the St. Louis River; and the Indians shall not be required to remove from the homes hereby set apart for them. And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President.

ARTICLE 12. In consideration of the poverty of the Bois Forte Indians who are parties to this treaty, they having never received any annuity payments, and of the great extent of that part of the ceded country owned exclusively by them, the following additional stipulations are made for their benefit. The United States will pay the sum of ten thousand dollars, as their chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of ten thousand dollars, in five equal annual payments, in blankets, cloth, nets, guns, ammunition, and such other articles of necessity as they may require.

They shall have the right to select their reservation at any time hereafter, under the direction of the President; and the same may be equal in extent, in proportion to their numbers, to those allowed the other bands, and be subject to the same provisions.

They shall be allowed a blacksmith, and the usual smithshop supplies, and also two persons to instruct them in farming, whenever in the opinion of the President it shall be proper, and for such length of time as he shall direct.

It is understood that all Indians who are parties to this treaty, except the Chippewas of the Mississippi, shall hereafter be known as the Chippewas of Lake Superior.

Provided, That the stipulation by which the Chippewas of Lake Superior relinquishing their right to land west of the boundary-line shall not apply to the Bois Forte band who are parties to this treaty.

ARTICLE 13. This treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Henry C. Gilbert, and the said David B. Herriman, commissioners as aforesaid, and the undersigned chiefs and headmen of the Chippewas of Lake Superior and the Mississippi, have hereunto set their hands and seals, at the place aforesaid, this thirtieth day of September, one thousand eight hundred and fifty-four.

HENRY C. GILBERT,
DAVID B. HERRIMAN,
Commissioners.

RICHARD M. SMITH, *Secretary.*

Appendix

La Pointe Band.

KE-CHE-WAISH-KE, or the Buffalo, 1st chief,	his x mark.	[L.S.]
CHAY-CHE-QUE-OH, 2d chief,	his x mark.	[L.S.]
A-DAW-WE-GE-ZHICK, or Each Side of the sky, 2d chief,	his x mark.	[L.S.]
O-SKE-NAW-WAY, or the Youth, 2d chief,	his x mark.	[L.S.]
MAW-CAW-DAY-PE-NAY-SE, or the Black Bird, 2d chief,	his x mark.	[L.S.]
NAW-WAW-NAW-QUOT, headman,	his x mark.	[L.S.]
KE-WAIN-ZEENCE, headman,	his x mark.	[L.S.]
WAW-BAW-NE-ME-KE, or the White Thunder, 2d chief,	his x mark.	[L.S.]
PAY-BAW-ME-SAY, or the Soarer, 2d chief,	his x mark.	[L.S.]
NAW-WAW-GE-WAW-NOSE, or the Little Current, 2d chief,	his x mark.	[L.S.]
MAW-CAW-DAY-WAW-QUOT, or the Black Cloud, 2d chief,	his x mark.	[L.S.]
ME-SHE-NAW-WAY, or the Disciple, 2d chief,	his x mark.	[L.S.]
KEY-ME-WAW-NAW-UM, headman,	his x mark.	[L.S.]
SHE-GOG, headman,	his x mark.	[L.S.]

Appendix

Ontonagon Band.

O-CUN-DE-CUN, or the Buoy 1st chief,	his x mark.	[L.S.]
WAW-SAY-GE-ZHICK, or the Clear Sky, 2d chief,	his x mark.	[L.S.]
KEESH-KE-TAW-WUG, headman,	his x mark.	[L.S.]

L'Anse Band.

DAVID KING, 1st chief,	his x mark.	[L.S.]
JOHN SOUTHWIND, headman,	his x mark.	[L.S.]
PETER MARKSMAN, headman,	his x mark.	[L.S.]
NAW-TAW-ME-GE-ZHICK, or the First Sky, 2d chief,	his x mark.	[L.S.]
AW-SE-NEECE, headman,	his x mark.	[L.S.]

Vieux De Sert Band.

MAY-DWAY-AW-SHE, 1st chief,	his x mark.	[L.S.]
POSH-QUAY-GIN, or the Leather, 2d chief,	his x mark.	[L.S.]

Appendix

Grand Portage Band.

SHAW-GAW-NAW-SHEENCE, or the Little Englishman, 1st chief,	his x mark.	[L.S.]
MAY-MOSH-CAW-WOSH, headman,	his x mark.	[L.S.]
AW-DE-KONSE, or the Little Reindeer, 2d chief,	his x mark.	[L.S.]
WAY-WE-GE-WAM, headman,	his x mark.	[L.S.]

Fond Du Lac Band.

SHING-GOOPE, or the Balsom, 1st chief,	his x mark.	[L.S.]
MAWN-GO-SIT, or the Loon's Foot, 2d chief,	his x mark.	[L.S.]
MAY-QUAW-ME-WE-GE-ZHICK, headman,	his x mark.	[L.S.]
KEESH-KAWK, headman,	his x mark.	[L.S.]
CAW-TAW-WAW-BE-DAY, headman,	his x mark.	[L.S.]
O-SAW-GEE, headman,	his x mark.	[L.S.]
KE-CHE-AW-KE-WAIN-ZE, headman,	his x mark.	[L.S.]
NAW-GAW-NUB, or the Foremost Sitter, 2d chief,	his x mark.	[L.S.]
AIN-NE-MAW-SUNG, 2d chief,	his x mark.	[L.S]
NAW-AW-BUN-WAY, headman,	his x mark.	[L.S.]

WAIN-GE-MAW-TUB, headman,	his x mark.	[L.S.]
AW-KE-WAIN-ZEENCE, headman,	his x mark.	[L.S.]
SHAY-WAY-BE-NAY-SE, headman,	his x mark.	[L.S.]
PAW-PE-OH, headman,	his x mark.	[L.S.]

Lac Court Oreille Band.

AW-KE-WAIN-ZE, or the Old Man, 1st chief,	his x mark.	[L.S.]
KEY-NO-ZHANCE, or the Little Jack Fish, 1st chief,	his x mark.	[L.S.]
KEY-CHE-PE-NAY-SE, or the Big Bird, 2d chief,	his x mark.	[L.S.]
KE-CHE-WAW-BE-SHAY-SHE, or the Big Martin, 2d chief,	his x mark.	[L.S.]
WAW-BE-SHAY-SHEENCE, headman,	his x mark.	[L.S.]
QUAY-QUAY-CUB, headman,	his x mark	[L.S.]
SHAW-WAW-NO-ME-TAY, headman,	his x mark.	[L.S.]
NAY-NAW-ONG-GAY-BE, or the Dressing Bird,1st chief,	his x mark.	[L.S.]
O-ZHAW-WAW-SCO-GE-ZHICK, or the Blue Sky, 2d chief,	his x mark.	[L.S.]
I-YAW-BANSE, or the Little Buck, 2d chief,	his x mark.	[L.S.]
KE-CHE-E-NIN-NE, headman,	his x mark.	[L.S.]
HAW-DAW-GAW-ME, headman,	his x mark.	[L.S.]
WAY-ME-TE-GO-SHE, headman,	his x mark.	[L.S.]
PAY-ME-GE-WUNG, headman,	his x mark.	[L.S.]

Appendix

Lac Du Flambeau Band.

AW-MO-SE, or the Wasp, 1st chief,	his x mark.	[L.S.]
KE-NISH-TE-NO, 2d chief,	his x mark.	[L.S.]
ME-GEE-SEE, OR THE EAGLE, 2d chief,	his x mark.	[L.S.]
KAY-KAY-CO-GWAW-NAY-AW-SHE, headman,	his x mark.	[L.S.]
O-CHE-CHOG, headman,	his x mark.	[L.S.]
NAY-SHE-KAY-GWAW-NAY-BE, headman,	his x mark.	[L.S.]
O-SCAW-BAY-WIS, or the Waiter, 1st chief,	his x mark.	[L.S.]
QUE-WE-ZANCE, or the White Fish, 2d chief,	his x mark.	[L.S.]
NE-GIG, or the Otter, 2d chief,	his x mark.	[L.S.]
NAY-WAW-CHE-GE-GHICK-MAY-BE, headman,	his x mark.	[L.S.]
QUAY-QUAY-KE-CAH, headman,	his x mark.	[L.S.]

Bois Forte Band.

KAY-BAISH-CAW-DAW-WAY, or Clear Round the Prairie, 1st chief,	his x mark.	[L.S.]
WAY-ZAW-WE-GE-ZHICK, SKING, headman,	his x mark.	[L.S.]
O-SAW-WE-PE-NAY-SHE, headman,	his x mark.	[L.S.]

Appendix

The Mississippi Bands.

QUE-WE-SAN-SE, or Hole in the Day, head chief,	his x mark.	[L.S.]
CAW-NAWN-DAW-WAW-WIN-ZO, or the Berry Hunter, 1st chief,	his x mark.	[L.S.]
WAW-BOW-JIEG, or the White Fisher, 2d chief,	his x mark.	[L.S.]
OT-TAW-WAW, 2d chief,	his x mark.	[L.S.]
QUE-WE-ZHAN-CIS, or the Bad Boy, 2d chief,	his x mark.	[L.S.]
BYE-A-JICK, or the Lone Man, 2d chief,	his x mark.	[L.S.]
I-YAW-SHAW-WAY-GE-ZHICK, or the Crossing Sky, 2d chief,	his x mark.	[L.S.]
MAW-CAW-DAY, or the Bear's Heart, 2d chief,	his x mark.	[L.S.]
KE-WAY-DE-NO-GO-NAY-BE, or the Northern Feather, 2d chief,	his x mark.	[L.S.]
ME-SQUAW-DACE, headman,	his x mark.	[L.S.]
NAW-GAW-NE-GAW-bo, headman,	his x mark.	[L.S.]
WAWM-BE-DE-YEA, headman,	his x mark.	[L.S.]
WAISH-KEY, headman,	his x mark.	[L.S.]
CAW-WAY-CAW-ME-GE-SKUNG, headman,	his x mark.	[L.S.]
MY-YAW-GE-WAY-WE-DUNK, or the One who carries the Voice, 2d chief,	his x mark.	[L.S.]

Appendix

John F. Godfroy,
Geo. Johnston,
S.A. Marvin,
Louis Codot, *Interpreters.*
Paul H. Beaulieu,
Henry Blatchford,
Peter Floy,

Executed in the presence of

Henry M. Rice,
J.W. Lynde,
G.D. Williams,
B.H. Connor,
E.W. Muldough,
Richard Godfroy,
D.S. Cash,
H.H. McCullough,
E. Smith Lee,
Wm. E. Vantassel,
L.H. Wheeler.