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## TWO SEMINOLE TREATIES: PAYNE'S LANDING, 1832, AND FT. GIBSON, 1833 \*

by JOHN K. MAHON

THE TREATY OF Moultrie Creek or Camp Moultrie, of 1823, quickly revealed more weaknesses than strengths. Conspicuous among them was the absence of any deadline date by which the Seminoles were expected to be within the boundaries of their reservation. Very shortly it became obvious that the Indians were dissatisfied with the treaty, did not want to move, and were in no hurry to do so. Even after months had passed, still only a few had entered the reservation.<sup>1</sup>

Neamathla, the Mikasuky chief who had headed the Seminoles at Moultrie, was the most refractory of all. This brought matters to a head with him in July, 1824. Hearing that there was a gathering of discontented warriors at the chief's village, territorial Governor William P. DuVal hurried there, too. His appearance alone before three hundred hostiles was an act of great courage. Washington Irving thought it so much so that he wrote a dramatic version of the event. But DuVal was not content with that, he gave them a very hard talk while there. The governor made no attempt to make his action appear theatrical; he simply deposed Neamathla then and there and put John Hicks in his place. Such audacity must have had effect, for the bands west of the Suwannee agreed to be within their reservations by October 1, 1824. Performance, however, did not stem from agreement. Time passed, yet many Indians failed to come in, while some who had done so drifted out again. There are none but indirect figures to show how many entered the reservations. Governor DuVal reported that 1,500 natives were fed daily at

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\* This is the second of two articles dealing with the treaties made with the Seminole Indians of Florida. The first, dealing with the Treaty of Moultrie Creek, appeared in the last number of the *Quarterly*.

1. Talk of Seminole chiefs to Secy. of War, May 17, 1826, Clarence E. Carter, ed., *Territorial Papers of the United States: Territory of Florida*, XXIII, 548-551; Charles J. Kappler, *Indian Affairs, Laws and Treaties*, II, 203-207.

two distribution points, but one of those points was not within any reservation.<sup>2</sup>

The Seminoles insisted that they could not subsist on the land assigned them, and some influential white men agreed; Gad Humphreys was one, Benjamin Chaires, ration contractor, another. In February, 1826, DuVal added his voice. He had examined the reservation, he said, for thirteen days, and had not seen three hundred acres of good land in it. "Nineteen-twentieths of their whole country within the present boundary is by far the poorest and most miserable region I ever beheld." He recommended that Big Swamp, containing 5,000 to 6,000 acres of good land be added. Although DuVal had not yet received the word, permission to add Big Swamp had been granted by the President the day after Christmas, 1825, not, however, as a permanent Indian property. The Seminoles were to have the use of it only as long as the government allowed them to remain; tenure was not guaranteed. Previously, in February, 1825, another fertile strip called "Big Hammock" had been added outright to their holdings.<sup>3</sup>

Latter day writers have now and again contended that the Seminoles were purposely forced onto a reservation which would not sustain them, so that they would in a short time be willing to leave Florida altogether. If this is so there is nowhere in writing any direct admission of it. It is true, James Gadsden admitted, that the purpose in placing them on a reservation was to concentrate them so that they might be moved later. On the other hand, he insisted that four times their number could live in the area assigned them if they would farm it sensibly. Nor did the Secretary of War, John C. Calhoun, regard the land as unable to support them. On the contrary his views, early in 1825, were these: ". . . it is probable that no inconvenience will

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2. W. P. DuVal to Secy. of War, Jan. 12, 1824, *Territorial Papers: Florida*, XXII, 832; DuVal to Secy. of War, July 12, July 29, 1824, *ibid.*, XXIII, 13-22; Washington Irving, *The Conspiracy of Neamathla, Collected Works of Washington Irving*, 12 vols. (New York, 1882), XII, 289-304.

3. James Gadsden to Secy. of War, Jan. 27, 1824, *Territorial Papers: Florida*, XXII, 841; Gad Humphreys to DuVal, July 26, 1824, *ibid.*, XXIII 77; Secy. of War to President, July 29, 1824, *ibid.*, 21; Ben Chaires to DuVal, Jan. 13, 1825, *American State Papers: Indian Affairs*, II, 629; T. L. McKenney to DuVal, Dec. 26, 1825, *ibid.*, 643; DuVal to T. L. McKenney, Feb. 22, 1826, *Territorial Papers: Florida*, XXIII, 445-448; Exec. Order, Feb. 24, 1824, *ibid.*, 192.

be felt, for many years, either by the inhabitants of Florida or the Indians, under the present arrangement." The country could, in short support them, and, ". . . there ought to be the strongest and most solemn assurance that the country given them should be theirs as a permanent home. . . ." My own belief is this: if the land could not sustain them-and this is by no means certain -it was not due to the intent of the white men who put them on it, but stemmed rather from the fact that no one knew very much of the region, least of all whether it would support 3,000 to 5,000 Indians.<sup>4</sup>

While some Seminoles entered the reservation, some entered and then left again, and others never went near it, discussions of policy were in train in Washington. President James Monroe recognized that there was personal interest in many communities in getting the Indians out from among them. Yet each specific act of removal, that of the Cherokees for instance, only excited sectional jealousies and incurred high costs. These facts caused the President to advocate general Indian removal late in 1824. The outlines of his plan were included in a special message to Congress on January 27, 1825. Forthwith, the Senate turned to John C. Calhoun to draft a suitable bill, and swiftly passed the one he submitted, but the House of Representatives killed it. The Georgia Representatives, then engrossed in trying to force the federal government to clear the Creek Indians out of their state, obstructed general legislation lest it spoil Georgia's plans. Thus, no broad Indian removal law was enacted for another five years.<sup>5</sup>

Meanwhile, an important change took place in the organization of the government relating to the Indians. As a result of intensive attack by private fur interests, notably John Jacob Astor's company, the government factory system was finally done away with in 1822. Then, in 1824, an Office of Indian Affairs was established in the War Department with Thomas L. McKenney

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4. Annie Heloise Abel, "The History of Events Resulting in Indian Consolidation West of the Mississippi," *American Historical Association, Annual Report*, 1906, I, 331; Secy. of War to President, Jan. 24, 1825, *ASP: Indian Affairs*, II, 543-544; J. Gadsden to Secy. of War, Mar. 25, 1826, *Territorial Papers: Florida*, XXIII, 489-492; J. Gadsden to Andrew Jackson, Nov. 14, 1829, Indian Records Branch, National Archives; J. Gadsden to Editor, in *St. Augustine News*, July 3, 1839.

5. Monroe to Senate, Jan. 27, 1825, *ASP: Indian Affairs*, II, 541, 542; Abel, 341-343.

(who had been director of the government trading posts) as head.<sup>6</sup>

The Treaty of Moultrie Creek, it was becoming clear, had not resolved Indian-white relations. In 1825 drought reduced Seminole crops so much that they had to rely on forest foods or starve. The government ration was insufficient to nourish those who had moved to the reservations. So, gnawed by hunger the Indians became less and less tractable. They continually raided outside their boundaries taking food where they could find it. Nasty incidents resulted when they killed white men's cattle. All in all, there was a general worsening of relations.<sup>7</sup>

Slavery further strained the already tense relationship. There were Negroes among the Seminoles, some Indian slaves, some free. White men claimed that many of them were runaways who found all too easy sanctuary with the redmen. Day in and day out they insisted to all governing agencies that they had the unquestionable right to identify and reclaim their human property. It seemed to matter little to them that their search and seizure would inflame an already delicate situation. For a time Governor DuVal championed the Indians against them. When, early in 1826, he ordered the redmen to deliver up all runaways, they promptly did so. In contrast, the white slavers continued to hold Negroes known to belong to the Seminoles. Ashamed, DuVal wrote to James Barbour (who had replaced Calhoun as Secretary of War when John Quincy Adams became President), "I cannot consent to that sort of left handed justice which gives all that is demanded to our citizens and which withholds justice from this cheated, abused, and persecuted race."<sup>8</sup>

Then, during the next six months, the Governor's attitude changed completely. By mid-summer he no longer thought of the natives as cheated, abused, and persecuted, but as badly spoiled. On July 27 he wrote that even though the best hunting was with-

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6. Lawrence F. Schmeckebier, *The Office of Indian Affairs* (Baltimore, 1927), 26, 27.

7. Lt. E. Alberti to E. P. Gaines, June 27, 1825, *Territorial Papers: Florida* XXIII, 273-275; J. M. Hernandez to Secy. of War, Aug. 9, 1825, *ibid.*, 291, 292; John T. Sprague, *Origin, Progress and Conclusion of the Florida War* (New York, 1848), 30-33.

8. G. Walton to G. Humphreys, May 22, 1825, *ASP: Indian Affairs*, II, 634; DuVal to T. L. McKenney, Mar. 2, Mar. 20, 1826, *Territorial Papers: Florida*, XXIII, 473, 482, 483; Talk of chiefs to Secy. of War, May 17 1826, *ibid.*, 550.

in the Indian boundaries, yet they preyed instead on the cattle and provisions of the white settlers. Moreover, the settlers fed them at any house where they asked. This scarcely resembled his earlier theme. Why did he reverse himself so swiftly? We cannot be sure. It may be that the Seminoles grew more insolent, as he suggested, or it may be that the double burden of the governorship and the Indian superintendency had frayed his nerves. Attack struck him from all quarters. The tender-minded criticized because they believed he had used force at Moultrie Creek; the economy minded carped because he had spent money to keep the natives from starving, while day in and day out the slaveholders complained that he was not doing exactly as they wished concerning the Negroes among the Indians. To cap all this, DuVal felt himself badly underpaid and threatened to resign if not better rewarded.<sup>9</sup>

At the same time when Governor DuVal was reversing his position and switching from being champion of the Seminoles to being critic, Agent Gad Humphreys began to emerge as their supporter. His new role earned him the ill-will of many white men, and brought him under increasingly sharp attack. In the end it brought about his removal in 1830. The ostensible cause for it was malfeasance in office but his real offense was probably too much sympathy for his wards.<sup>10</sup>

By 1827 Floridians were thoroughly disgusted with the arrangement the federal government had made at Moultrie Creek. The Legislative Council in January enacted two very stem laws to keep white men out of the Indian reservation, and vice versa. Under these laws, individuals were allowed to seize any Indian found out of bounds and hail him before a justice of the peace who could sentence him to as much as thirty-nine lashes. Such regulations seemed certain to insure trouble. Meanwhile, the sentiment among the whites veered more and more toward complete removal. It was expressed in numerous petitions to Con-

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9. DuVal to Secy. of War, July 27, 1826, April 17, 1827, *ibid.*, 624, 625, 816-818.

10. G. Humphreys to DuVal, Feb. 8, 1827, in Sprague, 39, 40; Humphreys to DuVal, April 7, 1824, *ASP: Indian Affairs*, II, 617, 618. For additional citations concerning the charges against Humphreys see notes 45 and 48, Mahon, "Treaty of Moultrie Creek," *Florida Historical Quarterly*, XXXX (April, 1962), 350-372.

gress from individuals, from communities, and even from the Legislative Council.<sup>11</sup>

In response, the government made an effort to persuade the natives to move. It chose Joseph M. White, territorial Delegate to Congress who was himself a strong removal man, to try to persuade them. He employed the same velvet-glove-over-iron-fist technique as Gadsden had at Moultrie Creek. For instance, in his talk to the assembled chiefs on May 20, 1827, he said, "[The President] now offers you a good country and a great deal of money and provisions, do not therefore listen to bad council but take them for this sickly country where you now are. If you do not in a dozen moons your bad men may do wrong again, and your Great Father will send soldiers and destroy their towns." But since the Indians were not then sufficiently reduced or intimidated to agree; they flatly refused to consider moving from Florida. In explanation, Micanopy, head chief of the bands east of the Suwannee said, "Here my naval string was cut. The earth drank the blood which makes me love it."<sup>12</sup>

But the situation was satisfactory to no one. Five important chiefs signified to Gad Humphreys in October, 1828, that they were willing to send a delegation to look at the western country. Nothing came of this.<sup>13</sup>

Then Andrew Jackson was elected President! He had from the earliest times been a champion of clearing the Indians out of the path of civilization; indeed one scholar contends that he had been the instigator of the removal policy sponsored by President Monroe. Be that as it may, his own administration brought action. In his first annual message he recommended that land west of the Mississippi be set apart and that the Indians in the east be encouraged, but not forced, to trade eastern land for western. If they failed to do so they would be obliged to come under the jurisdiction of the states, a condition to be averted. His rec-

11. *An Act to Prevent Indians from Roaming at Large . . .*, Jan. 15, 1827; *An Act to Regulate our Citizens Trading with the Indians*, Jan. 27, 1827; Memorial to Congress by the Legislative Council, July, 1827, *Territorial Papers: Florida*, XXIII, 896, 897; J. M. White to Secy. of War [July, 1827], *ibid.*, 898-901.

12. J. M. White, Talk to Seminoles, May 29, 1827, Indian Records Branch, National Archives; J. M. White to Secy. of War, June 15, 1827, *Territorial Papers: Florida*, XXIII, 864-867; Abel, 368.

13. G. Humphreys to T. L. McKenney, Oct. 20, 1828, *Territorial Papers: Florida*, XXIV, 92.

ommendation triggered, four months later, one of the sharpest debates ever heard in Congress. The result was the passage of an "Indian Removal Act" on May 28, 1830. This act appropriated half-a-million dollars to purchase land in the west and to facilitate the removal of the eastern savages to it.<sup>14</sup>

Now came eighteen months which softened up the Seminoles. Hardship was constant; even starvation gnawed at them. Their strength, and consequently their bargaining power, dwindled with every passing moon. All the while petitions from white communities kept ever before the government the urgent need to get them out of Florida. At the same time the cost of the Seminoles to the government ran high, for Congress continued to appropriate money to keep them from starving. The true situation of the redmen was probably well summarized by the Legislative Council in a petition to Congress begging for removal:

The Treaty of 1823 deprived them of their cultivated fields and of a region of country fruitful of game, and has placed them in a wilderness where the earth yields no corn, and where even the precarious advantages of the chase are in a great measure denied them. . . . they are thus left the wretched alternative of Starving within their limits, or roaming among the whites, to prey upon their cattle. Many in the Nation, it seems, annually die of Starvation; but as might be expected, the much greater proportion of those who are threatened with want, leave their boundaries in pursuit of the means of subsistence, and between these and the white settlers is kept up an unceasing contest.<sup>15</sup>

In spite of the pressure, and his own inclinations, it was not until the last year of his first term that Andrew Jackson reached the point of taking action. When his administration did move, it was not primarily because of the plight of the Indians, but because of the indignation of the white Floridians that the Indians were in their way. On that account on January 30, 1832, instructions went from the War Department to a man appointed

14. Jackson's Annual Message, Dec. 8, 1829, James D. Richardson, *Messages and Papers of the Presidents*, 10 vols. (Wash. D.C., 1899), II, 459; Abel, 362, 377-380; Grant Foreman, *Indian Removal*, Second Ed. (Norman, 1953), 21; Indian Removal Act, May 28, 1830, IV *U.S. Statutes at Large*, 411, 412.

15. Petition, Jefferson County to DuVal, Jan. 18, 1832, *Territorial Papers: Florida*, XXIV, 632; Memorial to Congress by the Legislative Council [Feb., 1832], *ibid.*, 667; Petition from Alachua County to Congress, Mar. 26, 1832, *ibid.*, 678-680.



special agent to negotiate with the Seminoles. The recipient of this honor was none other than James Gadsden, who had been the moving spirit nine years earlier in the Treaty of Moultrie Creek. That he was a friend of the President's was enough to secure him this appointment but, in addition, to select him was to endorse his earlier negotiation. His reward was \$8.00 per day, plus \$8.00 for every twenty miles travelled, plus \$5.00 a day for a secretary and \$5.00 for every twenty miles the secretary travelled. These were good wages in the 1830's!<sup>16</sup>

Gadsden's instructions exuded lofty motives. The Indians, they said, were suffering and were unable to provide food for themselves. To relieve their distress Gadsden was to persuade them to move west. This was the core of his mission. Now appeared a stipulation which is startling in the extreme. The Seminoles were to become a constituent part of the Creek nation and were to share with it an allotment of land west of the Mississippi! This was almost a calculated affront for whenever the Florida Indians had had to fight the white man they had had to fight the Creeks as well. During the War of 1812, and again in Jackson's invasion of 1818, the Creeks had joined the whites to battle their southern cousins. What is more, there was unremitting bad blood between them over the ownership of slaves. Over this issue the Creeks had frequently raided Seminole settlements. The only sentiment the Seminoles felt toward the Creeks was hatred. Of course, as early as the acquisition of Florida by the United States, Andrew Jackson and other statesmen had set the amalgamation of Creeks and Seminoles as a goal, but they had been obliged to give it up. Now, in 1832, the moment had come because the Florida Indians were in so sad a plight that they could not resist even this indignity.<sup>17</sup>

This time Gadsden was to handle the negotiation alone. He went to work on the preparations at once. It was not necessary for him to consider the Apalachicola Indians in his plans for he was to deal with them separately later. It is curious to observe, therefore, that he set the treaty grounds farther west than Moultrie Creek, the point to which the trans-Suwannee bands had had

16. See "James Gadsden," *Dictionary of American Biography*; Secy. of War to J. Gadsden, Jan. 30, 1832, *ASP: Military Affairs*, VI, 473.

17. *Ibid.*, 472; Wiley Thompson to DuVal, Jan. 1, 1834, *House Documents*, 24 Cong., 1 Sess., No. 271, pp. 7-11.

to journey in 1823. He appears to have selected the site in conference with Micanopy - Payne's Landing on the Oklawaha River (a few miles from the present town of Eureka.) Whatever the reason for the choice, the spot was easy of access and well known to all bands. Nonetheless, it was three months after receiving his commission before the agent was able to assemble enough chiefs to hold a talk.<sup>18</sup>

It is unfortunate that Commissioner Gadsden never submitted any minutes of the talks held with the Indians at Payne's Landing. This failure laid him open to endless charges that the treaty signed there was obtained by force and fraud. As it is, we know little of what occurred. Later he reported two of the things he told them. The first was that the government could not continue to feed them year after year. Second, he did his best to show his listeners how disagreeable their situation would be when they came under the laws of the territory, their inevitable lot if they refused to move. Aside from this we know nothing of the parley except that a treaty was signed May 9, 1832. The marks of seven chiefs appear on it and eight subchiefs. These fifteen probably pretty well represented most of the Mikasuky bands, and a majority of the Seminoles who were descended from the first Oconees to come to the area of Alachua County, and who later fanned out over the peninsula. But certainly they were fewer and less representative than the signers at Moultrie Creek nine years before.<sup>19</sup>

Twenty-nine months later, Micanopy declared that he had not marked the Treaty of Payne's Landing. Even though his name appeared on the document, he insisted that he did not touch the pen. Of course the white men denied this, but in the last analysis it is their word against his. One must at least notice the rumor that none of the senior chiefs made their marks; the young bucks, disguised as their elders, did it. Worse yet, Charley Emarthla claimed that all the signers were coerced. This allegation, uttered on October 25, 1834, made the Indian Agent furious. (The Agent then was Wiley Thompson, successor to John Phagan, successor to Gad Humphreys.) ". . . it is said by

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18. Mark F. Boyd, *Florida Aflame: Background and Onset of the Seminole War, 1835*. Also printed in *Florida Historical Quarterly*, XXX (July, 1951), 44.

19. J. Gadsden to Editor, in *St. Augustine News*, July 3, 1839.

Charley Emarthla, that the white people forced you into the treaty of Payne's Landing," he must have almost shouted it at them, "If you were so cowardly as to be forced by anybody to do what you ought not . . . you are unfit to be chiefs." His argument, although lofty in tone, is not very strong in reasoning, for overwhelming force has obliged many people to do what they thought wrong. Moreover, the Indians did not nurture a tradition of martyrdom in their culture.<sup>20</sup>

All in all, it appears unlikely that we shall ever know whether or not those Indians whose marks appeared on the document actually signed. Nor, if they did do it, are we apt to find out whether or not they were forced to sign.

What did the notorious Treaty of Payne's Landing, executed on May 9, 1832, contain? The first article was the crucial one. It stipulated that the Seminoles were willing for seven of "their confidential chiefs" to travel west to inspect the Creek lands. . . . should they be satisfied," it continued, "with the character of that country, and of the favorable disposition of the Creeks to reunite with the Seminoles as one people . . ." then the remaining articles were to be considered binding. The key is the personal pronoun "they." To whom does it refer? Since the first sentence is long and involved, the reference is not at all clear. Did it point to the delegation of seven chiefs or to the Seminole nation? On this point, Indians and white men took opposite views. Charley Emarthla said in October, 1834, that his people were not bound to emigrate, "because the question was not submitted to the Seminole nation, after their delegation returned, whether they were willing to go." Other Indians agreed with him. White men, on the contrary, contended that "they" referred to the delegation of chiefs who, therefore, had full power to bind the group. This much can be said for the white position: the various bands which made up the loose association referred to as the Seminole Nation, seldom had any sort of national council except at such times as the United States government obliged them to do so. Therefore, the Indian contention that important decisions had to be decided by council seems weak; weak, but not, by the same token, automatically invalid. For councils below

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20. Abel, 393n; Abstract of Council, Oct. 25, 1834, *Sen. Docs.* 24 Cong., 1 Sess., No. 152, pp. 25, 26.

the level of the nation were frequent on matters of policy.<sup>21</sup>

Major Ethan Allen Hitchcock, although he was not there, contended as "simple, unquestionable truth," that Abraham, the Negro interpreter at the treaty meetings (and a powerful leader among the Seminoles), misrepresented the first article to the chiefs. Abraham knew, Hitchcock said, that the Seminoles had no intention of leaving Florida before the twenty years had expired which they considered to be the limit of the Treaty of Moultrie Creek. It follows that they would not have signed had the pitfalls in that article been apparent to them. Commissioner Gadsden, he added, bribed Abraham to conceal the truth, but of that more later.<sup>22</sup>

The remaining articles only went into effect when the first one was satisfied. They stipulated that the Seminoles would leave Florida within three years after ratification, one-third per year. They were, of course, to surrender all claims to their Florida land in return for various considerations. These added up (it is necessary to estimate some of them) to around \$80,000. Now, if they were surrendering the 4,032,940 acres assigned them at Moultrie Creek, their return equalled about two cents per acre.

In addition-and startling to see in print-the treaty stipulated that the Seminoles would become a part of the Creek Nation, would occupy land assigned to the Creeks in the west, and draw their annuities from the lump sum appropriated by Congress for the Creeks. They were thereby in effect surrendering their separate entity. To make so radical a departure they had to be hard pressed indeed. It is not unreasonable to infer that nothing but coercion could have obliged them to be swallowed up by their enemies.<sup>23</sup>

The people of Florida praised the Treaty of Payne's Landing because by means of it they might be free of the savages. But they stand almost alone in support of it. Thomas L. McKenney, who was superintendent of the Indian Office in the War Department until August, 1830, later wrote of it as an open fraud,

21. *Ibid.*, 26; Kappler, II, 344, 345.

22. W. A. Croffut, *Fifty Years in Camp and Field: Diary of Major General Ethan Allen Hitchcock*, U.S.A. (New York, 1909), 79, 80.

23. For illustration of their attitude toward the Creeks see William Worthington to Secy. of War, Dec. 4, 1821, *Territorial Papers: Florida*, XXII, 294.

“a foul blot upon the escutcheon of the nation.” Officers of the regular army who served in Florida almost to a man took the same view. Finally, latter day writers have been all but unanimously condemnatory. Yet when one tries to interpret the evidence left by those who were there, scanty as it is, he finds little which directly substantiates so strong a condemnation. On the other hand, he does not find evidence which flatly rejects it.<sup>24</sup>

In making a fresh analysis, it will be suitable to start with the charge of coercion. It does seem plain that there was no force at the treaty grounds sufficient to coerce the Indians. I have not seen any record showing what military detachment was present. The only evidence on the point is indirect. Four officers had signed the Treaty of Moultrie Creek as witnesses, and one other was known to be present. In contrast, at Payne’s Landing no military officers signed and none are known to have been present. The inference is that the detachment was smaller even than the twenty-five at Moultrie. As for the operation of a less immediate and more subtle type of pressure, it is more reasonable to presume that this operated than that it did not. I have already indicated that the merging of the Seminoles with the Creeks is hard to explain unless one infers pressure amounting to coercion. Moreover, Gadsden had not hesitated in 1823 to flex a mailed fist beneath a velvet glove and, inasmuch as the government had ratified his handiwork then, it is more likely than unlikely that he used the same tactics at Payne’s Landing. Finally, the Seminoles were weaker in 1832 than in 1823, and knew well that they were.<sup>25</sup>

What of the charge of fraud? Contemporary evidence is characteristically scant. The most damning body of it comes from Ethan Allen Hitchcock, a contemporary who was not present, but who claimed that he had interviewed those who were. In his diary, not for publication, he entered his conviction that the treaty was drawn up in Washington and sent to Gadsden with instructions to get the concurrence of the Seminoles. If this was

24. Thomas L. McKenney, *Memoirs, Official and Personal*, (New York, 1846), 274, 275; Junius E. Dovell, *Florida: Historic, Dramatic, Contemporary*, 2 vols. (New York, 1952), I, 242; Minnie Moore-Willson, *The Seminoles of Florida*, Second edition (New York, 1920), 13; Croffut, 122.

25. J. Gadsden to Secy. of War, June 2, 1832, *ASP: Military Affairs*, VI 505; Gadsden to Secy. of War, Nov. 1, 1834, Indian Records Branch, National Archives.

true, the Commissioner must have been given some leeway, for he accepted the vital first article on the grounds that the Indians would not have continued the proceedings without it. Nor was it possible to make headway, Hitchcock wrote, until Gadsden had bribed Abraham. The sum involved was \$200 to be paid after ratification. Hitchcock's authority concerning the bribe was Captain Charles M. Thruston who claimed to have been present when James Gadsden told President Jackson in person that he could not have procured a treaty without this bribe. Thruston was a graduate of the U.S. Military Academy, with an honorable record as a commissioned officer. One has slight grounds to suspect him of inventing an incident, or to suspect Hitchcock of perpetuating a fictitious one. Yet neither is impossible. This much is certain: Article Two of the Treaty provided that \$200 each should go to Abraham and Cudjo (Agent John Phagan's interpreter), "in full remuneration for the improvements to be abandoned on the lands now cultivated by them." Is this the bribe? If so it would appear Cudjo was involved in it too.<sup>26</sup>

This is the right moment to emphasize the importance of the interpreters. Few white men could handle Hitchiti and Muskogee; few Indians, English. Thus, the interpreters were the channels through which communication had to flow. In most cases they were Indian Negroes, that is Negroes connected with the Seminoles. They had no education. Yet what they reported as being said was, perforce, the basis for all official action. Obviously, whether bribed or not, the interpreters, though usually slaves, were as important in any negotiation as the most exalted person present.<sup>27</sup>

Next, Article I requires additional scrutiny. The Indian position about whom "they" referred to has already been stated. It remained consistent. Even the seven chiefs who in 1833 signed an agreement which the white men contended bound the Seminoles to move never pretended that they had authority to bind their people. In contrast, the white stand was not consistent. To begin with, the Commissioner himself, when reporting the treaty

26. Anonymous letter to Editor, *Niles Register*, June 18, 1839; Croffut, 78, 79; J. Gadsden to Secy. of War, June 2, 1832., *ASP: Military Affairs*, VI, 505; G. W. Cullum, *Biographical Register of Officers and Graduates of the U.S. Military Academy*, 3 vols. (New York, 1891), I.

27. Mark Boyd, 6, discusses the problem of interpreters.

to the Secretary of War, avoided committal language. His report went as follows: “. . . with the condition that a deputation of seven confidential chiefs . . . should previously visit the Creek country west of the Mississippi, and should it correspond with the representations made of it, then the argreement made is to be binding on the respective parties.” Obviously, this utterance does not resolve the problem. But seven years later when the Second Seminole War was raging, Gadsden-in reply to criticisms of his treaty-flatly labelled as a mistake the attempt to get the nation to move on the strength of the commitment made by the seven chiefs. Had the matter been submitted to the people in council, he insisted, they would have agreed to move.<sup>28</sup>

Lewis Cass, who followed James Barbour, Peter B. Porter, and John H. Eaton as Secretary of War, seems to have had but one view of the subject. This was expressed in December, 1832, in his annual report to the President: “The treaty, however, is not obligatory on their part until a deputation sent by them shall have examined the country proposed for their residence, and until the tribe, upon their report, shall have signified their desire to embrace the terms of the treaty.” It would be hard to be more explicit; but, as will be seen, when the matter came to a head Cass did not enforce this interpretation of the treaty at all.<sup>29</sup>

The exploratory party of seven was supposed to leave for the west after the Green Corn Dance in July, but it actually did not get away until about October 10, 1832. Jumper, Charley Emarthla, Coihadjo, Holati Emarthla, and Yahadjo were listed by name in the treaty and were present. John Hicks took the place of Sam Jones, who was an old man, and Nehathoclo went in the stead of Fuchelustihadjo. With the seven Indians went the Seminole Agent, John Phagan, and their “faithful interpreter, Abraham.”<sup>30</sup>

Meanwhile the government was trying to perfect the policy of Indian removal. On July 14, 1832, Congress created a com-

28. Abstract of Council, Oct. 25, 1834, *Sen. Docs.*, 24 Cong., I, Sess., No. 152, p. 26; J. Gadsden to Secy. of War, May 15, 1832, *ASP: Military Affairs*, VI, 503; Gadsden to Editor, *St. Augustine News*, July 3, 1839.

29. Secy. of War to McDuffie, May 31, 1832, *Territorial Papers; Florida* XXIV, 713; Report, Secy. of War to President, Dec. 4, 1832, *ASP: Military Affairs*, V, 23.

30. J. Gadsden to Secy. of War, Aug. 30, 1832, *Territorial Papers; Florida*, XXIV, 728; DuVal to Secy. of War, Oct. 11, 1832, *ibid.*, 740.

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mittee of three to gather information about the country west of the Mississippi and the Indians there. After encountering several refusals to serve, Secretary Cass at length appointed Governor Montfort Stokes of North Carolina, Henry L. Ellsworth of Connecticut, and the Reverend John F. Schermerhorn of New York. Also, during July the organization of the War Department was made more efficient. The head of Indian Affairs was designed "Commissioner" to be appointed by the President with the advice and consent of the Senate. At the same time greater powers were assigned to him than the head of the old bureau had held. The next step was to make a formal agreement with the Creek Indians concerning their removal and their relationship to the Seminoles once both peoples were in the West. This was accomplished in a treaty signed at Ft. Gibson (on the Grand or Neosho River, a little above its confluence with the Arkansas) on February 14, 1833. The Seminoles, that treaty stipulated, should become a part of the Creek nation, but should occupy a separate portion of the Creek reservation.<sup>31</sup>

A fog, due to lack of evidence, hangs about the fateful events which occurred next. The delegation of seven, after a long, hard trip, reached the "promised land" and waited and waited. Then they made a reconnaissance of the country, returning to Ft. Gibson in March, 1833. Later Jumper said they found bad Indians on the borders of the land they were supposed to bring the Seminoles into, and this is the only bit of positive evidence we have as to their reaction to what they saw. All we know is that beginning on March 25, 1833, the seven entered into meetings with the white authorities at Gibson. Those authorities were the three special commissioners (who had all finally reached Ft. Gibson by

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31. James C. Malin, *Indian Policy and Westward Expansion* (Lawrence, 1921), 18; Abel, 392; Kappler, II, 390; IV *U.S. Statutes at Large*, 564. A total of five men turned down the job of commissioner before three were found who would serve. Stokes resigned as governor of North Carolina in order to accept the position, and he remained in the Indian country afterwards on various public assignments. Least is known of Schermerhorn. All three men seem to have been conscientious in the discharge of their duties. All appeared to believe that the policy of removal was best for the Indians. For data on them see John Francis McDermott, ed., *The Western Journals of Washington Irving* (Norman, 1944), 9ff; Grant Foreman, *Pioneer Days in the Early Southwest* (Cleveland, 1926); Henry Leavitt Ellsworth, *Washington Irving on the Prairie, or a Narrative of a Tour of the Southwest in the Year 1832*, Stanley T. Williams and Barbara D. Simison, eds. (New York, 1937).



this time); General Matthew Arbuckle, commanding officer there; and John Phagan, their own agent. The prime mover among the whites seems to have been Phagan. According to the scanty white record, the chiefs expressed willingness to remove, provided that the Seminoles have a tract of land to themselves and an annuity separate from the Creeks. Also, Agent Phagan must be the removal agent. Two or three more fragments stand out in the fog. John Hicks told the three commissioners, "We have been kept here a long time while you were making treaties with other Nations. . . ." Had they been detained to soften them up? It seems doubtful. The principal reason for the delay was that the three "Commissioners of Indian Affairs, West" did not all reach the fort until early in February. Once there they had several special problems to address before they could properly turn to the Seminoles. The only other fragment to be drawn from the uninformative record of the talks is the portentous one that on March 28 the delegation signed what has come to be called the "Treaty of Ft. Gibson." This fateful document was very simple. The delegation of seven, it read, was satisfied with the land allotted to their people. It delineated the boundaries. The Seminoles, it continued, were to remove, "as soon as the Government will make arrangements for their emigration satisfactory to the Seminole nation." That was all! The marks of the seven chiefs appear on it together with the signatures of the three commissioners and some witnesses.<sup>32</sup> This brief Treaty of Ft. Gibson is rated by most latter day humanitarian writers as a fraud. Does the existing evidence justify such a judgment? We now turn to it.<sup>33</sup>

To begin with, Holata Emartla, Coihadjo (Alligator), and Jumper later claimed they did not sign. Whether they did this to justify themselves before their own people, to whom the Treaty was anathema, or whether they spoke the truth, we cannot know. Next, Charley Emarthla, himself a signer, in October, 1834, asserted that he and the other six had not the power to bind the Seminoles. Why then did he sign; why did the others? We

32. Proceedings of a Council Held with a Delegation of the Florida Indians at Ft. Gibson, Sen. Records 23B-C 1, Record Group 46, National Archives; Kappler, II, 394, 395; Abstract of Council, Oct. 24, 1834, *Sen. Docs.*, 24 Cong. 1 Sess., No. 152, p. 23; Foreman, *Pioneer Days*, 101.

33. Abel, 393; Dovell, 242.

have no evidence from the participants. But once again Major Hitchcock recorded some information in his diary which he claimed was received from "the officer at the post." His version ran thus: Major Phagan offered papers to the chiefs which they refused to sign because they had not the authority. Their duty, they contended, was to submit their findings to "their king" who, with his chiefs, would make the final decision. (It is by no means clear who this king was. About the only person coming anywhere near the station was Micanopy.) Now Phagan became angry and warned that if they refused to sign he would not "proceed with them on their journey home." Fearful that they might never get back to Florida, they signed, but not, Hitchcock continued, in the presence of the commissioners. The latter accepted the document uncritically as Agent Phagan presented it.<sup>34</sup>

Captain George A. McCall, who was at Ft. Gibson, alleged that it was General Arbuckle rather than Major Phagan who cajoled the seven into signing. The only evidence from the signers themselves was the muddled statement made in council by Charley Emarthla nineteen months later: "When I was there, the agent, Phagan, was a passionate man. He quarreled with us after we got there - had Major Phagan done his duty it would all have been settled, and there would have been no difficulty."<sup>35</sup> What was the agent's "duty" which if done would have resolved all unpleasantness? Who knows?

There is one other piece of evidence which does indeed cast doubt upon the integrity of the white men who made this treaty. Recall that in the Treaty of Paynes's Landing nearly everything depended on to whom the pronoun "they" referred. The crucial clause read, "should they be satisfied with the character of that country" the remaining articles were to be binding upon the nation. But who were "they," the nation in council or the delegation of seven? Seeing the weakness in the original document, whoever drew up the Gibson treaty removed the ambiguity. The altered clause read, "should the delegation be satisfied." One cannot know whether the seven chiefs were apprised of this

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34. Sprague, 80; Croffut, 80-82; Abstract of Council, Oct. 25, 1834, *Sen. Docs.*, 24 Cong., 1 Sess., No. 152, p. 26.

35. *Ibid.*, 24; George A. McCall, *Letters from the Frontiers* (Philadelphia, 1868), 301.

vital alteration or not; but if their later arguments were in good faith, they were not appraised.<sup>36</sup>

At least for official purposes, the three commissioners thought well of the Seminole pact. Their official report ran: "The Seminoles, who were referred to the commissioners for advice and assistance . . . have been well accommodated. This nation is, by the late treaty, happily united with its kindred friends (Creeks) and forms with them one nation; but is secured the privilege of a separate location. . . . This tribe, it is expected, will remove immediately to the lands assigned them." The reference to happy reunion with "kindred friends," the Creeks, indicates either hypocrisy or ignorance of the true state of affairs. From my knowledge of their character, I conclude that the commissioners acted out of ignorance, not dissimulation. Indeed, although it cannot be proved by specific documents, I believe that Agent John Phagan prepared the treaty, forced it upon the Indians, and then secured the acquiescence of the commissioners without their bothering to inquire into it. Part of his game was the stipulation in the document that he himself should be agent for the Seminole removal. This the Indians swallowed with the rest. Considering that Phagan was later removed from his post for altering invoices and pocketing the difference, the presumption of questionable conduct can fairly be held against him.<sup>37</sup>

Whatever the attitude of the Seminoles to the two treaties which were so revolutionary, the United States itself did not act on them for months and months. President Jackson finally submitted them to the Senate on Christmas Eve, 1833, nineteen months after the signing at Payne's Landing and nine months after that at Gibson. Such delay itself seems suspicious but the explanation for it is simple, even though it has to be based on reasonable presumption. The President withheld the Payne's Treaty from the Senate because it added up to nothing until the Seminoles had acted upon the first article. This they did, at least to Jackson's satisfaction, on March 28, 1833, but the Congress had ended its session on March 3, 1833. Thus, there could be no submission until the next session commenced. After December 24, 1833, the handling of the document was perfectly

36. Kappler, II, 344, 394.

37. Report of the Commissioners of Indian Affairs, West, Feb. 10, 1834, *House Reports*, 23 Cong., 1 Sess., No. 474, p. 79.

routine in the Senate. After the regular number of reports and readings, it reached a vote on April 8, 1834, and was unanimously accepted. The President proclaimed the treaty four days later.<sup>38</sup>

Almost two years had elapsed since the signing. To John H. Eaton, erstwhile Secretary of War, longtime friend of Andrew Jackson, and now Governor of the Territory of Florida, such a time lag amounted to repudiation. He cited the precedent of the transfer of Florida from Spain. When Spain delayed that treaty two years, the Senate had thought it necessary to re-ratify. Must not the same thing be done again, queried Eaton? The question was referred to the Attorney General who found, it almost goes without saying, that the lapse of time did not injure the treaty.<sup>39</sup>

Pressure for removal became intense in the fall of 1834. Inasmuch as the treaty called for complete removal three years after ratification, this would have set a deadline of April 12, 1837, but it was clear that the United States meant to move faster. To that end the Indian Agent held a series of talks. The agent involved was Wiley Thompson who had formally replaced John Phagan on December 1, 1833. Phagan had gone the way of his predecessor, cashiered for irregularities in his accounts. His misdemeanors, however, were far plainer and more heinous than those which had removed Gad Humphreys and given him the place in 1830. As for Humphreys, Governor DuVal reported in 1834 that he still owned a store on the edge of the Seminole tract in Florida from which he was urging the Indians to refuse to migrate. It was during the talks with Thompson in October, 1834, that the Indians gave much of the testimony cited above. They claimed then that they did not have to move because the Treaty of Moultrie Creek ran for twenty years. This was the duration of the annuities and other payments, and they construed it to be also the time limit of the treaty.<sup>40</sup>

38. *Journal of the Executive Proceedings of the Senate . . . from March 4, 1829 to March 3, 1837 Inclusive*, IV, 338, 339, 382, 385-387; Kappler, II, 344; *Register of Debates in Congress X*, part 4, Appendix, 233;

39. J. H. Eaton to Secy. of War, Mar. 8, 1835, *House Documents*, 24 Cong., 1 Sess., No. 271, pp. 97, 98; Atty. Gen. to Secy. of War, Mar. 26, 1835, *Territorial Papers: Florida*, XXV, 122, 123.

40. DuVal to Secy. of War, Aug. 21, 1832, *ibid.*, XXIV, 726; Abstract of Councils, Oct. 24, Oct. 25, 1834, *Sen. Docs.*, 24 Cong., 1 Sess., No. 152, pp. 23, 25.

Agent Thompson replied angrily and illogically to their excuses. "You solemnly bound yourselves to remove within three years from the ratification of that treaty," he said on October 25, 1834, "and the whole delegation that went west, confirmed that promise by entering into a final agreement to do so, by which the whole nation is bound." He categorically denied the charge of coercion. "You know you were not forced to do it. You know that Colonel Gadsden told you at Payne's Landing that it was the wish of your father . . . to remove you west of the Mississippi River." None of his vehemence could possibly have been very persuasive to the redmen, for it differed altogether from their version of what had been agreed upon.<sup>41</sup>

In this article, and in the preceding one, I have attempted to examine critically the three treaties which sealed the fate of the Seminoles. The evidence to work with is fragmentary and often contradictory. Then too another factor clouds even the sharpest data, namely that the Indian reactions are known to us only through reports made by white men. Frequently these reports were third hand - from Indian speaker to Negro interpreter to white man. Realizing the unstable nature of such evidence the following conclusions are offered concerning the role of coercion and fraud in the three fateful treaties. It stands to reason that the Indians were strongly influenced by the power of the United States which they recognized as much greater than their own. As for fraud, it may be that Abraham and Gadsden misrepresented the nature of Article I to the chiefs at Payne's Landing, but I am not myself convinced. Yet in the altering of the wording of that treaty from "should they be satisfied" to "should the delegation be satisfied" it is all but impossible to escape the presumption of fraud.

Were the treaties just? They were no more nor less so than the others which at the same time were drawn up to implement the policy of Indian removal. It seems crystal clear that the Seminoles did not regard them as just; indeed, did not expect to be able to obtain justice from the United States. So, in the end, they refused to abide by the treaties. The alternative was war! They knew this, and must have felt themselves hopelessly cornered to be willing to enter into so unequal a fight. They had

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41. *Ibid.*, 26-27.

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simply been pushed beyond the limit of endurance. From their viewpoint, they stood to lose everything whether they complied or fought. Following the dictates of their culture, they elected to fight! This decision brought about what has come to be known as the Second Seminole War, 1835-1842, which for seven years occupied the entire United States Army and thousands of volunteers. When cornered the Seminoles put up as game a fight as did any of the North American Indians.