

Indian Lands in New Brunswick: The Case of the Little South West Reserve

W. D. Hamilton

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W.D. HAMILTON

Indian Lands in New Brunswick: The Case of the Little South West Reserve

THE HISTORY OF INDIAN LANDS IN NEW BRUNSWICK is complicated by the fact that no land treaties as such were concluded between the Indians and the government — either before the province was formed in 1784, or afterwards.¹ The earliest agreement between British authorities and the Indians who lived within the Maritime Provinces was the Treaty of Boston (1725), the first of a series of treaties of peace and friendship. A ratification of this treaty, signed at Annapolis Royal in 1728, acknowledged both British jurisdiction over the territory of Nova Scotia and the fact that different tribes or bands of Indians were “inhabiting within” the province.² The Treaty of Boston was renewed in 1749, and other treaties of peace and friendship were concluded with the Indians from time to time until the 1760s. In these treaties the Indians were recognized as occupying particular districts or river systems where they were not to be disturbed by the growing number of colonists. Similar recognition of the Indians’ right to the peaceable occupation of the land was given in different proclamations, the best known of which was the Royal Proclamation of 1763.

In these early treaties and proclamations, however, the boundaries of the lands which the Indians had an acknowledged right to occupy were not indicated. The first descriptions of boundaries were those given in the *licences of occupation* which were issued to the Indians from the 1770s onward.³ This method of licencing land for the Indians’ use stood in contrast to the system of seigneurial grants used in New France and the treaty arrangements made later in other parts of Canada.⁴ A licence of occupation was not a grant in fee simple but a licence to occupy and possess during the pleasure of the crown; the land remained crown land and was not to be sold or otherwise alienated by the Indians.

1 For a corresponding account of the early history of Indian lands in New Brunswick, see L.F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver, 1979), pp. 98-112. See also G.P. Gould and A.J. Semple, eds., *Our Land: The Maritimes* (Fredericton, 1980), and W.D. Hamilton and W.A. Spray, eds., *Source Materials Relating to the New Brunswick Indian* (Fredericton, 1976).

2 Canada, *Indian Treaties and Surrenders*, Vol. 2 (Ottawa, 1905), pp. 198-9.

3 All Indian reserves established in New Brunswick after the province was formed in 1784 were also based on licences “to occupy and possess during pleasure”: “Schedule of Indian Reserves”, *New Brunswick Assembly Journal*, 1838, Appendix.

4 For discussion of different grant and treaty arrangements made with the Indians of Canada, see P.A. Cumming and N.H. Mickenberg, eds., *Native Rights in Canada*, 2nd ed. (Toronto, 1972), Alexander Morris, ed., *The Treaties of Canada* (Toronto, 1971), and Derek G. Smith, ed., *Canadian Indians and the Law: Selected Documents, 1663-1972* (Toronto, 1975).

4 *Acadiensis*

The first licence of occupation in New Brunswick was one issued at an early date to the Richibucto Indians by the Governor of Nova Scotia,⁵ but most such licences in the province were issued between the years 1783 and 1810. No more than 100,000 acres — or not more than one-half of one per cent of the land area of the province — was under licence at any time. The Richibucto tract was reduced to less than ten per cent of its original size in 1805, and other allotments were also reduced in size during the earlier years of the 19th century when the concept of the Indian reserve as such was adopted. By 1838, when Indian policy had passed from imperial to colonial control, some 60,000 acres of land remained under licences of occupation, or in reserve, at more than ten locations in the province. Larger tracts, ranging up to 10,000 acres in size, were held by the Micmac Indians at Richibucto, Buctouche, Burnt Church, Eel Ground, Red Bank, Big Hole, Pokemouche, and Nepisiguit in northeastern New Brunswick, and a 16,000-acre tract was under licence to the Maliseet Indians at the junction of the St. John and Tobique rivers in northwestern New Brunswick.⁶ During the period of colonial control, Indian lands in the province were again reduced in size through a policy of land sales. After responsibility for the administration of these lands passed to the federal bureaucracy, further land sales occurred, but the composition of the Indian lands in the province did not change greatly after 1867.

The history of the Indian lands in New Brunswick over the three different historical periods of their control and management is an exceedingly complex one, which can be best illustrated through a specific case study. No location better lends itself to such a study than does the Red Bank location on the Miramichi River in Northumberland County. The Red Bank Indian village, which is located on that portion of the former Little South West Reserve now known as the Red Bank Reserve, stands on an ancient Indian site.⁷ The documented history of this village and the lands adjoining it dates from the late 18th century when such tracts were first set aside for the Indians' use. A case study of this location shows how these lands were managed — and mismanaged — by the Indians themselves, by imperial and colonial administrations, and, since 1867 by the Government of Canada. It shows also how non-Indians came into possession of substantial portions of these lands and why it is now so difficult to determine the legitimacy of different claims to some of the properties involved.

Prior to the fall of New France, the Indians living along the Miramichi River greatly outnumbered the Europeans and had no difficulty protecting their

5 Moses H. Perley, "The Indians of New Brunswick", n.d. [1848], Colonial Office Series 188/106, pp. 206-22, Public Record Office [PRO], London. Perley did not give the date of the Richibucto licence. He stated that this licence was in the possession of the Richibucto Indians, but no record of it has been found in the Provincial Archives of Nova Scotia.

6 "Schedule of Indian Reserves", *New Brunswick Assembly Journal*, 1838.

7 See C.J. Turnbull, "A Mound from the Maritimes", *Archaeology of Eastern North America*, 4 (1976), pp. 50-62.

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villages from seizure and encroachment, if not always from attack or pillage. This condition changed when the area was opened up to exploitation and settlement by the English. At this time certain agreements were entered into between the leaders of the Micmac nation and the authorities at Halifax. These included a treaty of peace and friendship, dated 25 June 1761, which allowed the English to hold two Micmac hostages as a guaranty that its terms would be respected,⁸ and a proclamation by Governor Jonathan Belcher, dated 4 May 1762, enjoining all persons to refrain from molesting the Indians at their hunting, fowling, and fishing pursuits, and in the peaceable possession of their land claims.⁹

Although protected by these agreements and by the subsequent Royal Proclamation of 1763, the rights of the Indians were seriously threatened in 1765 when a 100,000-acre township grant was made on the Miramichi to William Davidson and John Cort.¹⁰ Davidson and Cort were about to establish a commercial fishery that would interfere with one of the means of livelihood of the Indians residing along the North and South West branches of the river.¹¹ Furthermore, their grant actually embraced the Indian village sites along these branches, including the ancient Red Bank site at the mouth of the Little South West (Figure One).

It is not known to what extent the Indians at first comprehended the implications of Davidson and Cort's incursion into the interior of the Miramichi river system. Neither is it known if resentment of Davidson and Cort's enterprise there contributed to the Micmacs' disaffection from the English cause in the Revolutionary War years or to their effective routing of Davidson and most of his followers from the grant in 1777.¹² Davidson is mute on the subject in his correspondence, but he was convinced that the Indians had solemnly resolved to massacre those of his settlers who did not flee the grant with him, and that they would have done so if the sloop of war *Viper* had not come into Miramichi Bay at a critical moment in the summer of 1777 — and put up the river to confront

8 Thomas B. Akins, ed., *Selections from the Public Documents of Nova Scotia* (Halifax, 1869), pp. 699-700.

9 RG 1, Vol. 165, pp. 224-5, Public Archives of Nova Scotia [PANS], Halifax.

10 A full account of the history of Davidson and Cort's grant is given in W.H. Davidson, *William Davidson: 1740-1790* (Saint John, 1947). Unless otherwise noted, all statements made concerning this grant rest on the authority of this volume.

11 The correspondence of Benjamin Marston, first sheriff of Northumberland County, contains a number of references to the destructive fishing practices of Davidson and his settlers. In a letter dated 17 July 1785, for example, Marston stated: "The fishing has failed very much this season — no doubt thro' the impolitic methods used to catch the fish, which is chiefly by set nets, which are so extended from each side as to leave the fish very little room to run, and at Davidson's are extended fairly quite across the river to the utter exclusion of the poor savages above": quoted in W.O. Raymond, "The North Shore", *Collections of the New Brunswick Historical Society*, 4 (1899), p. 98.

12 Davidson fled to Maugerville on the St. John River; he returned to the Miramichi grant in 1783.

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and intimidate a dangerously restive Indian population.¹³ In his account of this episode, Robert Cooney states that throughout the period of Indian unrest on the river associated with the Revolutionary War the Julian tribe, or family, of Micmac Indians distinguished themselves by their moderation and by the protection which they extended to the settlers. "They not only conducted themselves with exemplary forbearance", he wrote, "but even frequently interposed their influence in behalf of the people".¹⁴ This version of the Julians' role in the conflict is corroborated in a letter written by Alexander Taylor, an early Northumberland County magistrate.¹⁵ Moses Perley, in an unpublished narrative of events relating to the Indians of New Brunswick, cites other pertinent facts. He states that the *Viper* was sent to the river during this period for the protection of the settlers, and that the Indians, at the same time, were severely chastized for their riotousness. According to Perley, the Micmac chief, Caiffe (or Cive), fled and was proclaimed a rebel, and on 20 July 1779, a treaty of peace was concluded between Captain Augustus Harvey, of the *Viper*, and John Julian, who was then declared Chief of the Miramichi Indians.¹⁶

At the conclusion of the hostilities, in what was regarded as a reward for their loyalty and assistance, "John Julian and his tribe"¹⁷ were granted a licence of

13 W.F. Ganong, ed., "The Memorial of William Davidson", in "Historical-Geographical Documents Relating to New Brunswick", *Collections of the New Brunswick Historical Society*, 9 (1914), pp. 309-13.

14 Robert Cooney, *A History of Northern New Brunswick and the Gaspé* (Halifax, 1832), p. 53.

15 Quoted in Raymond, "The North Shore", p. 94. While Cooney refers to the Julians as a *tribe*, Taylor refers to them as a *family*. It would seem that they were a family who became (or acquired) a tribe when they assumed leadership over the Miramichi Indians. The distinction is an important one because, as a family of chiefs, over a period of more than a hundred years, the Julians claimed an identity and rights distinct from those of the Indians in general. This led to much difficulty and confusion, and it dramatically affected the history of the Little South West Reserve.

16 Perley, "The Indians of New Brunswick". In marginal notes in this document, Perley claimed personal possession of the proclamation of Captain Augustus Harvey and the peace treaty concluded between Captain Harvey and John Julian, both dated 20 July 1779; also a letter from Michael Francklin, Indian Superintendent for Nova Scotia, dated 4 August 1779, describing the proceedings of the *Viper*, three letters from Francklin to John Julian, and related items.

17 John Julian was chief over the Indians of the North West branch of the Miramichi River and its tributaries, i.e., of those Indians who had villages at Eel Ground and Red Bank, and who later had reserves at Eel Ground, Little South West (Red Bank), Indian Point (Sunny Corner), and Big Hole (Sevogle). John Julian was also referred to as King of the Micmacs of Miramichi and, after his death, the office or title of King was maintained until at least 1841. Andrew Julian, who resided at Eel Ground, was king from an early date in the 19th century until he resigned from office in 1836, and Barnaby Julian, of Red Bank, was king from 1836 until 1841, when he was deposed for abuse of office and replaced by Nicholas Julian, whose document of election does not designate him as King, although his responsibilities would seem to have been the same as those of his predecessors: MG H 54, 6 September 1841, University of New Brunswick Archives. At the same time, there were sometimes local band, or village, chiefs. Such a chief, evidently, was Francis Julian, at Red Bank, from the 1780s until his death in 1830, when he was succeeded by his sons Barnaby and Mitchell Julian.

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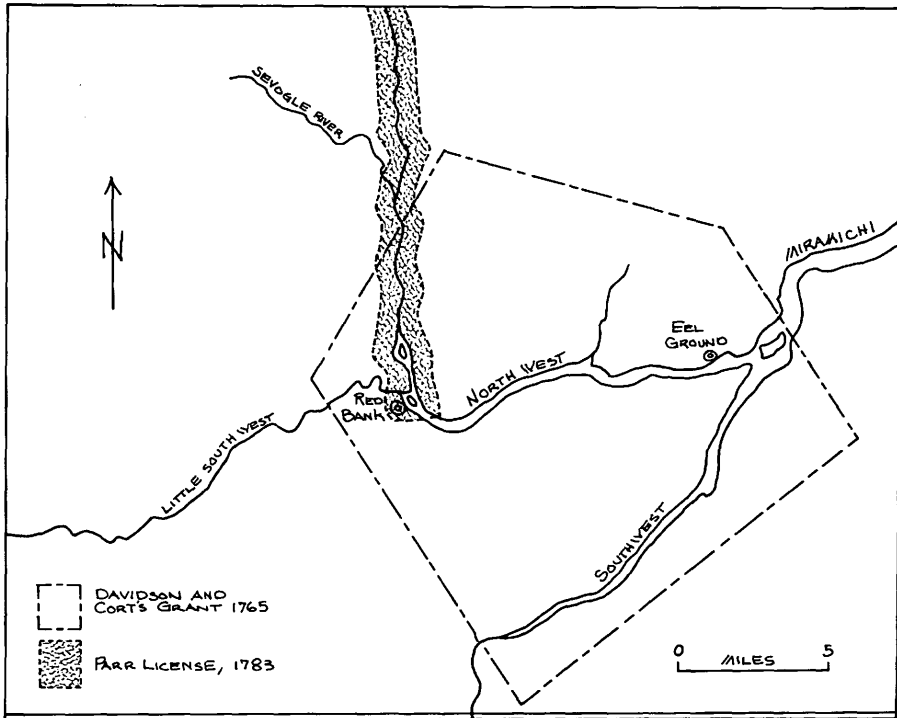


Figure One: Davidson and Cort's Grant (1765) and the Parr Licence (1783)

occupation by John Parr, Governor of Nova Scotia, to a 20,000-acre tract of land lying along either side of the North West branch of the Miramichi.¹⁸ This tract extended from a point below the mouth of the Little South West branch, past the mouth of the Sevogle River and other tributaries of the North West. As Figure One shows, the tract granted by the Parr Licence overlapped Davidson and Cort's grant on both the North West and Little South West branches. When John and Francis Julian attempted to exact payment in 1785 from Davidson's tenants for hay cut on the wild meadows inside their line, they learned from Northumberland County Sheriff Benjamin Marston that Davidson's claim took precedence over their own. "I have told the chiefs", wrote Marston to the Provincial Secretary, "that these meadows were given away a great while ago by the Governor of Halifax to D. and Cort, but this to a Savage is a very strange thing. That one Governor of Halifax should give away land which another Governor before him had already given away to another man. But a little acquaintance with Governor Parr would have informed him that His Excellency often did so by land which he had himself already given away to another".¹⁹

18 Records of Lands and Forests [RG 20], Series C, Vol. 95, PANS.

19 Ganong, "Historical-Geographical Documents", pp. 336-9.

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Marston consoled the Julians by informing them that Davidson and Cort's grant would probably be revoked because of their failure to fulfil its conditions. He also expressed the opinion that if it was revoked Governor Thomas Carleton would undoubtedly confirm to them all of the tract given to their tribe by Governor Parr, with the exception of those portions actually occupied by Davidson's settlers. So eager were the chiefs to have the licence confirmed by New Brunswick authorities that, according to Marston's letter, they called upon him a second time to state that, if Davidson's grant was revoked, they would be pleased to settle for half of their original allotment.

Davidson's grant was revoked in 1786, but the Indians did not immediately benefit from this. On the contrary, in the early 1790s, the most valuable land along the North West branch of the river which they claimed by virtue of the Parr Licence was granted to Loyalists and other settlers, and the Indians soon found themselves struggling to retain possession of even the village site of Red Bank. In 1791, two downriver settlers, James Gordon and Alexander Gregg, attempted to obtain title to the cultivated land within the village, and they might have succeeded in doing so had Deputy Surveyor Arthur Nicholson not undertaken to represent the Indians' case to a skeptical Surveyor General. Nicholson contended that the two men were claiming "the only spot where [the Indians] have their Gardens and raise their vegetables and which they claim by a Licence of Occupation. . . from Governor Parr".²⁰ A month later, two settlers joined Nicholson in protesting that Gordon and Gregg had lately been to the Little South West and given the Indians to understand that they had obtained possession of the place from the government. According to Nicholson, the property claimed was a piece of interval land which had been occupied by the Indians "from time immemorial".²¹ At this point, the Surveyor General agreed to place the matter before the executive council and ruled that, in the meantime, Indians were not to be molested.²²

Nothing more was heard from Gordon and Gregg, but a dispute between the Julians and Duffy Gillice, a resident on one of Davidson's lots, smouldered throughout the 1790s. Previously, Gillice had farmed an interval within the village with the Indians' consent. But when he attempted to acquire title to the old Micmac burial site as a location from which to net salmon, the Indians were indignant. Alexander Taylor, after sending an observer to inspect the place in dispute, expressed the opinion that a great injustice was being done the Indians by Gillice and some of his neighbors. "If you think it proper", he wrote Colonel Edward Winslow, "to have His Excellency informed of it I do actually think it would be a great charity, because the very road to justice seems to be entangled

20 Petition No. 292, 24 September 1791, Northumberland County Petitions, Provincial Archives of New Brunswick [PANB].

21 Petition No. 298, 11 October 1791, Northumberland County Petitions, PANB.

22 *Ibid.*

against these poor creatures, and I'm sure that's not His Excellency's will".²³ After Francis Julian, chief at Red Bank, also grieved to the authorities, Provincial Secretary Jonathan Odell intervened on the Indians' behalf. In a letter to Gillice dated 20 July 1801, Odell summarized the chief's representations, which were, in essence, that the lot in dispute was unfit for either tillage or pasture and that Gillice's only use of it was to set a net across the river which was injurious to the interests of the Indians. Odell invited Gillice to "relinquish that part at least of the lot which is claimed by the Indians and discontinue the setting of the cross net, or else show cause without loss of time to His Excellency in Council why the lot should not be granted to the Indians".²⁴ By order-in-council dated 5 February 1802, the parcel of land in question was secured to the Indians.

The Duffy Gillice affair may have helped alert Fredericton authorities to the need to have the land claims of the Miramichi Indians located, surveyed, and licenced. In any case, in 1804, when the first extensive land survey in nearly 20 years was done on the river, by Deputy Surveyor Dugald Campbell, the limits of all Indian claims situated between the Little South West and the Tabusintac were either fixed or confirmed. Campbell's return for the Little South West is titled: "Land Claimed by the Tribe of Indians of which François Julien is Head".²⁵ It shows the westerly limit of the claim some eight miles upriver from Red Bank, and the "Indian Village and Improvements", not at Red Bank, but on the north side of the Little South West immediately east of the Ox Bow meadow. The reason for the temporary dislocation of the village may have been because the Ox Bow meadow, on the south side of the river, the most fertile agricultural plot on the reserve, was not officially part of it in 1804. It had been granted, possibly inadvertently, to John Stuart, one of Davidson's settlers, but, in 1808, it was restored to the Indians by an agreement between the province and Stuart's heirs.²⁶ A certificate of the Little South West survey, dated 27 September 1804 and an order of the Surveyor General, dated 10 September 1805, reserving this tract to the Indians pending confirmation of the allotment by the executive council, were entered in Northumberland County records.²⁷

Also entered in the county records was an affidavit of Francis Julian, dated 13 July 1806, stating that, should he die, this tract was to pass to his sons, Mitchell and Barnaby Julian.²⁸ This affidavit is the earliest public record of unrelenting efforts made by Francis Julian and his sons over a period of at least 40 years to acquire and assert personal ownership rights to the Little South West Reserve. In doing so, they were forcing a distinction between John Julian's family, who befriended the English during the Revolutionary War years, and the Micmac

23 Quoted in Raymond, "The North Shore", p. 95.

24 *Ibid.*

25 Plan N1/13, Lands Branch, New Brunswick Department of Natural Resources.

26 Executive Council Papers, Indians [REX/Px], Vol. 3, pp. 1244-5, PANB.

27 Northumberland County Registry Office, Newcastle, Vol. 7, p. 155.

28 *Ibid.*

10 *Acadiensis*

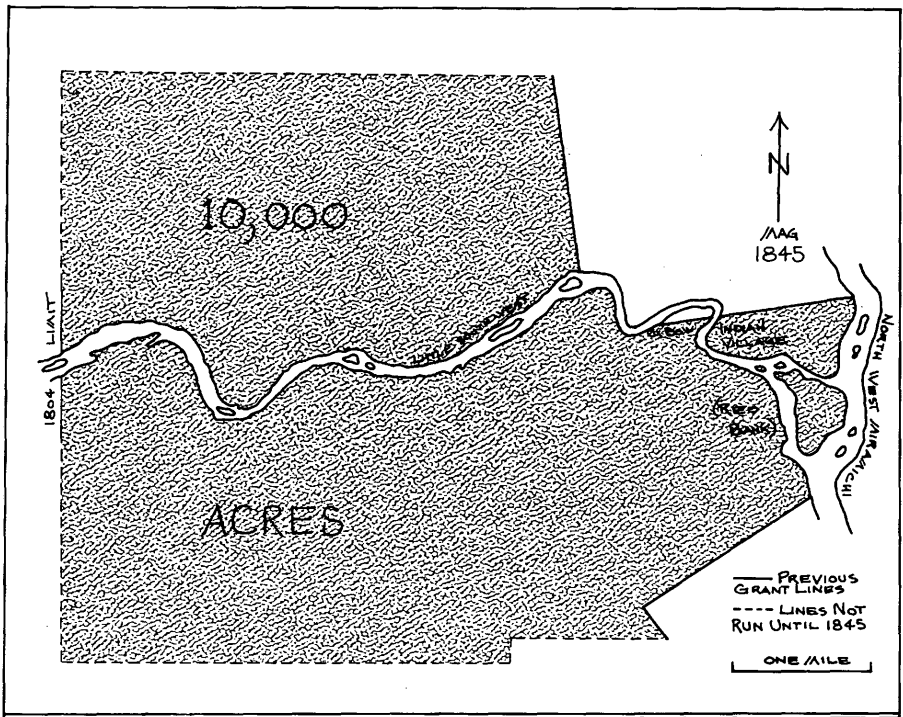
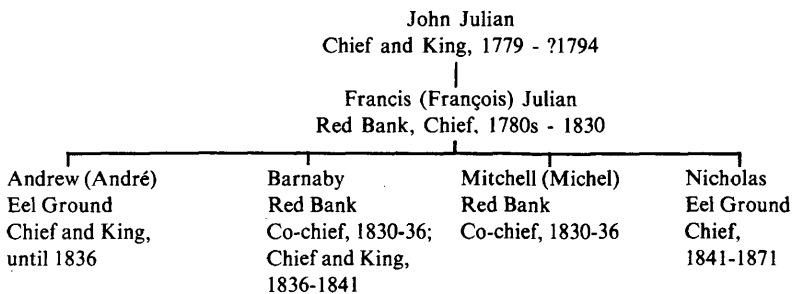


Figure Two: The Little South West Indian Reserve, 1804

population in general, which did not, and they were contending that the land grant made by virtue of the Parr Licence was a personal reward given to John Julian and his family, rather than a benefit bestowed upon the tribe, or band, as a whole.²⁹

29 No thorough study of the origins and lineage of the Julian, or Julien, family has been done. There are problems with the genealogy which cannot be discussed here, but the lineage of the earlier generations would seem to have been, in part, as follows:



According to tradition recorded in the 1880s and 1890s Francis was a son of John. Francis died in 1830 at age 101. In an 1806 affidavit Francis named Barnaby and Mitchell as sons, and Moses

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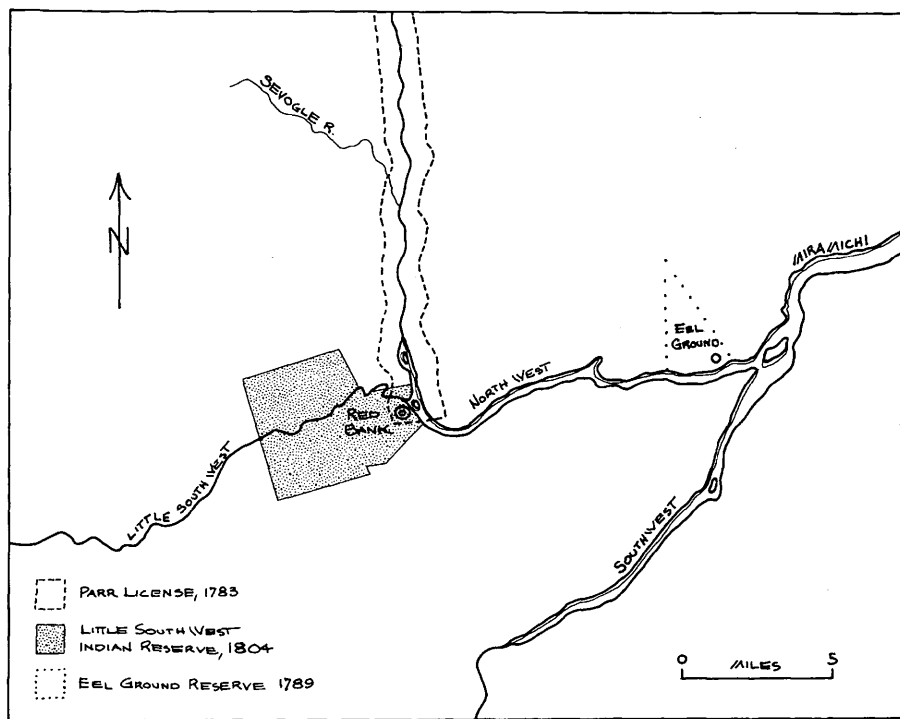


Figure Three: The Parr Licence and the Little South West Indian Reserve

Although the first official schedule of New Brunswick Indian reserves³⁰ gives the date of the licence issued by Governor Parr in 1783 as the date of the estab-

Perley in 1841 referred to both Andrew and Nicholas as brothers of Barnaby. Barnaby died in 1854. According to tradition cited in various archival documents, he remained an hereditary chief at Red Bank until his death in spite of his having been deposed in 1841 as Head Chief or King, as noted by Perley. By tradition, two hereditary chiefs in the Julian line followed him, in succession, at Red Bank — Francis Barnaby Julian, and Sock Francis Julian, who died in 1893 leaving no acknowledged successor. At Eel Ground, Nicholas Julian was succeeded as chief in 1871 by his son John N. Julian, who was also duly appointed to the office in that year, by Joseph Howe, Minister of State and Superintendent General of Indian Affairs. When John N. died in 1888 at age 74, the Eel Ground Reserve adopted the elected system of chiefs approved by the Department of Indian Affairs. Chief Tom Barnaby served in elected office from 1888 until 1894, in which year Peter Julian, a son of John N. Julian, petitioned the department for appointment as chief on the grounds that he was the best qualified man on the reserve to be chief, and that members of his family had been appointed chiefs through the generations because of the Julians' services to King George III. The department denied the petition but Peter won the election, and in office reasserted the Julians' ancestral claim to the Miramichi reserves. When Peter died at Eel Ground in 1938 at age 86, he was described by the local press as "the last of the Julians". Principal sources for this sketch are found in files 106,689 and 107,222, vols. 2517 and 2522, Records of the Department of Indian Affairs [RG 10], Public Archives of Canada [PAC].

30 "Schedule of Indian Reserves", *New Brunswick Assembly Journal*, 1838.

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ishment of the Little South West Reserve, the allotment described in the licence bears little resemblance to the block of land surveyed for Francis Julian and his tribe in 1804. The former was 20 miles in length and two in width, contained 20,000 acres, and lay along the North West, whereas the reserve established in 1804 was a 10,000-acre block, roughly five miles square, lying on the Little South West. They overlapped only to the extent that both included the Red Bank village site at the mouth of the Little South West.

It might be supposed that the offer made by the Julians in 1785 to accept half of the allotment described in the Parr Licence was taken as justification to reduce the reserve in size. It should be noted, however, that nearly 20,000 acres in all was set aside for the Miramichi Indians by Campbell's survey, though this was in three blocks of land having much less riverfront than the Parr Licence allowed. These were: Little South West (Red Bank), 10,000 acres; Indian Point (Sunny Corner), 750 acres; and Big Hole (Sevogle), 8,700 acres — a total of 19,450 acres. These allotments were confirmed in a second survey done by Deputy Surveyor William F. Odell in 1808. Odell's report no longer exists, but according to Moses Perley, Odell concluded his return by stating that he had "pointed out to the Indians on the plans the boundaries of the several tracts allotted to them, and informed them that they must not expect or claim anything more".³¹ The executive council minutes of 24 September 1808 indicated that Odell's report was accepted and that all questions concerning these reserves were considered resolved.³²

But in 1808 the land troubles of the Red Bank Indians had scarcely begun. Before 1800, at the Eel Ground Reserve, on the North West branch of the river, members of the Julian family had begun to trade in land. Under their chief, Andrew Julian, a pattern became established whereby the band became indebted to lumber operators for provisions, and then conveyed timber rights and deeds of sale to them in lieu of cash payment.³³ In 1815, certain members of the community at Eel Ground complained of this practice to authorities in Fredericton.³⁴ When the executive council responded by ordering that no further land sales or exchanges take place,³⁵ the chief evidently complied. But the idea of treating as income properties the large tracts of land to which they now held licences was too appealing for the Red Bank Julians to resist. Having been admonished not to sell land or timber rights, they turned to a traffic not yet specifically prohibited — that of selling leases. The earliest of these was a lease negotiated in 1820 by Francis, Barnaby, and John M. Julian with lumberman Richard McLaughlin, for a six-year period, by the terms of which McLaughlin, for £50

31 Perley, "The Indians of New Brunswick".

32 REX/Px, Vol. 3, pp. 1244-5, PANB.

33 See Northumberland County Registry Office, Vol. 11, pp. 38-40, 286, 356, Vol. 18, p. 52. Also REX/Pa, Indians, PANB.

34 REX/Px, Vol. 4, p. 1778, PANB.

35 *Ibid.*

annually, was permitted to cut all of the wild grass on the Little South West Reserve.³⁶ It was not with commercial leases, however, but rather with the leasing of homestead-size lots for settlement by non-Indians that the Julians had a veritable heyday in the 1830s. After Chief Francis Julian's death in 1830, his sons Barnaby and Mitchell Julian acted as managers of the Little South West and nearby Indian Point tracts. These "Indian Chiefs", as they are known to the record, had an agent at Red Bank in the person of settler William Park who, as their surveyor, secretary, and bookkeeper, also played an important part in the subdivision of the Little South West tract and in negotiating leases or rental agreements for almost all of the 50-odd riverfront properties created within it.³⁷

A number of lots were leased on the Little South West Reserve prior to 1836, but in that year two events helped accelerate the settlement of the tract by non-Indians. First, one of the local "Indian Chiefs", Barnaby Julian, became, upon the resignation of Andrew Julian, Head Chief, or King, of the Miramichi Indians.³⁸ He was thus empowered, in his view, to do what he wished with the land. And within a few weeks of this development, the lumberman Jared Tozer acquired leases to several lots within the tract and set about to establish a sawmill operation there.³⁹ Many of those who flocked to the reserve under settlement leases issued by Barnaby Julian were relatives or employees of Tozer. Some were second and third generation settlers who had been crowded off family holdings elsewhere. Others were recent immigrants from Ireland who did not have the means or opportunity to acquire property in any other way.⁴⁰

The Julian leases, many of which were duly registered, purported to convey the properties in perpetuity in consideration of an annual payment in cash, or in kind, or both. ⁴¹ No provision for their future cancellation or revocation by the Indians was written into them. For £1 annually, for example, lumberman James Holmes acquired Lot 2 North in 1838, "to have and to hold. . . the said James Holmes and his heirs, executors, administrators, and assigns, from and after the date hereof, *always, until it shall please her Majesty's Government to break said Indian Reserve and take from said Indians all claim to same*".⁴² The wording was typical. The leases were, in all but name, deeds, and the properties, once leased, were freely conveyable without further involvement of the Indians. Rental payments were to be made to the Julians, but the leaseholders paid county taxes on buildings and other improvements in the same way that free-

36 Northumberland County Registry Office, Vol. 16, p. 162.

37 "Petition of William Park", December 1841, REX/Pa, Indians, Vol. 1, PANB.

38 "Election of Barnaby Julian", 5 August 1836, MG H 54, University of New Brunswick Archives.

39 "Petition of Jared Tozer", 9 October 1841, REX/Pa, Indians, Vol. 1, PANB.

40 The history of the non-Indian settlements on the North West and Little South West branches of the Miramichi River is given in W.D. Hamilton, *Old North Esk* (Fredericton, 1979).

41 Most registered leases for Little South West properties are indexed under the name of Barnaby Julian in the Northumberland County Registry Office, Vols. 35-39.

42 "Petition of James Holmes", 3 September 1841, REX/Pa, Indians, Vol. 1, PANB.

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holders did.

Almost the whole reserve, except for the Indian village at Red Bank and back woodlots paralleling either side of the river, thus came to be occupied and possessed by settlers as though it were private property. By 1841, dozens of homes had been built on the tract and hundreds of acres of land had been brought under cultivation. The settlers had their own school, and those of the Baptist faith among them were striving to establish their own church. At this time, these tenants accounted for nearly half of the non-Indian occupants of Indian reserve land in the province.⁴³

Meanwhile, there was mounting public pressure to have all of the Indian reserves in the province opened up to settlement. In 1838, the legislative assembly proposed the sale at public auction of certain Indian lands in Kent County,⁴⁴ and in 1840, of portions of the Indian reserves in Northumberland County.⁴⁵ Lieutenant-Governor Sir John Harvey indicated a readiness to comply with the wishes of the house, but, according to Moses Perley, "the urgent remonstrances and strenuous opposition of the Indians prevented this".⁴⁶ Those advocating a policy of land sales contended that the Indians would be the principal beneficiaries if the revenues realized from the sales were placed in a special fund to be used exclusively for their welfare. This argument was motivated by more than altruism. Squatters and others had already taken possession of large portions of the reserves and wished to legitimize their claims. It was also evident that the creation of a special Indian fund could relieve the provincial budget of the burden of the welfare support which the province had extended to the Indians.

While this debate over their lands was taking place in New Brunswick, the Indians were acquiring unexpected allies overseas. In Britain in this period the humanitarian forces that had achieved the abolition of slavery turned their attention to the welfare of native peoples in the different colonies. This interest was soon reflected in the communications of the Colonial Office which, in the 1830s, despatched several inquiries about the Indians to North American colonial governors. Such inquiries were ignored in New Brunswick until precise instructions were sent to Lieutenant-Governor Harvey in 1838, requiring that a report be returned on the Indians showing information on their numbers, their land entitlements, their moral state, any efforts made for their civilization, and any local statutes enacted concerning them.⁴⁷ In tardy compliance with this demand, Moses Perley, who had been appointed Indian Commissioner in 1837, was instructed in 1841 to visit all reserves in the province and prepare a com-

43 "Extracts from Mr. Perley's Report on the Micmacs", *New Brunswick Assembly Journal*, 1842, Appendix [Perley Report]. Reprinted in W.D. Hamilton and W.A. Spray, *Source Materials Relating to the New Brunswick Indian* (Fredericton, 1976), pp. 88-110.

44 *New Brunswick Assembly Journal*, 1838, p. 188.

45 *New Brunswick Assembly Journal*, 1840, p. 144.

46 Perley, "The Indians of New Brunswick".

47 *Saint John Courier*, 26 January 1839.

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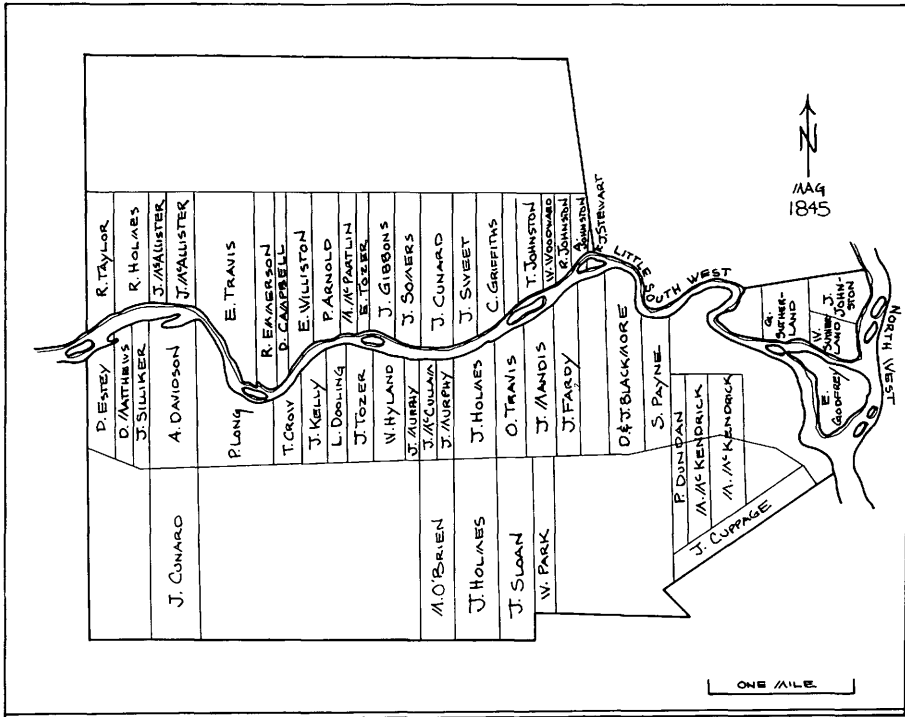


Figure Four: The Little South West Indian Reserve, 1845, showing non-Indian lots

prehensive report on the condition of the Indians.⁴⁸

The message which Perley carried throughout the province was that the executive council wished to see the reserved lands used for the Indians' benefit and their social condition and prospects improved by forming them into larger settlements, teaching them farming and other useful trades, getting them needed medical services, and establishing schools for their children. Perley was armed with copies of a proclamation issued by Lieutenant-Governor Sir William Colebrooke calling for the removal of squatters from Indian land,⁴⁹ and he made a point of inquiring into outstanding Indian land disputes. Perley was personally enthusiastic at the prospect of steps being taken to improve the lot of the Indians, and the Indians, in general, were receptive to his message and his point of view. "The announcement that the Executive was about to take some interest in their affairs", he stated of the Indians' reaction to his address at Eel Ground, for example, "created great satisfaction, and caused much rejoicing".⁵⁰

Perley and his party reached Red Bank on 30 August 1841, there to discover

48 Perley, "The Indians of New Brunswick".

49 REX/Px, Vol. 40, pp. 226-7, PANB.

50 Perley Report, Hamilton and Spray, *Source Materials*, p.89.

16 *Acadiensis*

that Chief Barnaby Julian, during his five years as Head Chief, or King, had assumed the right to sell and lease the greater part of the reserve of 10,000 acres on the Little South West. By Perley's calculation, Julian had received "nearly £2,000 in money and goods from various persons, as consideration for deeds and leases, and for rents". "His rent roll this year", wrote Perley, "amounts to a very considerable sum; yet I found him so embarrassed in his pecuniary affairs that he dare not come to Newcastle, save on Sunday, for fear of being arrested by the Sheriff". Worst of all, in Perley's view, was that Barnaby Julian's family alone benefitted by the money which came into his hands, "none of the other Indians receiving the smallest portion".⁵¹

Perley noted that the premises of Barnaby Julian were located on a flat or plateau within the Indian village at Red Bank, at the junction of the North West and Little South West branches of the river. "Part of the plateau was in grain and potatoes belong to Barnaby", he wrote; "the rest was a waste on which were the wigwams of the few other Indian residents at this very pretty spot".⁵² The chief was anxious that this Red Bank plateau be secured to himself and his family, but Perley had no sympathy with the personal ambitions of one whom he judged to be a scoundrel. Julian's conduct, he contended, had made the Red Bank community of some 50 Indians one of the poorest in the province when it "ought to have been one of the best settlements".⁵³

Perley was almost as outraged by the flagrant actions and truculent attitudes of many of the squatters on Indian land. He reported, for instance, that the small tract at Indian Point (Sunny Corner), had been "pounced upon" by squatters who had left the Indians with only three acres of land along the river-front which they now had under strong picket fence to prevent further encroachment.⁵⁴ Concerning the settlers on the Little South West tract, however, Perley felt differently. These settlers were, for the most part, "under lease and paying rent regularly". They had made "extensive and valuable improvements" to their lots. While they did not pretend to have clear title to their holdings, they felt that their circumstances gave them "a good and equitable claim upon the government". In contrast with the "lawless squatters" on other reserves, Perley noted "the superior air and manner" of these settlers, "the greater degree of comfort in their houses, and the respectable appearance of their families".⁵⁵ Indeed, a number of these people, like Perley himself, had St. John River backgrounds and proud New England roots. He delivered them copies of Colebrooke's proclamation, but his private advice to them was to cease paying rents to the Julians and to petition the Lieutenant-Governor at once for grants of their properties.⁵⁶

51 *Ibid.*

52 *Ibid.*, p. 102.

53 *Ibid.*, p. 90.

54 *Ibid.*, p. 101

55 *Ibid.*, p. 102.

56 REX/Pa, Indians, Vol. 1, PANB. This file contains the 1841 petitions of almost all Little South

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In his report Perley proposed that the Indians of the province be regrouped into four settlements — a Maliseet settlement at Kingsclear, near Fredericton, and Micmac settlements at Big Cove, Burnt Church, and Eel Ground, in Kent and Northumberland Counties. At these locations they would hold land collectively and, under certain conditions, individually. All Indian settlements, he thought, should be adjacent to non-Indian rural communities so that Indian children could attend school and mix with the non-Indian population. The cost of these and other changes and improvements would be borne by a special fund to be created from revenues received from developing those blocks and portions of land no longer needed for traditional purposes by the Indians.

Perley's report became grist for a select committee charged with drafting legislation to deal with the Indian land question, and it seemed at first that its key recommendations would be adopted.⁵⁷ But when the bill entitled "An Act to Regulate the Management and Disposal of Indian Reserves in this Province"⁵⁸ was proclaimed in 1844 it was obvious that the legislature was more concerned about opening the reserves up to settlement than with proposals for the Indians' betterment. The first phrase of the act's preamble revealed its tenor: "Whereas the extensive tracts of valuable land reserved for the Indians in various parts of the Province tend greatly to retard the settlement of the Country. . ." The act provided for surveys, sales, leases, and the appointment of local Indian commissioners. It created a special fund to be used, after the deduction of all expenses, for the relief of indigent and infirm Indians, and for the procuring of seeds, farm implements, and domestic animals. But it contained no provisions pertaining to larger settlements, schools, medical services, or any of the other benefits which Perley had discussed with the Indians and proposed in his report. In Perley's opinion, this act was "of very objectionable character".⁵⁹

Perley had been made an Honorary Chief by the Micmacs of Miramichi during his visit there in 1841. He took this honour seriously, and he championed the Indians' interests as best he could throughout the 1840s, in the face of indifference and incompetence and such attitudes as the act of 1844 represented. In 1845, he met again with the Miramichi Indians and determined, together with them, which portions of the Little South West and other reserves could be sold. "At the conferences between these Indians and myself in 1845", he wrote, "full understanding was had as to what particular portions of the Northumberland reserves they required, and what tracts or portions they were willing to relinquish to the control and management of the Crown, for their benefit".⁶⁰ Among

West settlers. "The Petition of John Gibbons and Thirty-Eight Others", dated 13 October 1847, states that Moses Perley advised in 1841 that the Indians should receive no further rent money but that when some of the settlers did not pay, they were sued and required to do so.

57 Perley, "The Indians of New Brunswick".

58 *Royal Gazette* (Fredericton), 25 September 1844.

59 Perley, "The Indians of New Brunswick".

60 Perley to Hon. Thomas Baillie, 30 December 1847, REX/Pa, Indians, Vol. 3, PANB. In a

18 *Acadiensis*

the lands which the Indians agreed to surrender was the settled portion of the Little South West tract.⁶¹ In the summer of 1845, the first official internal land survey of this tract was commenced by Deputy Surveyor David Sadler and, by fall, provincial officials were beginning to draft notices of auctions sales of portions of this and other Indian reserves.

The Little South West Reserve was unique in that it had been claimed as a virtual fiefdom by members of the Julian family and was occupied almost entirely by tenants holding spurious leases. For this reason, in October 1845, Provincial Secretary John S. Saunders questioned whether sales should be made from this reserve under the provisions of the act of 1844. Instead, the reserve might be ended by proclamation.⁶² When Bernard Julian of Red Bank, a son of Barnaby Julian, asked in 1846 that the executive council grant both the Little South West and North West Miramichi reserves to the Julian chiefs, as distinct from the Indians in general, Perley reacted by urging that the licences to the Miramichi reserves be revoked. "This attempt on the part of the chiefs to obtain the entire control of the lands mentioned, *evidently for their own personal benefit, is*", he wrote, "really monstrous".⁶³ No concession was made to the chiefs, but neither was any proclamation issued to revoke the licences of occupation to the Miramichi reserves.

Auctions of lots on the Eel Ground and Indian Point Reserves took place in 1847,⁶⁴ but sale of the Little South West lots was repeatedly delayed by petitions of protest and official uncertainty. In October 1847 the settlers petitioned that, in many cases, rents already paid the Indians had been greater than the purchase values of the properties concerned and that these rents should be credited against purchase prices. The authorities eventually agreed to an instalment purchase plan while rejecting the concept of credit for payments already made to the Indians.⁶⁵ The Indians, or some of them, were evidently as unhappy as the settlers were. When Perley arrived at Newcastle in October 1847, while on another round of visits to the Micmac parts of the province, he found that the Indians were, "as usual, dissatisfied about their lands", and they they had just sent another deputation off to Fredericton concerning the reserve on the Little South West. "This reserve", Perley stated, "should be broken up at once, and the land sold to the settlers, as agreed upon at the conferences of 1845".⁶⁶ But the marginal note Perley states that the "original minutes" of his meetings with the Miramichi Indians were sent to the Provincial Secretary, but these have not been located.

61 Perley to J.S. Saunders, 27 October 1847, *ibid.*

62 RPS/1/5, p. 97, Records of the Provincial Secretary, PANB.

63 Perley to Saunders, 27 October 1846, New Brunswick Historical Society Papers, Folder 6, No. 9, New Brunswick Museum Archives.

64 *Royal Gazette* (Fredericton), 16 June 1847.

65 "Petition of John Gibbons and Thirty-Eight Others", 13 October 1847, and "Petition of John Gibbons and Thirty-One Others", 18 December 1847, REX/Pa, Indians, Vol. 1, PANB. Also, John Gibbons to Hon. Alexander Rankin, 28 July 1849, MG 9 A1, Vol. 40, pp. 188-91, PANB.

66 Perley to Saunders, 27 October 1847, REX/Pa, Indians, Vol. 3, PANB.

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protests continued. Within a few weeks of Perley's visit, Barnaby Julian and others petitioned against sales being made off the Little South West Reserve.⁶⁷ And again, in January 1848, Barnaby and 22 other "heirs and descendants of John Julian" asked Lieutenant-Governor Colebrooke to permit them to continue to hold their lands on the same basis as these lands had been granted originally on the promise that they would "not ask any help or support from Government, but live and cultivate the lands as loyal and dutiful subjects".⁶⁸ Clearly, the province's Indian land sales policy was nothing if not exceedingly unpopular with the parties most affected on the Little South West Reserve.

Before he left office in the spring of 1848, Lieutenant-Governor Colebrooke called the attention of the Colonial Secretary, Lord Grey, to the problem of the Indian lands in the province. In this way, the subject of these lands reached the agenda of the Commissioners for Colonial Lands. After receiving a report and recommendations from the new Lieutenant-Governor, Sir Edmund Head, who felt that those portions of the reserves which were occupied by settlers should be sold, the commissioners sanctioned the policy of land sales. The commissioners stated that they had no doubt about the "worthlessness" of the different non-Indian claims to title "in point of law", but they concurred with Sir Edmund in the opinion that "it would not now be possible to eject the occupants, even if in itself such a measure were desirable". The provincial government had "acquiesced" in the different land transactions and had thereby "countenanced the impression of their validity".⁶⁹ After the commissioners' report was received, major auctions of lands situated in Kent and Northumberland Counties, in particular, were planned. On 12 September 1849, an auction sale of the Little South West lots (along with seven lots at Big Hole Reserve) was staged at Newcastle, over the continuing protests of the residents, and with predictable results.⁷⁰ Of the 50-odd Little South West lots offered for sale, fewer than 30 were actually sold, and several of those that were sold, on instalment plans, were never paid for. A number of settlers abandoned their claims rather than pay twice, as they saw it, for these lands. A greater number simply remained in obdurate possession of properties which they had, by this time, occupied for ten, 15, or more years. Sir Edmund Head had opined to the Commissioners for Colonial Lands that these settlers could not be ejected from their holdings, and certainly no action to eject them was taken, or ever seriously contemplated, by provincial authorities.

This left the status of much of the land on the reserve undefined and in a state of confusion. There was reserve land, including the Red Bank village site, which the Indians had not agreed to sell and which they occupied or held unchallenged.

67 Perley to Baillie, 30 December 1847, *ibid.*

68 "Petition of Barnaby Julian and Others", 13 January 1848, Vol. 40, p. 169, MG 9 A1, PANB.

69 T. Murdoch and F. Rogers to Herman Merivale, 14 October 1848, CO 386/83, pp. 146-53, PRO.

70 *Royal Gazette*, 11 July 1849.

But there were also smaller portions of reserve land which they had not agreed to sell which were occupied by non-Indians. There was reserve land which the Indians had agreed to sell which was not sold, but which was nevertheless occupied or claimed as private land. There was also reserve land which they had agreed to sell which was nominally sold, but which was never paid for by its purchasers and claimants. An finally, there was reserve land which they had agreed to sell which was paid for by its purchasers and granted in the usual way under the Great Seal of the Province.

In the years that followed, the Indians did not reassert claim to the properties which became alienated from the reserve in these different ways. Neither did the province, which, shortly after Confederation, simply turned its record and account books over to the federal government.⁷¹ But federal authorities showed little interest in the matter. In fact, nearly 50 years went by before an effort was made to clarify the status of much of the land on this reserve. Locally, it was perfectly well known which land was treated as private land and which as Indian land, but this was not a matter of official record. Finally, in the 1890s, in the wake of several court cases involving former Indian lands in Ontario, the Department of Indian Affairs took action.⁷²

Responsibility for probing into the chaotic land situation on the Little South West Reserve fell to William P. Carter, a Richibucto lawyer, who in 1893 was appointed Indian Agent for the Miramichi district. When Carter first inquired locally about the land, he discovered that there was "no settlement of white men on the Red Bank Reserve". However, there was a substantial settlement on adjacent former Indian land, about which he filed a detailed report.⁷³ The department took a firm position: Carter was "to inform these squatters that they must obtain title to the lands they occupy from this Department". Former purchasers of lots from the Province of New Brunswick who had balances owing were to be given six months to pay up, with interest at 6 per cent since 1849; and settlers on unpurchased lots would have one month in which to declare their intentions with respect to purchasing.⁷⁴ Six months later, in July 1894, Carter reported that all Little South West settlers had been notified of these demands. Some settlers had complained that the asking price of \$2.00 an acre for the land was exorbitant; others had stated a stoical willingness to comply with requirements; but none of them had actually paid money over to him during the six

71 Draft copy of letter to Hon. H.L. Langevin and appendix of recorded sales of Indian reserves, 2 December 1867, REX/Pa, Indians, Vol. 3, PANB.

72 File 107,222, Vol. 2522, RG 10, PAC. This voluminous file documents the department's efforts to resolve the land problems on the Little South West and other Miramichi Indian reserves between the years 1893 and 1908.

73 W.P. Carter to the Deputy Superintendent General of Indian Affairs [DSG], 6 December 1893, *ibid.*

74 Department of Indian Affairs [DIA] to Carter, December 1893, DSG to Carter, 25 January 1894, *ibid.*

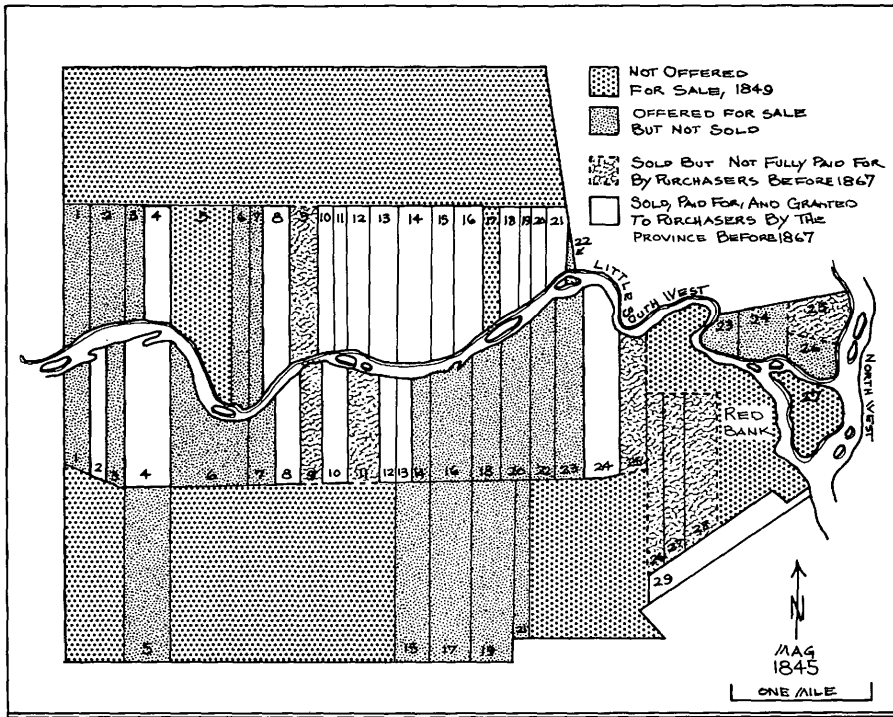


Figure Five: The Little South West Indian Reserve, 1867

month period.⁷⁵

Since Carter had expressed the opinion that the Indians would be willing to execute a formal surrender of the lands in question for sale,⁷⁶ as required by the Indian Act, the department provided him with blank surrender forms and instructions for their completion.⁷⁷ Promptly, two responses reached Ottawa. First, Peter Julian, the elected chief of the Eel Ground Reserve, claiming an hereditary interest in the lands concerned, notified Ottawa that no sales were to be made without his consent.⁷⁸ Secondly, a group of Red Bank Indians led by their unofficial chief, John Dominic, filed a letter of objection which was endorsed by nine Indians and allegedly supported by “ten others”.⁷⁹

It soon became evident that the Red Bank Indians were being influenced by the settlers on the Little South West tract, who had convinced them that the de-

75 Carter to DSG, 12 July 1894, *ibid.*

76 Carter to DSG, 13 January 1894, Carter to DSG, August 1894, *ibid.*

77 DSG to Carter, 30 August 1894, *ibid.*

78 Chief Peter Julian to Minister of Indian Affairs, 1 September 1894, *ibid.*

79 Minutes of a meeting held at Red Bank, 3 September 1894, *ibid.*

partment was attempting merely to divest the Indians of their lands.⁸⁰ It also became clear that Peter Julian was playing a political game aimed at having the unoccupied Big Hole Reserve of 8,700 acres taken away from the Red Bank Band and given to his own Eel Ground Band.⁸¹ Carter advised the department that John Dominic, of Red Bank, was not an elected or recognized chief.⁸² And Peter Julian, Carter contended, although he was an elected chief at Eel Ground, had no rights to Red Bank lands; the bands were separate bands; the Red Bank Indians had had no voice in Julian's election, and they were resentful of his interference.⁸³ The department, for its part, was profoundly ignorant about the local situation and the complex history of the Miramichi reserves.

In September 1894, Carter convened a meeting on the Red Bank Reserve which was attended by 15 of the 20 adult male residents there. The band would consent to a surrender, he reported, if the words "or to lease" were added to the words "to sell" in the official document.⁸⁴ What the band wanted at this stage, it would seem, was to manoeuvre themselves into a position to claim back rents on old leases as well as future lease rents. The department was interested only in sales. More blank surrender forms arrived from Ottawa in October, but the Indians still refused to sign them.⁸⁵

Meanwhile, Peter Julian and Lemey Renou, of Eel Ground, arrived in Ottawa, bearing with them, as evidence of the Julians' ancestral claim to the Miramichi reserves, a copy of the licence of occupation granted to "John Julian and his tribe" at the time of Dugald Campbell's survey in 1804. If the department would convey the Big Hole and Indian Point tracts to the Eel Ground Band, they would agree to any necessary surrenders. Conveniently overlooking the evidence that the Eel Ground and Red Bank Bands were separate bands, the department indicated an interest in the proposition.⁸⁶ Carter, for his part, advised that he had no personal objection to this arrangement, but he felt that the Red Bank Indians could be expected to do some "vigorous kicking".⁸⁷ A joint meeting of members of the two bands was needed, he suggested, to discuss the issue of the Big Hole and Indian Point tracts and to submit the documents of surrender for signature.⁸⁸

The settlers on the Little South West tract were being as difficult as the Red Bank Indians were. "While some of these squatters", stated Carter, "have

80 Carter to DSG, 3 January 1895, *ibid.*

81 Chief Peter Julian and Lemuel Renou to Carter, 8 October 1894, *ibid.*

82 Carter to DSG, 11 September 1894, *ibid.*

83 Carter to DSG, 20 September 1894, *ibid.*

84 Carter to DSG, 11 September 1894, *ibid.*

85 Carter to DSG, 30 October 1894, *ibid.*

86 DSG to Carter, 16 November 1894, *ibid.*

87 Carter to DSG, 15 December 1894, *ibid.*

88 Carter to DSG, 15 December 1894, *ibid.*

announced their readiness to purchase, the greater number do not seem disposed to make any effort to do so, and having lived on the lots for a number of years, are disposed to resent any interference with what they consider their own property". Besides, according to Carter, the settlers were behind the Indians' refusal to sign the surrender — expecting to continue in undisturbed possession of their land if no surrender was effected.⁸⁹ Exasperated by this lack of cooperation, the Deputy Superintendent General of Indian Affairs reminded Carter that the department was acting on the settlers' behalf. The government did not wish to resort to "harsh measures", but it had no power to allow these settlers to remain as they were.⁹⁰ And Carter, in turn, reminded Ottawa that these settlers "have lived for years on this land; many of them were born on it, and some of them are in miserably poor circumstances". They certainly would not get land surveys done, as the department had demanded; if the surrender and sales plan was to proceed, the properties would have to be surrendered by lot numbers only.⁹¹

At this point, the department adopted Carter's earlier suggestion and called for a joint surrender by the Red Bank and Eel Ground Bands combined without the necessity of lot or property surveys.⁹² Accordingly, on 10 April 1895, Carter held a meeting at Eel Ground of men of both bands above the age of 21. Of the 35 men who attended, from a total of approximately 70 adult males living on the two reserves, only two were from Red Bank, and they simply protested the Eel Ground Band's involvement with lands belonging to the Red Bank Band and walked out of the meeting.⁹³ Before the meeting concluded, however, 23 of the Eel Ground men signed the surrender form, on the face of which they were identified as "The Chief and Principal men of the Indians owning the Big Hole, Indian Point, and Red Bank Reserves, *resident on our reserves. . .*" Nowhere in the document was the fact revealed that these men belonged to the Eel Ground Reserve, rather than to the reserves named. Peter Julian, as "Chief of the said Band", was the first to sign, followed by Lemey Renou, second chief at Eel Ground, and the 21 others.⁹⁴ The department was not satisfied with this surrender. Carter was to get another one, signed by Red Bank Indians.⁹⁵ Yet the surrender given by the 23 members of the Eel Ground Band was one of two surrenders of these lands formally accepted by the department, and later published officially as such.⁹⁶

At a meeting held at Red Bank on 6 June 1895, Carter "had great difficulty

89 Carter to DSG, 3 January 1895, *ibid.*

90 DSG to Carter, 7 January 1895, *ibid.*

91 Carter to DSG, 2 March 1895, *ibid.*

92 DSG to Carter, 18 March 1895, *ibid.*

93 Carter to DSG, 12 April 1895, *ibid.*

94 Canada, *Indian Treaties and Surrender*, Vol. 3 (Ottawa, 1912), pp. 156-8.

95 DSG to Carter, 18 April 1895, File 107,222, Vol. 2522, RG 10, PAC.

96 *Indian Treaties and Surrenders*, Vol. 3, pp. 156-8.

24 *Acadiensis*

in inducing” 14 Indians, a majority of the adult male band members there, to sign a second surrender form. They agreed to do so only on condition that the Big Hole tract would be secured to the Red Bank Band. Also, they wanted a copy of the surrender document to keep.⁹⁷ Again, the department was not satisfied; the surrender was not acceptable with such a caveat written into it; Carter was to have it “reacknowledged”.⁹⁸ Without altering the date of the document, Carter returned it to Ottawa on 2 July, “duly reacknowledged as requested”.⁹⁹ But, presumably at the department’s later request, Carter and John B. Dominic, the acting chief at Red Bank, gave depositions concerning the authenticity of this surrender on 25 July 1895 before a Richibucto magistrate. The “reacknowledged” document, including record of these depositions, was then accepted as the second official document of surrender pertaining to the Little South West, Indian Point, and Big Hole lots which the department had sought authorization to sell.¹⁰⁰

For some reason, though, the department demanded that a third document of surrender be obtained. It could be signed by both Red Bank and Eel Ground Indians, but the breakdown in numbers was to be reported by Carter.¹⁰¹ At the meeting convened for this purpose on 25 October 1895, 35 Eel Ground men and eight Red Bank men were in attendance, of whom 32 Eel Ground men and one Red Bank man signed their names to the document. The others still refused.¹⁰²

In spite of the intransigence of most of the Red Bank Indians, the Department of Indian Affairs was evidently satisfied that proper and legal surrenders of the lands in question had been achieved through these several exercises. In February 1896, Carter was informed that the surrenders had been accepted by the Privy Council and that the surrendered land was now to be sold.¹⁰³ In the meantime, the dispute over the Big Hole tract was resolved by a decision to divide the tract into two blocks of equal size for the Red Bank and Eel Ground Bands.¹⁰⁴ The small Indian Point tract was left with the Red Bank Indians.

Towards the settlers on the Little South West tract, the department now began to behave as though it had a very strong suit in hand. Through Carter, they were sternly warned that they were to pay up promptly or “face ejection”.¹⁰⁵ In bureaucratic eyes, these settlers were johnny-come-lately squatters, perched precariously on the land, although, in fact, a number of them were freeholders

97 Carter to DSG, 8 June 1895, File 107,222, Vol. 2522, RG 10, PAC.

98 DSG to Carter, 13 June 1895, *ibid.*

99 Carter to DSG, 2 July 1895, *ibid.*

100 *Indian Treaties and Surrenders*, Vol. 3, pp. 158-60.

101 DSG to Carter, 9 October 1895, File 107,222, Vol. 2522, RG 10, PAC.

102 Carter to DSG, 26 October 1895, *ibid.*

103 DSG to Carter, 26 February 1896, *ibid.*

104 G.L. Chitty to DSG, 28 March 1896, *ibid.*

105 DSG to Carter, 4 April 1896, *ibid.*

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with land grants dating from before Confederation; several of them were persons who believed that they had acquired prescriptive titles to their properties through open possession over periods of 60 years or more; and a majority of them were, in any case, children, grandchildren, or other relatives of persons who had come to the land in the 1830s and 1840s under lease and by enticement of the Julian chiefs, who had organized and effected the orderly settlement of the tract.

When J.A. Macrae, the federal government's Inspector of Indian Agencies and Reserves, visited the province in the spring of 1898, he stated that he was shown no evidence of provincial grants ever having been made on the Little South West tract, although some settlers claimed that they had such grants. In a report rife with inaccuracy, he noted that, while there were only 29 squatters reported on the reserve in 1893, there were now 48.¹⁰⁶ This statistic caught the eye of J.D. McLean, secretary of the department, who concluded that, because the number of squatters had increased so rapidly, different parties must have taken up "vacant land" on the reserve during the past five years. He questioned Carter tersely on this: was Carter doing his job?¹⁰⁷ Carter replied promptly to explain that any changes of occupancy had been by right of quit claim deeds and the sale of improvements. "Do I understand you to mean", Carter queried, "that if a white squatter once leaves his lot I am to take steps to prevent his successor from taking up possession of the lot even though he may have bought and paid for the rights of the original settler?"¹⁰⁸ The answer was no: "The Department did not intend to convey the impression that you were not to allow parties who purchased the improvements and rights of squatters to enter into possession thereof".¹⁰⁹ There was, of course, no "vacant land" on the tract in the sense in which McLean imagined, nor had there been any since the 1840s.

The settlers themselves were the ultimate mystery and frustration to the department. Some of them allowed that they would be pleased or relieved to acquire clear title to their holdings, but others stubbornly insisted that the Indians had long since been paid all that the properties were worth. Some settlers were literally too poor to pay the money demanded, and those who were not had lived so long on the land that they tended to see it as their own of right. "The general opinion among them", wrote Carter, "is that they will not be molested. . . I have found it impossible to induce them to do anything".¹¹⁰

Departmental pressure continued for several more years. In 1901, W.C. Winslow, a Chatham solicitor, was appointed to collect the monies owed the department.¹¹¹ Winslow felt that a number of the settlers needed to be dealt with

106 Inspector Macrae's Report, 4 April 1898, *ibid.*

107 J.D. McLean to Carter, 31 March 1898, *ibid.*

108 Carter to McLean, 4 April 1898, *ibid.*

109 McLean to Carter, 9 April 1898, *ibid.*

110 Carter to DSG, 25 March 1897, *ibid.*

111 Acting Deputy Minister of Justice to Secretary of Indian Affairs, 9 July 1901, *ibid.*

“by legal process”. “Many are holding out”, he wrote, “avowedly for the purpose of testing whether the Department intends to follow the cases to a conclusion”.¹¹² Several times Winslow sought advice on how to proceed against these recalcitrants, but no steps or procedures were ever specified. Apart from being instructed repeatedly to collect the monies due the department, Winslow was given no direction. At the critical moment, the Department of Indian Affairs would not risk initiating actions of ejection. The settlers had been right all along. They would not be forcibly removed from the land. They had called the department’s bluff.

The department’s campaign over a ten-year period resulted in 28 sales of lots at 80¢ an acre (down from the original asking price of \$2.00 an acre), for which federal patents were issued. Left in legal limbo still were some 20 lots, of the 50-odd that had been placed on the provincial auction block in 1849.¹¹³ These properties, although included in the surrenders of 1895, were not purchased or patented, but simply held or squatted upon by their claimants or occupants. Besides, in its eagerness or indifference, the department, in the process of negotiating sales, ignored the lot numbers cited in the surrenders and sold and patented several unsurrendered lots along with the rest — thus creating yet another class or status of land on the tract.

The ultimate absurdity of the exercise, though, was that the Department of Indian Affairs did not have the constitutional right to sell or issue patents for former Indian land situated in the Province of New Brunswick.¹¹⁴ Judgements rendered by the Judicial Committee of the Privy Council, from 1888 onward, established that surrendered Indian land reverts, not to the crown in the right of Canada, but to the crown in the right of the province in which the land is located.¹¹⁵ Thus, purchasers of former Indian land from the Department of Indian Affairs were left holding in their hands only defective paper titles to their properties.

It took the federal government more than 50 years to extricate itself from the fiasco of having issued land patents in New Brunswick. A legal patch-work job was finally done in 1958, by a statute passed by both the provincial legislature and the Parliament of Canada which legitimized the federal patents retroactively.¹¹⁶ In the meantime, however, the Department of Indian Affairs countenanced violations of the Indian Act, in respect of lands, on every hand in the province. At Red Bank, the department did nothing in the 1920s to prevent a

112 W.C. Winslow to Deputy Minister of Justice, 6 October 1902, *ibid.*

113 The facts cited in this and the following paragraphs, unless otherwise noted, were obtained from active files and maps of the Department of Indian Affairs and Northern Development.

114 The power, as distinct from the constitutional right, to issue letters patent conveying Indian lands to purchasers was embodied in a federal statute (49 Victoria c. 7).

115 The landmark judgement on the consequences of a surrender of Indian lands was given in *St. Catherine’s Milling and Lumber Company and the Queen* (1888), 14 House of Lords 46.

116 *Statutes of New Brunswick*, 1958, c. 4; *Statutes of Canada*, 1959, c. 47.

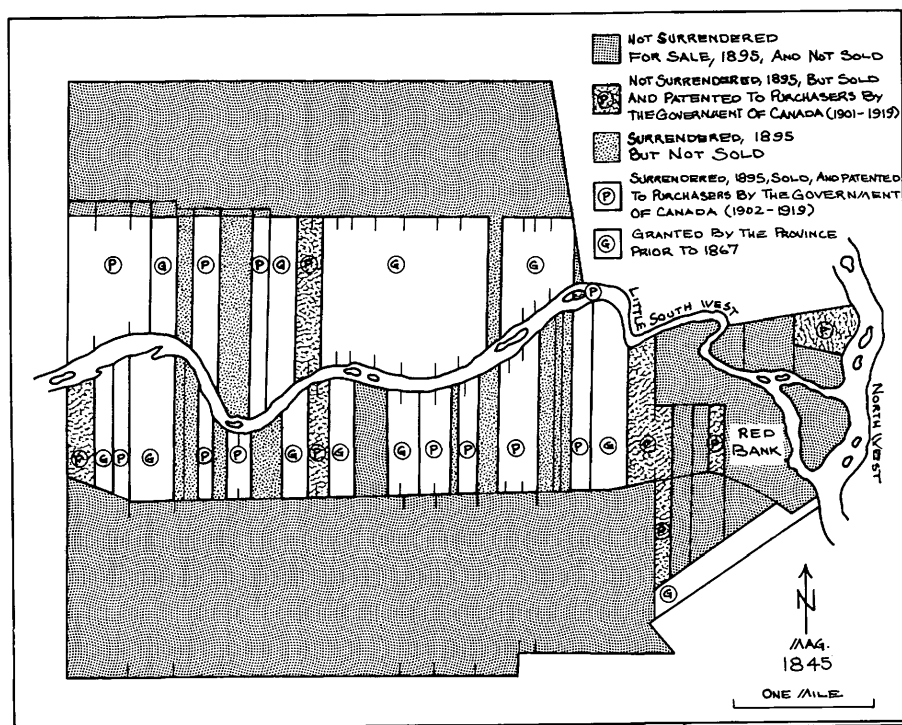


Figure Six: The Little South West Indian Reserve, 1920

non-Indian commercial and residential community from taking shape on the reserve through informal arrangements made between the Indians themselves and non-Indian merchants and residents. This development had no permanent effect on the boundaries of the reserve, but in the 1960s, when the band demanded that all of the Red Bank village and the Red Bank Reserve proper be restored to the Indians' exclusive occupancy, the situation caused hardship, quarreling and bitterness between the Indian and non-Indian people.

The most recent chapter in the history of the Little South West Indian lands took the form of a case initiated in 1973 and pursued for ten years through the Federal and Supreme Courts of Canada. In this case, the Department of Indian Affairs sought to assist the Red Bank Indian Band in evicting a non-Indian occupant from a property on the Little South West tract which was once part of the Indian reserve. The case of *Her Majesty the Queen vs. Gilbert A. Smith* produced much documentation and argument relevant to the unspeakably complex legal condition of the lot in question and of these lands in general. In the end, the Supreme Court allowed on appeal that neither the Red Bank Indian Band nor the crown in the right of Canada possessed any residual interest in reserve land that had been surrendered by the Indians for sale. Yet it

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is difficult to believe that the land problems which had their beginnings in the licence of occupation issued in 1783 to "John Julian and his tribe" will be ended by the handing down of this Supreme Court judgement in 1983. Given the chaotic history of this tract of land, the search for undisputed title to the many different properties within its bounds may never end.