

acknowledged by the treaty; Nine hundred and fifty dollars were paid and receipted on the 18th of September 1824. The remaining one thousand and fifty dollars were paid and receipted on the 13th of November 1824. By the second article of this treaty the New York Indians promised and agreed to and with the Menominies that they should have the free permission and privilege of occupying and residing upon the lands therein ceded, in common with them, provided that the Menominie nation should not in any manner infringe upon any settlements or improvements which might be made by the New York Indians. This mode of drafting the articles of cession might have been intended as a mean to "keep off the long finger nails of the white people." Indeed there was some evidence to show that this was the intention of both parties. But as the several parts of the same instrument, referring to the same subject matter, and perfected at the same time, constitute but one deed, the cession of the whole in one clause, and the retro-cession of a moiety by another, and by the same deed, cannot amount to any thing more than the grant of one moiety, and the reservation of the other. For it would be absurd to say that a party is divested of the whole, and reinvested with the moiety, *eo instanti* and by the same deed. The tenure by which the estate is held, as well as the nature of the estate, cannot be changed by this mode of conveyance. For as title by occupancy is the title by which a community of Indians hold their lands, a covenant real, for the full and free occupation in perpetuity, and that attaching to an actual possession, is equivalent to any estate assumed to be granted by the instrument. It follows then that the New York Indians acquired a tenancy in common with the Menominies; the same estate which their chiefs have insisted that they had granted and of which they have consented that the President might make partition.

The Council assembled on the 24th and continued from day to day as may appear by the journal to be transmitted as before stated. The Menominies and Winnebagoes asked the privilege of being assisted by Counsel; the Commis-